Neutral Citation: [2025] UKFTT 01505 (TC)

Case Number: TC09708

FIRST-TIER TRIBUNAL
TAX CHAMBER

[By remote video hearing]

Appeal reference: TC/2023/08093

STRIKE OUT APPLICATION - Stamp Duty Land Tax – Whether reasonable prospect of Appellant's case, or part of it, succeeding – Halstead v HMRC [2023] UKFTT 871 (TC) applied – Application allowed and appeal struck out

Heard on: 27 November 2025
Judgment date: 4 December 2025

Before

TRIBUNAL JUDGE BROOKS

Between

JOSEPH SMITH

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mrs Eugenia Kesselmann-Smith (wife of the Appellant)

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

DECISION

INTRODUCTION

1. This is my decision on the application by the Respondents ("**HMRC**"), made on 24 April 2025, that the appeal of the Appellant, Mr Joseph Smith, be struck out on the grounds that there is no reasonable prospect of his case succeeding (the "**Application**"). Mr Smith opposes the Application.

2. The form of the hearing was V (video), using the Microsoft Teams platform. I was referred to a Hearing Bundle comprising 699 pages which included relevant documents, legislation and authorities.

3. 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.

4. Mr Harry Winter of counsel appeared for HMRC. Mr Smith was represented by his wife, Mrs Eugenia Kesselmann-Smith. Their helpful submissions were much appreciated and have been taken into account, as have all the materials and authorities to which I was referred, even if not mentioned in this decision.

FACTS

5. Mr Smith is a US Department of Defense Postmaster stationed at RAF Menwith Hill, a NATO facility in North Yorkshire. It is not disputed that he is a member of a visiting force of a designated country. On 4 March 2022 he and his wife purchased a property to provide a private family home.

6. A Stamp Duty Land Tax ("**SDLT**") return was filed on 4 March 2022 and a payment of SDLT of £22,830 was paid the same day. This included an amount for Non-Resident SDLT Surcharge of £9,380 which was subsequently refunded by HMRC.

7. On 21 September 2022, Mr Smith (and his wife) made an in-time application to HMRC to amend their SDLT return to claim relief seeking a refund of £13,450 SDLT under s 74A of the Finance Act 1960 (which is set out in full in the Appendix). Section 74A confers an exemption from SDLT "to any visiting force of a designated country" ("**s 74A Relief**"). HMRC opened an enquiry into the SDLT return on 1 March 2023.

8. On 17 March 2024 HMRC issued a closure notice setting out HMRC's decision that no refund of SDLT was due. This was on the basis that s 74A relief was not available "in situations where a single member of a visiting force purchases property in a personal capacity". HMRC's decision was upheld on 9 May 2023 following a review.

9. Mr Smith appealed to the Tribunal on 16 May 2023.

10. On 27 September 2023 the Tribunal (Judge Anne Scott) released its decision in the case of *Halstead v HMRC* [2023] UKFTT 871 (TC) ("***Halstead***"). Like the present case, *Halstead* concerned an application by HMRC to strike out proceedings in which the Appellant, Mr Halstead, who was a member of a visiting force of a designated country, had sought s 74A Relief.

11. Judge Scott noted, at [55] of her decision, that the term "visiting force", which was derived from s 12(1) of the Visiting Forces Act 1952, was "clearly defined" in s 74A(5)(c) Finance Act 1960 and that nowhere in that provision was there any reference to individual members of a Visiting Force. She went on to say, at [56], that there was no doubt that the Secretary of State for Defence was a Minister of the Crown.

12. Therefore, she said, in terms of s 107 of the Finance Act 2003 (the material parts of which are also set out in the Appendix), any purchase of land, which would obviously be "institutional" for the British armed forces would be exempt from SDLT.

13. Accordingly, in terms of s 74A(1) Finance Act 1960, the exemptions extended to Visiting Forces must correspond to exemptions applying to the British armed forces. She observed, at [57], that this made sense when considering the provisions of s 74A(2) Finance Act 1960 which refers to "barracks and camps" and, as it was necessary to read the legislation as "a whole and in context", Mr Halstead had not been correct to rely on the part of s74A(2) referring to promoting the health or efficiency of a force.

14. Judge Scott also applied the same rationale to HMRC's publication, *Tax Exemptions: International Military Headquarters, EU Forces, etc* which she described as the "Proposal". In her decision, having "carefully considered" Mr Halstead's arguments and the wording of s 74A Finance Act 1960, Judge Scott said, at [58]:

> "… I cannot accept that the exemption from SDLT extends to individual members of NATO or EU forces. It never has done."

15. She continued, at [58] – [61]:

> "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 …"

16. On 22 December 2023, following applications by HMRC for an extension of time to file a statement of case and for this appeal to be stayed behind *Halstead*, the Tribunal directed:

> "The Tribunal considers that, as *Halstead* addresses the issue which is raised by the Appellant's grounds of appeal (namely the applicability of s74A Finance Act 1960 to the purchase of residential property by individual members of the US Armed Forces who are based in the UK), it is in the interests of efficiency of proceedings for the proceedings to be stayed behind *Halstead*. The appeal is stayed until the decision in *Halstead* becomes final. HMRC are required to inform the Tribunal within 14 days thereafter of the expiry of the stay, at which point the parties will have 14 days in which to inform the Tribunal if they are proceeding with the appeal (in the case of the Appellant) or cancelling the assessment (in the case of HMRC)."

