



Neutral Citation: [2023] UKFTT 00280 (TC)

Case Number: TC08754

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/01847

Land Transaction Tax – higher residential rates

Heard on: 11 January 2023
Judgment date: 8 March 2023

Before

**TRIBUNAL JUDGE ABIGAIL MCGREGOR
SIMON BIRD**

Between

Mrs LORRAINE HAYES

Appellant

and

THE WELSH REVENUE AUTHORITY

Respondents

Representation:

For the Appellant: Mrs Lorraine Hayes

For the Respondents: Rhiannon Lewis, litigator of the Welsh Revenue Authority

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video) via the Tribunal video hearing system.
2. The documents to which we were referred are a bundle of 272 pages and supplemental documents of the Land Registry record obtained shortly before the hearing and a black TR1 form for reference.
3. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

SUMMARY

4. This appeal was against a closure notice charging the higher residential rates of Land Transaction Tax on a property purchase in Wales. We announced at the hearing our decision that the higher residential rates did apply to the transaction and therefore the appeal was dismissed.
5. This written decision records full findings of fact and conclusions.

BACKGROUND FACTS

6. The facts in this case were not in dispute.
7. A property in Trowbridge (the Property) was acquired with an effective date of 28 May 2021 for £136,000.
8. The buyers of the Property on the property transfer form (TR1) and the land transaction return submitted to the Welsh Revenue Authority (WRA) were Mrs Lorraine Hayes (the Appellant) and her daughter, Ms Olivia Hayes.
9. The Property was intended and has always been the home of Ms Olivia Hayes.
10. Mrs Hayes does not and has never lived in the Property.
11. Mrs Hayes is a borrower under the mortgage used to buy the Property.
12. Mrs Hayes owns another property with her husband, in which she lives.
13. The land transaction return in respect of the purchase of the Property was submitted, by Mrs Hayes' agent, on 2 June 2021. This return stated that the transaction was a higher rates transaction and included LTT due of £5,440, which was paid.
14. On 2 July 2021 an amendment was made to the return to add the second buyer, Ms Olivia Hayes, who had been inadvertently left off the first return.
15. On 18 January 2022, an amendment was made to the return to state that it was a normal residential transaction, without the application of the higher rates of LTT, reducing the amount of LTT to £0.
16. The WRA opened an enquiry into the amended return on 25 January 2022.
17. The enquiry closed and a closure notice was sent to Mrs Hayes (and her daughter) on 28 February 2022. The closure notice amended the return to show that the higher residential rates applied and that therefore the original amount of LTT, £5,440, was due.
18. Mrs Hayes appealed to this Tribunal on 4 March 2022.

LAW

19. Pursuant to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (LTTA 2017), from 1 April 2018, LTT replaced Stamp Duty Land Tax in Wales.
20. By LTTA 2017, s 17, a land transaction is chargeable to LTT unless an exemption or relief applies.
21. There is no dispute that the purchase of the Property was a “land transaction” within section 4 of LTTA 2017.
22. Section 24 of LTTA 2017 requires the Welsh Ministers to specify the tax bands and rates in the case of the following types of chargeable transactions:
 - (1) residential property transactions;
 - (2) higher rate residential property transactions;
 - (3) non-residential property transactions.
23. Section 24(6) LTTA 2017 provides:

“(6) A chargeable transaction is a residential property transaction if—

 - (a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or
 - (b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.”
24. Section 24(6) is, however, subject to s 24(7) which provides:

“But if Schedule 5 applies to a chargeable transaction it is a higher rates residential property transaction.”
25. There is no dispute in this case that the Property is “residential property”.
26. Paragraph 3 of Schedule 5 to LTTA 2017 provides, to the extent relevant:

“(1) A chargeable transaction is a higher rates residential property transaction if—

 - (a) it falls within sub-paragraph (2), and
 - (b) paragraph 5 applies.

(2) A transaction falls within this sub-paragraph if—

 - (a) the buyer is an individual,
 - (b) the main subject-matter of the transaction consists of a major interest in a dwelling (“the purchased dwelling”), and
 - (c) the chargeable consideration for the transaction is £40,000 or more.

...

(5) This paragraph applies subject to the exceptions provided for in—

 - (a) paragraph 7 (interest in same main residence exception), and
 - (b) paragraph 8 (replacement of main residence exception).

(6) In this Part of this Schedule 'purchased dwelling' has the meaning given by sub-paragraph (2)(b).”
27. Paragraph 5 of Schedule 5 to LTTA 2017 provides to the extent relevant:

“(1) This paragraph applies in relation to a transaction if, at the end of the day that is the effective date of the transaction—

(a) the buyer has a major interest in a dwelling other than the purchased dwelling, and

(b) that interest has a market value of £40,000 or more.”

28. Paragraph 6 of Schedule 5 to LTTA 2017 provides that where there are two or more buyers who are individuals in a transaction, the transaction is a higher rates residential property transaction if paragraph 3 applies in relation to any one of the buyers.

