

SPSO decision report

Case: 201608323, Revenue Scotland
Sector: Scottish Government and devolved administration
Subject: failure to provide information
Decision: upheld, recommendations

Summary

Mr C contacted Revenue Scotland (RS) for clarification on whether Additional Dwelling Supplement (ADS) (a tax supplement on most purchases of additional residential properties in Scotland) would apply to him when purchasing a property. RS's initial response was that it did not apply. When Mr C was in the final stages of purchasing a property, he discovered that ADS did apply and that he would have to pay it. Mr C complained to us that RS failed to advise him of their opinion request process at the point of his first enquiry, that they failed to provide him with correct advice about the application of ADS in his situation, and that they failed to handle his complaint appropriately.

We found that RS mentioned the opinion request service to Mr C when they responded to his complaint, but that they did not inform him about it when he first contacted them asking for advice. Had they done so, he would have been able to request an opinion on the application of ADS at an earlier stage in the conveyancing procedure. We upheld this aspect of Mr C's complaint.

RS said that they do not provide advice on individual tax liability. However it was clear to us that, on this occasion, that RS had done this. Their response to Mr C's first enquiry clearly stated that ADS did not apply to him. This response to Mr C did not ask him for any further detail, did not indicate that Mr C could not rely on the accuracy of this response, did not ask him for any further detail, and did not signpost him to the opinion request service or refer him to his solicitors. As such, we found that RS had provided Mr C with inaccurate advice, and we upheld this aspect of his complaint.

We found that RS's response to Mr C's complaint did not adequately address the financial implications that their failure to give correct advice had had on him. Whilst organisations are entitled to reach their own conclusions on complaints following consideration of the available evidence, the conclusions should be reasonably supported by the evidence. In this case, we found that it was not reasonable for RS to conclude that the evidence did not support Mr C's complaint, at least in part. We upheld this aspect of Mr C's complaint.

We noted that RS had already taken action to ensure that the opinion request service is now referenced in all responses sent out, and that they had undertaken work with their staff to ensure that their responses to enquiries are now consistent with the position that they do not provide advice on individual tax liability. We also found that RS had apologised to Mr C more than once for their failings. As such, we did not make any further recommendations with regards to these aspects of Mr C's complaint.

RS told us that they have no discretion over whether to charge ADS, and that there is no legal mechanism under which they can waive or repay tax which is legally due. We accept this is the case. However, given that Mr C suffered financial detriment because of the inaccurate advice they provided to him, we made a recommendation to address this point.

Recommendations

What we asked the organisation to do in this case:

- Make a payment to Mr C as redress for the unanticipated financial loss he suffered as a result of their incorrect advice. The payment should be made by the date we have indicated. If payment is not made by that date, interest should be paid at the standard interest rate applied by the courts from that date to the date of payment.

In relation to complaints handling, we recommended:

- Complaint investigation decisions should be supported by, and make reference to, the available relevant evidence.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.