



**TC06651**

**Appeal number: TC/2017/08238**

*SDLT – application for permission to make late appeal against assessment.  
Application refused.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GILES MILLER & NATASHA CAMPBELL**                      **Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHARLES HELLIER**

**Sitting in public at Taylor House EC1N on 19 July 2018**

**The Appellants were neither present nor represented**

**Peter Kane for the Respondents**

## DECISION

1. Dr Miller and Mr Campbell applied to the tribunal for permission to make a late  
5 appeal against discovery assessments for SDLT arising on their acquisition of 32  
Sudlow Road. HMRC objected to the application and the tribunal listed a hearing to  
consider the application for 19 July 2018.

2. The notification of the hearing indicated that it was to start as soon as possible  
after 10:30 am. It started at 12 noon. At that time and neither the applicants nor any  
10 representative for them was present.

3. The tribunal's file shows that the notice of the hearing had been e-mailed to  
jacquie.fleming@intaxLLP.com after an earlier e-mail sent to  
ioana.misurov@IntelintaxLLP.com had been rejected. In their notices of appeal the  
applicants designated inTaxLLP as their representatives in relation to SDLT matters,  
15 and separately authorised the tribunal to correspond with that firm. The notice of  
appeal gave Ioana Misurov's e-mail address at inTaxLLP and initially the tribunal  
corresponded with her at that address, but from, at the latest, September 2017  
HMRC's correspondence with inTax LLP been with Jacqui Fleming. I was therefore  
satisfied that notice of the hearing had been given to the applicants' representatives.

4. At the start of the hearing Mr Kane rang Jacqui Fleming. Ms Fleming told him  
20 that the matter had been passed back to the applicant's original advisers and that all  
notifications had been sent to them. They were, she believed, aware of the hearing.

5. Mr Kane also told me that on 12 July 2018 HMRC's skeleton argument and  
documents had been sent to inTaxLLP (and Miss Khan, who was with Mr Kane), told  
25 me that draft submissions had been sent to them on 7 February 2017).

6. I concluded that the applicant's representatives were aware of the listing of the  
application and that it was just continue to hear it in the absence of the applicants and  
their representatives.

7. I note that Rule 38 of the tribunal's rules provides that the tribunal may set aside  
30 a decision made after a hearing at which a party was not present if it considers it in the  
interests of justice so to do and the party makes application in writing within 28 days  
of the date the tribunal send the decision to him or her

### **Factual findings.**

8. From the bundle of documents and Mr Kane's evidence I find as follows.

9. In 2011 the applicants entered into arrangements for the acquisition of 32  
35 Sudlow Road. Under these arrangements the applicants subscribed capital in a  
company which contracted for the purchase of the house for £550,000. The company  
then cancelled the shares held by the appellants and made a transfer in specie of the  
rights to the house to the applicant.

10. It appears that in reliance on a particular interpretation of section 45 Finance 2003 the applicants made an SDLT return in relation to the acquisition in July 2011, disclosing consideration for the purchase of only £250.
- 5 11. HMRC had a false start: thinking that no SDLT return had been made by the applicants, they made SDLT determinations on 9 November 2012. (I note that on 12 December 2012 HMRC wrote to the applicants saying that it was believed that they had undertaken an ineffective SDLT avoidance scheme and inviting an offer to settle by paying SDLT of £20,000 plus interest.)
- 10 12. But on 20 March 2013, realising that SDLT returns had been made, HMRC cancelled the determinations and on the same day an officer of HMRC made discovery assessments which were sent to the applicants with covering letter at 32 Sudlow Road. The covering letters set out the officer's view that the applicants had used an ineffective SDLT mitigation scheme to reduce their liability on the acquisition 32 Sudlow Road, and that the SDLT which was due was £22,010.
- 15 13. The covering letter said that if the addressee "would like to appeal against the assessment then please notify me together with your grounds of appeal in writing within 30 days of the date of this letter". The assessments themselves also referred to the possibility of making an appeal and the 30 day limit for making such an appeal.
- 20 14. HMRC sent copies of the letters and the assessments to Silverman Sherliker LLP who had who were recorded on the SDLT returns as having acted for the applicants (and the company which took part in the arrangements).
- 15 15. Several years passed. In these years various appeals were heard by the tribunal against HMRC's determinations or assessments in relation to similar SDLT mitigation arrangements.
- 25 16. On 4 May 2017 HMRC wrote to the applicants: noting that no appeal had been made against the March 2013 assessment; noting that the 30 day time limit had expired; and saying the late appeals could be made if the taxpayer had a reasonable excuse as to why the appeal was late.
- 30 17. Mr Kane told me, and I accept, that (i) manuscript notes on a printout of the applicants' computer records show that their recorded address was checked on 6 November 2012 (when the earlier determination was sent) and on 4 February 2013 and (ii) that the record was also checked on 3 May 2017; and in each case the record showed 32 Sudlow Road as the applicants' address. I accept that this means that it is likely that they had not changed their address in the period and lived from 2011 to  
35 2017 at 32 Sudlow Road. I conclude that it is likely that letters addressed to them which arrived there came to their attention.
18. On 3 August 2017 HMRC wrote to the applicants letting them know that the collection of the SDLT had been referred to their Debt Management Unit.
19. This letter prompted two letters to HMRC:

(i) one, on 14 August 2017 from inTaxLLP in which it was said that :

(a) neither they nor their clients held a copy of the assessment, and "therefore, at the time the assessment was issued [the applicants] were not aware" of the time limit;

5 (b) the grounds of appeal were that the SDLT mitigation arrangements worked; and

(c) the documents and information HMRC had requested supporting the appeal were held by ItaxConsulting (another firm which I understood had advised on the arrangements for the house purchase); and

10 (ii) a letter to HMRC from the appellants on 16 August 2017 saying that whilst they did not "wish to take up your offer to formally settle the SDLT", they would like to make a without prejudice payment on account.

