



[2022] FTSTC 8

Ref: FTS/TC/AP/22/0002

Land and Buildings Transaction Tax – Additional Dwelling Supplement

DECISION NOTICE

IN THE CASE OF

Miss Lorna Yuill

Appellant

- and -

Revenue Scotland

Respondent

**TRIBUNAL: ANNE SCOTT
CHARLOTTE BARBOUR**

The Tribunal determined the appeal on Tuesday 23 August 2022 via WEBEX

DECISION

Introduction

1. This is an appeal against Revenue Scotland's decision to amend to NIL the appellant's claim for repayment of the Additional Dwelling Supplement ("ADS") in the sum of £9,417. That ADS has been charged under Section 26A and Schedule 2A of the Land and Buildings Transaction Act (Scotland) Act 2013 ("the Act").
2. The appellant sought repayment in terms of Section 107 of Revenue Scotland Tax and Powers Act 2014 ("RSTPA") on the basis that the conditions in paragraph 8 of Schedule 2A of the Act were met.
3. At the heart of the appellant's appeal is the argument that given her extenuating circumstances and the impact of Covid-19, the decision not to repay the ADS is patently unfair whether or not it was correct in law.

The factual background

4. The underlying facts are not in dispute.
5. The appellant owned a half share in a property in the west of Scotland. For reasons that it is not necessary to narrate here, the appellant found herself in a position whereby she had to leave that property in June 2018.
6. She purchased a property elsewhere in Scotland ("the Second Property") and the effective date for that purchase was 10 August 2018.
7. The electronic Land and Buildings Transaction Tax ("LBTT") return for the purchase of the Second Property quite properly reflected the ADS chargeable in the amount of £9,417 and that was paid.
8. On 22 July 2021, having had huge difficulty in doing so for reasons that were not in her control, the appellant managed to sell her share in the First Property. On 29 July 2021, she submitted a claim for repayment of the ADS of £9,417 on the basis that the First Property had previously been her main residence.
9. On 13 August 2021, Revenue Scotland sent a letter dated 12 August 2021 to the appellant rejecting the claim for repayment of the ADS on the basis that the statutory criteria for repayment had not been satisfied. In particular, in order to qualify for repayment the property which was disposed of must have been disposed of within the period of 18 months beginning with the day after the effective date of the transaction. It had not been.
10. On 13 September 2021, the appellant wrote to Revenue Scotland arguing that her unique personal circumstances should have been taken into account. She referenced the impact of the Covid-19 pandemic and material published by the Law Society of Scotland regarding the Coronavirus (No 2) (Scotland) Bill. She argued that the 36 month extension referred to in the Bill should be afforded to all of those impacted in the sale of their property by Covid-19.

11. On 16 September 2021, Revenue Scotland wrote to the appellant offering to review the decision but pointing out that Revenue Scotland had no discretion in applying the relevant legislation.

12. On 27 September 2021, the appellant confirmed that she wished the decision to be reviewed. She reiterated that she should be permitted to benefit from the extension to 36 months of the period allowed for the sale of the previous main residence.

13. On 26 October 2021, Revenue Scotland issued a letter setting out its view of the matter to the appellant which was to the effect that the earlier decision to refuse the repayment claim should be upheld.

14. On 24 November 2021, Revenue Scotland confirmed that the decision was upheld.

15. On 8 February 2022, the appellant lodged her Notice of Appeal. Technically that Notice of Appeal was out of time. However, on 4 April 2022, Revenue Scotland confirmed that, in terms of section 243 RSTPA, it agreed to the Notice of Appeal being given after the relevant time limit.

The Law

16. We have set out at Appendix 1 the relevant provisions of Schedule 2A of the Act.

17. The Coronavirus (Scotland) (No. 2) Act 2020 at Schedule 4, Part 5 reads:-

Schedule 4

Other measure in response to coronavirus

6 (1) The Land and Buildings Transaction Tax (Scotland) Act 2013 as amended by this paragraph.

...

(3) In schedule 2A (transactions relating to second homes etc.)—

(a) After paragraph 8A insert—

“8B Repayment of additional amount: period for disposing of ownership of dwelling

8B(1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if the effective date of the transaction falls within the period beginning with 24 September 2018 and ending with 24 March 2020.

