



TC03641

Appeal number: TC/2013/00980

Stamp Duty Land Tax: duty to notify within the time limited; failure to file SDLT 1 on time; fixed penalty; reasonable excuse established? – no; unfairness or unreasonableness; HMRC and HOK Limited.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SHEPHERDS BOOKBINDERS LTD

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE CHRISTOPHER HACKING
MR PHILIP GILLETTE FCA**

Sitting in Bedford Square, London on 23 October 2013

Mr David Cooper, Solicitor and Secretary to the Appellant appeared on its behalf

Mr P Rowe, a Case Presentation Officer for the Respondents

DECISION

The Appeal

5 1. This was an appeal against a decision of the Respondents to impose a flat rate penalty of £100 for the failure to deliver a return of land transactions form SDLT 1 within the 30 day period limited by the relevant legislation.

10 2. S. 76(1) Finance Act 2003 provides:

“In the case of every notifiable transaction the purchaser must deliver a return (a ‘land transaction return’ to the Inland Revenue before the end of the period of 30 days after the effective date of the transaction”

15 3. S. 97(2) of the same act states:

“Where a person had a reasonable excuse for not doing anything required to be done for the purposes of this Part –

20 (a) he shall be deemed not to have failed to do it unless the excuse ceased,

and

25 (b) after the excuse ceased he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased”

4. There was no dispute in this appeal as to the need to comply with the obligation to file a land transaction return under the act. The effective date of the transaction (the acquisition of a leasehold interest in land) was agreed to be 26 October 2012. To avoid late filing the SDLT 1 had to be delivered to HMRC on or before 25 November 2012. That day was a Sunday and either hand or electronic delivery on or by that date would have been acceptable.

35 5. The Appellant’s SDLT 1 was in fact received electronically by HMRC on Monday 26 November 2012, one day late. A penalty notice was issued on 01 December 2012.

40 6. In the Appellant’s appeal to the Respondents by letter dated 14 December 2012 the reason for the late delivery of the return is stated as follows:

“ I do not agree with the penalty applied. The last working day was the Monday 26th November, when the return was sent online. It was not possible or realistic for us to have sent it on the Sunday”

45 7. The Respondents confirmed the penalty by letter dated 7 January 2013.

8. Mr Cooper on behalf of the Appellant submitted an appeal to the First-tier Tax Tribunal by letter dated 1 February 2013 stating that his letter of 14 December 2012 “lays out the facts behind this penalty being unfairly issued”
- 5 9. HMRC’s Statement of Case was delivered to the tribunal under letter dated 26 February 2013. The statement set out the relevant facts together with extracts from the Finance Act 2003 concerning the duty to effect a timely filing of notifiable land transactions.
- 10 10. As the essential facts including the late delivery of the return were not in dispute the only issues to be determined by the tribunal were whether there was some reasonable excuse for the late delivery of the return and/or whether looking at the matter more generally the imposition of the fixed penalty was unfair or unreasonable.
- 15 “Reasonable excuse”
11. The only excuse claimed by the Appellants originally was that their agent, Mr Cooper’s partnership, David Cooper & Co had not found it “possible or realistic” to have filed the return on the Sunday.
- 20 12. At the hearing of the appeal Mr Cooper candidly accepted that the filing was late but said that he had had not been able to access the internet on the Sunday and was thus unable to submit the return until the following day. He expressed the view that the 30 day time limit was artificial in a case such as this where no duty was payable. The form itself had been completed in good time but the filing of the form had been left to the last day of the week as a result of an error by a member of staff. When Mr Cooper realised this he took the papers home to complete the filing over the weekend. Unhappily he had been unable to gain access to the internet that weekend and it was because of this that the filing was necessarily delayed by one day.
- 25 30 13. Mr Cooper told the tribunal that he had in fact filed the return at the earliest possible opportunity thereafter on the Monday morning. He had expected HMRC to exercise discretion in light of the facts as explained to them.
- 35 14. There is no definition within the Finance Act 2003 as to what constitutes a “reasonable excuse”. HMRC use as a working definition some exceptional circumstance which is outside of the control of the taxpayer and which is unexpected resulting in an inability to do the thing required within the time limited. Whilst it may be that this approach does not embrace all of the possible circumstances which could qualify as falling within the expression “reasonable excuse” it is, the tribunal accepts, a good starting point and in this instance one which has application to the facts concerning this appeal.
- 40 45 15. That the last day of the filing was a Sunday was neither exceptional nor unexpected. The control of the matter of the filing was in Mr Cooper’s hands. The best that could be said of the circumstances is that they were unfortunate. The fact that a staff member may have failed to alert Mr Cooper to the urgent need to effect the

5 filing on the Friday cannot, in the finding of this tribunal, amount to a reasonable
excuse. Mr Cooper was both the Appellant's Company Secretary and its solicitor. He
is an experienced solicitor who must be taken to appreciate the need to effect filings
of this nature by the due date. Leaving matters to the last moment was a recipe for
disaster, something of which Mr Cooper must have been aware by reason of his
training and experience.

"Unfairness"

10 16. This tribunal is not able to exercise a supervisory jurisdiction over the activities
of HMRC. It cannot therefore substitute what it might, in any given situation, see as
being a "fair" decision of its own for a decision made by HMRC. It cannot give effect
to taxpayer's expectations however reasonable these may appear if those expectations
15 are in conflict with a taxpayer's statutory duties. It is the responsibility of the tribunal
to look at the decision made by HMRC and if it is one which it was entitled at law to
make and the decision making process was itself not flawed then it must be
confirmed. That the jurisdiction of the First-tier tax tribunal is limited in this way was
made clear by the Upper Tribunal in the case of *HMRC and HOK Limited* [2012]
UKUT 363 (TCC)

20 *Decision*

17. For the above reasons the tribunal finds that the Appellant did not have a
reasonable excuse for its delay in filing its land transaction return and accordingly the
25 fixed penalty of £100 is confirmed as payable.

18. The tribunal has, for the reasons explained, no jurisdiction to entertain the more
general issues concerning fairness raised by Mr Cooper on behalf of the Appellant

30 19. This appeal must be dismissed.

20. This document contains full findings of fact and reasons for the decision. Any
party dissatisfied with this decision has a right to apply for permission to appeal
against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax
35 Chamber) Rules 2009. The application must be received by this Tribunal not later
than 56 days after this decision is sent to that party. The parties are referred to
"Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"
which accompanies and forms part of this decision notice.

40 **CHRISTOPHER HACKING**
TRIBUNAL JUDGE

RELEASE DATE: 28 May 2014

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