20. There followed a telephone conversation between Jacqui Fleming of inTaxLLP and an officer of HMRC in which the officer said that any application to make a late appeal would need to be made directly to the tribunal because HMRC had declined to allow extra time.

21. Then, in an e-mail to Mr Kane 22 September 2017 Jacqui Fleming said that the former agents who had acted for the applicants were unfamiliar with enquiry work and did not know the rules, but as soon as inTaxLLP had become aware of the matter they had written to HMRC.

### **Discussion.**

22. Section 36 FA 2003 requires any appeal against an SDLT discovery assessment to be made in writing to HMRC within 30 days after the assessment is made. Section 44 provides that notice of appeal may be given late if either (i) HMRC agree (and the section specifies the circumstances in which HMRC must agree) or (ii) the tribunal gives permission.

23. Section 44 imposes no constraints on the discretion given to the tribunal to permit a late appeal. But the authorities show that in exercising that discretion the tribunal should consider (i) whether the delay had been serious or significant, (ii) what were the reasons for the delay (iii) all the other circumstances, including the detriment which would accrue to one party or the other from giving or withholding permission (which may include some consideration of the apparent strength or weakness of a party's case) – and bear in my the need for litigation to conducted efficiently and at proportionate cost, and the need for finality.

### *The Period of delay*

24. This was over 4 ½ years from the date of the assessments. If the assessments did not come to their attention the applicants nevertheless made their application some 4 months after HMRC's letter of 4 May 2017. In either case the delay was significant.

*The Reasons for the delay*

25. In their grounds of appeal the appellant applicants say that they had "no record of an enquiry having been issued ... neither were they aware that any assessment had been issued".

5 26. The only other reason for the late appeal appears to be that suggested in para [21] above – the lack of expertise of the advisors.

27. I take these contentions in turn.

(i) no record of an enquiry

10 28. So far as concerns an "enquiry" I think this is irrelevant. There is no procedure for the opening of an enquiry as a precursor to the making of a discovery assessment for SDLT purposes: s 28 FA 2003. There was no enquiry.

(ii) not aware of the assessments

29. So far as concerns the assertion that they were not aware that the assessment had been issued I find this difficult to believe. That is because:

15 (1) whilst it is possible that some letters may have gone astray HMRC addressed letters dealing with the assessments to the applicants at 32 Sudlow Road on 20 March 2013 (one letter to each applicant) and on 4 May 2017. The applicants gave 32 Sudlow Road as their address in the notice of appeal. I think it very unlikely that all these letters went astray; and

20 (2) HMRC also sent copies of the assessment to those who had acted for the applicants in the acquisition. It would be at least unusual for that firm not to have contacted the applicants on receipt.

30. I find support for his conclusion in the fact that in their letter to HMRC of 16 August 2017 the applicants say they do not wish to take up HMRC's settlement offer. 25 That offer was made in HMRC's letter of 12 December 2012 which followed the earlier (later cancelled) determination. If the applicants were aware of the letter of 12 December 2012 they would have been aware of the determination and either, (i) if they did not received HMRC's later letters, they would be unaware that it had been replaced by an assessment and so would be likely to have wanted to appeal against it, 30 or, (ii) if they had received those later letters, they would have been aware that the determinations had been replaced by the assessments.

31. Even if the 2013 assessments and letters had not, for some reason, been seen by the applicants, and they had not been contacted by their representatives it seems to me very unlikely that the letter of 4 May 2017 did not come to their attention. Their letter 35 of appeal to HMRC was dated 14 August 2017 more than three months later. No reason, good or otherwise, was offered for that (serious) delay.

32. I conclude that under this heading the applicants have not shown a good reason for the delay.

(iii) the advisors' lack of knowledge

5 33. This does not seem to me to be a good reason for delay. An advisor who had not read the statute should nonetheless have been able to read and comprehend the words in the assessment and the covering letters that an appeal should be made within 30 days.

34. I conclude that there was no good reason for the delay in seeking to appeal.

*Other Circumstances*

10 35. I note that the tribunal in other appeals held that arrangements similar to those entered into by the applicants were not effective. It is therefore not clear to me that the applicants would have a good case in the substantive appeal. That lessens the weight to be attached to the prejudice which might accrue to the applicants if they are prevented from pursuing their appeal against the assessments.

15 36. Taking all these matters in to consideration and bearing in mind the desirability the need for litigation to conducted efficiently, I refuse permission to appeal out of time.

**Conclusion**

37. Permission to appeal out of time is refused.

**Rights of appeal**

20 38. 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)" 25 which accompanies and forms part of this decision notice.

30 **CHARLES HELLIER**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 10 August 2018**