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Neutral Citation: [2023] UKFTT 871 (TC)

Case Number: TC08948

FIRST-TIER TRIBUNAL
TAX CHAMBER

[By remote video hearing]

Appeal reference: TC/2022/12669

STAMP DUTY LAND TAX – strike out application – whether jurisdiction – no claim for relief in returns – returns not amended – whether amendment must be in returns – yes – no appealable decision in respect of one property – appeal in that regard stuck out as no jurisdiction – whether enquiry notice competent in respect of other property – yes – whether timeous amendment to return – no – whether claim for overpayment relief has reasonable prospect of success – no – appeal in respect of both properties struck out

Heard on: 5 September 2023
Judgment date: 27 September 2023

Before

TRIBUNAL JUDGE ANNE SCOTT

Between

CALEB BRANDON HALSTEAD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

The Appellant: C Brandon Halstead

For the Respondents: Harry Winter, of Counsel instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. On 19 January 2023, the respondents ("HMRC") made an application for strike out of Mr Halstead's appeal pursuant to Rules 8(2) and 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (as amended) ("the Rules"). I annex a copy of those Rules at Appendix 1.

2. On 12 September 2022, Mr Halstead had filed an appeal online seeking repayment of Stamp Duty Land Tax ("SDLT") in a total of £20,300. He and his wife had purchased a property in 2016 ("the First Property") and another property in 2018 ("the Second Property"). They had paid SDLT of £7,500 and £12,800 respectively. In summary, he argued that the SDLT had been "improperly charged" and he sought repayment on the basis that he had "tax-exempt status as a member of the US Visiting Forces".

3. I had the benefit of a hearing bundle extending to 524 pages which included the strike-out application upon which HMRC relied as a Skeleton Argument.

4. With the consent of the parties, the hearing was conducted by video link using the Tribunal's video hearing system. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

5. I set out the facts, including the history of the arguments deployed, at length since, from the outset, Mr Halstead had made it explicit that he wished this appeal to be escalated to the highest level.

6. The primary function of the Tribunal is to find the facts and then to apply the law. Although I refer to the law in the body of this decision, at Appendix 2, I annex the text of the legislative and other provisions that are relevant to the arguments advanced in this matter.

The Legal Framework for strike-out

7. The Tribunal is a creature of statute law and its jurisdiction is circumscribed by that law. In relation to strike-out applications, that jurisdiction is found in Rule 8 of the Rules. If the Tribunal lacks jurisdiction, in terms of Rule 8(2) it **must** strike out the proceedings. That is a binary decision, which the Tribunal must address and determine at the hearing of the strike-out application.

8. In this appeal, HMRC seek strike out of the appeal in relation to the First Property in terms of Rule 8(2).

9. This is to be contrasted with an application to strike out a claim, or part of it, on the grounds that it has no reasonable prospect of success. In the latter case, the Tribunal will not exercise its discretion to strike out if there is a non-fanciful argument in support of the claim, or relevant part.

10. HMRC seek strike out of the appeal in terms of Rule 8(2) of the Rules in respect of the First Property on the basis that the Tribunal has no jurisdiction. HMRC also seeks strike out of the appeals for both properties in terms of Rule 8(3)(c) of the Rules.

11. Mr Winter argued that the leading case giving guidance on Rule 8(3)(c) is *Fairford Group v HMRC* [2014] UKUT 329 (TCC) ("Fairford") where the Tribunal found at paragraph 41 that:-

> "In our judgment an application to strike out in the FTT under r 8(3)(c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the FTT Rules to summary judgment under Pt 24). The tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of succeeding on the issue at a full hearing, see *Swain v Hillman* [2001] 1 All ER 91 and *Three Rivers* [2000] 3 All ER 1 at [95], [2003] 2 AC 1 per Lord Hope of Craighead. A 'realistic' prospect of success is one that carries some degree of conviction and not one that is merely arguable… The tribunal must avoid conducting a 'mini-trial'. As Lord Hope observed in *Three Rivers*, the strike out procedure is to deal with cases that are not fit for a full hearing at all."

Mr Halstead also relied on that quotation, arguing in particular that there should be no mini-trial and that there should be a full hearing.

12. Although *Fairford* is relevant, the Upper Tribunal in *The First De Sales Ltd & Others v HMRC* [2018] UKUT 396 (TCC) ("De Sales"), to which I was not referred, approved that quotation from *Fairford* at paragraph 31 of its decision but went on to say:

> "32. It was common ground that the application should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the FTT Rules to summary judgment under Part 24).
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> 33. Although the summary in *Fairford Group Plc* is very helpful, we prefer to apply the more detailed statement of principles in respect of application for summary judgment set out by Lewison J, as he then was, in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15]. This was subsequently approved by the Court of Appeal in *AC Ward & Sons v Caitlin Five Limited* [2009] EWCA Civ 1098. The parties to this appeal did not suggest that any of these principles were inapplicable to strike out applications.
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> "i) The court must consider whether the claimant has a 'realistic' as opposed to a "fanciful' prospect of success: *Swain v Hillman* [2001] 1 All ER 91
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> ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]
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> iii) In reaching its conclusion the court must not conduct a 'mini-trial': *Swain v Hillman*
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> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]
>
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond* (No 5) [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

I adopt that approach.

The facts

13. Until his recent retirement, Mr Halstead was a Lt. Col. in the U.S. Air Force. He remains Senior Legal Counsel as part of the civilian deployment. He has been a member of the U.S. Visiting Forces assigned in the United Kingdom since 2015.

14. He and his wife purchased the First Property with an effective date of 8 February 2016. The relevant SDLT return was filed with HMRC on 8 February 2016, albeit in terms of section 76(1) Finance Act 2003 ("FA 03"), and paragraph 2 Schedule 10 FA 03 the last day within which the return had to be delivered was 9 March 2016. That return was submitted by Mr Halstead's solicitor. At box 9 it was indicated that Mr Halstead did not claim any form of relief. The relevant tax of £7,500 was paid.

15. In terms of paragraph 6(3) Schedule 10 FA 03 the deadline for amending that return was one year after the filing date, namely 9 March 2017.

16. In terms of the relevant legislation, the deadline for making a claim for overpayment relief was four years after the effective date of the transaction, ie 8 February 2020. No claim was made in that period.

17. Mr Halstead and his wife subsequently purchased the Second Property which had an effective date of 11 May 2018. The SDLT return was filed on 14 May 2018 and the "filing date" was 10 June 2018 so it was filed in good time. Again, at box 9 no relief was claimed in the return. The tax of £12,800 was paid.

18. The deadline for amending that return was one year after the filing date, namely 10 June 2019. There was no amendment.

19. On 13 October 2021, Mr Halstead wrote to HMRC submitting a Memorandum ("M1") referencing HMRC's SDLT Manual SDLTM29630 (that was wrongly referenced but the enclosure was SDLTM29630) and section 74 Finance Act 1960 ("FA 60"). He asked that M1 be treated as a formal request for (a) amendment to both of the SDLT returns and (b) a full refund of "these improperly taxed amounts".

20. He sought relief on the basis that "land transactions made by members of the Visiting Forces which promote the health or efficiency of such a force" are exempt from SDLT.

