



[2026] FTSTC 1

Ref: FTS/TC/AP/25/0012

Land and Buildings Transaction Tax – Additional Dwelling Supplement (“ADS”) – repayment – no – property not sold within 18 months – appeal dismissed

DECISION NOTICE

IN THE CASE OF

Mrs Yvonne Bredin

Appellant

- and -

Revenue Scotland

Respondent

**TRIBUNAL: ANNE SCOTT
MEMBER: CHARLOTTE BARBOUR**

The Tribunal determined the appeal on 15 January 2026 without a hearing under the provisions of Rule 30(1) of The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017

DECISION

Introduction

1. This is an appeal against a decision dated 25 June 2025 by Revenue Scotland refusing the application for repayment of Additional Dwelling Supplement (“ADS”) made by the Appellant and her husband. That ADS has been charged under section 26A and Schedule 2A of the Land and Buildings Transaction Tax Act 2013 (“the Act”).

2. At the heart of the Appellant’s appeal is the argument that the decision not to repay the ADS is obviously unfair given that the ADS had been paid in good faith and in the expectation that it would be repaid; the fact that it was not repayable in terms of the legislation was due to matters outwith the Appellant’s control.

The hearing

3. The Appellant had originally requested an oral hearing of her appeal. On 20 August 2025 her husband had confirmed to the Tribunal and to Revenue Scotland that whilst he was aware of the appeal he did not wish to participate in the appeal. The appeal was listed for hearing on 15 January 2026 at 10.00am.

4. On 11 January 2026, the Appellant emailed the Tribunal and Revenue Scotland requesting that the Tribunal proceed to decide the appeal in her absence. The Tribunal and Revenue Scotland consented to that application. The appeal was determined on the basis of the available papers. We had a hearing bundle extending to 110 pages and an authorities bundle extending to 109 pages.

5. In addition, on 13 January 2026, Revenue Scotland had lodged with the Tribunal and the Appellant, their outline written submission together with confirmation that some online legal resources had inaccurately reported the provisions in the Coronavirus (Scotland) Acts and related Regulations.

The facts

6. The facts are not in dispute.

7. The Appellant and her husband jointly purchased a residential property in North Ayrshire (“the Second Property”) with a purchase price of £145,000 and an effective date of 21 May 2021.

8. On the effective date, the Appellant and her husband also owned a residential property in East Kilbride (“the First Property”).

9. The electronic Land and Buildings Transaction Tax (“LBTT”) return for the purchase of the Second Property was filed with Revenue Scotland on 16 June 2021 by the Appellant’s agent. No LBTT was payable but ADS in the sum of £5,800 was calculated as being due. It was paid on that date. 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 7 April 2025, the Appellant contacted Revenue Scotland to ask how to make a claim for repayment of the ADS. She was advised to submit a claim online and did so on 10 April 2025.

11. That was accepted by Revenue Scotland as being a repayment claim in terms of section 107 Revenue Scotland and Tax Powers Act 2014 ("RSTPA").

12. The reason given for the repayment claim was the sale of the First Property on 9 December 2022.

13. On 29 April 2025, the Appellant contacted Revenue Scotland by telephone to enquire as to the progress of the repayment claim and she was advised that it was unlikely that the repayment would be issued because the sale of the First Property had occurred more than 18 months after the purchase of the Second Property.

14. The repayment claim was then passed to Revenue Scotland's compliance team for review.

15. On 16 May 2025, the Appellant emailed Revenue Scotland asking for an update on the progress of her claim and on 28 May 2025, Revenue Scotland responded stating that they were still investigating the matter.

16. On 2 June 2025, Revenue Scotland sent the Appellant and her husband a Notice of Enquiry under Schedule 3, paragraph 13 RSTPA explaining that the repayment conditions for ADS are set out in the legislation at paragraph 8 Schedule 2A of the Act. That paragraph reads:

"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 had been occupied as the buyer's only or main residence."

17. Revenue Scotland pointed out that whilst conditions (b) and (c) had been met, condition (a) had not been met. They asked for confirmation as to whether or not the First Property had in fact been sold prior to 21 November 2022 which was the cut-off date.

18. On 12 June 2025, the Appellant emailed Revenue Scotland explaining that:-

- (a) At the time of the sale of the First Property, she had been unable to contact her usual lawyer due to the Covid restrictions and so had employed a different lawyer in early September 2022.
- (b) That lawyer had been explicitly told that the Appellant wished to reclaim the LBTT on the Second Property and therefore the First Property had to be sold timeously.
- (c) The sale was originally scheduled for 18 November 2022 but at the last minute the buyer had requested a delay as she was to be visiting Australia.
- (d) The sale was duly completed on 9 December 2022.
- (e) She believed that she had been let down by the new lawyer.
- (f) The delay was due to circumstances that were not within her control.

