



**TC06317**

Appeal number: TC/2017/06892

*STAMP DUTY LAND TAX – Land Transaction Return – failure to file return by filing date – was penalty determination made automatically valid - whether reasonable excuse – appeal allowed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HILL RESIDENTIAL LTD AND LATIMER  
DEVELOPMENTS LTD  
as responsible partners of  
LATIMER HILL LLP**

**Appellant**

- and -

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

**Responden  
ts**

**TRIBUNAL: JUDGE RICHARD THOMAS**

The Tribunal determined the appeal on 25 January 2018 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 14 September 2017 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 18 November 2017 and the Appellant's Reply dated 28 November 2017.



## DECISION

1. This was an appeal by Latimer Hill LLP (“the appellant”) against a penalty of £100 imposed by HMRC for failure to make a land transaction return (“LTR”) by the due date but within 3 months of that date.

### Facts

2. I had a bundle prepared by HMRC including a “paper hearing submission” in the form of a Statement of Case (“SoC”). Where there is no dispute that something happened I relate it as my finding of fact. Where I have to draw inferences or look at other evidence I indicate the basis for my finding. I have had to draw inferences because there is not a full set of the papers I would expect to find.

3. The appellant was incorporated on 15 February 2017 under the Limited Liability Partnership Act 2000. The certificate of incorporation shows “Partnership No. OC415952”. This information is taken from the Companies House website (which HMRC say they have also consulted).

4. After termination of the appointments of the founding members, the members were Hill Residential Ltd and Latimer Developments Ltd. Both were named as designated members. This information is also taken from the Companies House website.

5. On 22 February 2017 the appellant as purchaser acquired land to the southwest side of the Ewell By-Pass in Surrey at a cost of £15,000,000. The stamp duty land tax (“SDLT”) chargeable on the transaction was £739,500.

6. The latest date for filing the LTR in respect of this purchase and for paying the tax was 24 March 2017. Those obligations are on the purchaser.

7. From a statement made by Mr Tony Parker, Finance Director of Hill Residential Ltd (“Hill”) relayed to HMRC by Peters, Elworthy & Moore, Solicitors (“PEM”), I find that that member took the following steps:

(1) On 15 February 2017, the date of incorporation, the appellant applied to HMRC for a VAT registration number and a UTR, a Unique Taxpayer Reference number.

(2) On 2 March 2017 Hill first chased HMRC for an update on the VAT registration and when a VAT number would be issued.

(3) On 8 March 2017 Hill chased HMRC for the UTR number, but was told this could not be provided over the phone. It has never been received.

(4) Also on 8 March 2017 chased HMRC again for the VAT number.

(5) The appellant received a request by HMRC (I infer the VAT part of HMRC) for further information about the site being purchased.

- (6) On 22 March 2017 Hill again chased HMRC for the issue of a VAT number and was told the documents were being reviewed. HMRC responded to Hill's statement that the lack of a VAT number was delaying payment of SDLT by acknowledging that it was a problem.
- 5 (7) Over the following month Hill continued to chase for a VAT number, and HMRC continued to make further requests for information regarding the planning status of the site.
- (8) On 26 April 2017 the VAT number was received and the form SDLT1 (the LTR) was completed and submitted to HMRC online.
- 10 8. It seems from a one row table in the SoC that a determination of a penalty of £100 was made on 2 May 2017. No further evidence beyond the suggestion in that table has been supplied. There is no copy of it in the bundle.
9. On 17 May 2017 Winckworth Sherwood LLP ("WS"), solicitors acting for the appellant appealed, in a rather oblique way, against a penalty.
- 15 10. On 25 May 2017 HMRC responded to the WS letter which they took to be an appeal against the penalty of £100 imposed for the failure to file late. The officer upheld the decision to impose the penalty and gave reasons. He enclosed a leaflet to tell the appellant what action it could take if it disagreed with the decision: these were to ask for a review or to appeal to the Tribunal.
- 20 11. On 12 June 2017, the appellant, now acting through PEM, asked for a review and it was in their letter that the statements made by Mr Parker were provided.
12. On 18 July 2017 HMRC informed PEM that they could not deal with them as they had not been authorised to act by the appellant.
13. On 4 August 2017 the appellant authorised HMRC to deal with PEM.
- 25 14. On 15 August 2017 HMRC wrote to the appellant with the conclusions of the review which were to uphold the penalty. There was no reference to a copy to PEM.
15. On 14 September 2017 PEM notified the appeal to the Tribunal on behalf of the appellant.
16. There is a copy of a printout of the SDLT1 filed in this case. The relevant details  
30 which are the bone of contention in this appeal are in Boxes 50 and 51.
17. Box 50 says "If purchaser is VAT registered, give their VAT registration number". A VAT number is shown.
18. Box 51 says
- 35 "If purchaser is a UK company you must provide a UK company or partnership UTR number.

