



TC05297

Appeal number: TC/15/6839 and TC/15/6841

SDLT - penalty for late filing – whether reasonable excuse – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**NADIA IBRAHIM MARZOUK
-and
AKRAM HAMOUDI HASOON**

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE Barbara Mosedale

Decided on the papers with the agreement of all parties

DECISION

1. Each appellant entered into a lease extension deed with respect to different flats in the same block with the same freeholder and both instructed the same solicitor to act on their behalf. Other than that, I have no evidence that there is any other connection between the two appellants. Nevertheless, it appears that the Tribunal directed that the appeals should be heard together because the alleged default and reasons for it were identical in both cases as the tax returns in both cases was handled by the same solicitor.

10 *The facts*

2. There seems little dispute over the facts. The appellants each entered into a lease extension deed, on separate properties, on 21 August 2015. Their solicitors, Miller Clayton, sent two letters by DX post to HMRC on 18 September, each enclosing an SDLT return for each of the appellants. The letters and returns were not received by HMRC until 21 September.

3. Both forms was incomplete, as accepted by Miller Clayton. In particular, Ms Marzouk's form did not include the effective date of the transaction nor her unique identifying number. Mr Hasoon's form did not include the effective date of the transaction. HMRC returned the two forms to Miller Clayton on 22 September.

4. The missing information was completed and both forms returned to HMRC by Miller Clayton and received by HMRC on 25 September. Although HMRC had subsequent queries on both forms, they treated them as filed on 25 September, which was five days late. Both appellants were issued with a £100 penalty for late filing.

5. These penalties were appealed; HMRC undertook a review of the imposition of the penalties and upheld them. The appeals were lodged with the Tribunal.

The law

6. It was accepted that a land transaction return ought to have been made to HMRC in respect of both transactions at issue in the appeal. I am not in any position to determine this as I have not been shown the deeds in question: but HMRC state that that is their position and the appellant has not challenged it.

7. The appellants also accept that the effective date of the transaction (ie the completion date) was 21 August 2015: this is stated by HMRC and not challenged by the appellant.

8. The law is that a land transaction return (SDLT return) must be made within 30 days of the land transaction. This is s 76(1) and 77 Finance Act 2003:

76 duty to deliver land transaction return

(1) 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.

5 9. The appellants accept that the land transactions were notifiable; they accept that the return was incomplete when filed and that the last filing date was 20 September 2015.

10. Schedule 10 to the Finance Act 2003 prescribes the land transaction return. It provided:

Contents of return

- 10 1(1) a land transaction return must –
- (a) be in the prescribed form,
 - (b) contain the prescribed information, and
 - (c)....[not relevant]

15 11. By Sch 10 paragraph 1(2) ‘prescribed’ is defined as meaning prescribed by HMRC in regulations. The appellant accepts that, although the returns were in prescribed form, prescribed information had been missed off the forms. I have set out what was missing in §3 above.

20 12. The appellants were therefore in default of the obligation to file their SDLT return on time. Both appellants are therefore liable to the penalty unless they can prove that they have a reasonable excuse. This is because s 97 of Finance Act 2003 provides:

- (2) 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
 - 25 (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 ceased.

30 13. In my view to be a ‘reasonable excuse’ the excuse must meet two criteria:

- (a) it must be the cause of the default; and
- (b) it must be reasonable (in other words, the appellant must have acted as a reasonable taxpayer in the same position as the appellant and mindful of his tax obligations would have acted).

Appellants’ reliance on agent

35 14. Neither party referred to the issue that here agents were clearly acting on behalf of the taxpayers. It was assumed (rightly) that if the agent had a reasonable excuse for the late filing, then (as he was acting on behalf of the taxpayers) the taxpayers would have a reasonable excuse.

15. Rightly the appellants also did not suggest that any failings by their agent amounted to a reasonable excuse: while a taxpayer is entitled to have an agent act on their behalf to comply with their tax obligations, doing so does not avoid liability. Any mistake of the agent is the mistake of the taxpayer, as the agent is carrying out the responsibilities of the taxpayer.

16. Below I refer to what Clayton Miller did on the basis Clayton Miller was acting in the shoes of the taxpayers: if Clayton Miller had a reasonable excuse then so did the taxpayers.

Grounds of appeal

17. The grounds of appeal in the Notice of Appeal were:

- (a) The return ought to have arrived in time;
- (b) The failure to fully complete it should not give rise to penalties;
- (c) There should be no penalties as there was no tax due.

