

Tax Chamber
First-tier Tribunal for Scotland



[2022] FTSTC 7

Ref: FTS/TC/AP/22/0006

***Land and Buildings Transaction Tax – Additional Dwelling Supplement –
impact of Covid – whether Tribunal can consider if law is fair – no – appeal
dismissed***

DECISION NOTICE

IN THE CASE OF

Mr Peter Pattison

Appellant

- and -

Revenue Scotland

Respondent

TRIBUNAL: ANNE SCOTT

The Tribunal determined the appeal on 28 July 2022 without a hearing under the provisions of Rule 27 of The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 having first read the Notice of Appeal, and attachments, dated 11 May 2022 and Revenue Scotland's Statement of Case, and attachments, received by the Tribunal on 14 June 2022.

DECISION

Introduction

1. This is an appeal against Revenue Scotland's decision to amend to NIL, Mr Pattisson's claim for repayment of the Additional Dwelling Supplement ("ADS") in the sum of £10,200. That ADS had been charged under section 26A and Schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013 ("the Act").

2. Mr Pattisson sought repayment in terms of section 107 of Revenue Scotland and Tax Powers Act 2014 ("RSTPA") on the basis that the conditions in paragraph 8 of Schedule 2A of the Act were met.

3. Paragraph 8, Schedule 2A, of the Act is key because the conditions in it that need to be met for ADS to be repaid include that the previous property was the "only or main residence" in the 18 months prior to the purchase of the property which gave rise to the ADS charge.

The facts

4. The facts are not in dispute.

5. In July 2018, the appellant and his wife sold their previous main residence in London as at that time they were working in the humanitarian sector in Nepal and were not in a position to look for a new main residence in the UK. They owned another property in Southampton.

6. When they returned to the UK in May 2019, having worked overseas for a number of years, they moved to Scotland to look for a main residence to buy.

7. On 2 February 2020, Mr Pattisson and his wife started to market their property in Southampton but withdrew it from the market on 13 May 2020 because of lock-down.

8. Immediately prior to lock-down the appellant and his wife had found a property that they wished to purchase in Scotland and completed that purchase on 30 June 2020. It was that transaction which had triggered the ADS.

9. Mr Pattisson does not deny that the ADS was properly due at the time of the purchase of the property in Scotland because at that point they owned two properties.

10. However he argued, had it not been for the lockdown, the Southampton property would have been sold before the purchase of the Scottish property and thus no ADS would have been payable.

11. At the heart of his appeal is the argument that the decision not to repay the ADS is patently unfair because:-

- (a) They had been employed in humanitarian work and therefore unable to purchase a new main residence in the UK after the sale of their previous main residence.

- (b) The property in Scotland is their main residence and clearly not a second home.
- (c) Although he and his wife were aware that they did not fit within the conditions set out in the legislation, nevertheless the current law is unjust and not fit for purpose.
- (d) They considered that they had been forced to pay the ADS as a direct result of the pandemic and the restrictions imposed because of it.

11. This Tribunal has set out at length the law in this matter in the decision in the case of *Dr Andrew Christie v Revenue Scotland* (“Christie”). I do not propose to rehearse it again since Mr Pattison recognises that in terms of the relevant legislation, the ADS cannot be repaid. It cannot be for the reasons set out in *Christie*.

12. In *Christie* at paragraph 32 I stated that it is well established law that the First-tier Tribunal cannot take into account whether or not it considers the law with which it is dealing to be fair or not. I made reference to the case of *HMRC v Hok* [2012] UKUT (TCC). Essentially what that case says is that the Tribunal is a creature of statute and therefore has only the powers given to it by law. It has no power to consider whether or not that law is fair.

13. In this case as I stated in *Dr Colin Goudie and Dr Amelia Sheldon v Revenue Scotland* [2018] FTST C3:-

“It is very clear, that this Tribunal can only find the facts, as we have done, and then apply the law. The relevant legislation has conferred no supervisory jurisdiction. We are restricted to deciding whether Revenue Scotland’s interpretation of the legislation is correct or not and, if not, to what extent we disagree”.

14. In this instance, Revenue Scotland have correctly applied the law and therefore I can only uphold that decision.

15. Whilst I have sympathy with Mr Pattison this Tribunal must apply the law as enacted by the Scottish Parliament.

16. 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.

ANNE SCOTT

President

RELEASE DATE: 28 July 2022

Amended pursuant to Rule of 37 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 (“the Rules”) on 8 August 2022