



TC05247

Appeal number: TC/2016/00448

*STAMP DUTY LAND TAX – late filing of Land Transaction Return –
whether reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Birchgrove UK Ltd

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 20 June 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 21 January 2016 and HMRC's Statement of Case dated 10 March 2016.

DECISION

Introduction

- 5 1. This is an appeal against the imposition of a flat rate penalty of £100 for the failure to submit a Land Transaction Return (SDLT 1) within the 30 day period allowed. The question is whether the Appellant had a reasonable excuse for the return being received late.
2. There is no dispute that the return was received late. It is therefore incumbent upon the Appellant to show that they have reasonable excuse for the duration of the failure.
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Relevant legislation

- 15 3. Under Section 76(1) Finance Act 2003 where there is a “notifiable transaction” the purchaser must deliver a return to HMRC before the end of the period of 30 days after the effective date of the transaction.
4. A person who is required to deliver such a return and fails to do so by the filing date is liable to a flat rate penalty under Schedule 10, Paragraph 3 Finance Act 2003.

Background facts

- 20 5. The late submission of the Land Transaction Return (LTR) is in respect of a lease transaction for residential Flat 59, Dorrington Court, 260 South Norwood Hill, London SE5 6BG. The transaction was notifiable in accordance with Section 77 Finance Act 2003 as the lease was the acquisition of a major interest in land that did not fall into any of the exemptions in Section 77A Finance Act 2003.
- 25 6. The LTR had to be delivered on or before 3 July 2015 but was received on 11 August 2015, which was 39 days after the filing date and a Late Filing Penalty of £100 was imposed.
7. HMRC received the payment of tax due on the Appellant’s transaction on 22 June 2015 but the LTR submitted online in June 2015 contained the reference for a different client and for a different property transaction.

Appellant’s submissions

- 30 8. The Appellant in the appeal of September 2015 stated the following;
- “Having investigated the position, we can confirm that subsequent to the completion of the above matter on 3 June, a cheque for stamp duty payable was sent to you on 17 June and cashed on 25 June, with the SDLT form being submitted electronically on 17 June. This was within the time limit and therefore should not have incurred a penalty. We then received a Notice that this SDLT 5 certificate could not be issued as there was already a certificate for this property, which we did not have. We were finally issued with an SDLT 5 certificate on 11 August after
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submitting a second form, which is after the 30 day time limit, however, this, was due to further investigation into the matter taking place between 17 June and 11 August. HMRC were fully aware of the issues we were having at this time and that we were attempting to resolve them as quickly as possible”.

5 9. It is clear that due to the wrong reference on the form the matter was delayed and this resulted in the imposition of a penalty. The error was not intentional.

10. The Appellant made several calls to HMRC and its helpline to try and understand the reason why the LTR had not been received.

11. A review was conducted on 5 January 2016 which confirmed that the SDLT
10 payment was received within the 30 day period. However, the penalty related to the LTR which was not connected to the SDLT liability. Since the LTR was received late, a Late Filing Penalty was imposed and the penalty was upheld on appeal to the Review Officer.

12. The Appellant says that they were unaware that the forms they submitted had a
15 different reference to the reference used on the submitted cheque for the payment of the SDLT. They say that it was only after HMRC’s letter of 6 November 2015 and after the appeal had been submitted was there disclosure by HMRC that the reference was wrong on the form when it was first submitted.

20 They have said that they acted reasonably and were only informed of the error after the penalty date.

HMRC’s submission

13. HMRC have confirmed that the payment of tax due on the transaction was
25 received on 22 June 2015 and the SDLT1 form or LTR was received after the due date. HMRC say that the Appellant should have been alerted to an error when they tried unsuccessfully to submit an LTR form under the wrong reference and were told that “the return for this UTRN has already successfully been made”. As the SDLT certificate under the wrong UTRN had already been issued on 12 June 2015 the agent should have been alerted to the fact that the LTR form on the present transaction was still outstanding.

30 HMRC therefore consider that the purchaser had not complied with the relevant provisions for filing the LTR form therefore did not have a reasonable excuse since it was their or their agent’s error which resulted in a late filing.

Conclusion

14. The Land Transaction Return is in a fixed form which requires disclosure of
35 mandatory information. The Self-Assessment Return requires the purchaser to specify the amount of tax which is properly payable in respect of the land transaction being notified. It is important that the information returned is correct. A purchaser, for example, can be liable to a penalty if they file an incorrect LTR.

15. The Revenue must be notified within 30 days of the transaction taking place if the purchaser is to avoid a Fixed Rate Penalty under Self-Assessment. In addition to the penalty, a fine will be imposed if the Land Transaction Return is not filed within a period of 12 months of the land transaction.

5 16. When a return is submitted the Revenue can raise queries on the return. It is therefore very important that the return contains accurate information which means that proper records are must be kept to deliver a complete and accurate return.

17. Professionals are acting on land transaction should know how to complete these forms with accurate information. It is no excuse to say that they made a mistake.
10 Mistakes such as ticking the wrong box, sloppy arithmetic or giving inaccurate references are not reasonable excuses.

18. A purchaser should have the appropriate records of the transaction to deliver a return which is correct. The Revenue will not process forms which contain inaccurate or incomplete information or where the transaction is not correctly identified. In any
15 event most of these forms are now read by computer which means that inaccurate information would cause processing problems. In this case, where a wrong transaction reference number was provided it is not surprising that the form could not have been processed within the timeframe required for a penalty not to arise. The agent cannot blame HMRC for not informing them that there was an error. If a wrong reference
20 number is given on the form and this is the fault of the person completing the form then they cannot blame HMRC if a penalty results from such an error.

19. In fairness, the agent did made all efforts to investigate and acted reasonably in making enquiries as to why the form had not been received when it was their understanding that the form had actually been filed. We all make errors and mistakes
25 but sadly an error or mistake of this nature does not provide a reasonable excuse.

20. It is incumbent upon those completing forms in dealing with the Revenue complete those forms accurately and within the time required. It must be remembered that these forms are required for HMRC's record and/ or for tax collection.

21. In the circumstances, the appeal is dismissed and the penalties upheld.

30 22. 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
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**DR K KHAN
TRIBUNAL JUDGE**

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