[2021] UKFTT 159 (TC)

TC08128

Income Tax – Discovery Assessments –s.29 (6) Taxes Management Act 1970 - Information made available by third party.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/02907

BETWEEN

NICHOLAS SCOGGINS **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE JENNIFER NEWSTEAD TAYLOR
JANE SHILLAKER

By consent between the parties the hearing was held by video link on 26 April 2021

The Appellant appeared in person.

Vicki Anne Wood, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. This is an appeal by Mr Scoggins against a discovery assessment ("the Assessment"), dated 6 November 2018, in the sum of £3,933.92 made under s. 29 (1) of the Taxes Management Act 1970 ("TMA 1970.")

2. The Assessment was made because HMRC formed the view that Mr Scoggins had income, being pension commutations and medical expenses totalling £99,314, that gave rise to a liability to income tax that he had failed to notify to HMRC.

THE EVIDENCE

3. We were provided with a main hearing bundle of 554 pages prepared by HMRC.

4. The main hearing bundle included the following:

   (1) Tribunal Documents;

   (2) Witness statement of Officer Lee Baxter;

   (3) Documents for the hearing;

   (4) Extracted documents;

   (5) Appellant's documents;

   (6) Legislation and Guidance.

5. We were also provided with a smaller bundle of 31 pages prepared by Mr Scoggins. However, save for Items 5, 6 & 8, the contents of Mr Scoggins' bundle were included within the main hearing bundle. Item 5 was HMRC advice to Pension Companies 2015 – PTM073700. Item 6 was HMRC advice to Pension Companies 2015 – PTM073010. As to Item 8, this was the ADR Exit Document and we informed the parties that we would disregard this as it was not relevant to our decision.

6. Mr Scoggins' letter attached to the Notice of Appeal was treated as his witness statement. He gave oral evidence, was cross-examined by Ms Wood, and answered questions from the Tribunal. We found him to be an honest witness who was doing his best to explain the position and to assist.

7. Officer Lee Baxter provided a witness statement, gave oral evidence led by Ms Wood, was cross-examined by Mr Scoggins, and answered questions from the Tribunal. We found him to be a straightforward and credible witness.

8. We enquired if any authorities were relied upon. During the course of the hearing, Ms Wood referred us to *Langham v Veltema* [2004] EWCA Civ 193. In addition, we identified the case of *Anderson (deceased) v Revenue & Customs* [2009] UKFTT 258 (TC). We ensured that both parties had copies of these authorities and were afforded sufficient time to consider them.

9. Based on the evidence provided, we make the following findings of fact. Some of the facts were in dispute, and we also make further findings later in our decision

THE FACTS

10. On 17 April 2015, Fidelity Worldwide Investment ("Fidelity") wrote to Mr Scoggins confirming that, in accordance with his withdrawal instructions, £33,128.86 had been withdrawn from his pension of which £23,500.71 had been paid to Mr Scoggins' bank account and £9,628.15 was income tax. The letter also informed Mr Scoggins that:

"The enclosed P45 and pay slip details the amount of tax deducted from your pension withdrawal. The tax deducted may not be the right amount due when all of your income for the tax year is taken into account.

After the end of this tax year HMRC will check whether you have paid the correct amount of tax and if not they should contact you. However, you should still check whether you need to complete an HMRC Self Assessment tax return regardless of whether HMRC contact you or not."

11. On 6 May 2015, Zurich wrote to Mr Scoggins enclosing a cheque for £40,975.30 in respect of an Uncrystallised Funds Pension Lump Sum ("UFPLS). In short, Mr Scoggins withdrew £59,505.80 of which he received £40,975.30 and £18,530.50 was deducted in tax. The letter stated that:

"A form P-45 which confirms the amount of tax as stated above, if any, will be issued to you under separate cover .

It may be that the tax deducted will not be the correct amount due, when all your income for the year is taken into account. After 5 April HMRC will check whether the correct amount of tax has been paid, and if it is not correct then they will contact you."

12. On 9 July 2015, Friends Life wrote to Mr Scoggins enclosing his P45 and stated:

"The tax deducted may not be the right amount due, when all your income for the year is taken into account. HMRC will check whether you have paid the correct amount of tax, and if not they will contact you."