If purchaser has no UK reference, give a tax reference from the country in which purchaser is based.

Enter the name of the country (see guidance notes)".

19. This box is left blank.

5 **Law**

20. The primary duty to deliver a return is in s 76 Finance Act ("FA") 2003:

"(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.

10 (2) The Inland Revenue may by regulations amend subsection (1) so as to require a land transaction return to be delivered before the end of such shorter period after the effective date of the transaction as may be prescribed or, if the regulations so provide, on that date.

15 (3) A land transaction return in respect of a chargeable transaction must—

(a) include an assessment (a "self-assessment") of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, ..."

20 21. It is not in dispute that the appellant is a "purchaser" or that it had the obligation to deliver a return before the end of the 30 day period referred to in subsection (1).

22. Paragraph 1 of Schedule 10 to FA 2003 sets out what the contents of the return must be:

**"Contents of return**

1—(1) A land transaction return must—

25 (a) be in the prescribed form,

(b) contain the prescribed information, and

(c) include a declaration by the purchaser (or each of them) that the return is to the best of his knowledge correct and complete.

...

30 (2) In sub-paragraph (1) "prescribed" means prescribed by regulations made by the Inland Revenue.

(3) The regulations may make different provision for different kinds of return.

35 (5) The return is treated as containing any information provided by the purchaser for the purpose of completing the return."

23. The regulations made by the Inland Revenue are the Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837) ("the Admin regulations"). Paragraph 9 in Part 3 of the regulations says:

“9—(1) A land transaction return must be in writing and completed in black ink.

(2) A land transaction return must be—

5 (a) on the form prescribed by Part 1 of Schedule 2 together with any of the forms prescribed by Parts 2 to 4 of that Schedule which are relevant; or

(b) in a form that has been approved by the Board.

(3) A land transaction return must contain the information required by the forms prescribed by Schedule 2.”

10 24. Under s 132 FA 1999 regulations may be made for facilitating electronic communication. For SDLT these are Stamp Duty Land Tax (Electronic Communications) Regulations 2005 (SI 2005/844) (“eComm Regulations”), and they permit the “delivery of a land transaction return to” the Commissioners for Her Majesty’s Revenue and Customs.

15 25. As is the case with all regulations made under s 132 FA 1999, the eComm Regulations contain evidential provisions. Under regulation 5(4):

“(4) Information shall not be taken to have been delivered to an official computer system ... by means of electronic communications unless it is accepted by the system to which it is delivered.”

20 26. Further, regulation 9(2) of the eComm Regulations provides:

“(2) The use of an authorised method of electronic communications shall be presumed, unless the contrary is proved, not to have resulted in the making of a payment, or the delivery of information—

25 (a) in the case of information falling to be delivered, or a payment falling to be made, to the Board, if the making of the payment or the delivery of the information has not been recorded on an official computer system;...

...”

30 27. The format of the LTR is set out in Schedule 1 to the Admin regulations. It was substituted for the original by the Stamp Duty Land Tax (Administration) (Amendment) Regulations 2011 (SI 2011/455) in conjunction with the coming into operation of online submission. The relevant page of the Format shows the same details as are described at §§17 and 18, with, under each rubric, a series of boxes. Under the question about a VAT number there are 9 boxes spaced 3:4:2 and under the question  
35 about a UTR there are ten boxes, spaced 5:5.

28. I assume that a return which contained no genuine VAT number or UTR and no other characters in the second and third row of boxes in question 51 would not be accepted by HMRC.

40 29. The consequences for a failure to deliver the return on time are found in Schedule 9 FA 2003:

*“Meaning of filing date and delivery of return*

2—(1) References in this Part of this Act to the filing date, in relation to a land transaction return, are to the last day of the period within which the return must be delivered.

5 (2) References in this Part of this Act to the delivery of a land transaction return are to the delivery of a return that—

(a) complies with the requirements of paragraph 1(1) (contents of return),

...

