



**TC08173**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number:  
TC/2020/03668**

**DECISION  
ON AN APPLICATION TO STRIKE OUT THE APPELLANT'S APPEAL  
IN THE CASE OF**

**DAVID THOMAS**

**Appellant**

**-and-**

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

**Respondents**

**BACKGROUND**

1. Mr Thomas has appealed to the Tribunal against HMRC's refusal to allow him to make a late application to recover Stamp Duty Land Tax ("**SDLT**") amounting to £2,400 which had to be paid when he purchased a new main residence before he had sold the existing one. He asks the Tribunal either to direct that HMRC should repay the SDLT or to give permission to allow him to make a late application for the refund.
2. HMRC have made an application dated 8 January 2021 for Mr Thomas' appeal to be struck out in accordance with Rule 8(2)(a) of the First-tier Tribunal (Tax Chamber) Rules on the basis that Mr Thomas has no right of appeal in respect of the matters he complains about and that the Tribunal does not therefore have jurisdiction in relation to the proceedings.
3. Rule 29(3) of the Tribunal Rules permits the Tribunal to make a decision in relation to a strike-out application without a hearing. Mr Thomas has provided detailed representations in relation to HMRC's strike out application and has said that, if the Judge requires more information than he has included in his representations, he would like to have a hearing in order to give him a fairer chance.
4. Having read Mr Thomas' Notice of Appeal, the correspondence attached to Mr Thomas' Notice of Appeal, HMRC's strike-out application and Mr Thomas' representations, I am satisfied that I have all the information I need in order to deal with the strike-out application fairly and justly in accordance with the over-riding objective of the Tribunal Rules set out in Rule 2. Nothing useful could be added by Mr Thomas if the Tribunal were to hold a hearing.

**BACKGROUND FACTS**

5. The relevant facts are not disputed and can be stated briefly.
6. Mr Thomas purchased a property on 5 May 2017 which he intended should be his new main residence. However, at the time, he still owned his existing house. Although I infer that

the purchase price for the new property was below the SDLT threshold, this meant that Mr Thomas had to pay SDLT of £2,400 under the rules which had been introduced the previous year requiring a purchaser to pay an additional three per cent. SDLT charge if they already owned an existing property.

7. Mr Thomas sold his previous main residence on 8 January 2018. This removed the liability to the additional three per cent. SDLT and entitled Mr Thomas to amend his SDLT return in order to recover the tax which he had paid.

8. Unfortunately, Mr Thomas was not aware that he could claim a refund when he sold his previous property. He only became aware of this in July 2020.

9. As soon as he found out that he was entitled to a refund, Mr Thomas submitted a claim to HMRC on 7 July 2020.

10. HMRC refused to process the application to amend Mr Thomas' SDLT return as the application was made outside the statutory time limit.

11. Mr Thomas contacted HMRC. The individual he spoke to advised him to appeal which he duly did on 24 August 2020. HMRC wrote back to Mr Thomas on 15 September 2020 to inform him that there was no process for making an appeal against an out of time amendment to an SDLT return. Mr Thomas therefore made an appeal to the Tribunal on 19 October 2020.

#### **THE RELEVANT LEGISLATION**

12. The provisions relating to the additional charge to SDLT where someone who owns an existing property purchases another one are contained in Schedule 4ZA to the Finance Act 2003 (Schedule 4ZA).

13. The effect of these provisions is that the SDLT which is payable on the purchase of the second property is three per cent. higher than the normal rate. This includes a purchase where no SDLT would otherwise be payable as the value of the property is below the SDLT threshold (see paragraph 1 of Schedule 4ZA).

14. There is however an exception where the property being purchased is a replacement for the purchaser's only or main residence (paragraph 3(5) of Schedule 4ZA).

15. This exception applies even if the new main residence is purchased before the old residence is sold as long as the previous residence is sold within three years of the purchase of the new main residence (paragraph 3(7) of Schedule 4ZA).

16. The effect of selling the old main residence is therefore that the additional three per cent SDLT was never in fact due. In order to give effect to this, paragraph 8 of Schedule 4ZA allows the purchaser to amend their SDLT return. However, this has to be done before the expiry of the later of:

- (a) three months from the sale of the previous main residence; or
- (b) twelve months from the filing date for the SDLT return relating to the purchase of the new main residence (paragraph 8(3) of Schedule 4ZA).

17. When a purchaser acquires a property, they must submit an SDLT return within 30 days of the purchase. That return must include a calculation of the tax due which is known as a "self-assessment" (see section 76 Finance Act 2003).

18. The ability for a purchaser to amend their SDLT Return when they sell their previous main residence is therefore, in effect, an ability to amend the self-assessment contained in the SDLT return.

19. Taxpayers are given specific rights of appeal in relation to SDLT. These are contained in Schedule 10 to FA 2003 (Schedule 10).

20. Paragraph 35 of Schedule 10 sets out the matters in respect of which the taxpayer can appeal as follows:

“35

- (1) An appeal may be brought against -
  - (a) an amendment of a self-assessment under paragraph 17 (amendment by Revenue during enquiry to prevent loss of tax),
  - (b) a conclusion stated or amendment made by a closure notice,
  - (c) a discovery assessment,
  - (d) an assessment under paragraph 29 (assessment to recover excessive repayment), or
  - (e) a Revenue determination under paragraph 25 (determination of tax chargeable if no return delivered).”

