

Tax Chamber
First-tier Tribunal for Scotland



[2023] FTSTC 1

Ref: FTS/TC/AP/22/0011

***Land and Buildings Transaction Tax – Additional Dwellings Supplement
(ADS) – whether sold within 18 months – no – appeal dismissed***

DECISION NOTICE

IN THE CASE OF

Mr Ian Alexander Tavendale

Appellant

- and -

Revenue Scotland

Respondent

TRIBUNAL: LOUISE CARLIN

The Tribunal determined the appeal on 25 January 2023 without a hearing under the provisions of Rule 27 of The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 having first read the Notice of Appeal, and attachments, dated 13 October 2022 and Revenue Scotland's Statement of Case, and attachments, received by the Tribunal on 23 November 2022.

DECISION

Introduction

1. This is an appeal against Revenue Scotland's decision to refuse the appellant's claim for repayment of Additional Dwelling Supplement ("ADS") in the sum of £7,106. That ADS had been charged under section 26A of, and Schedule 2A to, the Land and Buildings Transaction Tax (Scotland) Act 2013 ("the Act").

2. The appellant sought repayment in terms of section 107 of Revenue Scotland and Tax Powers Act 2014 ("RSTPA"), the material parts of which read:-

"107 Claim for relief for overpaid tax etc

(1) This section applies where —

(a) a person has paid an amount by way of tax but believes the tax was not chargeable,

....

(2) The person may make a claim to Revenue Scotland for the amount to be repaid or discharged.

(3) Where this section applies, Revenue Scotland is not liable to give relief, except as provided in this part, or by or under any other provision of this Act."

3. Central to the appellant's appeal is the argument that he met the statutory conditions for the repayment of ADS, as set out in paragraph 8(1) of Schedule 2A to the Act. In particular, that he had disposed of the ownership of a dwelling within a period of 18 months beginning with the day after the effective date of the chargeable transaction in question.

Factual background

4. The facts are not in dispute.

5. The appellant owned a home in Grangemouth ("the First Property").

6. The appellant purchased a home in Forres ("the Second Property") with an effective date of 26 February 2021.

7. The Land and Buildings Transaction Tax ("LBTT") return for the Second Property disclosed ADS chargeable in the amount of £7,106, which the appellant paid.

8. On 26 August 2022, the appellant submitted a claim to Revenue Scotland for repayment of the ADS of £7,106, under section 107 of RSTPA. The date of the disposal of the First Property was stated to be 23 August 2022. The evidence submitted by the appellant to support his claim included a qualified acceptance letter dated 23 August 2022 from the appellant's agent to the agent acting for the purchaser of the First Property indicating that the date of entry for the First Property would be 29 September 2022.

9. On 29 August 2022, Revenue Scotland telephoned the appellant and the appellant confirmed that the date of entry for the First Property was 29 September 2022. Revenue Scotland informed the appellant that his claim would be refused on the evidence submitted. The appellant agreed that he would resubmit his claim with supporting evidence once the First Property had been sold.

10. On 29 September 2022, the appellant submitted a second claim for repayment of the ADS of £7,106, under section 107 of RSTPA. The date of the disposal of the First Property was stated on the claim to be 29 September 2022. The disposition for the sale of the First Property submitted by the appellant with the claim was signed by the appellant on 17 September 2022 and confirmed that the date of entry was 29 September 2022.

11. On 3 October 2022, Revenue Scotland wrote to the appellant stating that his repayment claim made on 29 September 2022 was refused. The reason provided to the appellant for refusing his claim was that the First Property had not been disposed of within a period of 18 months, beginning with the day after the effective date of the transaction to purchase the Second Property. The view of Revenue Scotland was that, as the appellant had not met all of the statutory criteria for the repayment of ADS, it was “not liable to give relief in terms of repayment of ADS”.

12. In a Notice of Appeal dated 13 October 2022, the appellant appealed to the Tribunal.

13. The appellant’s grounds of appeal are that “the sale of the original dwelling was agreed in writing between our solicitors and the purchaser’s solicitor on 23/08/2022, within the 18 month parameter to qualify for relief of tax” and that “the intention to dispone, and acceptance in writing of the offer to purchase the property was clearly within the qualification period”.

