

Tax Chamber
First-tier Tribunal for Scotland



[2019] FTSTC 10

Ref: FTS/TC/AP/19/0004

Land and Buildings Transaction Tax (LBTT) - Additional Dwelling Supplement (ADS) - Schedule 2A paragraph 8 of Land and Buildings Transaction Tax (Scotland) Act 2013 – whether appeal allowed to be received late – yes – disposal of dwelling that was the subject-matter of the chargeable transaction and which was not the buyer’s only or main residence at any time during the period of 18 months ending with the effective date of the transaction – whether ADS repayable – no - appeal dismissed

DECISION NOTICE

IN THE CASE OF

Ms Joanne Philippa Chumas

Appellant

- and -

Revenue Scotland

Respondent

**TRIBUNAL: ANNE SCOTT
KATRINA LUMSDAINE**

Sitting in public at George House, Edinburgh on Monday 30 September 2019

Ms Joanna Chumas, the appellant

Mrs Ailsa Garland, Presenting Officer, Revenue Scotland

DECISION

Introduction

1. This is an appeal against the decision dated 27 September 2018 by Revenue Scotland refusing Ms Chumas' application for repayment of Additional Dwelling Supplement ("ADS"). Ms Chumas' application was in terms of paragraph 8 of Schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 ("LBTTA").

Preliminary Issue

2. Technically the appeal was lodged late. However, Revenue Scotland have not maintained their objection and, in the circumstances outlined by the appellant, the Tribunal extended the time for lodgement and admitted the appeal.

Factual background

3. Prior to 4 August 2017, Ms Chumas had owned a property in Edinburgh (the "First Property") which was her only or main residence.

4. On that date, Ms Chumas purchased another property (the "Second Property") which then became her only or main residence and she leased out the First Property.

5. The effective date of the transaction, for the purposes of Land and Buildings Transaction Tax ("LBTT"), was 4 August 2017. A LBTT Tax Return was submitted to Revenue Scotland that day and, as she owned two properties, she quite properly paid ADS on the Second Property. The ADS on the Second Property amounted to £5,205.

6. Thereafter, on 3 August 2018, Ms Chumas sold the Second Property and moved back into the First Property. The First Property became, once again, her only or main residence.

7. On 29 August 2018, Ms Chumas submitted the claim for repayment of the ADS which is the subject matter of this appeal. That claim was refused by Revenue Scotland by letter dated 27 September 2019. After a review of that decision, on 12 December 2018, Revenue Scotland upheld its decision. Ms Chumas appealed to the Tribunal on 30 January 2019.

Applicable Legislation

8. ADS forms part of the regime for charging LBTT and the operative provisions are found in Schedule 2A LBTTA. ADS is payable on a second property where certain conditions are satisfied. However, that ADS may be repaid in certain cases and the conditions for repayment are to be found in paragraph 8 of Schedule 2A LBTTA. We have set the terms of that paragraph out in full in the Annex to this Decision.

The Appellant's Arguments

9. Her grounds of appeal are centred on the fact that the ADS had been calculated on the Second Property which was her main residence. The Second Property was sold within 18 months of the effective date of the transaction. As the ADS was payable on the Second Property, she considered that the ADS ought properly to be repayable when that Second Property was sold.

10. At the hearing Ms Chumas expanded her submissions to explain that she did not think that the wording of the legislation was clear. She did not consider that the legislation set out clearly whether the ADS should be repayable on the disposal of the First Property or the Second Property.

Revenue Scotland's Arguments

11. In its Statement of Case, Revenue Scotland submitted that Ms Chumas does not meet the conditions in paragraph 8(1)(a) or 8(1)(b) of Schedule 2A LBTTA. They argue that both provisions would require to be met in order for the ADS to be repaid.

12. For paragraph 8(1)(a) to be met, the buyer, Ms Chumas, must dispose of a dwelling "...other than one that was or formed part of the subject-matter of the chargeable transaction". They submitted that this excluded the disposal of the Second Property, under explanation that this was the subject-matter of the chargeable transaction.

13. Revenue Scotland argue that the terms of paragraph 8(1)(b) were not met because the Second Property would have had to have been Ms Chumas' only or main residence at any time during the period of 18 months ending with the effective date of the transaction. That was impossible because that was the date on which she had bought it.

Discussion

14. In this appeal, the facts are not in dispute. The issue before us is a matter of law, namely whether the rules for repayment of ADS in Schedule 2A, paragraph 8 LBTTA are met.

15. Therefore we begin with the legislation which is not very easy to read. Paragraph 8(1) contains three conditions, each of which must be met for ADS to be repayable.

16. Paragraph 8(1)(a) reads:

"(a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling **(other than one that was or formed part of the subject-matter of the chargeable transaction)**" (our emphasis added).

17. Since it is the Second Property which triggered the payment of ADS, it is the Second Property which formed the subject-matter of the chargeable transaction. Therefore, in order to obtain repayment the disposal must be of a property *other* than the Second Property in order to meet this condition. Thus, disposal of the Second Property cannot result in repayment of ADS. Therefore, the condition in paragraph 8(1)(a) is not met.

18. Paragraph 8(1)(b) reads :

“(b) that dwelling was the buyer’s only or main residence at any time during the period of 18 months ending with the effective date of the transaction”.

19. Of course, Ms Chumas agrees that the Second Property was not her only or main residence at any time in the 18 months prior to 4 August 2017 which is the effective date of the transaction. That would have been impossible. Therefore, the condition in paragraph 8(1)(b) is also not met.

20. The condition in paragraph 8(1)(c) is met because the second property was occupied as Ms Chumas’ only or main residence for all of the time that she owned it.

23. From the wording of the legislation, it was the Scottish Parliament’s intention that ADS is only repayable in the limited circumstances set out in paragraph 8(1) of Schedule 2A LBTTA. All three conditions in paragraph 8(1) of that Schedule must be met for the ADS to be repayable. As neither of the conditions in paragraph 8(1)(a) or 8(1)(b) of Schedule 2A LBTTA are met in this case, the ADS is not repayable.

24. We therefore cannot do anything other than uphold Revenue Scotland’s decision.

25. For all these reasons the appeal is dismissed.

26. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has the right to apply for permission to appeal on a point of law pursuant to Rule 38 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017. In terms of Regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016, any such application must be received by this Tribunal within 30 days from the date this decision is sent to that party.

KATRINA LUMSDAINE
Legal Member

Release date: 4 October 2019

Annex - applicable legislation

Provision of LBTTA relevant to this appeal:

Schedule 2A

Repayment of additional amount in certain cases

8(1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—

- (a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction),
- (b) that dwelling was the buyer's only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and
- (c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer's only or main residence.

(2) Where this sub-paragraph applies—

- (a) the chargeable transaction is to be treated as having been exempt from the additional amount, and
- (b) if the buyer has made a land transaction return in respect of the transaction, the buyer may take one of the steps mentioned in sub-paragraph (3).

(3) The steps are—

- (a) within the period allowed for amendment of the land transaction return, amend the return accordingly, or
- (b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority under section 107 of the Revenue Scotland and Tax Powers Act 2014 for repayment of the amount overpaid.

(4) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

(5) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(d)(ii), sub-paragraph (2)(a) has effect only in relation to the additional amount applicable to so much of the relevant consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) referred to in sub-paragraph (1)(c).