

Tax Chamber
First-tier Tribunal for Scotland



[2019] FTSTC 8

Ref: FTS/TC/AP/19/0003

Land and Buildings Transaction Tax –Invalid appeal-appeal dismissed

DECISION NOTICE

IN THE CASE OF

Avocet Agriculture Limited

Appellant

- and -

Revenue Scotland

Respondent

TRIBUNAL: ANNE SCOTT, President
KENNETH CAMPBELL, QC, Legal Member

Sitting in public at George House, Edinburgh on Monday 26 August 2019

Mr Martin Frost, for the appellant

No appearance by or for the respondent

DECISION

Introduction

1. This hearing concerns Revenue Scotland's application dated 18 June 2019 for dismissal of the appeal in terms of Rule 8(3) of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 ("the Rules"). Furthermore, in terms of paragraphs 8, 10 and 11 of the Order issued by the Tribunal on 28 June 2019, the appellant was warned that there was no valid appeal before the Tribunal and that therefore the appeal would be dismissed in terms of Rule 8(1)(a) since the Tribunal did not have jurisdiction.

2. We annex at Appendix 1 a copy of Rule 8.

Preliminary issue

3. Rule 30(3) of the Rules reads:-

"The First-tier Tribunal may dispose of proceedings, or a part of proceedings, under rule 8 (dismissal of a party's case) without a hearing".

That rule was drawn to Mr Frost's attention in paragraph 12 of the Order issued on 28 June 2019. The Tribunal did not intend to hold a hearing and Revenue Scotland had and have, no intention of attending a hearing.

4. On 9 July 2019, Mr Frost wrote to the Tribunal insisting on a public hearing. Accordingly this hearing was convened. The hearing was intimated to Revenue Scotland and having had regard to Rule 34 of the Rules we confirm that it is in the interests of justice to proceed with the hearing in their absence.

Jurisdiction

5. At the outset of the hearing we explained the jurisdiction of the Tribunal which is derived wholly from statute.

6. The Tribunal has no inherent or general "supervisory" jurisdiction to consider taxpayer's claims based on public law concept such as fairness or inappropriate conduct by Revenue Scotland.

7. On 24 April 2017, the First-tier Tribunal for Scotland Tax Chamber took on the functions of the former Tax Tribunals for Scotland. Section 21 Revenue Scotland Tax and Powers Act 2014 ("RSTPA") states that the Tribunal "... is to exercise the functions conferred upon it by or under the Act".

8. Section 51 provides for Tribunal rules to be made by Scottish Ministers by Regulations. Those are the Rules to which we refer in this Decision.

9. In particular, Section 54(2) provides that the Rules should "provide for the form and manner in which a case is to be brought".

10. Mr Frost has argued that Revenue Scotland has “chosen to sue a wrong party” and as I indicated in paragraph 22 of the Order dated 22 May 2019, Revenue Scotland have not sued anyone. They have simply responded, as they must, to his Notice of Appeal.

11. In his letter of 9 July 2019 he argued that this Tribunal “... is bias (sic) in not ordering Revenue Scotland to commence again against Avocet Farms Limited”. This Tribunal has no such power.

12. Section 241 RSTPA states that this Tribunal only has jurisdiction in respect of an “appealable decision”. Such an appeal will only be valid if it complies with Section 242 RSTPA and that states clearly at Section 242(3) “The Notice of Appeal must specify the Grounds of Appeal”. The Tribunal’s powers are set out in Section 244 and the only power is to uphold, vary or cancel Revenue Scotland’s view of the matter.

13. Section 233 RSTPA sets out the limited list of appealable decisions. The only appealable decision in this matter is the Penalty Assessment Notice.

The history

14. On 5 October 2018, Revenue Scotland had issued a Penalty Assessment Notice to Avocet Farms Limited.

15. That Notice was issued following the lodgement on 30 August 2018 of a Land and Buildings Transaction Tax (“LBTT”) return in relation to transaction RS3979525. That transaction had an effective date of 16 October 2016 so the return was very late as it should have been filed within 30 days of the effective date and the tax paid then.

