



Low Incomes Tax Reform Group Case Commentary on CTC/1853/2009 – Judge Williams

Keywords

UK citizens living abroad - entitlement to CTC pre/post May 2010; meaning of the EU definition of "family allowance".

An outline of the facts and issues

- a) On 1/10/08, HMRC issued a notice to Mr and Mrs F, awarding CTC for the period 6/04/08-26/08/08. This followed a claim made by Mr and Mrs F linked to Mr F's award of incapacity benefit (IB).
- b) Mr and Mrs F were UK citizens who had never worked in any other country. Mr F retired because of ill-health and received a police pension. He also had an underlying entitlement to long-term IB. He did not actually receive any IB because of the level of his income although he did receive national insurance credits on the basis of his incapacity for work.
- c) The couple's CTC award was later amended to cover the period to 15/07/08 only.
- d) The award was stopped because Mr and Mrs F resided in Sweden not Britain.
- e) The appellant (Mrs. F) appealed because she considered they remained entitled CTC under EU law. A first-tier tribunal confirmed the HMRC decision hence the referral to the Upper Tribunal. There were no other issues.

HMRC's view

- a) The award of CTC was made on the basis that it was a "family allowance" under EC rules.
- b) Subsequently HMRC concluded that CTC is not a "family allowance" because it also takes into account the income of the pensioner i.e. Mr F.
- c) Accordingly awards of CTC were reviewed and no further payments were made.
- d) HMRC referred to EC Regulation 1408/71 and its replacement by Regulation 883/2004 in May 2010. Additionally reference was made to Article 7(2) of EC Regulation 1612/68.

Mrs F's view

- a) Tax credits are part of the tax system not the social security system.
- b) Refusing the couple CTC was a breach of their rights to free movement as European citizens under Article 18 of the European Treaty and also of Article 48 as it imposed a higher rate tax on his pension income.

Judge Williams' decision

- a) Initially he considered whether he should refer the matter to the European Court. He decided not to because:
 - The "previous" view that CTC was a "family allowance" was "clearly overgenerous" and the subsequent view was correct;
 - As at the date of his decision, European law was to change in a few weeks time in the appellant's favour.
- b) The starting point was whether CTC was part of the UK tax system or part of the European social security system – the answer is both. However, although there are UK regulations dealing with the treatment of CTC there is no European equivalent.
- c) Judge Williams made particular reference to Article 1 of Regulation 1408/71 holding that the term "family allowances" means "periodical cash benefits granted exclusively by reference to the number and where appropriate the age of members of the family". CTC takes account of the income of claimants and falls outside the scope of this definition.
- d) Regulation 883/2004 came into force in May 2010. This includes the widely defined concept, "family benefit", which would include CTC.

Additional issue

Mrs F queried why other similar awards of CTC had been stopped later than hers. This was not an issue for the appellate tribunal system. Mrs F had the option of raising it with the HMRC Adjudicator's Office.