10 *Failure to deliver return: flat-rate penalty*

3—(1) A person who is required to deliver a land transaction return and fails to do so by the filing date is liable to a flat-rate penalty under this paragraph.

He may also be liable to a tax-related penalty under paragraph 4.

15 (2) The penalty is—

(a) £100 if the return is delivered within three months after the filing date, and

(b) £200 in any other case.”

30. The administrative rules for penalties are in Schedule 14 FA 2003:

20 *“Determination of penalty by officer of the Board*

2—(1) An officer of the Board authorised for the purposes of this paragraph may make a determination—

(a) imposing the penalty, and

25 (b) setting it at such amount as in the officer’s opinion is correct or appropriate.

(2) Notice of the determination must be served on the person liable to the penalty.

(3) The notice must also state—

(a) the date on which the notice is issued, and

30 (b) the time within which an appeal against the determination may be made.

(4) A penalty determined under this paragraph is due and payable at the end of the period of 30 days beginning with the date of issue of the notice of determination.

35 (5) Where an officer of the Board has decided to impose a penalty, and has taken all other decisions needed for arriving at the amount of the penalty, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility  
40 for serving notice of the determination.

*Appeal against penalty determination*

5—(1) An appeal may be made against the determination of a penalty.

(2) Notice of appeal must be given in writing to the officer of the Board by whom the determination was made within 30 days of the date of issue of the notice of determination.

5 (3) The notice of appeal must specify the grounds of appeal.

(4) On an appeal under this paragraph that is notified to the First-tier Tribunal, the tribunal may—

(a) if it appears ... that no penalty has been incurred, set the determination aside;

10 (b) if the amount determined appears ... to be appropriate, confirm the determination;

(c) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as appears to them to be appropriate;

15 (d) if the amount determined appears to them to be insufficient, increase it to such amount, not exceeding the permitted maximum, as the First-tier Tribunal considers appropriate.

(5) The provisions of paragraphs 36A to 36I of Schedule 10 apply to appeals under this paragraph.”

20 31. Paragraphs 36A to 36I are copies out, with necessary modifications, of sections 49A to 49I Taxes Management Act 1970 (“TMA”). One of the modifications is that references to s 54 TMA that appear in the s 49A etc are to be references to paragraph 37 Schedule 10 FA 2003 which is to the same effect.

25 32. It can be seen that the provisions in Schedule 14 shown above are closely modelled on those in s 100 and s 102 TMA. Section 118(2) TMA does not apply to SDLT, but there is an equivalent for SDLT in s 97 FA 2003:

“(1) For the purposes of this Part a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Inland Revenue may allow.

30 (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

35 (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 had ceased.”

33. Finally in this part I set out the relevant rules relating to the treatment of partnerships, found in Schedule 15 FA 2003:

### “Part 1

## 40 General provisions

### *Partnerships*



1 In this Part of this Act a “partnership” means—

(a) a partnership within the Partnership Act 1890 (c 39),

(b) a limited partnership registered under the Limited Partnerships Act 1907 (c 24), or

5 (c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c 12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c 12 (NI)),

10 or a firm or entity of a similar character to any of those mentioned above formed under the law of a country or territory outside the United Kingdom.

*Legal personality of partnership disregarded*

2—(1) For the purposes of this Part of this Act—

(a) a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners, and

15 (b) a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners,

and not by or on behalf of the partnership as such.

20 (2) Sub-paragraph (1) applies notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.”

34. In this case the appellant falls within paragraph 1(c), and so it is treated as purchasing the land on behalf of the two members, reading the reference to “partners” as to “members” in the case of an LLP, despite an LLP formed under the LLPA 2000, as this one is, being a body corporate. Part 2 provides relevantly:

25 **“Part 2**

**Ordinary partnership transactions**

*Introduction*

5—(1) This Part of this Schedule applies to transactions entered into as purchaser by or on behalf of the members of a partnership ...

30 *Responsibility of partners*

6—(1) Anything required or authorised to be done under this Part of this Act by or in relation to the purchaser under the transaction is required or authorised to be done by or in relation to all the responsible partners.

(2) The responsible partners in relation to a transaction are—

35 (a) the persons who are partners at the effective date of the transaction, and

(b) any person who becomes a member of the partnership after the effective date of the transaction.

40 (3) This paragraph has effect subject to paragraph 8 (representative partners).

*Joint and several liability of responsible partners*

7—(1) Where the responsible partners are liable—

...