Return ought to have arrived on time

18. I accept that if the return had been posted by a method which a reasonable taxpayer would have reasonably assumed would result in a timely submission of the return, then the taxpayer would have a reasonable excuse for its late arrival.

19. Miller Clayton point out that they used the DX service which guarantees delivery by 9AM the next day. But HMRC pointed out, using a print out from the DX website, which evidence I accept, that the DX service only promises delivery by 9am the next working day. So I find Miller Clayton ought to have known that a letter posted on Friday by DX was only guaranteed to arrive by 9am on the following Monday. And that is what happened in this case: the letters arrived on Monday 21 September.

20. I agree with HMRC. This does not amount to a reasonable excuse: Miller Clayton (acting on behalf of their clients) ought to have known, and could have known if they had checked the DX website, that DX would not deliver the return in time. Clayton Miller could and should have chosen a different delivery method such as using a guaranteed next day delivery from Royal Mail or doing an online return.

21. In any event, it would not amount to a reasonable excuse by itself as the return originally delivered was incomplete. The completed return was delivered 5 days late in any event and any mistake about the DX system did not cause that late delivery: that was due to the failure to fully complete the form.

22. I dismiss this ground of appeal.

Failure to fully complete form

23. Miller Clayton do not agree that only delivery of a properly completed return was sufficient to comply with the obligation to file a return. However, as explained above the law does require the stipulated form to be completed and both forms omitted the effective date of the transaction.

24. Miller Clayton refer to their difficulties with Ms Marzouk's form in entering the purchaser's unique reference number as Ms Marzouk did not reside in the UK and did not have a national insurance number from the UK nor from her place of residence. In the end HMRC were satisfied when Miller Clayton supplied her VAT registration number.

25. However, as HMRC point out, the guidance notes with the form allow for this eventuality: they specifically advise taxpayers who do not have an NI number to insert their passport or driver's licence number. Miller Clayton did not do this but do not explain to the Tribunal why not.

26. In any event, Ms Marzouk's form was missing the effective date of registration too, so the form would have been incomplete even if I considered the appellant had a reasonable excuse for failing to complete the unique reference number.

27. I find that there is no reasonable excuse for missing off any of the missing information and that only a properly completed return was sufficient to discharge the obligation to file. This ground of appeal is also dismissed.

No tax at stake

28. Miller Clayton point out that no tax was at stake. However, I consider that this cannot be a reasonable excuse. It did not cause the failure to file on time. Moreover, there was a legal obligation to complete the return in any event and a reasonable taxpayer mindful of his obligations would do so even where no tax was at stake.

29. And it is clear that Parliament intended the fixed penalty of £100 to apply whether or not there was tax at stake. This is because the structure of the legislation is that there is both a fixed rate penalty and a tax geared penalty. It makes sense too: Parliament intended HMRC to collect the information on land transactions from the returns so that HMRC could assess whether or not tax was due.

30. The penalty was incurred not because tax was at stake but because the taxpayers had an obligation to file the return on time and failed to do so. The penalties were of a minor amount (£100) reflecting the fact that collection of tax was not jeopardised.

31. In conclusion, I dismiss all these grounds of appeal.

Additional ground of appeal

32. On 18 February 2016 Miller Clayton applied in a letter sent to HMRC to admit an additional ground of appeal. They copied the letter to the Tribunal. HMRC clearly

received the letter as it was included in the bundle they prepared but oddly it was not referred to in their statement of case filed in March.

5 33. Clayton Miller reiterated their grounds of appeal, including this new ground of appeal, in a letter to the Tribunal dated 22 March 2016 which (as Clayton Miller had failed to do this) was copied to HMRC by the Tribunal on 30 March.

34. On 28 April, the Tribunal consented to the joint application of all parties for the appeals to be dealt with on the papers and gave all parties time to make any further representations that they chose. On 4 May, HMRC stated that they had nothing to add to what they had already said.

10 35. It appears likely that HMRC overlooked Clayton Miller's new grounds of appeal but I find that they knew about them and had had the opportunity to comment on them. Dealing with cases fairly and includes dealing with them proportionately and taking into account that this appeal concerns £200 it does not seem proportionate to further delay resolution of this appeal by giving HMRC yet more time to comment
15 on the new ground of appeal, when they have already had plenty of opportunity to do so.

36. I admit the new ground on the basis HMRC had plenty of notice of it and the point is a good arguable point and so I move on to consider it.

