



**Appeal number: FTC/81/2010**

**[2012]UKUT 9 (TCC)**

***STAMP DUTY LAND TAX — failure to render return — whether taxpayer had a reasonable excuse — no — appeal dismissed***

**UPPER TRIBUNAL  
TAX AND CHANCERY CHAMBER**

**CHRISTOPHER RYAN**

**Appellant**

**- and -**

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

**Respondents**

**Tribunal: Judge Colin Bishopp**

**Appeal determined on written submissions alone**

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## DECISION

1. This is an appeal against a decision of the First-tier Tribunal (Judge Poole and Mr Marjoram) by which it dismissed the appellant's, Mr Christopher Ryan's, appeal against the imposition on him of a penalty of £200 for the late submission of a stamp duty land tax return. It appears not to be disputed that the return should have been submitted by 23 June 2007, but that it was in fact submitted on 26 June 2009. The penalty was imposed in accordance with para 3 of Sch 10 to the Finance Act 2003, which prescribes a fixed penalty of £200 if a return is submitted more than three months late.
2. Mr Ryan argues that he has a reasonable excuse for the late submission, and that s 97(2) of the 2003 Act relieves him of liability for the penalty. It provides, in short, that a person liable to submit a return shall not be deemed to have failed to submit it if he has a reasonable excuse, as long as he submits the return within a reasonable time after the excuse ceased.
3. The essence of Mr Ryan's case is that no-one told him that he was required to submit a return. He blames others—the landlord who granted the lease in respect of which the return was due, the landlord's solicitor, his own solicitor and HMRC—none of whom, he says, told him that a return had to be submitted. I should add at this point that many of the details of the transaction, in particular whether Mr Ryan was represented in it by a solicitor of his own, if so whether the solicitor said anything to Mr Ryan about the need to submit a return, whether the solicitor was in funds to pay any tax which was due, and the circumstances which prompted Mr Ryan to make a return about two years late, were all apparently obscure to the First-tier Tribunal and are certainly obscure to me. I have therefore to proceed on the basis of several assumptions.
4. The Act does not say what is meant by a reasonable excuse, and it does not specifically exclude (as other similar legislation does) reliance on a third party from amounting to a reasonable excuse.
5. I cannot, however, see how the failure of the landlord, his solicitors or HMRC to advise Mr Ryan that he should submit a return could conceivably amount to a reasonable excuse. A landlord has no obligation of that kind to his tenant, particularly so when the tenant is represented by a solicitor; and, even if there were an obligation on a landlord's solicitor to advise an unrepresented tenant to submit a return (which I very much doubt) it would be a professional discourtesy for the landlord's solicitor to offer Mr Ryan such advice if he had a solicitor of his own. It may well be correct, as he contends, that HMRC knew of Mr Ryan's existence, and that he had set up in business, but I do not understand how that could impose on them the duty (as Mr Ryan's argument implies) to make a prompt enquiry into his affairs in order to advise him of any requirements imposed on him which he had not then observed. That is not, and never has been, HMRC's function. Moreover, as s 76(3) makes perfectly clear, stamp duty land tax is a self-assessed tax; the obligation to calculate and declare his liability is placed firmly upon the taxpayer.
6. On the other hand I have to agree with Mr Ryan that if he was represented in the transaction by a solicitor, he should be entitled to expect the solicitor not merely to advise him of his obligation to submit a return but to perform the

obligation for him. But that is not the same as saying that he has a reasonable  
excuse, within the meaning of the legislation. The plain purpose of the legislation  
is to encourage the prompt submission of returns by imposing penalties on those  
who submit them late. The penalty is imposed on the person concerned, and not  
5 upon his solicitor or any other representative. The purpose of the legislation  
would be defeated if a penalty could be escaped by the expedient of placing the  
blame on a dilatory solicitor. If Mr Ryan believes he has been let down by his  
solicitor, his remedy is to take the matter up with the solicitor.

7. Even if there were a reasonable excuse for the initial failure to submit the  
10 return, the penalty would still be due if the failure was not remedied within a  
reasonable time after the excuse ceased to exist. It is evident from the First-tier  
Tribunal's decision that it had no information on this point, and there is none  
available to me. It is for the appellant to show that he acted promptly once any  
excuse he might have had came to an end, but he has not even attempted to do so.  
15 Thus even were I persuaded there was initially a reasonable excuse the appeal  
would fail on this ground.

8. I am satisfied that in the circumstances of this case the First-tier Tribunal  
came to the right conclusion and that the appeal must be dismissed.

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**Colin Bishopp**  
**Upper Tribunal Judge**  
**Release date: 10 January 2012**