(c) to a penalty under this Part of this Act or to interest on such a penalty,

5 the liability is a joint and several liability of those partners.

...

*Representative partners*

10 8—(1) Anything required or authorised to be done by or in relation to the responsible partners may instead be done by or in relation to any representative partner or partners.

(2) This includes making the declaration required by paragraph 1(1)(c) of Schedule 10 ... (declaration that return ... is complete and correct).

15 (3) A representative partner means a partner nominated by a majority of the partners to act as the representative of the partnership for the purposes of this Part of this Act.

(4) Any such nomination, or the revocation of such a nomination, has effect only after notice of the nomination, or revocation, has been given to the Inland Revenue.”

20 35. There is no reference to any nomination in the papers, so it is the two members who are jointly and severally liable to the penalty.

### **The HMRC case**

36. The SoC for HMRC contains the following statements (among others)

25 (1) because SDLT is a self-assessment [*sic*] tax and the submission of the SDLT1 should not be delayed, then if the appellant believed they did not have the unique references they should have contacted the Stamp Taxes helpline for advice.

30 (2) the responsibility for submitting the land transaction return rests with the appellant and neither the responsibility nor the liability for making sure HMRC receive a valid return by that [*sic*] legislative due date can be delegated to a third party.

(3) a penalty is due by virtue of paragraph 3 Schedule 10 FA 2003 as the return was 35 days late.

35 (4) guidance published on 19 March [2017] is available on the Gov.UK website at SDLTM62520. The information in this guidance tells a person without a VAT number or UTR what to do. It clearly states that a Company Registration number (issued by Companies House) is to be listed at Question 51.2 and to contact the Stamp Taxes helpline if advice [*is*] required.

40 (5) a reasonable excuse within s 97 FA 2003 is where an exceptional event has prevented the taxpayer from delivering a completed SDLT 1 form or making other arrangements to do this by the deadline. Since the appellant had its Companies House reference number there was no unexpected event outside the

agent's control which stopped them submitting the SDLT 1 by their legislated [*sic*] filing date.

(6) reliance on a third party is not a reasonable excuse, for which proposition paragraph 23(2) Schedule 55 FA 2009 is cited in support.

5 (7) the delay in obtaining the VAT number is not a reasonable excuse. HMRC cannot guarantee to provide a VAT number or UTR within the 30 days between a land transaction and the due date. The appellant had its CRN and so it was one of the required reference numbers.

(8) the penalty is proportionate to the failure.

10 (9) by not applying legislation and not to have imposed the penalty would mean that HMRC were not adhering to their legal obligations.

(10) while paragraph 16 Schedule 55 allows HMRC to reduce a penalty if they think it right to do so because of special circumstances there are none in this case.

### **The appellant's case**

15 37. In the grounds of appeal (the relevant page was not in the bundle, but I have it from the Tribunal's file) PEM argue

(1) the client did everything that could be considered reasonable to obtain the relevant information to enable an SDLT 1 to be submitted in time.

20 (2) HMRC were contacted by the client and their former agents several times to resolve the issue.

(3) while HMRC guidance at SDLTM62520 does state that a CRN is acceptable if other references are not available, the appellant does not have a CRN, it has an LLP Registration Number from Companies House, not mentioned in HMRC's guidance. Given that returns with unique identifiers entered in the  
25 wrong place will be rejected, it is unreasonable to assume that the client would have been able to submit the returns suggested by the guidance.

(4) the partnership was not told by HMRC that an LLP Reference number could be used, even though they asked HMRC what substitute numbers could be used. This is not surprising and LLPs are not mentioned in the guidance.

30 (5) two exceptional events outside the client's control prevented timely submission:

(a) HMRC failed to issue a VAT number or UTR number in a timely manner

(b) HMRC failed to provide guidance on the position of an LLP.

35 (6) for consideration to be given to the professional fees incurred in dealing with this appeal and request compensation.

38. In their response to the HMRC statement of case, PEM add

(1) WS contacted the HMRC stamp duty helpline on 2 March 2017 and 21 March 2017. On neither occasion were they told that the LLP registration number would be sufficient.

5 (2) the reference to question 51.2 in the guidance refers to a CRN which the client did not believe they had, and believed it was reasonable to assume this referred to a company and not to an LLP.

## Discussion

### *Burden of proof*

10 39. HMRC say correctly that they have the burden of proof of showing that a penalty is due. They also have the burden of showing that the penalty was validly issued and met all the requirements of the legislation permitting it to be imposed.