21. SDLTM29630 is very short and I annex a copy at Appendix 3.

22. On 26 October 2021, HMRC responded stating that:-

(a) Section 74A(3) FA 60 provides that any claim for relief must be made in a return or an amendment to a return.

(b) Paragraph 6(3) Schedule 10 FA 03 provides that any amendment must be made within 12 months of the filing date, and

(c) Therefore the returns could not be amended.

They did not point out to Mr Halstead that section 74 FA 60 had been repealed by the Finance Act 2012.

23. On 9 November 2021, Mr Halstead sent another Memorandum ("M2") to HMRC arguing that:-

(a) Neither section 74A FA 60 nor paragraph 6 Schedule 10 FA 03 addressed instances where "taxation was improper and without authority, thereby creating a potential claim in tort or contract against HMRC for unauthorised collection of taxes. This type of limitation period is addressed under the Limitation Act 1980".

(b) Since he had only discovered the existence of section 74A FA 60 in August 2021 the claims were in time in terms of the Limitation Act 1980.

(c) Paragraph 6(3) Schedule 10 FA 03 reads "Except as otherwise provided an amendment may not be made more than 12 months after the filing date" and the fact that HMRC had erroneously taxed two transactions "clearly falls within the 'Except as otherwise provided' provision".

(d) Paragraph 7(1) Schedule 10 FA 03 provides that HMRC "may amend a land transaction return so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise)" so the returns should be amended.

(e) Equitable relief requires the amendment of the returns.

24. On 17 January 2022, HMRC responded pointing out that:-

(a) Where a person has paid an amount of tax but believes that it was not due, a claim for repayment could be made under paragraph 34 Schedule 10 FA 03 (an overpayment claim) but that such a claim could not be made more than four years after the effective date of the transaction. Accordingly Mr Halstead was out of time to make a claim for the First Property but was within time for the Second Property.

(b) Paragraphs 34(3) and 34A Schedule 10 FA 03 make provision for certain cases in which HMRC are not liable to give effect to a claim made under paragraph 34. Specifically in terms of paragraph 34A(2)(b), HMRC are not liable to give effect to a claim where the amount paid is excessive by reason of a mistake consisting of making or giving or failing to make or give a claim or election (Case A). Even if SDLT relief was

available, there was a mistake because there was a failure to make claims for relief within the statutory time limits.

(c) Section 39 of the Limitation Act 1980 provides that that Act does not apply to any action for which a period of limitation is described by any other enactment. Therefore, paragraph 34 Schedule 10 FA 03 prevents the Limitation Act 1980 from applying.

(d) A common law claim for restitution is not possible because paragraph 34(6) Schedule 10 FA 03 excludes non-statutory liability and provides that a claim must be made under the statutory provisions of FA 03.

25. On 20 January 2022, Mr Halstead sent another Memorandum ("M3") to HMRC saying that he had discovered section 74A FA 60 in August 2021 and had realised that it should have applied to him. He argued that:-

(a) Any alleged mistake did not lie with him but rather with the solicitors who had completed all the necessary paperwork and payments. If subject matter experts who specialised in home conveyancing were not aware of the exemption, the individual members of the Visiting Forces should not be taxed.

(b) HMRC had been unjustly enriched through improper taxation.

(c) He reiterated that the SDLT had been applied without any authority and improperly collected and there should be equitable relief.

(d) He also reiterated the argument about paragraph 7(1) Schedule 10 FA 03 arguing that HMRC's unfounded collection of SDLT was an "error of principle".

(e) He requested that HMRC exercise its discretion under paragraphs 6(3), 7(1) and 34 Schedule 10 FA 03 to correct the errors and refund the taxes. His argument was that those provisions "clearly envisaged and intended" that there should be such an exemption. He described the taxes as HMRC's "ill-gotten gain".

(f) He said that there had been changes in the Finance Acts 2007 to 2013 which appeared to grant a six year time limit to reclaim SDLT as the result of the careless behaviour of another person and he relied on HMRC's "Compliance Handbook CH53200, 17 January 2022" as the authority for that. He requested that HMRC consider that option.

26. On 18 February 2022, HMRC responded referring to their letter of 17 January 2022 and stating that:-

(a) The overpayment claim in respect of the First Property was more than four years after the effective date so there was no possibility of an appeal for that transaction.

(b) The in-time claim for overpayment relief in respect of the Second Property would be referred to colleagues in SDLT compliance who would discuss the validity of the claim.

(c) Paragraph 7(1) Schedule 10 FA 03 exists to correct obvious errors made in a return, such as simple transcription errors.

(d) In terms of paragraph 7(3) Schedule 10 FA 03 a correction can only be made within nine months of the return being delivered or where an amendment to the return is made within nine months of the amendment being made. Neither applied in these circumstances.

(e) Whether or not relief is available is not something that HMRC can decide via a correction because SDLT is a self-assessed tax.

(f) HMRC did not agree that the Visiting Forces exemption existed to afford relief in situations where a single member of a Visiting Force purchased property in a personal capacity.

(g) There is no discretion in terms of paragraph 6(3) Schedule 10 FA 03.

(h) CH32200 deals with time limits for HMRC to make assessments, and not with reclaims of tax. That is also the situation in relation to paragraph 31 Schedule 10 FA 03.

27. On 1 March 2022, Mr Halstead sent another memorandum ("M4") to HMRC and argued that:-

(a) The "withholding" of SDLT was the result of mistakes on the part of the solicitors.

(b) HMRC were refusing to acknowledge that the taxation was without any authority and HMRC had "improperly collected revenue from a foreign entity (in this case a member of the Visiting Forces) which was contrary to both international agreement and its own Finance Acts".

(c) Visiting Forces have special governmental status in the UK under Article 1, paragraph 1(b) of the 1951 North Atlantic Treaty Organisation Status of Forces Agreement ("NATO SOFA"), the Visiting Forces Act 1952 and the Finance Act 1960 at section 74A(5)(c). The relevant extracts from NATO SOFA are at Appendix 4.

(d) He reiterated the arguments about both the need for an equitable refund and HMRC exercising discretion in terms of paragraphs 6(3), 7(1) and 34 Schedule 10 FA 03.

(e) Paragraph 34A(2) Schedule 10 FA 03 (Case A) does not apply because HMRC had taxed a "tax-exempt sovereign entity without authority". Effectively his case was that his circumstances were more akin to paragraph 34A(8) and (9) (ie Case G). He argued that subparagraph (9) which reads: "Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law" was authority for the proposition that "refunds are mandated when the tax is contraindicated by international law". In this case the "unauthorized taxation" was contrary to EU law, UK law and the UK's international agreements with the US Visiting Forces.

(f) CH53200 applied because the "erroneous payments [were] caused by the careless behaviour of a third party". Therefore there was a six year limitation period. Nothing in paragraph 31 Schedule 10 FA 03 prevents a refund of tax paid and the six year time limit permits examination of all tax consequences due to third party error.

(g) The plain language of sections 74(2) and 74A(2) FA 60 was that "members of the Visiting Forces purchasing real property for their health, wellbeing and efficiency" of the force were exempt from SDLT and in that regard he also relied on SDLTM29630.

