



TC05423

Appeal number: TC/2016/

***STAMP DUTY LAND TAX – late filing of STLT1 Form – whether
reasonable excuse – no – appeal dismissed***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Antony Phillip Brown

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 15 August 2016 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 13 April 2016 and HMRC's Statement of Case of 26 May 2016.

DECISION

Introduction

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1. This is an appeal against the imposition of a flat rate Penalty of £100.00 for the failure to submit a Return of Land Transactions within the thirty days allowed. Where there is a “notifiable” transaction (freehold purchase of residential property) the purchaser must deliver a Land Transaction Return (SDLT1) to HMRC before the end of the period of thirty days after the effective date of the transaction. The SDLT1 includes a self-assessment of the SDLT Payment of the amount chargeable.

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

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3. To avoid a Late Filing Penalty, a Land Transaction Return SDLT1 form had to be delivered to HMRC on or before 6 January 2016. The form was received by HMRC on 12 January 2016. Payment of the tax due on the transaction was £1,619.00 which was received on 12 January 2016.

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4. As the SDLT1 form was received thirty-six days after the effective date and six days after the filing date a Late Penalty Payment of £100 was imposed.

The Law

5. Section 76(1) of the Finance Act 2003 (‘the Act’) provides:

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“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”

Section 77(1) of the Act provides:

“A land transaction is notifiable if it is –

(a) an acquisition of a major interest in land.....”

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6. Section 117(1) and (2) provide:

“(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.....”

7. Section 119(1) provides:

“(1) Except as otherwise provided, the effective date of a land transaction for the purposes of this Part is –

(a) The date of completion.....”

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

5 “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

10 (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”.

Relevant Facts

9. There is no dispute that the effective date of the transaction was 7 December 2015 nor that the SDLT1 form had to be delivered to HMRC on or before 6 January 2016. The Appellant’s Agent wrote to the Appellant on 8 December 2015 requesting
15 them to sign and return an enclosed copy of the SDLT1 form. The Appellant stated that they did not receive the Agent’s letter or the copy of the form which was sent with it.

10. The Appellant’s Agent emailed their client on 17 December 2015 with a further request for the signed SDLT1 form.

20 11. The Appellant states that they only became aware that the SDLT1 form was required when their solicitor tried contacting them by ‘phone message in the week before the Late Filing Penalty Notice was issued on 18 January 2016.

25 12. The Appellant was working in Cornwall and did not receive the telephone message and that the earliest they could have made contact was 18 January 2016. They did not receive the SDLT1 form until 22 January 2016 when it was scanned, signed and returned to the Agent.

13. The Appellant appealed on 20 January 2016 and HMRC issued a written decision on 29 February 2016, which rejected the appeal and upheld the Penalty.

30 14. On 10 March 2016 a further letter of appeal was received from the Appellant. This explained that they were “blissfully unaware that any form had to be filled in”.

15. A further review was done on 22 March 2016 which explained that unfamiliarity with legislation is not a reasonable excuse to cancel a Late Filing Penalty. HMRC issued a final review letter on 1 April 2016 upholding the Penalty.

Appellant's Submissions

16. The Appellant stated their ground of appeal as follows;

5 "I'm writing to you to appeal against your demand for a Late Payment
Penalty of £100 for not submitting a Land Transaction Return as stated in
your letter dated 18/01/16. The first I was aware of this was when my
solicitor tried contacting me by phone message in the week before the
10 date of your letter. I could not act upon it then as on 11/01/16 I had left
my 'phone at my mother's house in Bristol and went to work in Cornwall
for the following week, so the earliest I actually done (anything) about
this was the 18/01/16 when I answered my solicitors 'phone call
15 message. I stated by email to my solicitor that I could not sign anything as
I had not received any paperwork to sign. I did not receive this paperwork
until my solicitor sent me an email on the 22/01/16. The paperwork was
scanned, signed, returned there and then. My property was purchased on
the 07/12/15 and I did not move into it until after Xmas. There was mail
20 from my solicitor at the time but no Land Transaction Return form, my
solicitor suggested it was sent to me on the 8th/9th December. I would still
deem it unfair to make this payment so soon after moving house due to the
actual turmoil of moving house and also the fact that the move was so
close to the Xmas and the possibility of postal issues. I think it only fair
that people should be given time for things to settle after moving house.
If I actually knew this on the 8th December I would have acted upon it. I
hope you can see this with a level of reason".

25 HMRC's Contention

17. HMRC say that the penalty was correctly imposed and there is no dispute that the Return was late. They do not consider ignorance of the law as a reasonable excuse for the Return having been submitted late which gives grounds to cancel a Late Penalty.

30 18. They say that it is clear that the Appellant's Agent was fully aware of the deadline for submitting the STLD1 form and that a Penalty would be imposed for late submission.

35 19. The legislation at Section 76(1) Finance Act 2003 imposes an obligation on the purchaser to deliver an SDLT1 form within thirty days of the transaction. The purchaser cannot delegate this responsibility to any other party or rely on those who say they will do it for them.

20. HMRC do not consider the fact that the Agent did not stress the level of urgency in delivering the Return as constituting a reasonable excuse.

21. In the circumstances there is no reasonable excuse.

Conclusion

22. While the Tribunal has the utmost sympathy for the Appellant there is no reasonable excuse for a late delivery of the SDLT1 form. The only excuse presented to the Tribunal is that their solicitor tried to make email and phone contact around the
5 11 January 2016 but was unable to do so resulting in contact being made on 18 January 2016 which was too late.

23. An experienced professional such as the solicitor should be aware of the necessity to comply with the timescale and deadlines for the filing of the form and should have advised his client accordingly. The primary responsibility for the filing of
10 the form rests with the Appellant. He cannot rely on the fact that there were difficulties making contact with his advisors or that forms were not received during the busy Christmas period as a reasonable excuse. While it is perfectly understandable how these delays can occur in this period the fact that the Appellant was not fully familiar with the legislation or the deadlines does not present a reasonable excuse.

15 24. The Appellant seems to indicate that the Penalty was unfair. The Tribunal is not able to exercise a supervisory jurisdiction over the activities of HMRC. It cannot therefore substitute what might be seen as being “fair” decision of his own for a decision made by HMRC. 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 the
20 decision-making process was itself not flawed then it must be confirmed. In this case, HMRC have made the correct decision in accordance with the law.

25. For these reasons, the Tribunal finds the Appellant does not have a reasonable excuse for the delay in filing his Land Transaction Return and accordingly the Fixed Penalty of £100 is confirmed as payable.

25 26. 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
30 “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: 18 OCTOBER 2016