17. The decision in *Halstead* became final following the decision of the Upper Tribunal (Judge Rupert Jones) refusing the appellant in *Halstead* permission to appeal against Judge Scott's decision (see *Halstad v HMRC* [2025] UKUT 22 (TCC).

18. As noted above, HMRC made the Application on 24 April 2025.

LAW

19. Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber Rules) 2009 provides:

> (3) The Tribunal may strike out the whole or a part of the proceedings if—

…

(c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

20. The following guidance on the application of Rule8(3)(c) was given by the Upper Tribunal (Henry Carr J and Judge Sinfield) in *The First De Sales Ltd & Others v HMRC* [2018] UKUT 396 (TCC) ("***De Sales***") at [32] – [33]:

"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).

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.

"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.

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].

iii) In reaching its conclusion the court must not conduct a 'mini-trial': *Swain v Hillman*.

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."

DISCUSSION AND CONCLUSION

21. In essence, for HMRC, Mr Winter contends that the Application should be allowed on the basis that s 74A Relief is not available to Mr Smith. He says that the issue has been determined by the Tribunal in *Halstead* and, as a matter of judicial comity (unless I consider it to have been wrongly decided) I should follow *Halstead* in this case.

22. Mrs Kesselmann-Smith contends that s 74A of the Finance Act 1960 is capable of applying to individual members of visiting forces; that this issue remains arguable and unresolved by any binding authority; and that procedural fairness and consistency with HMRC's published guidance and internal practices require the Application to be dismissed and her husband's appeal be allowed to proceed to a substantive hearing on the merits rather than be determined on a strike out application.

23. In the course of her submissions Mrs Kesselmann-Smith, in addition to the provisions of s 74A Finance Act 1960 and the Finance Act 2003 (which introduced SDLT), referred to other legislation and guidance including the Visiting Forces Act 1952, HMRC's SDLT Manual SDLTM29639 – Reliefs, the North Atlantic Treaty Organisation Status of Forces Agreement 1951 ("**NATO SOFA**") and HMRC's SDLT Manuals. However, this legislation and guidance was considered by the Tribunal in *Halstead* which, at [79] was "entirely underwhelmed" by the references to the NATO SOFA and Visiting Forces Act 1952 noting 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."

24. With regard to HMRC manuals, the Tribunal in *Halstead* cited, at [92], a passage from the decision of the Upper Tribunal (Roth J and Judge Sinfield) in *Sippchoice v HMRC* [2020] UKUT 149 (TCC) at [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."

25. It is therefore clear that the issues raised by Mrs Kesselmann-Smith in the present case were carefully considered by Judge Scott in *Halstead* who concluded that, although s 74A Relief applied to a Visiting Force of a designated country, the exemption from SDLT did not extend to individual members of those forces. Although her decision in that case was on a strike out application, as opposed to a full substantive hearing, this was because it was a case that fell within the description at [33vii] of *De Sales*, ie it gave rise to a short point of law or construction in relation to s 74A Relief which the parties had had an adequate opportunity to address in argument.

26. In view of this, the question for me is whether I should follow *Halstead* as a matter of judicial comity. If so, it would follow that Mr Smith's appeal could not have reasonable prospects of succeeding and, applying the guidance in *De Sales*, should be struck out.

27. The principle of judicial comity was succinctly described by Judge Brown KC (who is now President of the Tax Chamber of the First-tier Tribunal) in the case (which was not cited by either party) of *The Executors of the Estate of Linington and another v HMRC* [2023] UKFTT 89 (TC). She said, at [177]:

> "In summary, the principle requires that whilst courts of competent jurisdiction are not bound by the legal conclusions of one another's judgments, such conclusions will be highly persuasive and should be followed unless the second court is convinced that they are wrong. …"

28. Were it not for *Halstead*, I might well have been persuaded by Mrs Kesselmann-Smith's articulate and extensive submissions that the appeal should proceed to substantive hearing, dismissed the Application and directed a substantive hearing in this case.

29. However, given the clear similarity between them, I am unable to distinguish *Halstead* from the present case. Also, in the light of the refusal of permission to appeal I do not consider *Halstead* was wrongly decided. As such, judicial comity requires me to apply *Halstead* to the present case with the result that Mr Smith's appeal does not have a reasonable prospect of succeeding.

30. Therefore, for the reasons above, the Application is allowed and Mr Smith's appeal is struck out.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

31. 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.

Release date: 4th DECEMBER 2025

Appendix

Section 74A Finance Act 1960

At all material times s 74A Finance Act 1960 provided as follows:

(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—

(a) the headquarters were a visiting force of a designated country;

(b) 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;

[(c) the references to the country to which a force belongs included both any designated allied headquarters and, in relation to any such person as is mentioned in paragraph (b), the country of whose armed forces he is a member.][1]

(5) For the purposes of this section—

…

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

(c) "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;

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

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

Section 107 Finance Act 2003

At all material times s 107 Finance Act 2003 [HB/37/253] has provided as follows at all material times:

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

[1] Section 74A(4)(c) was repealed by para.1 sch.37 Finance Act 2012 with effect from 17 July 2012, i.e., before any of the relevant events in this appeal

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

…

A Minister of the Crown