13. In or around July 2015, Fidelity, Zurich and Friends Life ("the Pension Companies") provided the P45s to HMRC. Mr Scoggins did not provide the P45s to HMRC.

14. On 8 January 2017, Mr Scoggins submitted his Self -Assessment Tax Return for the year ended 5 April 2016 ("the Return.") Mr Scoggins PAYE employment and tax pre-populated, but his pension commutations, the tax deducted and/or medical insurance did not. Box 11, being *Pensions (other than State Pension) retirement annuities and taxable triviality payments*, and Box 12, being *Tax taken off box 11*, were both blank. Also, there was no information in any of the white spaces concerning either the pension commutations and/or the medical insurance. Mr Scoggins did not attach the P45s to the Return.

15. In January 2017, Mr Scoggins called HMRC, specifically a contact centre, to discuss the Return. He was informed that he owed £1,007.00 in tax which he promptly paid. However, he was not told that the person he spoke to was not empowered to enquire into the Return. In short, this person simply looked at the Return and reiterated the information provided by Mr Scoggins on the Return.

16. On 4 September 2017, Mr Scoggins amended the Return ("the Amended Return.") The amendment concerned business travel and expenses which increased from £4,108 in the Return to £6,584 in the Amended Return. No information concerning the pension commutations and/or the medical insurance was contained in the Amended Return.

17. On 6 November 2017, Mr Scoggins received a Self-Assessment Statement showing that no tax was due.

18. On 5 January 2018, Mr Scoggins submitted his Self-Assessment Tax Return for the year ended 5 April 2017 ("the 2017 Return.") At the time of completing the 2017 Return, the pension commutations were pre-populated. This was a system enhancement to improve accuracy that was not available when Mr Scoggins completed the Return.

19. As a result of inaccuracies in the 2017 Return, Officer Baxter looked into the Return.

20. On 5 March 2018, Officer Baxter compared the Return with information held by HMRC on the PAYE Service (being the system that holds information provided to HMRC by employers and pension providers of PAYE employments and pension commutations) and ECIS (being the system that holds P11D information provided to HMRC by employers of benefits provided and expense payments made to employees.) He identified that the following items had been omitted from the Return:

(1) Pension commutations totalling £97,420;

(2) Tax deducted from pension commutations totalling £39,181.65;

(3) Medical insurance of £1,894.

21. On 6 March 2018, Officer Baxter wrote to Mr Scoggins informing him that he was conducting a check of Mr Scoggins' tax position for the year ended 5 April 2016 because he had established that pension commutations and medical insurance had been omitted. Additionally, a S.9A TMA 1970 enquiry was opened into the travel and subsistence claim of £6,584 in the Amended Return.

22. On 2 May 2018, HMRC wrote to Mr Scoggins with proposals and calculations with a view to concluding the check into Mr Scoggins' tax position for the year ended 5 April 2016. In respect of the Return, HMRC proposed the following amendments:

(1) Reducing the business travel and subsistence expenses claimed from £6,584 to £2,477;

(2) Including medical insurance of £1,894;

(3) Including pension commutations of £97,420 and tax deducted of £38,822.

23. HMRC included two tax calculations. The first reflecting the reduction of business travel and subsistence expenses which showed Mr Scoggins owed £2,464.40 in additional income tax. The second reflecting the inclusion of medical insurance and pension commutations that showed Mr Scoggins owed £5,368.60 in additional income tax.

24. Between 8 May 2018 and 15 October 2018, the parties entered into correspondence concerning HMRC's proposals and calculations.

25. On 3 July 2018, HMRC, in light of a transposition error, revised their calculations and confirmed that, in total, Mr Scoggins owed £7,473.00, being £2,464.40 plus £5,008.60, in additional income tax for the year ended 5 April 2016.

26. On 10 July 2018, HMRC emailed Mr Scoggins stating that a potential underpayment of £1,074.68, being 'underpaid tax for 2015-16 included in Mr Scoggins tax code for 2016-17', had been omitted when calculating the additional income tax due for the year ended 5 April 2016. HMRC rectified this and revised the calculations. As a result, Mr Scoggins was informed that he owed £6,398.32, being £2,464.40 plus £3,933.92, in additional income tax for the year ended 5 April 2016.

