

**Tax Chamber**  
**First-tier Tribunal for Scotland**



[2025] FTSTC 8

Ref: FTS/TC/AP/25/0002

***Land and Buildings Transaction Tax – Additional Dwelling Supplement (“ADS”) – repayment – no – as one of the buyers had not lived in the first property as their only or main residence in the relevant period – appeal dismissed***

**DECISION NOTICE**

IN THE CASE OF

**Naeem-Ur-Rahman Bukhari and Faheem-Ur-Rahman Bukhari**

Appellants

- and -

**Revenue Scotland**

Respondent

**TRIBUNAL: ANNE SCOTT  
CHARLOTTE BARBOUR**

**The hearing took place at George House, Edinburgh on Wednesday 28 May 2025**

**For the Appellants: The Appellants**

**For the Respondent: Chris Nicholson, WS**

## **Introduction**

1. This is an appeal against Revenue Scotland's decision to amend to NIL the appellants' claim for repayment of the Additional Dwelling Supplement ("ADS") in the sum of £16,800. That ADS had been charged under section 26A and Schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013 ("the Act").

2. We had a joint Bundle of Documents extending to 146 pages, a Bundle of Authorities for Revenue Scotland extending to 98 pages, a Bundle of Authorities for the Appellants extending to 26 pages, a witness Statement from Revenue Scotland's review officer and a Statement of Agreed Facts. We have not included most of that Statement in this decision since it transpired that it included information that was not necessary for this decision and it was not wholly accurate.

3. We heard evidence from Naeem-Ur-Rahman Bukhari ("Naeem") only.

## **Preliminary issue**

4. The Notice of Appeal dated 18 January 2025 was in the name of Naeem only, albeit the Review Conclusion Letter and Closure Notice were addressed to both Naeem and his brother Faheem-Ur-Rahman Bukhari ("Faheem"). Whilst section 247 of the Revenue Scotland and Tax Powers Act 2014 ("RSTPA") provides that an appeal may be brought by any of the "buyers" of a property and the decision of the Tribunal will bind all buyers where only one appeals, we had due regard to Rules 2 and 9 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 ("the Rules") and decided to add Faheem as a party.

## **The Factual Background**

5. The Appellants sought repayment of the ADS in terms of section 107 of RSTPA on the basis that the Appellants had sold their previous main residence in Motherwell ("the First Property").

6. On 28 October 2022, the Appellants had jointly purchased a property in Glasgow ("the Second Property") for £420,000. It was intended to be a family home for their parents and Faheem.

7. The electronic LBTT return for the transaction was submitted to Revenue Scotland by their solicitor on 28 October 2022 (which was the effective date). The Appellants report that their solicitor had advised them that if the First Property was sold within 18 months then the ADS would be repaid.

8. On the effective date, Naeem lived with his wife in the First Property. Faheem lived with his parents. Although the First Property was owned by Naeem's wife, in terms of the legislation, this was deemed to be marital property or a single economic unit property. Therefore, the LBTT return for the Second Property reflected total LBTT of £32,150, including ADS (at the then prevailing rate of 4% of the purchase price) in the amount of £16,800. That tax was paid on 1 November 2022.

9. Under the heading 'Additional Dwelling Supplement' in the LBTT return, the response to the question "Does the buyer intend to sell their main residence within 18 months?", was "No".

10. On 10 March 2024, Naheem's wife signed a disposition disposing of the First Property to family members. That disposition stated that for the period between the date of entry (10 March 2024) and registration of the title the wife would hold the title to the First Property in trust for herself. No evidence of registration has been provided. Naeem was the witness to the disposition and it stated that he lived at the First Property.

11. On 19 March 2024, the Appellants' solicitor contacted Revenue Scotland seeking guidance on submitting a repayment claim for the ADS.

12. An ADS repayment claim was then submitted on 21 March 2024 and correspondence ensued. It was confirmed that Faheem had never lived in the First Property.

13. On 15 May 2024, Revenue Scotland sent the Appellants a Notice of Enquiry under paragraph 13 Schedule 3, RSTPA in relation to the claim. The Notice set out the background, the applicable legislation, the criteria for repayment of ADS and a summary of the information that Revenue Scotland had received from the Appellants' solicitor regarding the claim.

14. The enquiry officer explained that, based on the information provided, it appeared that Faheem did not meet the criteria for repayment of the ADS; in particular the requirement that both buyers had lived in the First Property as their only or main residence prior to the effective date. Revenue Scotland invited the Appellants to provide further evidence that this requirement had been met.

15. Correspondence ensued. On 15 June 2024, the Appellants confirmed that Naeem and his wife had separated "last year" and that he was now living in the Second Property. The separation had "ultimately led to the disposal" of the First Property. On 17 July 2024, Naeem wrote to Revenue Scotland stating that he and his wife had separated on 6 June 2023. Initially he remained resident in the First Property but he moved into the Second Property with his parents and brother in or about November or December 2023.

16. On 29 July 2024, Revenue Scotland issued an Enquiry Closure Notice to the Appellants under section 93 RSTPA. That Notice advised that, based on all the information provided, two of the ADS repayment conditions, (a) and (b), had not been met by both buyers. Those conditions require that (a) both buyers disposed of the First Property within 18 months of purchasing the Second Property; and (b) the First Property was the main residence of both buyers in the 18 months prior to buying the Second Property. Revenue Scotland pointed out that Faheem did not dispose of the First Property and he had never lived there.