(h) He quoted from HMRC's publication "Tax Exemptions: International Military Headquarters, EU Forces, etc" ("the Proposal"):

> "Section 74A FA 1960 applies an exemption from stamp duty land tax in respect of any land transaction in connection with a NATO headquarters. The other three sections provide tax privileges to members of visiting armed forces and their civilian component who are either stationed in the UK or serving at a NATO headquarters in the UK".

He also quoted from paragraph 17 of the Background Note to the Proposal which said:

> "Existing tax legislation provides that members of visiting forces and staff of designated NATO allied headquarters, who are present in the UK solely because of their official duties, are exempt from tax on their official remuneration and do not

become tax resident in the UK if they are stationed here. There are also provisions providing exemptions from Capital Gains Tax, Inheritance Tax and Stamp Duty Land Tax".

(i) There is no ambiguity because Visiting Forces have special status and "Improper taxation of this sovereign status must be refunded". This is not merely a taxation mistake by a third party "it is an unauthorised excise upon a sovereign entity with tax-exempt status, and HMRC is in violation of the UK's treaty obligations under international law".

28. On 29 March 2022, HMRC opened an enquiry into the claim for refund of overpaid SDLT. That made it explicit that it related only to the Second Property since it was the only property for which the claim was within the statutory four year time limit. It stated that the enquiry was opened pursuant to paragraph 7 Schedule 11A FA 03.

29. On 25 April 2022, Mr Halstead responded with a further Memorandum ("M5") arguing strenuously that the claim in respect of the First Property was within the six year statutory limitation for "mistakes/careless behaviour of a third party (HMRC reference CH53200)". He argued that that was a "potential violation of international agreement for improper taxation of Visiting Forces" and meant that the four year time limit in paragraph 34 Schedule 10 FA 03 did not apply. He enclosed further copies of M2, M3 and M4.

30. On 7 June 2022, HMRC responded with a Closure Notice. That letter stated that:-

(1) HMRC had found as fact that the overpayment relief claim in respect of the Second Property had been validly made as it was within the statutory time limit and met all other relevant characteristics for it to be considered a valid overpayment relief claim under paragraph 34 Schedule 10 FA 03.

(2) Rather vaguely, as Mr Winter pointed out, the third paragraph read:

"This is the reason why my enquiry was limited to this claim only and did not extend to the other claim you made, which was not validly made."

Mr Winter argued that the other claim was the claim for exemption from SDLT and it was not a reference to the First Property. Given the terms of the rest of the Closure Notice I would agree with that analysis.

(3) Box 9 in the SDLT return had made no claim for relief/exemption.

(4) No amendments had been made to the return during the statutory amendment period of 12 months and therefore the requirement in section 74A(3) FA 60 was not met.

(5) The failure to meet the provisions of section 74A(3) FA 1960 cannot be remedied by way of making an overpayment relief claim as that falls within paragraph 34A(2)(b) Schedule 10 FA 03.

(6) HMRC relied on *HMRC v Christian Peter Candy* [2021] UKUT 170 (TCC) (albeit it was incorrectly referenced in the letter). However, it did refer to paragraph 112 of that decision, the relevant part of which reads:-

"… it does not follow that merely meeting the conditions for the relief is enough to secure that the taxpayer actually gets the relief. The relief requires a claim; and if the claim is not made in the return, the taxpayer will not get it. And nor can para. 34 of Sch. 10 to FA 2003 (as it currently stands) ride to the taxpayer's rescue in such a case – see para 34A(2)(b)."

(7) HMRC argued that the provisions of section 74A FA 60 provide relief for Visiting Forces in respect of acquisitions of property by them as institutions and does not extend to individual members of that Force.

31. On 8 June 2022, the Mr Halstead responded with a further Memorandum ("M6") described as being for "HMRC Independent Tribunal" arguing that HMRC had applied an "arbitrary and capricious application" of the law which "reflects a bureaucratic effort to protect HMRC". He appealed the decision on the basis that:-

(a) Individual members of the Visiting Force should be entitled to the exemption particularly in light of the exemption for "health or efficiency of the Force" which was a reference to living accommodation and that encompassed both barracks and private accommodation. That was a matter of black letter law given the wording of section 74A FA 60 which referenced members of the force and referred to "any body, contingent or detachment…" (74A(5)(c)). He reiterated the previous arguments in relation to the Proposal highlighting his argument that the Proposal dealt with reliefs for individuals.

(b) He reiterated his previous arguments in regard to the law, statutes of limitation and CH53200. If HMRC could raise discovery assessments then the same time limit (six years) should apply to overpayment claims.

(c) He also reiterated his previous arguments in relation to potential breaches of international law but on this occasion cited Article X of NATO SOFA.

32. On 7 June 2022, HMRC responded with their View of the Matter letter which confirmed the views in the Closure Notice.

33. On 7 September 2022, in their Review Conclusion letter, HMRC wrote to Mr Halstead confirming that the Closure Notice was upheld. Again that related only to the Second Property.

34. In summary, it stated that:-

(a) It is accepted that paragraph 34B(1) Schedule 10 FA 03 provides that a statutory claim for repayment of overpaid tax can be made within four years from the effective date of the transaction. However, HMRC did not accept that a failure to meet the requirements of section 74A(3) FA 60 (relief must be claimed in a return or an amendment of a return) can be remedied by making an overpayment relief claim.

(b) Mr Halstead's circumstances fall within Case A of paragraph 34A(2) Schedule 10 FA 03 which states that HMRC are not liable to give effect to a claim where the amount paid is excessive by reason of a mistake consisting of making or giving or failing to make or give a claim or election. The appellant (or the solicitors) had failed to make valid claims.

(c) The extended time limits outlined in HMRC's manual CH53200 do not extend the time limit for HMRC to repay tax because it only allows additional time for HMRC to make assessments.

(d) HMRC rejected the arguments that section 74A FA 60 offered an exemption to individuals. They pointed out that the definition of "visiting forces" does not apply to individual members of a visiting force acting in their personal capacity. The space between the words "any" and "body" in the definition makes it clear that it is referring to the institutions themselves. The types of land transactions referred to, being barracks or camps support that interpretation (section 74A(4)(a) and (b)).

(e) The Proposal did not support the argument that section 74A FA 60 applies to individual members but did the opposite and pointed to the first of the quotations that Mr Halstead had relied upon arguing that only the "other three sections" provided tax privileges to individuals.

(f) The use of the words "In this Agreement" in Article I(b) of NATO SOFA 1951 means that the definitions therein apply only to that document, unless expressly included in other legislation. Therefore that Article cannot be authority for the proposition that Visiting Forces have been given special government status in the UK and as a result HMRC are not permitted to impose SDLT on exempt visiting forces.

(g) Mr Halstead's argument, that Article X of NATO SOFA meant that taxation dependent on domicile is not permitted, was not accepted because SDLT is not predicated upon either residence or domicile.

(h) Case G in paragraph 34A(9) FA 03 does reference EU law but not other international treaties such as NATO SOFA.

(i) The definitions in the UK Visiting Forces Act 1952 were expressly stated to apply "In this Part of this Act" and therefore do not apply to FA 60.

35. On 8 September 2022, Mr Halstead prepared what he described as "Memorandum for HMRC Independent Tribunal" ("M7"). He reiterated his previous arguments. He relied on the wording of CH53200 for the proposition that there was no time bar. He also made reference to CH50100 arguing that HMRC had harmonised the time limits to assess taxes and make claims for relief.