16. The name of the buyer was stated to be Avocet Agriculture Limited with company number 9376813. The return was lodged by the appellant’s solicitor (“the agent”). The transaction related to the purchase of Harcase Hill Farmhouse for a total consideration which was stated at £5 million. The LBTT amounted to £187,000.15. The tax, which was due for payment by 15 November 2016, has not been paid.

17. Avocet Agriculture Limited had changed its name to Avocet Farms Limited on 23 June 2017; hence the penalties were assessed on Avocet Farms Limited.

18. The Penalty Assessment Notice was in the sum of £57,958 being penalties for late filing of the return, late payment of the tax and interest.

19. The agent wrote to Revenue Scotland on 5 November 2018 quoting the transaction reference and referring to the issue of the Penalty Assessment Notice. They stated that they were the solicitors acting for Avocet Farms Limited and requested a review of the Penalty Assessment Notice.

20. There was no response to letters from Revenue Scotland to both the appellant and the agent dated 6 and 23 November 2018 seeking further information in regard to the review of the penalties.

21. On 20 December 2018, Revenue Scotland issued a review decision upholding the penalties but that letter was incorrectly addressed to Avocet Agriculture Limited.

22. The appellant had 30 days within which to appeal to the Tribunal.

23. On 18 January 2019, Mr Frost lodged an appeal with the Tribunal in the name of Avocet Agriculture Limited referring to the penalties and the £5 million transaction.

24. He makes it clear that the decision that he appeals is the review decision issued by Revenue Scotland on 20 December 2018. He enclosed a copy.

25. The stated Ground of Appeal was that in 2018 the price had been reduced to £4 million and there should therefore be no penalties.

26. On 7 February 2019, Revenue Scotland sought Directions from the Tribunal to the effect that the appellant should set out clearly in the Grounds of Appeal the propositions of fact or law upon which it relied. Directions were issued on 11 February 2019.

27. The appellant did not reply timeously and further Directions were issued on 27 March 2019 seeking detailed information about:

- (a) The decision or decisions which were appealed.
- (b) The reasons for the appeal of any decision, and
- (c) The precise result that was sought.

The appellant was put on notice that if there was no compliance by 12 April 2019 the appeal would be dismissed.

28. On 12 April 2019, Mr Frost responded stating that the appellant in the appeal should be Avocet Farms Limited which had previously been known as Avocet Agriculture Limited. The company that is currently known as Avocet Agriculture Limited had no connection with the transaction. The consideration had been reduced by £1 million, the LBTT should be sought from Avocet Farms Limited and recalculated.

29. On 17 April 2019, Revenue Scotland sought an Order dismissing the appeal on the basis that there had not been compliance with the Directions.

30. Correspondence ensued and it became apparent that a new and different company called Avocet Agriculture Limited was incorporated on 27 June 2017.

31. On 22 May 2019, the Tribunal issued an Order setting out the history of the appeal as outlined above. The appellant was directed to intimate in writing to the Tribunal whether or not he wished to continue with an appeal by Avocet Farms Limited and, if so, that would be treated as an application to substitute Avocet Farms Limited as the appellant in terms of Rule 9(1)(a) of the Rules which reads as follows:-

“9.—(1) The First-tier Tribunal may make an order adding, substituting or removing a party as an appellant or a respondent including where—

- (a) the wrong person has been named as a party; or ...”.

32. In the event that that course of action was adopted then the appellant was directed to lodge with the Tribunal details of the reasons why the return was late and the tax not

paid. The appellant was put on notice that if there was no compliance then the appeal would be dismissed.

33. The appellant responded in a thoroughly contradictory fashion and stated:

“I formally intimate that Avocet Agriculture Limited wishes to appeal this Order for after discussing such with a retired judge and Senior Scottish counsel it is their opinion that under Scots law it is not possible to transcribe one limited company to another. ... Separately, I have forwarded extended grounds for an Appeal by Avocet Farms Limited.”

34. Understandably Revenue Scotland’s response was to argue that the appellant appeared to be objecting to the substitution of Avocet Farms Limited. However, the Grounds of Appeal that were lodged seemed to indicate a wish to proceed with the appeal.