20 37. The new ground is that Miller Clayton only received the Lease Extension Deed from Durrells House Ltd (the freeholder) on 18 September even though the letter enclosing it was dated 11 September and the deed itself dated 21 August 2015 (the completion date). They produced in evidence an email from Miller Clayton dated 18 September to Durrells House politely complaining about this, but, Miller Clayton informed the Tribunal by letter, they received no response or explanation.

25 38. As HMRC have, for whatever reason, made no comment on this, I accept that the facts are as Miller Clayton represent them to be.

30 39. In favour of Miller Clayton's position that this amounts to a reasonable excuse for the late filing is the fact that the freeholder was beyond the control of the leaseholders. The late receipt of the deeds from the freeholder was not the fault of either Miller Clayton or the appellants.

40. And Miller Clayton, no doubt mindful of the approaching deadline, dealt with the matter very promptly, sending off the tax returns to HMRC on the date they received the deeds from the freeholder.

41. But does that amount to a reasonable excuse for the late filing?

35 42. Although the freeholder's actions were beyond the control of the leaseholders, nevertheless Clayton Miller did receive the documents in time to lodge a timely tax return. The reason they did not do so is (a) the forms were incomplete and (b) not sent by a method that would arrive in time. The freeholder was not responsible for

these two failings and therefore I do not think that the freeholder can be said to be the cause of the default.

43. There is no suggestion that the failure to insert the effective date of transaction onto both forms was anything but an oversight. There was no suggestion that it occurred because of a lack of time to correctly complete the form. Even assuming that the other error on Ms Marzouk's form was caused because there was a lack of time to deal with the need for an identifying number, there is no evidence that the late delivery of the forms by the freeholder to Clayton Miller caused both forms to be incomplete in missing off the effective date of transaction.

44. There is also no suggestion that Clayton Miller was unable to submit the forms on time by using a different method to the one selected (in other words, by using online filing or Royal mail's guaranteed next day delivery service.)

45. So while it was very unfortunate that the freeholder sent the forms to Clayton Miller so late, and had the freeholder sent the forms to Clayton Miller in a timely fashion, Clayton Miller may have had the time to have the incomplete forms returned to them by HMRC and to re-send them in time, nevertheless I consider there is a break in the chain of causation: it was not the freeholder's fault that Clayton Miller erroneously failed to fully complete the forms and sent them by DX. So the freeholder's actions did not cause the late filing.

46. And so far as the 'reasonableness' part is concerned, while Clayton Miller did turn round the tax returns on the same day they received the legal documents, and to that extent clearly were acting (on behalf of their clients) with care towards their tax responsibilities, nevertheless careless mistakes (such as not inserting the effective date of transaction) do not amount to a reasonable excuse. Nor does failing to appreciate that the DX post would not deliver the return in time whereas there were other methods that would have done so.

47. The irony for Clayton Miller is that had the freeholder been even more dilatory, such that they made it impossible for Clayton Miller to file on time, then that may well have amounted to a reasonable excuse.

48. I have considered whether the above view in §§45-46 is right taking into account the wording of s 97 and in particular s97(2)(b) which provides:

he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse ceased.

49. Miller Clayton may well point out that, even taking into account their initial mistake in filing an incomplete form by DX, nevertheless a correct form was filed by 25 September, which was only 7 days after receiving the deeds from the freeholder. Should they really be penalised for that?

50. However, technically, I do not think this provision assists them. The provision in full is:

(2) 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

5 (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 ceased.

51. In other words, to be within (b) the taxpayer must fall within the first part of s 97(7) and that means that the ‘reasonable excuse’ must be an excuse ‘for not doing anything required to be done....’

10 52. For the period from completion of the deed until Miller Clayton received it, I consider (as it seems Miller Clayton did not know about the completion) they had a reasonable excuse for not filing the tax return. But while they could have filed (had they known about it) at any time after 21 August, they were not in breach of an obligation to file until the due date of 20 September had passed. So as I have found
15 that freeholder’s retention of the deed did not cause the failure to file on time, and was therefore not a reasonable excuse at the date of filing, s 97(2)(b) is irrelevant. Having a reasonable excuse which ceased before the filing date is therefore not a reasonable excuse within the meaning of the act.

20 53. So having admitted this ground of appeal, I dismiss it as well as the other grounds

54. The appeals are therefore dismissed.

25 55. 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)” which accompanies and forms part of this decision notice.

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**BARBARA MOSEDALE
TRIBUNAL JUDGE**

RELEASE DATE: 4 AUGUST 2016

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