36. He again argued that individuals were covered by the exemption, not least because section 74A FA 60 said Visiting Forces and international military headquarters, so therefore it could not just be the headquarters.

37. On 12 September 2022, Mr Halstead lodged his Notice of Appeal covering both properties, notwithstanding the fact that the Closure Notice related only to the Second Property.

38. On 20 January 2023, HMRC lodged their strike out application and on 23 January 2023 Mr Halstead lodged a further Memorandum ("M8") which he described as a rebuttal of that application. He stated that:-

(a) HMRC had wholly failed to address his arguments based on the Proposal which he described as a "Guidance Memorandum" and from which he again quoted.

(b) The Tribunal would be required to confirm the applicability of SDLT exemptions to Visiting Forces.

(c) This appeal "represents a unique instance of improper taxation of a tax-exempt individual under both UK domestic and international law; as such, the ordinary HMRC rules of civil procedure and filing deadlines must not be applied".

(d) The Visiting Forces Act 1952, section 74A FA 60 and the Proposal had implemented the Visiting Force's status under the *NATO SOFA*.

(e) Paragraph 34A(9) Schedule 10 FA 03 shows compliance with EU law; "therefore, the mandate to offer relief under international law over domestic civil procedure is in fact not unique".

(f) The tax should never have been applied and was a violation of UK tax law by HMRC.

(g) The strike out application does not address the fundamental issue of HMRC's breach of its own tax laws.

(h) Whilst UK domestic tax refunds "may" follow Finance Act procedures "errors based in HMRC violation of UK statutes founded in international treaty mandate expanded time lines for correction" (sic). He relied on Article 1, paragraph 5(a) and Article 26 of what

he described as the "US UK Technical Explanation of the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains" for the proposition that a refund of tax should be made. In fact that Explanation does not include Articles 1 and 26 but simply offers the US Department of the Treasury's explanation of those Articles. It should therefore be a reference to the Convention (the "Double Tax Treaty").

39. On 25 January 2023, HMRC responded to Mr Halstead pointing out that in their letter of 7 September 2022, HMRC had addressed the Proposal and went on to repeat the first quotation relied upon by Mr Halstead and said that it had not been quoted in context. HMRC added a further quotation:-

> "**Current law**
>
> […]
>
> Section 74A FA 1960 applies an exemption from stamp duty land tax in respect of any land transaction in connection with a NATO headquarters. The other three sections provide tax privileges to members of visiting armed forces and their civilian component who are either stationed in the UK or serving at a NATO headquarters in the UK …
>
> **Proposed Revisions**
>
> Legislation will be introduced in Finance Bill 2012 so that section 74A FA 1960 will apply to any international military headquarters in the UK. The other three sections will apply to military and civilian personnel either stationed in the UK or working at an international military headquarters in the UK".

It was argued that the Proposal made it clear that section 74A FA 60 applies to NATO headquarters and not to military personnel of any Forces. Lastly, it was argued that the exemption could not be available to individual members of the Forces because British Forces had no relief from SDLT.

40. Later that day, Mr Halstead replied arguing that HMRC had misread the legislative history as well as the plain language of the Acts. He referred to M7 and reiterated his previous arguments in relation to the Proposal which he described as being a "HMRC Guidance Memorandum". The primary thrust of his argument was that the title of section 74A FA 60 was "Visiting forces and allied headquarters" which distinguished between the headquarters and members of the Force which made up the Visiting Force.

41. He argued that the fact that UK Forces were not entitled to a relief was "specious" because the exemption applied specifically to Visiting Forces and not host nation personnel.

42. In support he again referred to NATO SOFA but this time to Articles X-X111 (but Articles XI to XIII relate to customs and therefore could not be relevant). He also referred to Article 1 of the Double Taxation Treaty but this time to paragraph 2 thereof. For completeness I annex at Appendix 5 the text of paragraphs 2 and 5(a) of Article 1 (and because it is referred to in paragraph 5 the text of paragraph 4) and the material portion of Article 26.

The Issues

43. HMRC argue that the only issues are whether Mr Halstead can:-

(1) Amend the SDLT returns or cause HMRC to do so, and

(2) Reclaim the SDLT that has been paid.

44. As can be seen, Mr Halstead argues that there are far greater issues. Most of those are well summarised by him in M7 where he said:-

"…overpayments require immediate remedy under international law, and must be granted an indefinite period for correction….HMRC has illegally taxed an individual with sovereign tax-exempt status; such an error in international law is not limited by…domestic timelines."

Discussion

45. Whilst I understand that Mr Halstead feels that he is advocating not only for himself but also for all other members of the Visiting Forces, nevertheless each case turns on its own facts and I can only look at the facts in this case and apply the law to those facts.

46. In my view, although I have read and heard very diverse arguments, there are two key issues at the heart of this strike-out application.

47. The first is that HMRC argue that one of the core issues is that SDLT is a self-assessed tax and it is not predicated on residence or domicile. They are correct. As can be seen Mr Halstead has repeatedly focussed his arguments on the assertion that HMRC have "imposed" SDLT, they had taxed him [and his wife] and they had done so illegally. Bluntly they have not.

48. The reality is that what they have done is to refuse to repay tax that Mr Halstead, and his wife, through their then solicitors, self-assessed and elected to pay to HMRC. Incidentally, I have heard no argument that Mrs Halstead was a member of the Visiting Forces but I attach no weight to that potential argument since it was not raised before me and HMRC were represented by Counsel. I mention it since it may be raised on appeal. The short answer is that I have no evidence on that point so I cannot comment.

49. The second is whether section 74A FA 60 can be read as conferring an exemption on individual members of the Visiting Forces.

50. Although Mr Halstead has referred to, and relied upon, section 74 FA 60 (see paragraphs 19 and 27(g) above), that was repealed by paragraph 10(1) Schedule 39 Finance Act 2012. However, it is worth looking at and it reads:-

"74 Visiting forces and allied headquarters (stamp duty exemptions)

(1) Subsections (2) to (4) of this section shall have effect with a view to conferring exemptions from stamp duty (corresponding to exemptions applicable in the case of Her Majesty's forces) in relation to any visiting force of a designated country, and in those subsections "a force" means any such visiting force as aforesaid.

(2) There shall be exempted from all stamp duties any contract, conveyance or other document made with a view to building or enlarging barracks or camps for a force, or to facilitating the training in the United Kingdom of a force, or to promoting the health or efficiency of a force….".

51. As can be seen, its provisions have been very largely carried over into section 74A FA 60. The word "allied" has been replaced by the words "international military". It does not refer to individual members and it does not refer to private homes. Nor does section 74A FA 60.

52. Prior to the repeal of section 74 FA 60, HMRC published what I have referred to as the Proposal. I described it as such because that is what it is. It most certainly is not a "HMRC Guidance Memorandum" (see paragraph 40 above) as Mr Halstead argued. Furthermore, the quotations from the Proposal cited by HMRC (see paragraph 39 above) appear in the section headed "Detailed Proposal". I find that those quotations make it explicit that the SDLT

exemption relates to headquarters and not to private homes. The other amendments that were proposed (and ultimately enacted) apply to the individual members of the Visiting Forces.

