



**TC01422**

**Appeal number: TC/2009/14270**

***COSTS – unreasonable conduct – HMRC sought to make employee liable for tax – PAYE regs required them to make employer liable – circumstances in which employee could be made liable were not present – direction that HMRC should make contribution to employer/applicant’s costs of successfully appealing in Trib.Proc (FTT)(Tax Chamber) Rules 2009 r.10(3)(a)***

**FIRST-TIER TRIBUNAL**

**TAX**

**NICHOLAS DELUCA**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: SIR STEPHEN OLIVER QC**

**Sitting in public in London on 27 July 2011**

**Dr David Southern, counsel, instructed by Dale Langley, solicitors for the Appellant**

**PP Donnelly, Appeal and Review Team, for HMRC**

## DECISION

- 5 1. The Appellant, Mr Nicholas Deluca, has applied for a contribution by HMRC to the costs that he incurred in respect of the appeal which this Tribunal decided in his favour. The Decision Notice was released on 6 January 2011 and HMRC have not appealed any part of it.
- 10 2. Mr Deluca's application under rule 10(3)(a) is based on rule 10(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009. His grounds are that HMRC had acted unreasonably in bringing and conducting the proceedings.
- 15 3. I confirm the decision that I gave orally at the conclusion of the hearing of the costs application. I direct that HMRC make a contribution of half the costs incurred in connection with the enquiry and the appeal. That amount (£7,970) is well below the itemised costs incurred since the appeal was made in 2009.
- 20 4. The factual background to the appeal and the reasons for the decision are summarised in the Decision of 6 January 2011. Essentially the Tribunal concluded that HMRC had, throughout, pursued the wrong person for the tax said to have become due in respect of certain loan waivers made at a time when Mr Deluca ceased employment on account of illness. APCO Ltd, Mr Deluca's employer, should have been made liable; this was the effect of the  
25 PAYE regulations and nothing is those regulations that made Mr Deluca liable as employee.
- 30 5. HMRC satisfied themselves in January 2008 that APCO Ltd was unwilling to pay the Tax for which it was liable; but HMRC neither pursued APCO nor sought to suggest that there could have been a liability on Mr Deluca, as employee, on the grounds that he had colluded with his employer in evading a tax liability.
- 35 6. In the circumstances I am satisfied that HMRC had no justification for pursuing Mr Deluca for the tax and consequently putting him in a position of having to appeal. HMRC were, I fully accept, entitled to enquire into Mr Deluca's tax return; but HMRC should have recognised at an early stage in the enquiry on whom (if they were correct) the tax liability would properly fall. Their action in pursuing him and in effect driving him to incur the costs was  
40 unreasonable in the extreme.
7. For those reasons I direct that HMRC make a contribution of £7,970 towards Mr Deluca's costs incurred in pursuing his appeal.
- 45 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.

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**SIR STEPHEN OLIVER QC**  
**TRIBUNAL JUDGE**  
**RELEASE DATE: 1 September 2011**