The law

14. The relevant statutory provisions are set out in the Appendix.

Discussion

15. The issue in dispute in this appeal is whether the First Property was sold within the relevant statutory time limit.

16. As can be seen from the Appendix, paragraph 8(1) of Schedule 2A to LBTTA sets out the conditions for the repayment of ADS including that the buyer is to sell a dwelling within a period of 18 months beginning with the day after the effective date of the transaction to purchase another dwelling

17. What this means in the present case is that, as the effective date of the purchase of the Second Property was 26 February 2021, the First Property would have to have been sold by 27 August 2022 to meet the conditions for the repayment of the ADS.

18. The appellant may have thought that the qualified acceptance issued by his agent on 23 August 2022 meant that he had sold the First Property. However, as a matter of law, he had not and, indeed, that was not even a concluded bargain.

19. In practical terms the effective date for LBTT is the date of entry. (Sections 63 and 64 of the Act provide that the effective date is the date of completion which is when the transaction is settled.) The date of entry for the First Property was 29 September 2022, as stated in the appellant's second claim for repayment of the ADS of £7,106.

20. As the appellant disposed of the First Property after the end of the relevant statutory time limit, he has not met all of the statutory conditions for the repayment of the ADS.

21. This Tribunal was created by the Scottish Parliament and is therefore a creature of statute. What that means is that its powers are only those that are given to it expressly by statute.

22. In the case of an appeal of an appealable decision, section 244(2) RSTPA provides that:-

“The Tribunal is to determine the matter in question and may conclude that Revenue Scotland's view of the matter in question is to be:-

- (a) upheld,
- (b) varied, or
- (c) cancelled.”

23. This Tribunal must apply the law.

24. There are no provisions in the relevant legislation for considering extenuating or special circumstances or a reasonable excuse in determining the matter of the repayment of ADS.

25. The appellant may feel that he has been treated unfairly in circumstances in which he intended to dispose of the First Property prior to the expiry of the 18 month time limit. However, this Tribunal does not have jurisdiction to consider fairness in reaching its decision.

Decision

26. For all these reasons the appeal is dismissed and the decision of Revenue Scotland is upheld.

27. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has the right to apply for permission to appeal on a point of law pursuant to Rule 38 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017. In terms of Regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016, any such application must be received by this Tribunal within 30 days from the date this decision is sent to that party.

LOUISE CARLIN
Legal Member

RELEASE DATE: 31 January 2023

Lands and Buildings Transaction Tax (Scotland) Act 2013 – Schedule 2A

2 Transactions relating to second homes etc.

(1) This schedule applies to a chargeable transaction if the following conditions are satisfied—

- (a) the subject-matter of the transaction consists of or includes the acquisition of ownership of a dwelling,
- (b) the relevant consideration for the transaction is £40,000 or more,
- (c) at the end of the day that is the effective date of the transaction, the buyer owns more than one dwelling, and
- (d) either—
 - (i) the buyer is not replacing the buyer's only or main residence, or
 - (ii) the buyer is replacing the buyer's only or main residence but the subject-matter of the transaction also includes the acquisition of ownership of one or more other dwellings in addition to the one that the buyer intends to occupy as the buyer's only or main residence.

(2) A buyer is replacing the buyer's only or main residence if—

- (a) during the period of 18 months ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,
- (b) that dwelling was the buyer's only or main residence at any time during the period of 18 months, and
- (c) on the effective date of the transaction, the buyer intends to occupy the dwelling that is or forms part of the subject-matter of the transaction as the buyer's only or main residence.

8 Repayment of additional amount in certain cases

(1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—

- (a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction),
- (b) that dwelling was the buyer's only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and

(c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer's only or main residence.

(2) Where this sub-paragraph applies—

(a) the chargeable transaction is to be treated as having been exempt from the additional amount, and

(b) if the buyer has made a land transaction return in respect of the transaction, the buyer may take one of the steps mentioned in sub-paragraph (3).

(3) The steps are—

(a) within the period allowed for amendment of the land transaction return, amend the return accordingly, or

(b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority under section 107 of the Revenue Scotland and Tax Powers Act 2014 for repayment of the amount overpaid.

(4) For the period allowed for amendment of returns, see section 83 of the Revenue Scotland and Tax Powers Act 2014.

(5) In the case of a chargeable transaction to which this schedule applies by virtue of paragraph 2(1)(d)(ii), sub-paragraph (2)(a) has effect only in relation to the additional amount applicable to so much of the relevant consideration for the transaction as is attributable, on a just and reasonable apportionment, to the acquisition of ownership of the dwelling (including any interest or right pertaining to ownership of the dwelling) referred to in sub-paragraph (1)(c).