



TC04104

Appeal number: TC/2014/03892

Stamp Duty Land Tax - Penalty for late delivery of Land Transaction Return – Finance Act 2003 Section 76(1) – no reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RICHARD HELER & ANNE HELER

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE G NOEL BARRETT (Presiding Member)
MR ROLAND PRESHO FCMA**

Sitting in public at Stocklund House Castle Street Carlisle on 13th October 2014

Mr G W Dalton, Solicitor for the Appellant

HMRC not in attendance

DECISION

Introduction

- 5 1. This is an appeal by Mr and Mrs Heler ('the Appellants') against the imposition of a penalty of £100 for late delivery of a Stamp Duty Land Transaction ('SDLT') Return in relation to their purchase of 4 Fairview Avenue Weston Cheshire ('the Property').
- 10 2. The penalty resulted from the Appellants failure to deliver an SDLT Return within 30 days of a notifiable land transaction, which notifiable land transaction, in this case, was the completion date of their purchase of the Property, being 4th April 2014. Thus in order to be delivered on time, their SDLT Return needed to be delivered by the 4th May 2014
- 15 3. The Appellants ground of appeal was somewhat confusing, as it was based, not on whether the Appellants, had a reasonable excuse for late delivery of their SDLT Return per se, but as to whether or not HMRC had acted unreasonably in processing their SDLT Return once it had been received by them.
- 20 4. The Appellants claimed that if it could be shown that HMRC had acted unreasonably, then that unreasonable behaviour could provide the Appellant with a reasonable excuse for late delivery of their SDLT Return.
5. Unusually HMRC were not in attendance at the hearing, having previously written to the Tribunal on 30th September 2014, enclosing their Statement of Case and Evidence Pack and requesting that their attendance be excused.

25 The Law

6. Section 76(1) of the Finance Act 2003 ('the Act') 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"
- 30 7. Section 77(1) of the Act provides:
- "A land transaction is notifiable if it is –
- (a) an acquisition of a major interest in land"
8. Section 117 (1) and (2) provide:
- 35 " (1) References in this Part to a "major interest" in land shall be construed as follows.

- (2) In relation to land in England and Wales, the references are to-
- (a) an estate in fee simple absolute.....”

9. Section 119 (1) provides:

- 5 “ (1) Except as otherwise provided , the effective date of a land transaction for the purposes of this Part is-
- (a) The date of completion.....”

10. Section 97(2) of the Act provides:

- 10 “Where a person had a reasonable excuse for not doing anything required to be done for the purposes of this Part –
- (a) he shall be deemed not to have failed to do it unless the excuse ceased, and
- (b) after the excuse ceased he shall be deemed not to have failed to do it if he
- 15 did it without unreasonable delay after the excuse had ceased”.

11. Schedule 10 Paragraph 7 (1) of the Act provides:

“The Inland Revenue may amend a land transaction return so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise”

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The Evidence and our Findings of Fact

12. From the documentary evidence and the oral evidence of Mr Dalton. There was no dispute in this appeal as to the effective date on which the Appellants acquired a major interest in land, which acquisition they had completed on the 4th April 2014, or

25 that they needed to deliver an SDLT Return within 30 days of the acquisition in order to comply with their obligation.

13. The issue therefore before us is as to whether or not the facts of this case provide the Appellants with a reasonable excuse for late delivery of their SDLT Return, and/or looking at the matter more generally whether the imposition of the fixed penalty was

30 unfair or unreasonable.

14. There is no dispute that the Stamp Duty Land Tax in the sum of £1,890 was paid within the 30 day period and was held by HMRC in their suspense account until they could correctly “match” that Duty with a valid SDLT Return.

15. The obligation under the Act is for both the SDLT Return to be delivered and for the Duty to be paid with the 30 day period.
16. If the Duty is paid on time, without the delivery of a valid SDLT Return, then HMRC have no method of determining whether the Duty has been correctly calculated, or indeed as to whether the Duty has been paid within the requisite 30 day period.
17. Mr Dalton confirmed and we accepted that he had acted for the Appellants upon their acquisition of 4 Fairview Avenue and was instructed by them, to deliver an SDLT Return and pay over the required Stamp Duty Land Tax within the requisite period.
18. Mr Dalton further confirmed and we again accepted that the Appellants had furnished him with a completed SDLT Return and the requisite Stamp Duty land Tax either before or at the very latest by the completion date on the 4th April.
19. Candidly Mr Dalton confirmed and we accepted that very shortly after the 4th April he had left his office for a two week holiday and that it was as a result of his holiday that he failed to deliver the Appellants SDLT Return, until after his return from holiday. He pointed out that he was a sole practitioner and that the return could not therefore be filed in his absence.
20. The paper SDLT Return was delivered to HMRC by Mr Dalton on Wednesday 30th April 2014.
21. The required 30 day period expired on Sunday 4th May.
22. Had the SDLT Return been completed correctly in all its mandatory fields then that would have been the end of the matter, but unfortunately Mr Dalton omitted to complete box 4 of the Return, which should have been completed to show the effective date of the transaction. As a result of this omission the return was deemed by HMRC to be invalid and it was returned to Mr Dalton by post on the 6th May, to be corrected.
23. Mr Dalton was unable to redeliver the corrected return until 12th May, which was 8 days after the date for delivery. As a result HMRC issued a £100 penalty notice.
24. Mr Dalton submitted that HMRC had acted unreasonably, in returning the Return to him by post so close to the expiry of the 30 day delivery period, on several basis.
25. Firstly, as HMRC had Mr Dalton's telephone contact details correctly entered onto the Return, that it would he been perfectly reasonable to expect HMRC to telephone Mr Dalton to obtain the missing information as soon as they realised the error, so that they, HMRC, could then have corrected the Return under Schedule 10 Paragraph 7 (1) of the Act, within the 30 day delivery period.