29. Paragraph 7 of Schedule 5 to LTTA 2017 provides:

“A transaction is not a higher rates residential property transaction under paragraph 3 if the main subject-matter of the transaction is a major interest in a dwelling—

(a) in which, immediately before the effective date of the transaction, the buyer or the buyer's spouse or civil partner had another major interest, and

(b) which, immediately before and after the effective date of the transaction, is the buyer's only or main residence.”

30. Paragraph 8 of Schedule 5 to LTTA 2017 provides in relevant part:

“(1) A transaction is not a higher rates residential property transaction under paragraph 3 if the purchased dwelling is a replacement for the buyer's only or main residence.

(2) For the purposes of this paragraph, the purchased dwelling is a replacement for the buyer's only or main residence if—

(a) on the effective date of the transaction (“the transaction concerned”) the buyer intends the purchased dwelling to be the buyer's only or main residence,

(b) in another land transaction (“the previous transaction”), the effective date of which was during the period of 3 years ending with the effective date of the transaction concerned, the buyer or the buyer's spouse or civil partner at the time disposed of a major interest in another dwelling (“the sold dwelling”),

(c) immediately after the effective date of the previous transaction, neither the buyer nor the buyer's spouse or civil partner had a major interest in the sold dwelling,

(d) at any time during the period of 3 years referred to in paragraph (b) the sold dwelling was the buyer's only or main residence, and

(e) at no time during the period beginning with the effective date of the previous transaction and ending with the effective date of the transaction concerned has the buyer or the buyer's spouse or civil partner acquired a major interest in any other dwelling with the intention of it being the buyer's only or main residence.

...

(4) For the purposes of this paragraph, the purchased dwelling may become a replacement for the buyer's only or main residence if—

(a) on the effective date of the transaction (“the transaction concerned”) the buyer intended the purchased dwelling to be the buyer's only or main residence,

- (b) in another land transaction the effective date of which is during the period of 3 years beginning with the day after the effective date of the transaction concerned, the buyer or the buyer's spouse, former spouse, civil partner or former civil partner disposes of a major interest in another dwelling (“the sold dwelling”),
 - (c) immediately after the effective date of that other land transaction, neither the buyer nor the buyer's spouse or civil partner has a major interest in the sold dwelling, and
 - (d) at any time during the period of 3 years ending with the effective date of the transaction concerned the sold dwelling was the buyer's only or main residence.
- ...”

31. With regards to the process of appealing, an appealable decision is defined in section 172(2) of the Tax Collection and Management (Wales) Act 2018 (TCMWA 2018), as far as relevant as follows:

The following decisions by WRA are appealable decisions—

- (a) a decision which affects whether a person is chargeable to a devolved tax;
 - (b) a decision which affects the amount of a devolved tax to which a person is chargeable;
 - (c) a decision which affects the day by which an amount of a devolved tax must be paid;
 - (d) a decision about a penalty relating to a devolved tax;
- ...
- (i) ...”

32. The Tribunal’s powers are set out in section 181 of the TCMWA 2018,

- (1) If an appeal against an appealable decision is made to the tribunal in accordance with section 179 or 180 (and not withdrawn), the tribunal must determine the appeal.
- (2) The tribunal may determine that the appealable decision is to be—
 - (a) affirmed,
 - (b) varied, or
 - (c) cancelled.

PARTIES ARGUMENTS

Appellant’s submissions

33. The Appellant submits that her involvement in the purchase and ownership of the Property was simply a “paper exercise” to enable her daughter to buy the Property. Her daughter did not, on her own, meet the affordability requirements to obtain the necessary mortgage and therefore the mortgage company required Mrs Hayes to become a borrower on the mortgage as well.

34. She never had any real interest in the Property and, as soon as her daughter’s affordability requirements had improved, she would come off both the mortgage and the deeds of the property.

35. She does not have any beneficial interest in the property and has offered to get this in writing from lawyers.

36. The estate agent and mortgage advisor did not advise her that there may have been alternative ways of achieving the desired outcome (such as possibly a joint borrower sole proprietor mortgage).

37. The position in England was different and she would have been entitled to a refund if the transaction had taken place in England.

38. The WRA have not looked at her particular case on an individual basis, but rather treated her as if she were buying a second home and this is not fair. No common sense has been applied to recognise that not all cases are the same.

39. If she had bought and sold a main residence within three years, she would have been entitled to a refund of the additional rates tax, so she feels that an equivalent provision should apply to her being on the mortgage and property register for two years.