19. On 25 June 2025, Revenue Scotland issued a Notice of Completion of Enquiry under paragraph 14 Schedule 3 RSTPA. The claim for repayment of ADS was rejected because the statutory criteria had not been met.

20. The effect of the Notice was to amend the claim to NIL.

The Appellant's Grounds of Appeal

21. On 22 July 2025, the Tribunal received the Appellant's Notice of Appeal (erroneously dated 21 June 2025). On 15 October 2025 the Appellant subsequently filed revised Grounds of Appeal (referred to as a Statement of Case).

22. The Grounds of Appeal are:-

- (a) The missives for the sale of the First Property were concluded on 27 September 2022 with an entry date of 10 November 2022.
- (b) The purchaser had subsequently requested that the entry date be deferred until 9 December 2022 as she would be in Australia.
- (c) The lawyer had not advised the Appellant that the impact of delaying the sale would mean that the ADS would not be repayable. In any event contact with the lawyer had been hampered by Covid restrictions.
- (d) The aftermath of Covid had also slowed down the property market.
- (e) The sale of the First Property was only 19 days (15 working days) outwith the 18 month timescale in the legislation.
- (f) The timescale for refunding ADS had been increased to 27 months in terms of the Coronavirus (No 2) Scotland Bill in May 2020 for properties bought between September 2018 and March 2020 and the law had been further changed with effect from 1 April 2024 allowing a 36 month timescale.

- (g) The deferred sale was entirely due to circumstances outwith the Appellant's control and consideration should be given to the effect of Covid and the consequential changes in the legislative timescales.
- (h) The ADS was a substantial amount of money which had been paid in good faith in the expectation that it would be refunded once the First Property had been sold.

Revenue Scotland's argument

23. Shortly put, Revenue Scotland state that they must apply the law and they have no discretion. There was no ambiguity in the clear words of the statute and the Appellant has not complied with the provisions of paragraph 8(1)(a) of Schedule 2A of the Act.

Discussion

24. It is not in dispute that in the first instance the Appellant and her husband were liable for the ADS.

25. As the Tribunal stated at paragraph 69 in *Dr Goudie & Dr Sheldon v Revenue Scotland* [2018] FTSTC 3, "In summary, whilst this Tribunal has a wide jurisdiction it is confined to the powers conferred by statute".

26. As the Tribunal has made clear in a number of other cases, it was the Scottish Parliament's intention that ADS is repayable in only the very limited circumstances set out in the Act.

27. Unfortunately for the Appellant, the legislation that applied at the time to her transaction, ie the effective date of 21 May 2021, was crystal clear in its terms and neither Revenue Scotland nor the Tribunal have any power to extend the 18 month time limit in paragraph 8 Schedule 2A of the Act.

28. The simple fact is that the First Property was not sold within that timescale. The fact that the legislative timescale was subsequently amended cannot help the Appellant since the Tribunal can only apply the law that was in force at the time that the repayment claim was made.

29. Although the timescale was amended by the Coronavirus (Scotland) (No.2) Act 2020, that only applied to transactions with an effective date before 24 March 2020. (Incidentally, Revenue Scotland are correct in stating that the "Covid extension" was 36 months as opposed to the inaccurately reported 27 months.) The subsequent non-Covid extension was introduced with effect from 1 April 2024. The Scottish Parliament did not choose to backdate that relaxation of the timescale.

30. The Act does not give the Tribunal or Revenue Scotland the jurisdiction to consider whether there was a reasonable excuse for the delay in selling; the timescale is either met or it is not.

31. We do understand that the Appellant considers that the law is unfair but Revenue Scotland are correct to quote paragraph 67 from *Dr Goudie & Dr Sheldon* where, having quoted from the Upper Tribunal in *HMRC v Hok* [2012], it stated "this Tribunal does not have jurisdiction to consider either fairness or Revenue Scotland's conduct.". It does not.

32. Lastly, for completeness, the issue as to whether or not the Appellant was poorly advised is not a matter for this Tribunal. The Upper Tribunal in *Ryan v HMRC* [2012] UKUT 9 (TCC) made it clear, in the context of a statutory time limit, that if a taxpayer believes that (s)he has been let down by a solicitor then the remedy is to take the matter up with the solicitor.

Decision

33. For all these reasons the appeal is dismissed.

34. 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: 16 January 2026