53. The Detailed Proposal follows on from a description of the background. Importantly that states that:-

(a) The measures will affect EU military forces and EU civilian staff, and

(b) The measures ensure that those forces and staff will receive the same tax privileges as those that apply to visiting NATO forces.

54. Schedule 1 made it clear that the substantive change in relation to SDLT was to replace the word "allied" with the words "international military". The Explanatory Note stated that the purpose was to bring the treatment of EU forces and staff into line with the "tax treatment already given" to NATO forces and civilian staff. Under the heading "Details of the Schedule" paragraph 2 reads:

> "Paragraph 1 amends section 74A of the Finance Act (FA) 1960 so that the section applies an exemption from Stamp Duty Land Tax (SDLT) not just to land transactions in respect of a NATO headquarters, but also to land transactions in respect of any international military headquarters designated under an Order in Council. It also deletes the redundant subparagraph 4(c)."

55. Section 74A FA 60 has been in force since 1 December 2003. It can be seen that "visiting force" is clearly defined in section 74A(5)(c) and nowhere in the section is there reference to the individual members of a Visiting Force. For the avoidance of doubt that definition is directly derived from section 12(1) of the Visiting Forces Act 1952.

56. There is no doubt that the Secretary of State for Defence is a Minister of the Crown and therefore, in terms of section 107 Finance Act 2003, any purchases of land, which would obviously be "institutional", for the British armed forces would be exempt from SDLT. Therefore in terms of section 74A(1) FA 60 the exemptions extended to Visiting Forces must correspond to the exemptions applying to the British armed forces, ie it must be at the same level.

57. That also makes sense when looking at the provisions of section 74A(2) FA 60 which refers to barracks and camps. Legislation has to be read as a whole and in context. Mr Halstead is not correct to rely only on the clause in that subsection referring to promoting the health or efficiency of a force. I apply the same rationale to SDLTM29630 (see paragraphs 17 and 18 above).

58. Whilst I have carefully considered all of Mr Halstead's arguments on the Proposal and the wording of section 74A FA 60, nevertheless I cannot accept that the exemption from SDLT extends to individual members of NATO or EU forces. It never has done.

59. The wording of the section itself is clear and there is no need to look behind it. However, the Proposal, upon which Mr Halstead relies not only does not assist him but it makes it very clear that the changes in 2012 related only to "headquarters".

60. HMRC are correct in arguing that the Proposal makes it clear that section 74A FA 60 applies only to headquarters and not to the military personnel of any forces. That has always been the case.

61. That should be the end of the matter, since on that basis there would be no SDLT exemption for individual members of any armed force, but in case I am wrong in that, I must look at the other issues.

Does the Tribunal have jurisdiction?

62. There are two reliefs that are being sought here. Firstly, Mr Halstead seeks relief based on what he argues is the SDLT exemption. Secondly, he seeks overpayment relief albeit, as can be seen, he argues that I should not restrict my consideration of that issue to the provisions of domestic law.

63. Mr Winter argued that:-

(1) The Tribunal has no jurisdiction in relation to the purported amendment of the return in respect of the First Property as there was no amendment, no enquiry and no closure notice.

(2) Mr Halstead's arguments both in relation to amendment of the return in respect of the Second Property and overpayment relief in respect of both properties had no prospect of success let alone a reasonable prospect of success.

64. By contrast Mr Halstead argued that matters of both fact and law, in respect of both properties, required nothing less than a full hearing and therefore the Tribunal must have jurisdiction.

65. As I said in the course of the hearing, and it is worth reiterating, the primary function of the Tribunal is to find the facts in the particular appeal before it and then apply the law to those facts. In this case there is no dispute about the facts relating to the purchase of the two properties and the reason why no claim for exemption was made at the time or within the prescribed statutory time limits.

66. My starting point is the First Property. The Tribunal only has jurisdiction in relation to "appealable decisions". That is to say decisions where the legislation stipulates a right of appeal to the Tribunal. Not all decisions of HMRC are appealable decisions. HMRC argue that there is no appealable decision in relation to the First Property.

67. They are correct for the following reasons.

68. Paragraph 35(1) Schedule 10 FA 03 prescribes when an appeal can be brought. Only paragraph 35(1)(b) could possibly apply in the circumstances of this case and that is if there was "a conclusion stated or amendment made by a closure notice". There is no closure notice because HMRC had not opened an enquiry into the SDLT return in terms of paragraph 12(1) Schedule 10 FA 03. Therefore they could not issue a closure notice in terms of paragraph 23 Schedule 10 FA 03. That is the only relevant statutory provision in relation to closure notices for SDLT purposes.

69. HMRC could never have opened an enquiry because of paragraph 12 Schedule 10 FA 03 which stipulates that an enquiry must be opened before the end of the enquiry period which is nine months after the filing date where there is no amendment to the return. It is common ground that there was no amendment to the return within the statutory time limits.

70. Mr Halstead argued that, given their "illegal actions" HMRC should have enquired and issued a closure notice. Shortly put, they simply could not have done so.

71. Mr Halstead has argued that there was an amendment some years later. He argues that paragraph 7(1) Schedule 10 FA 03 would have permitted an amendment by HMRC which he argues should have been done in response to his request for an amendment in M1.

72. That paragraph is headed "Correction of return by Revenue". As can be seen, the wording of that paragraph is permissive and not mandatory. The crucial wording is that it states that HMRC "may amend a land transaction return so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise)".

73. HMRC are correct to say, as they did in their letter of 18 February 2022, that any such correction is only in regard to obvious errors or omissions and in any event no such correction can be made more than nine months after the date on which the return was delivered or the amendment, by the purchaser, was made and that would have had to have been within 12 months of the filing date.

74. Quite apart from the issue of time limits, Mr Halstead argues that there was an error of principle in that an SDLT exemption should have been claimed. The problem with that argument is that even if there is an SDLT exemption for members of Visiting Forces, which I do not accept, the failure to claim it was certainly not an "obvious error".

75. Firstly, hitherto, no-one has ever even suggested that there is such an exemption so it cannot be obvious. Secondly, in the return(s) there is no indication that Mr Halstead (and/or his wife) were members of a Visiting Force. There is nothing on the face of the return(s) to suggest any obvious error.

76. I refer to the returns not least because the paragraph must be read as a whole. It is clear from the wording of that paragraph that the purpose of the legislation was to permit HMRC to unilaterally amend a return in certain circumstances; hence the following subparagraphs requiring HMRC to notify the purchaser and the purchaser having the right to reject the amendment. In this case it is the purchaser who is requesting the amendment.

77. The issue of time limits, whether to amend the return(s) or otherwise, is crucial for Mr Halstead and he has advanced many and varied arguments.

78. Ultimately, he argues that the filing deadlines for amendment of SDLT returns can be extended, or alternatively that the limitations imposed by statute simply do not apply, where there has been what he describes as "illegitimate taxation" which is in breach of international law.

79. I am entirely underwhelmed by the references to the Double Tax Treaty, the NATO SOFA or the Visiting Forces Act 1952. The short answer is that those antedate the introduction of section 74A FA 60 in 2003. They are uncontentious and have raised no issues in relation to SDLT until this appeal. Article X of NATO SOFA references taxation which is dependent on residence or domicile. SDLT depends on neither. Article 1 does define "force" but firstly, as HMRC noted that is for the purposes of that agreement only. In any event, read in context, the use of the word "personnel" is as a plural noun.