27. On 25 September 2018, HMRC forwarded copies of NPPS (PEL) Penalty Explanation and NPPS101 'Penalty suspension conditions – confirmation of acceptance' to Mr Scoggins having previously sent them to an old address. In short, HMRC charged Mr Scoggins with a penalty totalling £1,614.16, being £959.74 for the year ended 5 April 2016 and £654.42 for the year ended 5 April 2017. However, HMRC offered to suspend the penalty subject to conditions. On 12 October 2018, Mr Scoggins accepted the penalty suspension conditions.

28. On 16 October 2018, Mr Scoggins requested a review of Officer Baxter's decisions.

29. On 24 October 2018, Officer Frost upheld Officer Baxter's decisions and confirmed that HMRC were able to issue a discovery assessment in relation to both pension commutations and medical insurance for the tax year ended 5 April 2016. On the same date, Mr Scoggins emailed Officer Frost confirming that he was *"not disputing the discovery assessment for the Medical Benefits, only the pension contributions. Just to clarify that matter."*

30. On 6 November 2018, Officer Baxter issued the Assessment and a Closure Notice for £2,464.40 for the year ended 5 April 2016.

31. On 4 December 2018, Mr Scoggins wrote to HMRC stating that he wished to appeal the Assessment.

32. On 11 December 2018, HMRC sent a View of the Matter Letter confirming that their view remained as set out in their letter dated 6 November 2018 and offering a review.

33. On 8 January 2019, Mr Scoggins requested that HMRC undertake a review of Officer Baxter's decision to issue the Assessment.

34. On 4 April 2019, Mr Scoggins was notified of the conclusion of HMRC's review. The review officer upheld the decision to raise the Assessment in the sum of £3,933.92 on the grounds of a careless inaccuracy. Further or alternatively, HMRC noted that the officer could not reasonably have been expected, on the information made available to him before that time, to be aware of the pension commutations and/or the medical insurance.

THE APPELLANT'S CASE

35. At the outset of the hearing, Mr Scoggins agreed that his grounds of appeal were correctly summarised in paragraphs 28-28.9 of HMRC's Statement of Case as follows:

> *"28.1. The appeal is a challenge to the Review Conclusion letter issued by Officer Crowley on 04 April 2019.*
>
> *28.2. The Appellant disagrees with "the amount of tax in question" and "the validity of HMRC being able to perform a Discovery Assessment".*
>
> *28.3. The Appellant states that HMRC informed him in March 2018 that he owed £7,473 in relation to the 2015-16 tax year. He submits that his "own calculation, if proven legitimate, is £7,354.75".*
>
> *28.4. He does not accept HMRC's position that he only owes £3,933.92. He believes this is "a figure created by them, when supplying me with calculations that assume the tax 'owed' is included etc."*
>
> *28.5. The Appellant believes he acted with reasonable care when filling in his tax return.*
>
> *28.6. He believes that HMRC "committed in writing...to ensure the tax collected was correct from April 2015 onwards, and failed to do so".*
>
> *28.7. When the Appellant called HMRC in January 2017, to discuss the 2015-16 return, he was informed that he owed £1,007 in tax. The return was not questioned at any point during the call*
>
> *.28.8. HMRC brought in new RTI codes which were mandatory from April 2016. As a result of this the pension flexibility detail was pre-populated on SA from 2016-17 onwards. The Appellant states that if this had been brought in in 2015, there would have been no issue with anyone at risk of underpaying tax.*

28.9."The relevant income and tax information was provided to HMRC, in the stipulated electronic format, by the pension companies, in the 2015-16 tax year... [This]shows that HMRC had all the information, related to my use of the pension flexibility in real time."

36. Further, we explained to Mr Scoggins that our role was to consider the appeal against the Assessment, specifically the validity of and amount of the Assessment, and whilst we understood that he had a number of other general complaints with respect to his Self-Assessment history that these were not within our remit.

