



**TC05180**

**Appeal number: TC/2015/06384**

*STAMP DUTY LAND TAX – late filing of SDLT 1 Form – whether  
reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANDREW OLIVER**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE DR K KHAN**

**The Tribunal determined this Appeal on 22 March 2016 without a hearing and under the provisions of Rule 26 of the Tribunal Procedure First-tier Tribunal (Tax Chamber) Rules 2009 (default paper cases) after having first read the Notice of Appeal dated 3 July 2015 and HMRC's Statement of Case (undated).**

## DECISION

### Introduction

5 1. This is an appeal against the imposition of a flat rate penalty of £200 for the failure  
to submit a return of land transactions within the 30 days allowed. Where there is a  
“notifiable” transaction (lease extension for residential property) the purchaser must  
deliver a Land Transaction Return (SDLT 1) to HMRC before the end of the period of  
30 days after the effective date of the transaction. The Land Transaction Return  
10 includes a self-assessment of the SDLT liability payment of the amount chargeable.

2. The transaction was notifiable in accordance with Section 77 Finance Act 2003 as  
the extension of the lease is the acquisition of a major interest in land and does not fall  
into any of the exemptions in Section 77A Finance Act 2003.

15 3. In order to avoid a Late Filing Penalty, a Land Transaction Return (SDLT 1) had to  
be delivered to HMRC on or before 24 October 2014. HMRC received the form on 3  
June 2015 which was 252 days after the effective date thus resulting in a Late Filing  
Penalty of £200.

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### Relevant facts

4. The Appellant appealed on 3 July 2015. A written decision was issued that  
confirmed the penalty. On 27 August 2015, the Appellant requested a review of the  
25 decision and on 1 October 2015 the HMRC concluded the review which upheld the  
penalty.

5. The Appellant appealed to the Tribunal on 17 October 2015.

### Appellant’s Submissions

6. The Appellant stated the following -

7. “I apologise that the Land Transaction was sent in late. The Return was for a Lease  
35 Extension on a flat that I own and I was advised by the freeholder’s solicitor, verbally,  
that they would do the return. However, it transpired that the solicitor wanted me to  
do the return and as soon as I was aware of this, I sent it to HMRC. So whilst I was  
aware that the return was late, I request that the mitigating circumstances be taken  
into consideration. In addition, given zero tax payable, a proposed penalty of £200 is  
40 neither fair nor reasonable and unjustified.”

8. The Appellant said that the fine was disproportionate.

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### Respondent's Submissions

5 9. The Respondents say that the legislation, section 76 (1) Finance Act 2003, imposes an obligation on the purchaser to deliver a SDLT 1 form within 30 days of the transaction. If the return is submitted late, as it was, there is a flat rate penalty.

10. The Appellant acknowledges that the return was late.

10 11. The penalty is imposed regardless of any tax due and the Appellant cannot delegate the responsibility for submitting the return to another party, including those who advised him that they would “do the return”.

15 12. The penalty is imposed for failure to submit the return whether or not the transaction attracts tax and as such it was properly imposed in accordance with the legislation. The form was submitted a substantial time after the filing date and the penalty was properly applied. The Appellant provided no evidence that he chased progress on the submission of the form.

### Conclusion

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13. The Tribunal has sympathy with the Appellant. It was his understanding that the forms were being submitted by the professional advisors dealing with the transaction and it was a fair assumption that matters would be dealt with competently.

25 14. The primary responsibility for the submission of the form was with the Appellant, who had accepted that the form was filed late. He cannot rely on the inaction of the freeholder's solicitors to defeat the purpose of the legislation and to provide a reasonable excuse.

30 15. The Appellant said that the penalty was unfair because there was no tax due on the transaction. The obligation on the Appellant is to file the return, even if no tax is owed. The penalty is set by statute and the level of penalty has been correctly imposed by statute. It is therefore fair and proportionate in the circumstances.

35 16. In transactions such as this one, most people use a solicitor or legal conveyancer to act on their behalf, but it is the Appellants responsibility to notify HMRC and to pay any tax due. The Appellant does not have a reasonable excuse if that responsibility is delegated to the vendors' solicitors. It is unfortunate that the solicitors did not provide the forms within the requisite time to HMRC, but this is not  
40 an excuse available to the taxpayer. There is no explanation for the delay nor was any evidence that the taxpayer chased the progress of the SDLT 1 form with the solicitors to ensure it was submitted on time.

45 17. In the circumstances, the Appellant had not complied with the relevant legislation and the Tribunal therefore confirms the penalty. The appeal is therefore dismissed.

18. This document contains full findings of facts 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)” which accompanies and forms part of this decision notice.

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**DR K KHAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 16 JUNE 2016**

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