26. Secondly, that HMRC had acted unreasonably as it took them until Tuesday 6th May to return the SDLT Return to Mr Dalton by post. In respect of which Mr Dalton submitted that the delay on HMRC's part was deliberately orchestrated in order that a late filing penalty could then be imposed and additional revenue raised.

5 27. Thirdly, as the 30 day period for delivery of the SDLT Return expired on Sunday the 4th May and the following day Monday 5th May was a Bank Holiday that HMRC had acted unreasonably in not extending the delivery period until the next working day ie Tuesday 6th May. We are unsure as to quite how any such extension of time would assist the Appellants, given that they did not in fact deliver their corrected
10 SDLT Return until Monday 12th May?

28. We do not accept these submissions for the reasons we shall provide, whilst it is unfortunate that HMRC were not in attendance and thus were unable to provide any verbal evidence, the Appellants grounds of appeal had fortunately already been well rehearsed when they had requested HMRC to review their case. As such we were able
15 to rely on the documentary evidence provided by HMRC, which provided replies to the submissions made by Mr Dalton.

29. HMRC confirmed in their Statement of Case and review letters dated 16th June and 4th July 2014 and we accept, that the process for logging SDLT Returns is highly automated and that the staff at the processing centre are not qualified to telephone
20 customers.

30. Whilst HMRC submitted in their Statement of Case and review letters that the completion of box 4 of the SDLT Return is a mandatory requirement and not a minor error, and therefore could not be corrected. Schedule 10 paragraph 7(1) of the Act refers to "obvious errors or omissions in the return" the schedule does not make any
25 distinction as to whether the errors or omissions which may be corrected are of mandatory information or only of minor information.

31. Whilst we have some doubts as to HMRC's interpretation of the schedule and the extent of their "corrective" powers and as to whether those "corrective" powers could have been used in this instance. We accept that as the omission, was in this case, the
30 transaction date itself, HMRC would have had no way of knowing when the 30 days required for submission would expire, nor that posting the return back would result in a late submission.

32. We accept that it is perfectly reasonable for HMRC to have automated systems in place to process SDLT Returns and that where an SDLT Return is incorrect for
35 HMRC to forward that Return to its Birmingham Office for appropriate action to be taken. We also accept that HMRC's systems are such that it may take a day or two for returns to be received and actioned by its Birmingham Office. We do not accept therefore that any reasonable excuse for late submission arises by virtue of HMRC's actions.

40 33. Even though the 30 day submission period was reaching its close, the Appellant's agent chose to submit the SDLT by post rather than to submit it online. HMRC's

guidance notes on completing a paper SDLT return, with which the Appellants solicitor agent should have been familiar confirms that filing by post;

5 “.... Is more time consuming than filing on line and has a number of disadvantages. If you make a mistake HMRC will write to you and your return will be held open until your reply – this may result in penalties for late filing and interest charged on late payment of any tax due.”

10 34. Had the Appellant’s agent submitted the return online then, quite apart from this avoiding any postal delays, the built in validation within the online submission process would have ensured that all the relevant questions on the return had been answered without omission.

35. We do not therefore accept Mr Dalton’s second submission.

15 36. In regard to Mr Dalton’s third submission we do not accept that where the final date for delivery falls on a Sunday or a Bank Holiday that the period should then be extended until the next working day. Delivery in this case had to be on or before Sunday 4th March whether by post or electronic means. Section 76(1) of the Act states “before the end of the 30day period” no allowances are given to allow an extension to the next working day.

Reasonable Excuse

20 37. 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
25 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

30 38. We do not accept that the Appellants have a reasonable excuse for late delivery of their SDLT Return. Their only excuse is that their agent and Solicitor, Mr Dalton, failed to complete their SDLT Return correctly, and as a result of his holidays did not deliver their SDLT Return until Wednesday 30th April, which left little or no time for any errors or omissions within the SDLT Return to be corrected by Mr Dalton.

35 39. Had Mr Dalton submitted the SDLT Return on completion or just after the 4th April, before he left for his holiday then matters may have been entirely different, as there would then have been time to deal with any required corrections or omissions. But that was not what happened and we do not accept that it is unreasonable for HMRC to take what in effect were four working days, (Wednesday 30th April to Wednesday 6th May, given the intervening weekend and Bank Holiday Monday) to return the Return.

Unfairness

5 40. Mr Dalton is an experienced professional who can only well be too aware of the necessity to comply with timescales and deadlines and whilst he may believe that HMRC have acted unfairly this tribunal is not able to exercise a supervisory jurisdiction over the activities of HMRC.

41. 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 a taxpayer’s expectations, however reasonable these may appear, if those expectations are in conflict with a taxpayer’s statutory duties.

10 42. 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.

15 43. 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)

Decision

20 44. For the above reasons the tribunal finds that the Appellants do not have a reasonable excuse for their delay in filing their land transaction return and accordingly the fixed penalty of £100 is confirmed as payable.

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

46. This appeal must be dismissed.

25 47. 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 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)”
30 which accompanies and forms part of this decision notice.

35 **G NOEL BARRETT**
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 4 November 2014