17. On 13 October 2024, Naeem requested a review of that decision and on 16 October 2024, Revenue Scotland asked him to provide any additional information to support his case.

18. On 17 October 2024, Naeem replied stating that:

- (a) "...I disposed of a property I owned on the 10<sup>th</sup> March 2024...".
- (b) "The property that was disposed of was my main residence".
- (c) "Since disposing of my previous property, my main residence has been in the new property that was purchased".

19. He said that he "owned" the First Property because Revenue Scotland had explained deemed ownership to him.

20. On 11 November 2024, Revenue Scotland issued its View of the Matter letter under section 237 RSTPA and asked Naeem to provide any further information in response.

21. On 14 November 2024, Naeem discussed the position by telephone with the review officer and then sent her three emails which he copied to his brother. He argued that the legislation meant that he qualified for a repayment.

22. On 15 November 2024, Faheem wrote to the review officer, with a copy to his brother, arguing that Revenue Scotland's interpretation of the legislation to the effect that conditions (a) and (b) were not met was inconsistent with the subsequent amendment to the legislation and the spirit of that amendment.

23. On 20 December 2024, Revenue Scotland issued its Review Conclusion letter to the Appellants under section 239 RSTPA. The original decision to refuse the repayment of the ADS was upheld on the basis that all of the statutory criteria for repayment of the ADS had not been met.

24. On 18 January 2025, Naeem lodged the Notice of Appeal with the Tribunal. He reiterated the arguments that had previously been advanced. He argued that Revenue Scotland's refusal was "illogical, inconsistent and against the spirit of the law in which the conditions for repayment were written" because:

- (a) It was only he who had been liable for the ADS and so it was illogical that both buyers needed to meet the repayment conditions. Faheem had never been liable for the ADS so he should not have to meet the repayment conditions.

- (a) The reason that he had had to pay the ADS was because his wife had owned the First Property and it was inconsistent that he should be required to have disposed of it as he had never previously owned any property.

25. He argued that he had suffered an injustice. The denial of the repayment was based on the technicality that his wife had owned the First Property. They had subsequently separated so he was no longer deemed to have ownership of it. He stated that "The law should not be applied in a way that produces unjust results based on technicalities or narrow interpretations..." and the refusal of the claim represented an unjust application of the law and disregarded the legislative intention.

26. In the Statement of Agreed Facts it narrated, in relation to the grounds of appeal that Naeem had made reference to the legislation that was applicable at the time:

“....and compares this to how it was later amended to remove the ambiguity in the legislation which has directly resulted in him being in this current circumstance. The result of clarifying this ambiguity would have seen the ADS repaid. That is to say that only the Appellant would have needed to satisfy conditions (a) and (b) and not his brother, Mr F Bukhari, and deemed ownership would apply consistently for paying and repaying ADS. The Appellant states that the spirit of ADS tax is for those that own multiple properties, which the Appellant does not own, and therefore believes he has suffered an injustice in this regard”.

## **The legislation**

27. The Tribunal was created by an Act of the Scottish Parliament and is, therefore, a creature of statute. Its powers are only those which are given to it expressly by statute.

28. In the case of an appeal of an appealable decision, section 244(2) of 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.”

29. In determining the matter in question, the Tribunal must apply the law.

30. Schedule 2A of the Act (“Schedule 2A”) contains the provisions relating to ADS.

31. Paragraph 2 reads:

*“Transactions relating to second homes etc*

2(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."

32. Paragraph 5 reads:

*"Joint buyers*

5(1) This paragraph applies to a chargeable transaction which satisfies the conditions in paragraph 2(1)(a) and (b) or 3(1)(a) and (b) if there are two or more buyers who are or will be jointly entitled to ownership of the dwelling.

(2) The conditions set out in paragraph 2(1)(c) and (d) or, as the case may be, 3(1)(c) are satisfied if they are satisfied in relation to any one of, or more than one of, the buyers."

33. Paragraph 8(1) of Schedule 2A the material parts of which read:-

*"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."

34. We have highlighted in bold the key words.

35. This appeal concerns the conditions, in paragraph 8(1)(a) and (b) of Schedule 2A, for the repayment of ADS.

## **Discussion**

36. The burden of proof rests on both of the Appellants since they were the joint purchasers of the Second Property. The standard of proof is the ordinary civil standard, which is the balance of probabilities.

37. The primary problem for the Appellants is that Faheem never lived in the First Property and nor did he sell it. In those circumstances repayment of ADS would never have been possible.

38. The Tribunal cannot consider the “spirit of the legislation” but must apply the law as enacted by the Scottish Parliament; that is not a technicality.

39. We find that the intention of the Scottish Parliament in respect of the repayment of ADS is clear from the words of the Act; that ADS is only repayable in the limited circumstances set out in paragraph 8(1) of Schedule 2A to the Act.

40. Unfortunately for the Appellants they simply do not fall within the limited circumstances within which the Scottish Parliament intended to permit the repayment of ADS.

41. The legislation contains no provisions giving Revenue Scotland, or the Tribunal, the power to extend those circumstances.

42. We understand why the Appellants might consider the law to be unfair.

43. However, in its Statement of Case, Revenue Scotland is correct to quote *Dr Goudie and Dr Sheldon v Revenue Scotland* [2018] FTTSC 3 in which, having quoted from the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC), it is stated [at 67] “This Tribunal does not have jurisdiction to consider...fairness.”

44. It does not.

## **Decision**

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

46. 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: 3 June 2025**

Amended pursuant to Rule 37 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 on 20 June 2025