THE RESPONDENT'S CASE

37. HMRC's case can be summarised as follows:

(1) The discovery assessment issued by HMRC under section 29 TMA 1970 for the tax year 2015-16 was correctly issued and is therefore valid.

(2) The quantum of the discovery assessment issued by HMRC is correct.

38. Further and for the avoidance of doubt, in the Statement of Case HMRC confirmed that *"After a review of the case, HMRC have concluded that the Appellant took reasonable care in completing his tax returns and that the inaccuracy was therefore caused by a mistake and not careless behaviour."*

THE LAW

39. Section 29 TMA 1970 is headed *"Assessment where loss of tax discovered"* and provides in relevant part as follows:

"(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—

(a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or

(b) that an assessment to tax is or has become insufficient, or

(c) that any relief which has been given is or has become excessive,

the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax…"

40. Therefore, the power to make an assessment is subject to Ss.29 (2) & (3) TMA 1970 which provide as follows:

"29(2) Where–

(a)the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, and

(b)the situation mentioned in subsection (1) above is attributable to an error or mistake in the return as to the basis on which his liability ought to have been computed,

the taxpayer shall not be assessed under that subsection in respect of the year of assessment there mentioned if the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.

29(3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, he shall not be assessed under subsection (1) above–

(a)in respect of the year of assessment mentioned in that subsection; and

(b)in the same capacity as that in which he made and delivered the return, unless one of the two conditions mentioned below is fulfilled."

41. S. 29 (4) TMA 1970, being the first condition, does not apply as HMRC accept that the inaccuracy was not brought about by either careless or deliberate behaviour. Instead, HMRC rely upon the second condition set out in s.29 (5) TMA 1970 as follows:

"29(5) The second condition is that at the time when an officer of the Board–

(a)ceased to be entitled to give notice of his intention to enquire into the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment; or

(b)in a case where a notice of enquiry into the return was given–

(i)issued a partial closure notice as regards a matter to which the situation mentioned in subsection (1) above relates, or

(ii)if no such partial closure notice was issued, issued a final closure notice,

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above."

42. The term *"...information made available..."* is defined in S.29 (6) TMA 1970 as follows:

"29(6) For the purposes of subsection (5) above, information is made available to an officer of the Board if–

(a)it is contained in the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment (the return), or in any accounts, statements or documents accompanying the return;

(b)it is contained in any claim made as regards the relevant year of assessment by the taxpayer acting in the same capacity as that in which he made the return, or in any accounts, statements or documents accompanying any such claim;

(c)it is contained in any documents, accounts or particulars which, for the purposes of any enquiries into the return or any such claim by an officer of the Board, are produced or furnished by the taxpayer to the officer; or

(d)it is information the existence of which, and the relevance of which as regards the situation mentioned in subsection (1) above–

(i)could reasonably be expected to be inferred by an officer of the Board from information falling within paragraphs (a) to (c) above; or

(ii)are notified in writing by the taxpayer to an officer of the Board."

43. Finally, S.29 (7) TMA 1970 provides that:

"29(7) In subsection (6) above–

(a)any reference to the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment includes–

(i) a reference to any return of his under that section for either of the two immediately preceding years of assessment;..

(b)any reference in paragraphs (b) to (d) to the taxpayer includes a reference to a person acting on his behalf."

44. All assessments, including those issued under s.29 TMA 1970, are subject to statutory time limits. S.34 TMA 1970 provides as follows:

"(1) Subject to the following provisions of this act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case, an assessment to income tax, capital gains tax or to tax chargeable under section 394(2) of the Income Tax (Earnings and Pensions) Act 2003 may be made at any time not more than four years after the end of the year of assessment to which it relates."

45. In relation to the Assessment, it is for HMRC to show that they made a discovery and that the Assessment was issued within the statutory time limit.