35. Regrettably the Grounds of Appeal as stated do not comply with the second Direction and simply duplicate the information lodged already. He argued that although the transaction was in 2016, the purchase price was altered in 2018 from £5 million, the figure in the LBTT return, to £3.7 million and therefore Revenue Scotland has overstated the tax, interest and penalties.

Discussion

36. The first and most obvious point to make is that most recently lodged Grounds of Appeal state that the purchase price had been altered to £3.7 million. He had previously stated £4 million (see paragraph 27 above). In his oral submission he argued that the purchase price had initially been reduced to £4.2 million and then to £3.2 million. However, it also transpired that the buyer and seller were connected parties so the transaction had not been at arm’s length.

37. Secondly, and far more importantly, Mr Frost should be well aware that those are not adequate Grounds of Appeal because at paragraph 25 of the Order issued on 22 May 2019 I advised him as follows:-

“25. Revenue Scotland has determined the amount of LBTT that is chargeable based on the information that was in the return that was submitted. If Mr Frost believes that is wrong then his remedy is **NOT** an appeal to the Tribunal but to make an application to Revenue Scotland in terms of section 107 Revenue Scotland and Tax Powers Act 2014 for part of the tax to be discharged.”

38. Mr Frost did not comply with Direction 2 in the Order dated 22 May 2019. He has never explained why no tax has been paid. It was only at the hearing that he offered any explanation as to the reason for the late return and that was little and too late. He is therefore in breach of Rule 8(2)(a) of the Rules. Hence Revenue Scotland’s application for dismissal.

39. RSTPA contains provisions mitigating penalties in certain circumstances. Thus Section 177 RSTPA provides that “Revenue Scotland may reduce the penalty ... if it thinks it right to do so because of special circumstances”.

40. Section 178 RSTPA provides that liability to a penalty will not arise if there is a reasonable excuse for the failure to make a payment timeously.

41. There are a number of published decisions on the Chamber’s website explaining the law on special circumstances and reasonable excuse.

42. Those are the only grounds on which any appeal could succeed. Even at this hearing Mr Frost has not offered any explanation for the failure to pay any tax at all.

43. At the hearing he made a bland and unsupported assertion that the agent had been at fault for lodging the return late. However, when he was asked why the appeal had been lodged in the wrong name he also blamed the agent until it was pointed out to him that he had hand written the appeal and not only had he put the wrong name in the box for “appellant” he had also stated on page 10 that he was signing the appeal for Avocet Agriculture Ltd.

44. In any event, even if there was any degree of fault on the part of the agent that cannot assist him.¹

45. Accordingly his failure to lodge relevant Grounds of Appeal means on that ground alone the appeal falls to be dismissed.

46. In this case it would appear that the only decision that is capable of appeal is the penalty assessment notice. That was correctly addressed to Avocet Farms Limited. Avocet Farms Limited has never appealed it. Even if Avocet Farms Limited were substituted, there is still no valid appeal in terms of Rule 23(1) of the Rules which reads:

“**23.**—(1) The notice of appeal referred to in section 242(1) of RSTPA 2014 (notice of appeal) must include—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant’s representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) details of the decision appealed against;
- (e) the result the appellant is seeking; and
- (f) the grounds for making the appeal.”

47. We have the wrong appellant and no valid Grounds of Appeal.

48. Since there is no valid Notice of Appeal the appeal, such as it is, is dismissed.

49. 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)

¹ HMRC v Katib [2019] UKUT 189 (TCC) at paragraph 58

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: 27 August 2019

Dismissal of a party's case

- 8.**—(1) The First-tier Tribunal must dismiss the whole or a part of the proceedings if the First-tier Tribunal—
- (a) does not have jurisdiction in relation to the proceedings or that part of them; and
 - (b) does not exercise its power under rule 5(3)(1) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
- (2) The First-tier Tribunal may dismiss the whole or a part of the proceedings if—
- (a) the appellant has failed to comply with an order which stated that failure by the appellant to comply with the order could lead to the dismissal of the proceedings or part of them;
or
 - (b) the appellant has failed to co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings fairly and justly.
- (3) The First-tier Tribunal may not dismiss the whole or a part of the proceedings under paragraph (1) or (2) without first giving the appellant an opportunity to make representations in relation to the proposed dismissal.