40. They submit that they have shown that the return was late, and it was not in fact in dispute that that was the case. As a result the burden passes to the appellant to show they had a reasonable excuse.

15 *Was there a valid penalty determination?*

41. Remarkably for a case involving penalties, HMRC do not include any information to show that a determination was issued and in what form and by whom. They do not even provide a specimen determination. The closest to it I can find in the bundle is SDLT12 Notes for Guidance about penalty determinations. It refers to the enclosed notice SDLT12 which I do not have.

25 42. In a (futile) endeavour to find out what the determination might look like I searched the SDLT Manual. It says failure to deliver an LTR by the filing date will result in a fixed rate penalty – see SDLTM85900. That paragraph refers the reader to the Compliance Handbook at paragraph 80000. That relates to penalties under Schedule 24 FA 2007 for incorrect returns.

43. Paragraph 2 Schedule 14 FA 2003 (no part of Schedule 14 was included in either the bundle or the list of statutory references in the Statement of Case) sets out the requirements for a valid notice.

30 44. First, an officer of the Board (to be read as an officer of HMRC by s 50(1) Commissioners for Revenue and Customs Act 2005) who is authorised for the purpose of paragraph 2 had to make the determination. By the use of “may” a discretion is given to the officer to make the determination and there is no automatic determination procedure.

45. Second, the notice must be served on the person liable to the penalty.

35 46. Third, the notice must state the date on which it was issued and the time within which an appeal may be made.

47. I am prepared (just – see §8) to accept that the notice was issued by HMRC and that it showed the time for appeal because it was appealed.

48. As to the second point (§45), I do not know if it was served on the liable person. WS's letter of 17 May 2017 refers to their clients as Latimer Hill LLP and I assume that it was the LLP which was named on the determination. Paragraph 6(1) Schedule 15 suggests that the liable person is "all the responsible partners", as the notice of  
5 determination is something authorised or required to be done under Part 4 FA 2003 in relation to the purchaser, ie the LLP.

49. By s 83(3)(a) FA 2003 a mistake in a determination as to the name of the person liable is not to be taken as ineffective. If it was served on the LLP that is a mistake as the persons to whom it should have been directed are the two members as the only  
10 responsible partners. But if it was served on the LLP it is still effective by virtue of paragraph (a) of s 83(3).

50. But as to the first point (§44) it is rather more difficult. There is nothing in the papers to show that an officer, a live human being, let alone an authorised one, made the determination and in particular gave any thought to the discretion vested in  
15 authorised officers.

51. I have considered the question of an authorised officer in relation to s 100 TMA on which paragraph 2 Schedule 14 is closely modelled. In *Khan Properties Ltd v HMRC* [2017] UKFTT 830 (TC) I held that a determination under that section which was admittedly made by a computer was invalid. Since HMRC have not shown that  
20 any authorised officer made the determination, I also hold that this penalty is invalid

*Invalidity aside, did the appellant have a reasonable excuse?*

52. Before answering this question I must draw attention to the misleading statements made by officers of HMRC on this subject.

53. The first response to the appeal did not say anything about what a reasonable  
25 excuse might or might not be, or why the circumstances outlined to them did not constitute one.

54. The reviewing officer's letter simply affirmed that the first responding officer was correct, without any reference to a reasonable excuse. The letter did address the question of special reduction under paragraph 16 Schedule 55 FA 2009, concluding that  
30 there were no special circumstances. Quite why he did this I do not know. Schedule 55 FA 2009 does refer to penalties for late submission of an SDLT LTR (see item 9 in the Table in paragraph 1), but Schedule 55 only comes into effect in relation to a tax if there is a commencement order to that effect. For SDLT there isn't.

55. In order to make up the deficit in consideration of what is put forward as a  
35 reasonable excuse, the SoC under the heading "Points at Issue" says:

"In accordance with Section 97 Finance Act 2003 there is provision to allow further time and accept there might be reasonable excuse for failure."

56. It seems to me that the appellant, through his agent, was seeking further time to obtain a VAT number or UTR but was not allowed it. But as to reasonable excuse, the SoC goes on to refer as well to paragraph 23 Schedule 55 FA 2009!

57. It then says that there is no statutory definition of reasonable excuse, but adding that HMRC accept that it is matter to be considered in all the circumstances of the case. The SoC goes on at paragraph 14 to refer to HMRC's view that the matter has to be looked at from the point of view of a prudent person exercising reasonable foresight and due diligence, wording that is stated as being the correct test in many decisions of this tribunal and its predecessors.