46. The meaning of the word discover in S.29 TMA 1970 was considered by the Upper Tribunal in *Charlton v HMRC* [2012] UKUT 770 @ 28 - 29 & 30 as follows:

"We agree with Mr Gordon that the word 'discovers' does not connote change, in the sense of a threshold being crossed. At one point an officer is not of the view that there is an insufficiency such that an assessment ought to be raised, and at another he is of that view. That is the only threshold that has to be crossed." [28]

"The mere fact that a threshold must be crossed does not mean that something more than a change of opinion is required". [29]

"In our judgment, no new information, of fact or law, is required for there to be a discovery. All that is required is that it has newly appeared to an officer, acting honestly and reasonably, that there is an insufficiency in an assessment. That can be for any reason, including a change of view, change of opinion, or correction of an oversight. The requirement for newness does not relate to the reason for the conclusion reached by the officer, but to the conclusion itself." [30]

47. In *Langham v Veltema* [2004] EWCA Civ 193 @ 31, the Court of Appeal considered that the underlying purpose of the self-assessment scheme was *"to simplify and bring about early finality of assessment to tax, based on an assumption of an honest and accurate return and accompanying documentation by the taxpayer."* Further, the Court of Appeal considered S.29 (5) TMA 1970 and said at [32]:

> *"If, as here, the taxpayer has made an inaccurate self-assessment, but without any fraud or negligence on his part, it seems to me that it would frustrate the scheme's aims of simplicity and early finality of assessment to tax, to interpret s 29(5) so as to introduce an obligation on tax inspectors to conduct an intermediate and possibly time consuming scrutiny, whether or not in the form of an enquiry under s 9A, or self-assessment returns when they do not disclose insufficiency, but only circumstances further investigation of which might or might not show it. I should emphasise that I say that, not in reliance on Miss Simler's information to the Court that the Inland Revenue do not customarily make much of an initial check of self-assessment returns and accompanying documents. Such practice, if it is general, cannot affect the proper interpretation of the statutory provisions, though it would appear to me to be inconsistent with the aims of simplicity and speed of the new statutory scheme as I read it, namely that there is nothing in the Act that obliges an Inland Revenue officer to enquire into a return, for example in a case such as this, to obtain expert valuation evidence for the purpose of checking the accuracy of a valuation indicated in a return."*

48. In *Anderson (deceased) v Revenue & Customs* [2009] UKFTT 258 (TC) @ 16 – 18 the FTT considered whether an HMRC officer could have been reasonably expected, on the basis of the information made available to him by a third party before that time, to be aware of the situation mentioned in s.29 (1) TMA 1970. The FTT decided as follows:

> *"16. It is clear from Langham v Veltema that the condition in s 29(5) will only fail to have been met where the taxpayer or his representatives, in making an honest and accurate return or (which is not relevant here) in responding to an enquiry, have already alerted HMRC to the insufficiency of the assessment. Section 29(6) contains an exhaustive list of the information that is treated as made available, and on the basis of which the awareness of the HMRC officer must objectively be tested, and this includes only information that has been made available by the taxpayer or by someone acting on the taxpayer's behalf. The chargeable event certificate, although available to HMRC in 2002 (and thus before the latest time for commencing an enquiry had elapsed) was not produced or furnished by the Appellant or her representatives, nor notified by the Appellant or her representatives, and in my judgement could not possibly have been inferred from the Appellant's return.*
>
> *17. In Langham v Veltema both Chadwick LJ and Arden LJ delivered concurring judgments. In one respect Arden LJ differed from Chadwick LJ in that Chadwick LJ had expressed ... the view that the Inspector could reasonably have been expected to have been aware of what he could have discovered if he had called for information as to the value of the asset. Lady Justice Arden disagreed with that, holding ... that s 29(6)(d)(i) did not attribute to the Inspector information which is not reasonably to be inferred from information within s 29(6)(a) to (c), which matters are all categories of information*

actually supplied by the taxpayer (or his representatives). In Revenue and Customs Commissioners v Household Estate Agents Ltd [2008] STC 2045 Henderson J considered this difference and said this ...:

> *"On this point I respectfully prefer the approach of Arden LJ, which seems to me to be more in accord with the wording of the subsection and the restrictive approach to its interpretation favoured by all three members of the Court of Appeal."*

That is the approach which I therefore consider should be adopted for the purpose of this appeal.