80. Mr Winter rightly accepts that HMRC is bound by international law but only where any such law is brought into domestic law. He relied upon the following extract from *Halsbury's Laws of England* which reads:

> "**13. The constitutional context**
>
> The place of international law and the conduct of international relations in English law are governed by the United Kingdom constitution. Of cardinal importance in this regard is the doctrine of parliamentary sovereignty, which implies that **in no case may the express words of statute be overridden by reference to international law.** Just as significant is the separation of powers as between Parliament and the executive, in accordance with which the executive may neither make nor abrogate domestic law by its acts alone. While the executive enjoys the constitutional authority to bind the United Kingdom as a matter of international law, it lacks the authority to secure by itself any necessary implementation in domestic law of the United Kingdom's international obligations. Equally, the separation of powers as between the executive and the judiciary means that the former's powers in relation to the conduct of international relations, including the assumption of international legal obligations on behalf of the United

> Kingdom, are mostly unsusceptible to judicial scrutiny as unreviewable exercises of the prerogative."

81. I have added emphasis since, as I have already indicated the Tribunal is a creature of statute. As the Upper Tribunal pointed out at paragraph 36 of *HMRC v Hok* [2012] UKUT 363 (TCC) ("Hok"):-

> "It is important to bear in mind how the First-tier Tribunal came into being. It was created by s 3(1) of the Tribunals, Courts and Enforcement Act 2007, 'for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act'. It follows that its jurisdiction is derived wholly from statute."

Since that decision is binding upon me, I am therefore constrained to consider only the statutory provisions.

82. Whilst referring to *Hok,* since Mr Halstead argued that it would be unfair if members of the Visiting Forces had to pay SDLT and so he sought equitable relief, I point out that the Upper Tribunal in *Hok* decided at paragraph 58 that the First-tier Tribunal has no jurisdiction to consider issues of fairness.

83. In any event, HMRC were correct to say that paragraph 34(6) Schedule 10 FA 03 excludes non-statutory liability.

84. In summary, in the absence of a closure notice there is no appealable decision and the Tribunal has no jurisdiction in relation to the purported amendment to the SDLT return for the First Property. The appeal in that regard must be struck out.

85. As far as the overpayment relief claim for the First Property is concerned, the right to appeal to the Tribunal is to be found in paragraph 14(1) Schedule 11A FA 03 which states that "an appeal may be brought against a conclusion stated or amendment made by a closure notice". The provisions relating to a closure notice are to be found in paragraph 11 Schedule 11A FA 03 and there was never an enquiry into the return First Property.

86. In any event, paragraph 34B(1) Schedule 10 FA 03 makes it explicit that a claim for overpayment relief cannot be made more than four years after the effective date of the transaction. The claim was made on 20 January 2022 which was almost two years after the expiry of that deadline.

87. In summary, whilst the appellant did purport to make a claim for overpayment relief, it was not a valid claim into which HMRC would have had the statutory ability to enquire and thereafter issue a closure notice. There is no appealable decision in relation to the overpayment relief. The Tribunal therefore has no jurisdiction.

88. I therefore find that, in relation to both the SDLT exemption and the overpayment relief claim, Mr Halstead's appeal in relation to the First Property must be struck out in terms of Rule 8(2) of the Rules.

89. What then of the Second Property (and if I am wrong about the First Property) and the prospects of success at a full hearing?

90. As can be seen, Mr Halstead has deployed many and varied arguments and there are a number of points that I should address at the outset. The first issue is that the heart of this appeal is the question of statutory construction. Mr Halstead has also repeatedly relied on what he describes as HMRC's guidance and manuals.

91. The Upper Tribunal in *Sippchoice v HMRC* [2020] UKUT 149 (TCC) ("Sippchoice") considered both the question of statutory construction and the use of HMRC's manuals and of

course both of those issues arise in this instance. Roth J and Judge Sinfield said at paragraph 18 that:-

> "18. ….Lewison LJ helpfully explained the correct way to approach the construction of legislation in *Pollen Estate Trustee Co Ltd v HMRC* [2013] EWCA Civ 753, [2013] STC 1479, in particular at [24] where he summarised the applicable principles as follows: "[24] The modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose. This approach applies as much to a taxing statute as any other: see *IRC v McGuckian* [1997] STC 908 at 915, [1997] 1 WLR 991 at 999; *Barclays Mercantile Business Finance Ltd v Mawson* (Inspector of Taxes) [2004] UKHL 51 at [28], [2005] STC 1 at [28], [2005] 1 AC 684. In seeking the purpose of a statutory provision, the interpreter is not confined to a literal interpretation of the words, but must have regard to the context and scheme of the relevant Act as a whole: see *WT Ramsay Ltd v IRC, Eilbeck (Inspector of Taxes) v Rawling* [1981] STC 174 at 179–180, [1982] AC 300 at 323; *Barclays Mercantile Business Finance Ltd v Mawson* (Inspector of Taxes), [2005] STC 1 at [29], [2005] 1 AC 684 at [29]. The essence of this approach is to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction (which might involve considering the overall effect of a number of elements intended to operate together) answered to the statutory description. Of course this does not mean that the courts have to put their reasoning into the straitjacket of first construing the statute in the abstract and then looking at the facts. It might be more convenient to analyse the facts and then ask whether they satisfy the requirements of the statute. But however one approaches the matter, the question is always whether the relevant provision of statute, upon its true construction, applies to the facts as found: see *Barclays Mercantile Business Finance Ltd v Mawson* at [32]."

92. They went on to say at paragraph 44 that:-

> "Statements in HMRC's manuals are merely HMRC's interpretation of the law in their internal guidance and they do not have the force of law. We must interpret the legislation in accordance with the principles of construction described above and if we conclude, as we have, that the legislation bears a different meaning to that found in the HMRC manual, the legislation must be preferred."

93. I have already explained, at some length, the purpose of section 74A FA 60 and do not propose to elaborate further on that.

94. Turning to the manuals. CH53200 is entitled "CH53200-Assessing Time Limits: Extended time limits: Reliance on another person" and deals only with the time limits within which HMRC must raise assessments where a loss of tax was brought about carelessly. It does not deal with time limits for claims of any sort. It does not assist Mr Halstead and it is not relevant to this appeal.

95. In M7 he argued that in CH50100 HMRC had harmonised the time limits to assess taxes and make claims for relief. In fact that excerpt from the manual is described as "Assessing Time limits: Overview". I do not propose to quote it in its entirely but it narrated that if HMRC were able to align time limits "where possible" that would reduce compliance costs and make compliance checks easier. In regard to stamp duty what it says is

> "Where we
>
> …

- amend a return in a stamp duty land tax enquiry closure notice,

the person may be able to make various consequential claims and elections that otherwise would have been out of time. More detail is at CH55100".

96. Of course, there was a closure notice for the Second Property but CH55100 states that consequential claims "can only be made in very specific circumstances and each tax has its own rules and time limits" and it relies on "specific legislation". There was no general alignment of the timing for assessments and claims. That guidance does not assist Mr Halstead and is not relevant to this appeal.

