



**Appeal number: FTC/96/2010**

**[2012] UKUT 10 (TCC)**

*STAMP DUTY LAND TAX — failure to notify — whether notification late — yes — whether reasonable excuse — no — identification of effective date — First-tier Tribunal correct — appeal dismissed*

**UPPER TRIBUNAL  
TAX AND CHANCERY CHAMBER**

**LANCER SCOTT LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**Tribunal: Judge Colin Bishopp**

**Appeal determined on written submissions only**

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## DECISION

1 This is an appeal by Lancer Scott Limited against a decision of the First-tier  
Tribunal (Judge Dhaliwal and Mrs S Cheesman), released on 25 August 2010, by  
5 which it dismissed Lancer Scott's appeal against the imposition on it of five fixed  
penalties of £100 each for the late submission of stamp duty land tax returns.  
Permission to appeal to this tribunal was granted by the First-tier Tribunal. The  
parties asked that, in the interests of economy, this appeal be dealt with on the  
basis of written submissions alone.

10 2 The relevant law is set out in Part 4 of the Finance Act 2003. By s 76(1), a  
purchaser must deliver a "land transaction return" in respect of every notifiable  
transaction within 30 days after the effective date of the transaction. Section  
119(1) defines the "effective date":

15 "Except as otherwise provided, the effective date of a land transaction for the  
purposes of this Part is

- (a) the date of completion; or
- (b) such alternative date as the Commissioners for Her Majesty's  
Revenue and Customs may prescribe by regulations."

3 There are no regulations which are relevant to this case.

20 4 The penalty for a failure to comply with the requirement to submit a return  
is prescribed by para 3 of Sch 10, brought into effect by s 7. It is £100 if the return  
is delivered within three months of the effective date, and £200 in any other case.  
Section 97 provides that a person shall be deemed not to have failed to comply  
with an obligation, including the duty to submit a land transaction return, if he has  
25 a reasonable excuse for not doing so, provided he submits the return within a  
reasonable period after the excuse ceases to exist.

5 The tribunal found that Lancer Scott purchased (it appears in a single  
transaction) five flats in Bournemouth. Contracts were exchanged, it seems  
(although there is no finding to this effect) on 2 October 2009, and the  
30 consideration was paid in full on 9 October. It seems also to have been common  
ground that the returns were submitted on 20 November 2009, some 42 days  
thereafter. If 9 October was the effective date, as the tribunal concluded, it  
follows that they were late, though by less than three months, and that in principle  
a penalty of £100 for each return was due.

35 6 The tribunal then went on to consider whether the appellant had a  
reasonable excuse for the delay, essentially because of confusion, or  
disagreement, between its solicitors and those acting for the vendor about the  
Land Registry form to be used in order to register the transfer of ownership.  
Although the First-tier Tribunal did not record a finding to this effect, it is  
40 apparent from a letter sent by the appellant's solicitors, of which a copy was  
within the hearing bundle, that their case was that the vendor's solicitors insisted  
that a single transfer form covering all five flats was appropriate, but when that  
single form was submitted, the Land Registry rejected it, requiring a separate form  
for each flat. The tribunal concluded that the confusion, which it accepted did

occur as a matter of fact, did not amount to a reasonable excuse, largely because the appellant was represented by solicitors who should have known how to register the transfers: as it put it, “The fact that the solicitors relied on the word of the opposing party, whilst regrettable, did not afford the appellant with a reasonable excuse”.

7 The finding that there was no reasonable excuse is not challenged in the grounds of appeal to this tribunal, but the appellant says that the First-tier Tribunal wrongly treated 9 October 2009 as the date from which its time to submit the returns began to run: it contends that the tribunal should, instead, have taken a date in December 2009, since until its title was registered by the Land Registry it was not the lawful owner of the flats. It relies on what it refers to as the two-pronged test in s 44(5). That subsection needs to be read with those that precede it, which provide that

15 “(1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.

(2) A person is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.

20 (3) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction.

In this case the effective date of the transaction is the date of completion.

(4) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract.

25 In this case the effective date of the transaction is when the contract is substantially performed.

(5) A contract is substantially performed when

30 (a) the purchaser, or a person connected with the purchaser, takes possession of the whole, or substantially the whole, of the subject matter of the contract; or

(b) a substantial part of the consideration is paid or provided.”

8 The appellant’s argument, as I understand it, is that the event which is determinative of the effective date is the acceptance by the Land Registry of its applications for registration as the proprietor of the five flats, on the imprecisely identified date in December, an argument which evidently focuses on sub-s (5)(a). In my view that argument is untenable. The inference to be drawn from the facts as I have set them out above is that the contracts exchanged on 2 October contemplated completion, and in particular payment of the price, on a later date, in the event 9 October. If that is right, sub-s (3) is engaged and 9 October is, as the First-tier Tribunal decided, the effective date. If that is not the correct inference, sub-ss (4) and (5) are engaged. One cannot, as the appellant’s argument appears to do, apply para (a) to the exclusion of para (b); the two are plainly alternatives. Since the entirety of the consideration was paid on 9 October, para (b) is satisfied and that is, again, the effective date.

9       Moreover, I am not persuaded that the appellant's evident interpretation of  
para (a) is right. It may well be that the appellant could not make good its title, in  
the sense of procuring its registration, until December; but it does not seem to me  
that this is of any consequence. First, the paragraph refers to possession, rather  
5       than ownership, and there is nothing before me to suggest that there was any  
impediment to its taking possession. Second, by paying the contractual price the  
appellant secured the right to be registered as owner; what followed, despite the  
problems it encountered, did not undermine that substantive right.

10       In my judgment the First-tier Tribunal was right to conclude that the  
effective date was 9 October 2009. The appeal must be dismissed.

**Colin Bishopp**

**Upper Tribunal Judge**

**Release date: 10 January 2012**

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