18. Could the HMRC officer have been reasonably expected, on the basis of the information made available to him by the Appellant or her representatives, actual or by inference from that information, to have been aware that the tax credit in relation to the CMG bond had been wrongly claimed? In my judgement the answer is plainly No. There was nothing on the face of the information in the return to suggest that the CMG bond was an offshore bond and not an onshore bond. It was included in the return in the section clearly related to onshore bonds, alongside a bond that was itself an onshore bond, and a tax credit was claimed in respect of it, which would have been applicable to an onshore bond but was not in the case of an offshore bond. The chargeable event certificate was provided to the Respondents by Clerical, Medical & General, and not by the Appellant or her representatives, and so must fall to be disregarded for this purpose."

49. It is for Mr Scoggins to show that the Assessment should be set aside or reduced, *T Haythornthwaite & Sons v Kelly (HM Inspector of Taxes)* (1927) 11 TC 657 @ 667.

OVERALL DECISION AND APPEAL RIGHTS

50. We are satisfied that the Assessment issued by HMRC under section 29 TMA 1970 for the tax year 2015-16 is valid and that HMRC assessed the Appellant within the applicable statutory time limits. In reaching this decision, we refer to and rely on the following.

51. It is Mr Scoggins responsibility, not HMRC's, to ensure that all his income is detailed in his Self-Assessment Return and, accordingly, that he pays the correct amount of tax; *Langham v Veltema* [2004] EWCA Civ 193 @ 32. Mr Scoggins relied on an alleged commitment by HMRC, evidenced in the letters he received from the Pension Companies, to check whether he had paid the correct amount of tax. However, Officer Baxter's evidence was that HMRC operate a process now and check later approach given the volume of Self-Assessment returns received. In any event, whether or not such a commitment was made by HMRC to Mr Scoggins, we do not consider that it absolved Mr Scoggins from the responsibility of ensuring that the Return was complete, correct and accurate.

52. As to the Return, the enquiry window closed in accordance with s.9A(2) (a) TMA 1970. For the avoidance of doubt, the Amended Return did not extend the enquiry window as the amendment was limited to business travel and expenses.

53. On 5 March 2018, Officer Baxter made a discovery in accordance with *Charlton v HMRC*. Specifically, it newly appeared to him that there was an insufficiency in the assessment caused by the omission of the pension commutations, the tax deducted and the medical insurance. Therefore, subject to S.29 (2-3) TMA 1970, Officer Baxter was entitled to make an assessment; s.29 (1) (a-b) TMA 1970.

54. As to S.29 (2) TMA 1970, Mr Scoggins cross examined Officer Baxter on the basis that the pre-population of the pension flexibility information from 2016-17 onwards was a change in the practice generally prevailing at the time. We do not accept that the introduction of pre-

population comes within the meaning of a practice generally prevailing at the time. In any event, at the time that Mr Scoggins made the Return the position was that the taxpayer was required to enter the trivial pension commutations and tax deducted manually i.e. this information was not pre-populated. Mr Scoggins did not do this. The pre-population of this information was not available at the time Mr Scoggins made the Return. It was available from 2016-17 onwards. Accordingly, it is not relevant to this appeal. For the avoidance of doubt, we do not accept Mr Scoggins suggestion that the system upgrade was delivered late.

55. S.29 (3) TMA 1970 requires one of two conditions to be fulfilled before an assessment can be made. The first condition requires careless or deliberate behaviour and, in light of HMRC's change of position, does not arise in this appeal, S.29 (4) TMA 1970.

56. S.29 (5) TMA 1970, sets out the second condition which, as relevant, provides that at the time when Officer Baxter ceased to be entitled to give notice of his intention to enquire into the Return he could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation in s.29 (1) (a-b) TMA 1970. Accordingly, this requires consideration of the information made available to Officer Baxter prior to the discovery. The term 'information made available' is defined in s.29 (6) (a-d) & s.29 (7) (a-b) TMA 1970.