(2) Paragraph 8(1)(a) has effect in relation to the transaction as if for “period of 18 months” there were substituted “period of 36 months”.

...

Discussion

18. The Tribunal was created by the Scottish Parliament and is therefore a creature of statute. What that means is that its powers are only those that are given to it expressly by statute. In this case, those powers are set out in Section 21 RSTPA which states that the Tribunal “Is to exercise the functions conferred upon it by or under this Act”.

19. In the case of an appeal of an appealable decision, Section 244(2) RSTPA provides that:-

“The Tribunal is to determine the matter in question and may conclude that Revenue Scotland’s view of the matter in question is to be:-

- (a) upheld,
- (b) varied, or
- (c) cancelled.”

20. The appellant very reasonably accepted that the Tribunal could not consider whether or not the law was fair but for completeness we confirm that the Tribunal has no power to do so. In *HMRC v Hok Ltd*¹ the Tribunal stated:-

“56 Once it is accepted, as for the reasons we have given it must be, that the First-tier Tribunal has only that jurisdiction which has been conferred on it by statute, and can go no further ... It is impossible to read the legislation in a way which extends its jurisdiction to include – whatever one calls to choose it – a power to override a statute ...”.

21. Basically the Tribunal has no jurisdiction to consider any question of fairness.

22. The appellant argued that the reasons why she had to buy the Second Property and the fact that it took such a long time to sell the First Property were completely outwith her control and we accept that.

23. We also accept that Covid-19 had an impact on the sale of the First Property.

24. The appellant correctly states that there was an extension of the legislative period of 18 months to 36 months where Covid-19 had an impact, but the problem is, that it is time limited. If she had been allowed 36 months from the effective date then she would have been entitled to repayment as she sold the First Property within 36 months of the effective date. Unfortunately for her, the Covid-19 extension only applies to effective dates occurring after 24 September 2018. She has been unlucky.

25. The law in this case clearly expresses the Scottish Parliament’s intention to restrict the ability to obtain a repayment of ADS to only very limited circumstances.

26. Unfortunately for the appellant, she simply does not fit into those circumstances.

¹ [2012] UKUT 363 (TCC)

27. There are no provisions in the legislation for considering extenuating or special circumstances or a reasonable excuse.

28. For all these reasons the appeal is dismissed and the decision of Revenue Scotland upheld.

29. 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: 25 August 2022

Lands and Buildings Transaction Tax (Scotland) Act 2013 – Schedule 2A

2 Transactions relating to second homes etc.

(1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

(a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,

(b) the relevant consideration for the transaction is £40,000 or more,

(c) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling, and

(d) either—

(i) the buyer is not replacing the buyer's only or main residence, or

(ii) the buyer is replacing the buyer's only or main residence but the subject-matter of the transaction also includes the acquisition of ownership of one or more other dwellings in addition to the one that the buyer intends to occupy as the buyer's only or main residence.

(2) A buyer is replacing the buyer's only or main residence if—

(a) during the period of 18 months ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,

(b) that dwelling was the buyer's only or main residence at any time during the period of 18 months, and

(c) on the effective date of the transaction, the buyer intends to occupy the dwelling that is or forms part of the subject-matter of the transaction as the buyer's only or main residence.

8 Repayment of additional amount in certain cases

(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).

8A Repayment of additional amount: spouses, civil partners and cohabitants replacing main residence

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

(a) there are only two buyers, and

(b) the buyers—

(i) are (in relation to each other) spouses, civil partners or cohabitants, and

(ii) are or will be jointly entitled to ownership of the dwelling that is or forms part of the subject-matter of the transaction.

(2) Paragraph 8 has effect in relation to the transaction as if—

(a) the reference in sub-paragraph (1)(a) of that paragraph to the buyer were a reference to either or both of the buyers, and

(b) the references in sub-paragraph (1)(b) and (c) of that paragraph to the buyer were references to both of the buyers together.

(3) For the purposes of sub-paragraph (1)(b)(i), two buyers are cohabitants if they live together as though married to one another.