58. It then comes as something of a surprise to find that at paragraph 47 of the SoC I am told that a reasonable excuse is where an exceptional event has prevented the taxpayer from completing the SDLT 1 in time.

59. Not surprisingly PEM sought to show that there were indeed exceptional events that caused the delay.

60. Most of HMRC's contentions on this subject though refer to what, in its view, the appellant ought to have done. It should, they say, have looked at SDLTM 62520. That says

Answer either question 50 or 51. Don't answer both questions 50 and 51 – answer one or the other.

61. Question 50: Give the VAT registration number.

Make sure you provide a valid VAT registration number. It should be 9 digits long, has [sic] be 9 digits long and does [sic] not start with 00.

Don't answer this question if there is no VAT registration number. Leave this field blank and go to question 51.1.

Question 51.1: Companies - Give your UK company Unique Tax Reference Number

Question 51.1: Partnerships - Give your UK Partnership Unique Tax Reference Number

Make sure that it's a valid number consisting of 10 digits supplied to you by HMRC. It shouldn't be confused with the Company Registration Number (CRN) issued by Companies House.

Don't use a Company Registration Number in this section. *If you do your form will be rejected* [my emphasis]

Don't answer this question if there is no Company or Partnership UTR. Instead go straight to question 51.2.

Question 51.2: Give one of the following:

- Company Registration Number (issued by Companies House).
- If you don't have this, enter a Non-UK Tax Reference.

Question 51.3: Enter the country where the reference was issued.

5 Don't answer this question if you answered either question 50 or question 51.1

If you don't have any unique references and need help please contact the Stamp Taxes helpline on 0300 200 3510.

62. There are two major problems with this guidance in relation to this case. First, the place on the statutorily prescribed form where the guidance tells someone to enter a CRN is immediately headed by the rubric "If purchaser (1) has no UK reference [which it did not have], give a tax reference from the country in which purchaser (1) is based." Second, a CRN is not given to a LLP. That may be regarded by HMRC as a pedantic point, but for the most part SDLT is a matter for lawyers. And given that there is stress in relation to question 51.1 that if you put the wrong figures in the form it may be rejected, it is not surprising that lawyers interpret the requirements of the legislation carefully.

63. But HMRC say: look at the last point in the guidance. It says if you don't have any unique references, and the appellant did not, ring the Helpline. That's what a prudent and responsible person would do.

20 64. And that's what the appellant did. The Helpline was not of much help beyond saying you could enter a CRN if you didn't have a VAT or UTR number. The Helpline did not seem to have appreciated the difference between a Companies Act company which has a CRN and an LLP which has a different type of number.

25 65. It is unnecessary to prolong this discussion further. I am in no doubt that the actions of the appellant and its agent were the actions of a prudent person, exercising reasonable foresight and due diligence and having proper regard for their responsibilities. They sought a VAT number and UTR on the day of incorporation and before the transaction – that showed foresight. They chased HMRC on several occasions – that was due diligence. They spoke to the Helpline – that was due diligence. 30 All of this was done because the appellant and its agent were fully aware of their responsibilities to make the return at the right time.

66. Since s 97 FA 2003 does not have an exclusion for relying on a third party and neither it nor paragraph 23 Schedule 55 requires there to be an exceptional event, that ends the matter. There was a reasonable excuse for the failure, and it was corrected 35 within a reasonable time of the excuse ceasing, ie immediately.

*Were there special circumstances?*

67. Not relevant.

**Decision**

68. The penalty of £100 is cancelled.

**Costs**

5 69. PEM asked for the appellant’s costs to be paid by HMRC. Under Rule 10(1)(b) of the of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 an application for costs may be made in a basic case such as this if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings.

10 70. Under Rule 10(3) PEM must make an application for an order and must in doing so:

- “(a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and
- 15 (b) send or deliver with the application a schedule of the costs or expenses claimed in sufficient detail to allow the Tribunal to undertake a summary assessment of such costs or expenses if it decides to do so.”

71. Under Rule 10(5) the Tribunal may not make an order under paragraph (1) against HMRC without first giving them an opportunity to make representations.

72. I have issued directions accordingly

20 73. 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  
25 and forms part of this decision notice.

**RICHARD THOMAS  
TRIBUNAL JUDGE**

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**RELEASE DATE: 6 FEBRUARY 2018**