57. The information made available by Mr Scoggins prior to the discovery was the Return and the Amended Return. There were no accompanying accounts, statements or documents. Neither the Return nor the Amended Return contained any information in relation to the pension commutations of £97,420, the tax deducted of £38,822 and/or the medical insurance of £1,894. Further, s.29 (7) (a) (i) TMA 1970, which provides that a reference to Mr Scoggins' return includes a reference to any return for either of the two immediately preceding years' assessment, is of no assistance because the withdrawal of pension commutations did not apply to either of the two immediately preceding years' assessment.

58. We have considered whether or not the pension companies provision of the P45s satisfies the definition of 'information made available' in s.29 (6) (d) (i-ii) TMA 1970. We have decided that it does not. This is because the P45s were not provided in accordance with s.29 (6) (a-d) TMA 1970. They did not accompany the Return. The P45s could not reasonably be expected to be inferred from the information provided by Mr Scoggins. They were not provided by Mr Scoggins or a person acting on his behalf, s.29 (7) (b) TMA 1970, and they were not notified in writing by Mr Scoggins to HMRC. We agree with the FTT in *Anderson (deceased) v Revenue & Customs* that S.29 (6) (a-d) TMA 1970 *"contains an exhaustive list of the information that is treated as made available, and on the basis of which the awareness of the HMRC officer must objectively be tested, and this includes only information that has been made available by the taxpayer or by someone acting on the taxpayer's behalf."* In short, information provided by a third party, other than the taxpayer's representative, is excluded from the definition of 'information made available.'

59. Further and for the avoidance of doubt, we note that, as a result of the pension companies provision of the P45s, the relevant information was held by HMRC on NPS and, consequently, that a search of NPS, as undertaken on 5 March 2018, would have revealed this information. However, as stated in *Langham v Veltema* @ 36 and confirmed in *In Revenue and Customs Commissioners v Household Estate Agents Ltd* [2008] STC 2045 Henderson J @ 33:

> *"It seems to me that the key to the scheme is that the Inspector is to be shut out from making a discovery assessment under the section only when the taxpayer or his representatives, in making an honest and accurate return or in responding to a section 9A enquiry, have clearly alerted him to the insufficiency of the assessment, not where*

the Inspector may have some other information, not normally part of his checks, that may put the sufficiency of the assessment in question."

60. In summary, we have decided that Officer Baxter could not have been reasonably expected, on the basis of the information made available to him by Mr Scoggins, actual or by inference from that information, to have been aware of the pension commutations, tax deducted and medical insurance. There was nothing in the Return or the Amended Return concerning the pension commutations, the tax deducted and/or the medical insurance and, accordingly, they could not have been inferred from the Return or the Amended Return. Mr Scoggins did not notify the P45s to HMRC. The Pension Companies, not Mr Scoggins, provided the P45s to HMRC some 18 months in advance of the Return and so this must be disregarded when considering *'information made available'* in S.29 (6) TMA 1970. Finally, HMRC are not to be excluded from making a discovery assessment simply because they may have some other information, such as the NPS system, which, not normally being part of HMRC's checks, may put into question the sufficiency of the Assessment.

61. As to time limits, the Return was filed on 8 January 2017 for the year ended 5 April 2016. The discovery was made on 5 March 2018 and the Assessment on 6 November 2018. Accordingly, the Assessment was made not more than four years after the end of the year of assessment to which it relates.

62. We are also satisfied that Mr Scoggins has not shown that the assessment is wrong in amount. Mr Scoggins contended that the correct amount was £7,354.75. This amount was derived from an online calculator. Save for the final figure, no evidence of the online calculation was provided to us. In cross examination, Mr Scoggins accepted that tax calculators could be inaccurate. We understood this to mean that the parameters employed by an online calculator could be erroneous, for example an online calculator may omit a relevant underpayment. This was of particular relevance in Mr Scoggins' case due to the potential underpayment of £1,074.68 detailed in paragraph 26 above. In the circumstances, we are not satisfied that the figure of £7,354 was reliable. Mr Scoggins raised no other challenges to the quantum of the assessment.

63. For the reasons set out in this decision notice, we refuse Mr Scoggins's appeal and confirm the Assessment in the sum of £3,933.92.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

64. 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.

65. 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.

JENNIFER NEWSTEAD TAYLOR

TRIBUNAL JUDGE

RELEASE DATE: 15 MAY 2021