97. The time limits for SDLT are clearly set out in FA 03.

98. Mr Winter relied on *Smith Homes 9 Ltd v HMRC* [2022] UKFTT 5 (TC) ("Smith") at paragraphs 80 to 87 which, although it relates to a different relief, is indeed analogous. It is not binding on me but I agree with Judge McKeever.

99. In that case where she was considering Case A (paragraph 34A(2) Schedule 10 FA 03, she relied on *Candy* at paragraph 112 which I have quoted at paragraph 30(6) above.

100. She found that the failure to make a claim which the appellant could have made in a return, falls within Case A and therefore HMRC is not liable to give effect to an overpayment relief claim. At paragraph 82 she found that that was entirely consistent with the scheme of the SDLT legislation which provides for relief, as it does in this instance with section 74A FA 60, and sets out mandatory requirements including time limits for the relief to be claimed.

101. She found that "the appellant cannot circumvent those requirements by submitting a repayment claim under paragraph 34. The provisions of paragraph 34A mean that HMRC is not bound to give effect to the claim in these circumstances".

102. She also relied on the Tribunal in *Secure Service v HMRC* [2020] UKFTT 59 where, at paragraph 48, Judge Fairpo found at paragraph 48 that "…it would be inconsistent with the aims of the legislation if a twelve month time limit could circumvented (sic) simply by describing a claim for relief as a claim for a refund of an overpayment".

103. I agree entirely.

104. Going back to *De Sales,* do I think that Mr Halstead has a realistic prospect of success which carries some degree of conviction? I do not.

105. If either purchase had met the conditions for an SDLT exemption which, of course, is disputed, Mr Halstead would be unable to attain the relief or attain repayment of the tax allegedly "overpaid" so an appeal would fail.

106. The reasons why it would fail would include:-

(a) In terms of section 74A(3) FA 60, the relief "must be claimed in a land transaction return or an amendment of such a return".

(b) No relief was claimed for either property in the claims.

(c) The purported amendments in M1 were very far outside the deadline for valid amendments and are therefore invalid. In any event they were not, and could not have been, in the return(s).

(d) Paragraph 34A Schedule 10 FA 03 lists a number of Cases and if a claim for overpayment relief falls within any of those Cases, then HMRC are not liable to give effect to that claim.

(e) Case A applies. Although Mr Halstead claims that the solicitors made the error in not claiming relief, Case A does not distinguish between who makes the error; it is only a question as to whether there was an error. Therefore, even if he were in principle entitled to relief in terms of section 74A FA 60, the relief was nevertheless not claimed validly in terms of section 74A(3).

(f) Mr Halstead has consistently argued that longer limitation periods applied or that there is no limitation because of the operation of international law. I have already addressed international law and the HMRC manuals.

(g) In their letter of 17 January 2022, HMRC were correct to point out that section 39 of the Limitation Act 1980 provides that that Act cannot apply where a period of limitation is included in any other legislation. Paragraph 34 Schedule 10 FA 03 prevents the Limitation Act 1980 from applying so, in summary, the time limits in FA 03 apply.

(h) Given that he does not meet the statutory time limits he would still have a problem in establishing that there is an SDLT exemption available to individual personnel in the Visiting Forces. For the reasons given, there is not.

107. Accordingly, I find that in terms of Rule 8(3) of the Rules that there is no reasonable prospect of success so the appeal should be struck out.

DECISION

108. For all these reasons the appeal is struck out.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

109. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

ANNE SCOTT
TRIBUNAL JUDGE

Release date: 27 September 2023

Appendix 1

Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (as amended)

Rule 8(2)

(1) …

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of them; and
(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

Rule 8(3)(c)

The Tribunal may strike out the whole or a part of the proceedings if—

(a) …
(b) …
(c) the Tribunal considers there is no reasonable prospect of the Mr Halstead's case, or part of it, succeeding.

Appendix 2

The material provisions of Finance Act 2003 at the relevant dates

1. Section 76:

"(1) In the case of every notifiable transaction the purchaser must deliver a return (a "land transaction return") to the Inland Revenue before the end of the period of 30 days after the effective date of the transaction.

Schedule 10

2. Paragraph 2:

1. references in this Part of this Act to the filing date, in relation to a land transaction return, are to the last day of the period within which the return must be delivered.
…"

3. Paragraph 6:

"(1) The purchaser may amend a land transaction return given by him by notice to the Inland Revenue.

2. The notice must be in such form, and contain such information, as the Inland Revenue may require.
…
3. Except as otherwise provided, an amendment may not be made more than twelve months after the filing date."

4. Paragraph 7:

"**Correction of return by Revenue**

7-

(1) The Inland Revenue may amend a land transaction return so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise).
…
(2) A correction under this paragraph is made by notice to the purchaser.

(3) No such correction may be made more than nine months after—

(a) the day on which the return was delivered, or

(b) if the correction is required in consequence of an amendment under paragraph 6, the day on which that amendment was made.

(4) A correction under this paragraph is of no effect if the purchaser—

(a) amends the return so as to reject the correction, or

(b) after the end of the period within which he may amend the return, but within three months from the date of issue of the notice of correction, gives notice rejecting the correction.

(5) Notice under sub-paragraph (4)(b) must be given to the officer of the Board by whom notice of the correction was given.

4. Paragraph 12:

"(1) The Inland Revenue may enquire into a land transaction return if they give notice of their intention to do so (notice of enquiry")—

(a) to the purchaser,
(b) before the end of the enquiry period.

(2) The enquiry period is the period of nine months—

(a) after the filing date, if the return was delivered on or before that date;
(b) after the date on which the return was delivered, if the return was delivered after the filing date;
(c) after the date on which the amendment was made, if the return is amended under paragraph 6 (amendment by purchaser).

…"

5. Paragraph 23:

"(1) An enquiry under paragraph 12 is completed when the Inland Revenue by notice (a "closure notice") inform the purchaser that they have completed their enquiries and state their conclusions.

(2) A closure notice must either—

(a) state that in the opinion of the Inland Revenue no amendment of the return is required, or
(b) make the amendments of the return required to give effect to their conclusions.

(3) A closure notice takes effect when it is issued."

6. Paragraph 31:

(6) The general rule is that no assessment may be made more than 4 years after the effective date of the transaction to which it relates.

(7) An assessment of a person to tax in a case involving a loss of tax brought about carelessly by the purchaser or a related person may be made at any time not more than 6 years after the effective date of the transaction to which it relates….

7. Paragraph 34:

"(1) This paragraph applies where—

(a) a person has paid an amount by way of tax but believes that the tax was not due, or

…

(2) The person may make a claim to the Commissioners for Her Majesty's Revenue and Customs for repayment or discharge of the amount.

(3) Paragraph 34A makes provision about cases in which the Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under this paragraph.

(4) The following make further provision about making and giving effect to claims under this paragraph—

(a) paragraphs 34B to 34D, and
(b) Schedule 11A.

…

(6) The Commissioners for Her Majesty's Revenue and Customs are not liable to give relief in respect of a case described in sub-paragraph (1)(a) or (b) except as provided—

(a) by this Schedule and Schedule 11A (following a claim under this paragraph), or
(b) by or under another provision of this Part of this Act.

(7) For the purposes of this paragraph and paragraphs 34A to 34E, an amount paid by one person on behalf of another is treated as paid by the other person."

8. Paragraph 34A:

"(1) The Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under paragraph 34 if or to the extent that the claim falls within a case described in this paragraph.