#### **THE STRIKE OUT APPLICATION**

21. HMRC say that Mr Thomas has no right of appeal under paragraph 35 of Schedule 10. The reason for this is that his application is to amend his self-assessment in his SDLT return and that none of the categories in paragraph 35 of Schedule 10 deal with an amendment to a self-assessment by the taxpayer (as opposed to HMRC).

22. On the basis that Mr Thomas has no right of appeal, HMRC submit that the Tribunal has no jurisdiction and that the appeal must therefore be struck out in accordance with Rule 8(2)(a) of the Tribunal Rules.

23. Mr Thomas makes a number of points in response.

24. The main point raised by Mr Thomas is that it is clear that the SDLT is not due as he sold his previous property well within the three-year time limit. He also points out that, if he had sold his previous property later (say at the beginning of the May 2020), this would still have been within the three year period and the repayment claim in July 2020 would have been made before the expiry of the three month deadline.

25. Mr Thomas also says that he should not be penalised for not being aware of the ability to reclaim the SDLT at the time he sold his previous property. He draws attention to the fact that he has no legal qualifications and argues that the relevant provisions are not common knowledge as they are only relevant to a small percentage of purchasers.

26. Looking at the legislation itself, Mr Thomas says that Parliament clearly considered the three-year period to be a reasonable within which to allow refunds of SDLT and that it should not be interpreted in such a way as to catch unwary purchasers out.

27. Finally, Mr Thomas draws attention to the fact that he was advised by an HMRC officer to make an appeal.

28. For all of these reasons, Mr Thomas believes it is reasonable for HMRC to refund the SDLT which he has paid.

29. It is important to understand that the Tribunal is a creature of statute. The result of this is that the Tribunal only has jurisdiction to hear an appeal if a right of appeal is specifically conferred by statute. As the Upper Tribunal observed in *HMRC v Hok Limited* [2012] UKUT 363 (TCC) [at 36]:

“It is important to bear in mind how the First Tier Tribunal came into being. It was created by Section 3(1) of the Tribunals, Courts and Enforcement Act 2007, “for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act”. It follows that its jurisdiction is derived wholly from statute.”

30. It is clear from paragraphs 36A – 36I of Schedule 10 that a taxpayer may only make an appeal to the Tribunal if they have first made an appeal to HMRC (see for example paragraph 36A(1)). The key question therefore is the one identified by HMRC which is whether Mr Thomas has any right to make an appeal to HMRC against their refusal to give effect to his amendment to his SDLT return.

31. As I have already mentioned, the result of Mr Thomas selling his previous main residence is that he is given a right by paragraph 8 of Schedule 4ZA to amend his SDLT return in order to reclaim the tax which he has (as it turns out) incorrectly paid. There is however a clear time limit for doing this. In Mr Thomas’ case, the time limit was 4 June 2018 – 12 months after the latest filing date for the SDLT return relating to the purchase of the new property. HMRC rejected the amendment on the basis that it was made late.

32. Unfortunately for Mr Thomas, HMRC are right that this is not a decision in respect of which statute confers any right of appeal. Neither an amendment to a SDLT return by the taxpayer, an amendment by the taxpayer to the self-assessment contained in the SDLT return nor HMRC’s refusal to accept any such amendment is mentioned in paragraph 35 of Schedule 10 which, as set out above, is a provision which confers rights of appeal on a taxpayer in respect of SDLT.

33. It follows from this that, as Mr Thomas has no right of appeal, the Tribunal has no jurisdiction to hear an appeal and so the proceedings must be struck out in accordance with Rule 8(2)(a) of the Tribunal Rules.

34. I do have considerable sympathy with Mr Thomas. There is no doubt that, having sold his previous residence within the three-year period, he qualifies in principle for a refund of the SDLT which he has paid. I also accept that he did not know at the time that he could claim a refund and that there was no reason why he should have known given that none of the professionals involved told him about this. As soon as he became aware of the ability to claim the refund, he promptly did so. Had he sold his previous property later (but still within the three-year period), the amendment application could potentially have been within the permitted timescale. It is quite understandable that, in the circumstances, Mr Thomas feels aggrieved. However, I must apply the law. I have no jurisdiction to allow Mr Thomas to make an appeal based on what is fair or reasonable if statute does not permit this.

35. Mr Thomas was clearly told by an HMRC officer that he should make an appeal. This advice was misleading given that, as I have explained, Mr Thomas in fact had no right to make an appeal. Should he wish to do so, it would be open to him to make a formal complaint to HMRC and, if necessary, to follow this up with the Adjudicator’s Office if he does not get a satisfactory result from HMRC.

36. The only other point I would note is that neither HMRC nor Mr Thomas appear to have considered whether Mr Thomas’ original request for a refund of SDLT might amount to a claim for a repayment of overpaid tax in accordance with paragraph 34 of Schedule 10 to Finance Act 2003. There are detailed circumstances in which HMRC are not required to give effect to a repayment claim under paragraph 34 and so I do not wish to get Mr Thomas’ hopes up and express no view as to whether the conditions are satisfied.

**OUTCOME**

37. For the reasons explained, the Tribunal has no jurisdiction in relation to these proceedings and they are therefore struck out in accordance with Rule 8(2)(a) of the Tribunal Rules.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

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

**ROBIN VOS  
TRIBUNAL JUDGE**

**Release date: 8 June 2021**