WRA's submissions

40. WRA submit that the procedural requirements have been met, specifically:

- (1) The closure notice was properly issued to the Appellant and her daughter;
- (2) The closure notice set out the conclusions on the tax treatment of the purchase of the Property;

41. WRA submit that the purchase of the Property is subject to the higher rates of LTT because:

- (1) The Property was purchased by the Appellant and her daughter as joint buyers;
- (2) The transaction was a chargeable transaction because it involved the acquisition of a chargeable interest, i.e. the freehold;
- (3) Under sections 2 and 56 of LTTA 2017, the Appellant and her daughter must pay the LTT in respect of the transaction;
- (4) The higher rates apply because:
 - (a) the Appellant is an individual (as is her daughter);
 - (b) the main subject-matter of the transaction (i.e. the chargeable interest acquired) is the freehold estate in the Property, and under section 68 LTTA 2017, a freehold estate is a major interest in land;
 - (c) the chargeable consideration for the transaction was £136,000 so more than £40,000;
 - (d) on 28 May 2021 the Appellant had a freehold interest in another dwelling, that being her main residence and the interest held in that dwelling had a value of more than £40,000
 - (e) the exceptions in paragraphs 7 and 8 of Schedule 5 to LTTA 2017 are not relevant to this transaction; and
 - (f) in accordance with paragraph 6 of Schedule 5 to LTTA 2017 the joint transaction is a higher rates residential property transaction because paragraph 3 applies to Mrs Hayes, who is one of the buyers.
- (5) The replacement of main residence provisions do not apply because Mrs Hayes does not treat the Property as her main residence.

42. With regards to the purpose of the legislation and the Appellant's assertions that it is unfair and does not take account of a parent trying to help their child, WRA submit that the statute is unambiguous and the transaction that took place clearly falls within the scope of the legislative provisions. On that basis, there is no need to have recourse to the purpose behind the legislation.

43. Even if the purpose of the legislation were relevant to the interpretation of this provision, the WRA believe that it was intended to apply to circumstances such as Mrs Hayes, because the higher rates provisions were intended to capture purchases of second residential properties where a person already owns one residential property, and has no intention to dispose of it. Furthermore, the Senedd made express provision for the higher rates provisions to apply in cases where there are joint buyers if one of them would be liable to the higher residential rates of LTT.

44. Finally, WRA submits that the legislation that may or may not apply in England is not relevant to this case.

DISCUSSION

45. It became clear during the course of Mrs Hayes' submissions that there was no dispute at all about the way in which the law, as set out above, applied to the Transaction. She accepted that, as the law stands, the transaction was a higher rates residential transaction giving rise to a sum of LTT of £5,440.

46. The way in which this appeal has come about are a little unusual, in the sense that the original return (when combined with the first amendment to reflect the fact that it was a joint purchase) showed a higher rates transaction and the LTT was paid at that time.

47. In response to questions during the hearing, Mrs Hayes acknowledged that she had been aware of the higher rates transaction applying before the completion of the purchase because the mortgage adviser had told her.

48. Since she could not appeal her own return, she needed to amend the return, as she did in January 2022, and then WRA issued a closure notice to revert the position to the one originally submitted.

49. It may have been possible to structure the transaction in a different way, for example through a different type of mortgage or a guarantee arrangement, that would not have given rise to the fact that Mrs Hayes became a legal owner of the Property (although we express no view on what the LTT consequences of any alternatives would have been). However, this is not what happened, and we can only apply the law to the facts as found.

50. Mrs Hayes asserted both in correspondence and at the hearing that she did not have any beneficial interest in the Property. She also accepted that she did not have any documentary evidence to support that position and had not followed through on her offer to the WRA earlier in correspondence to get a solicitor to draw up a document to confirm it.

51. To the contrary, the evidence shows that she is the joint owner of the Property at the Land Registry and no specific arrangements have been shown that would alter the usual beneficial ownership consequences of that title.

52. We find that the transaction was a higher rates transaction in accordance with LTTA 2017.

53. Mrs Hayes's frustrations are mainly aimed at:

(1) the fact that the policy implemented in LTTA 2017 with regards to higher rates transactions did not make separate provision for parents seeking to help their children onto the property ladder; and

(2) the fact that WRA did not exercise any kind of discretion to disapply the higher rates provisions in her circumstances.

54. As we expressed at the hearing, these are frustrations that are outside the scope of our power. This Tribunal is a creature of statute, and we only have the power, on an appeal against an amendment in a closure notice relating to LTT to affirm, vary or cancel the WRA's decision as to whether Mrs Hayes is chargeable to the tax and/or the amount of the tax (by virtue of sections 172 and 181 of the TCMWA 2018).

55. We do not have the power to consider whether the policy for LTT higher rates transactions is fair or morally right.

56. For completeness, we would agree with the WRA that the potential refund if the transaction had taken place in England is not relevant (and we do not express any opinion on whether such a refund would or would not have applied).

57. Mrs Hayes confirmed that she was not seeking to rely on the replacement of main residence provisions, but was rather drawing an analogy with her position, particularly in light of her short period of ownership. Again, any consideration of this question would be straying into policy which is outside the scope of the appeal.

58. For the reasons set out above, we refuse Mrs Hayes appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

59. 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.

**ABIGAIL MCGREGOR
TRIBUNAL JUDGE**

Release date: 08th MARCH 2023