(2) Case A is where the amount paid, or liable to be paid, is excessive by reason of—

(a) a mistake in a claim or election, or
(b) a mistake consisting of making or giving, or failing to make or give, a claim or election.

…

(8) Case G is where—

(a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant's liability to tax, and
(b) liability was calculated in accordance with the practice generally prevailing at the time.

(9) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(10) For the purposes of sub-paragraph (9), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or
(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a)."

9. Paragraph 34B:

"(1) A claim under paragraph 34 may not be made more than 4 years after the effective date of the transaction.

(2) A claim under paragraph 34 may not be made by being included in a land transaction return."

10. Paragraph 35:

"(1) An appeal may be brought against—

(a) an amendment of a self-assessment under paragraph 17 (amendment by Revenue during enquiry to prevent loss of tax),
(b) a conclusion stated or amendment made by a closure notice,
(c) a discovery assessment,
(d) an assessment under paragraph 29 (assessment to recover excessive repayment), or
(e) a Revenue determination under paragraph 25 (determination of tax chargeable if no return delivered).

…"

Schedule 11A Finance Act 2003

Paragraph 7:

"(1) The Inland Revenue may enquire into a person's claim or amendment of a claim if they give him notice of their intention to do so ("notice of enquiry") before the end of the period of nine months after the day on which the claim or amendment was made.
…".

Paragraph 11:

"(1) An enquiry under paragraph 7 is completed when the Inland Revenue by notice (a "closure notice") inform the purchaser that they have completed their enquiries and state their conclusions.

(2) A closure notice must either—

(a) state that in the opinion of the Inland Revenue no amendment of the claim is required, or

(b) if in the Inland Revenue's opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.

In the case of an enquiry into an amendment of a claim, paragraph (b) applies only so far as the deficiency or excess is attributable to the amendment.

(3) A closure notice takes effect when it is issued."

Paragraph 14:

"(1) An appeal may be brought against a conclusion stated or amendment made by a closure notice.

…."

Section 74A Finance Act 1960

74A Visiting forces and international military headquarters (stamp duty land tax exemptions)

"(1) This section has effect with a view to conferring exemptions from stamp duty land tax corresponding to exemptions applicable in the case of Her Majesty's forces in relation to any visiting force of a designated country. In this section "a force" means any such visiting force.

(2) A land transaction entered into with a view to building or enlarging barracks or camps for a force, or to facilitating the training in the United Kingdom of a force, or to promoting the health or efficiency of a force, is exempt from charge for the purposes of stamp duty land tax.

(3) Relief under this section must be claimed in a land transaction return or an amendment of such a return.

(4) Subsection (2) of this section has effect in relation to any designated international military headquarters as if—

i. the headquarters were a visiting force of a designated country;

ii. the members of that force consisted of such of the persons serving at or attached to the headquarters as are members of the armed forces of a designated country;

b. For the purposes of this section—

i. …

ii. "designated" means designated for the purpose in question by or under any Order in Council made for giving effect to an international agreement;

iii. "visiting force" means any body, contingent or detachment of a country's forces which is for the time being or is to be present in the United Kingdom on the invitation of Her Majesty's Government in the United Kingdom;

iv. "land transaction" has the meaning given by section 43(1) of the Finance Act 2003;

v. "land transaction return" has the meaning given by section 76(1) of that Act."

Section 107 Finance Act 2003

"(1) This Part binds the Crown, subject to the following provisions of this section.

(2) A land transaction under which the purchaser is any of the following is exempt from charge:

…
A Minister of the Crown".

Appendix 3

SDLTM29630 – Reliefs

Visiting Forces and Armed Headquarters

FA1960/S74A

This relief applies to certain acquisitions of land for use by

- visiting forces of designated countries, which are present in the UK at the invitation of HM Government, or
- designated international military headquarters established under the North Atlantic Treaty.

In order for relief to apply, the country or headquarters concerned must be designated for this purpose by Order in Council.

A land transaction is exempt from charge where it is entered into with a view to

- building or enlarging barracks or camps for the visiting force of a designated country,
- facilitating the training in the United Kingdom of such a force, or
- promoting the health or efficiency of such a force.

For this purpose a designated international military headquarters is treated as if

- it were a visiting force of a designated country,
- the members of that force were the persons serving at or attached to the headquarters who are members of the armed forces of a designated country and

Relief must be claimed in a land transaction return or an amendment to such a return. Enter code 28 (Other reliefs) at question 9 of the return.

Appendix 4

NATO SOFA

Article 1

1. In this Agreement the expression

a. "force" means the personnel belonging to the land, sea or air armed services of one Contracting Party when in the territory of another Contracting Party in the North Atlantic Treaty area in connexion with their official duties, provided that the two Contracting Parties concerned may agree that certain individuals, units or formations shall not be regarded as constituting or included in a "force" for the purpose of the present Agreement;

b. "civilian component" means the civilian personnel accompanying a force of a Contracting Party who are in the employ of an armed service of that Contracting Party, and who are not stateless persons, nor nationals of any State which is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the State in which the force is located. (emphasis added)

Article X

(1) Where the legal incidence of any form of taxation in the receiving State depends upon residence or domicile, periods during which a member of a force or civilian component is in the territory of that State by reason solely of his being a member of such force or civilian component shall not be considered as periods of residence therein, or as creating a change of residence or domicile, for the purposes of such taxation. Members of a force or civilian component shall be exempt from taxation in the receiving State on the salary and emoluments paid to them as such members by the sending State or on any tangible movable property the presence of which in the receiving State is due solely to their temporary presence there.

(2) Nothing in this Article shall prevent taxation of a member of a force or civilian component with respect to any profitable enterprise, other than his employment as such member, in which he may engage in the receiving State, and, except as regards his salary and emoluments and the tangible movable property referred to in paragraph 1, nothing in this Article shall prevent taxation to which, even if regarded as having his residence or domicile outside the territory of the receiving State, such a member is liable under the law of that State.

(3) Nothing in this Article shall apply to "duty" as defined in paragraph 12 of Article X1.

(4) For the purposes of this Article the term "member of a force" shall not include any person who is a national of the receiving State.

Appendix 5

The Double Taxation Treaty

Article 1

…

2. This Convention shall not restrict in any manner any benefit now or hereafter accorded:

   (a) by the laws of either Contracting State; or
   (b) by any other agreement between the Contracting States.

…

5. The provisions of paragraph 4 of this Article shall not affect:

   (a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), sub-paragraph (b) of paragraph 1 and paragraphs 3 and 5 of Article 17 (Pensions, Social Security, Annuities, Alimony, and Child Support), paragraph 1 of Article 18 (Pension Schemes) and Articles 24 (Relief From Double Taxation), 25 (Non-discrimination), and 26 (Mutual Agreement Procedure) of this Convention; and

   (b) the benefits conferred by a Contracting State under paragraph 2 of Article 18 (Pension Schemes) and Articles 19 (Government Service), 20 (Students), and 28 (Diplomatic Agents and Consular Officers) of this Convention, upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

For completeness, I also enclose paragraph 4, although I was not referred to it, because paragraph 5 refers to it.

4. Notwithstanding any provision of this Convention except paragraph 5 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if this Convention had not come into effect.

Article 26

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention. …