



## Low Incomes Tax Reform Group Case Commentary on CTC 591/2008 (Commissioner Williams)

### Keywords

Late claims and backdating; possible discrimination against self-employed; the importance of protective rather than retrospective claims.

### An outline of the facts and issues

- a) The joint claimants made a claim for tax credits on 07/02/06 for themselves and their child, born on 14/04/05.
- b) HMRC awarded CTC for the period 06/11/05 - 05/04/06.
- c) When appealing, the claimants argued they should be paid TCs back-dated to 14/04/05 (the child's DOB) in respect of CTC and 06/04/05 for WTC (on income grounds).
- d) The late claim was made because the claimants considered they were not in a position to make a claim on 06/04/05, (the start of the relevant tax year) because their accounts were not finalised and they were not aware of their income for the financial year commencing April 2005 June.
- e) The claimants also contended HMRC's decision discriminated against self-employed people and infringed their human rights.

### **Commissioner Williams' decision**

Although the claimants were not aware, tax credit legislation allows "*protective claims*" to be made at the beginning of a tax year. A protective claim should be made either within three months of the beginning of the tax year for CTC or within three months of the child being born. This applies even if a claimant does not know how much income he/she will earn in the year.

This process is explained in a section of the HMRC website "[Protect your rights to tax credits by claiming early](#)". The website explains that if a claimant thinks his/her income will decrease he/she should make a tax credit claim at the start of the tax year to allow for this possibility. Any adjusted tax credit payments can then be backdated to the date on which the claim was made.

However, [Regulation 7 of the Tax Credits \(Claims and Notifications\) Regulations 2002](#) states that a TC claim made after the beginning of the tax year can only be backdated for up to 3 months to the beginning of the year.

There are two principal exceptions (which did not apply in this particular case): -

- i. Regulation 8 of the 2002 Regs applies to WTC involving a disability element, linking TC claims with awards of Disability Living Allowance;
- ii. Regulation 3(5) of the TC (Immigration) Regulations 2003 covering those with refugee status.

### **The Discrimination Issues**

Referring to the Race Relations Act 1976, the claimants alleged discrimination on the basis that refugees were allowed to backdate claims when they were not.

With reference to Sections 19B and C of Race Relations (Amendment) Act 2000 and the 2007 Court of Appeal case of *Couronne –V- Crawley Borough Council*, the Commissioner definitively explained that a tribunal empowered to deal with social security appeals had no jurisdiction to deal with discrimination issues.