

Tax Chamber
First-tier Tribunal for Scotland



[2019] FTSTC 2

Ref: FTS/TC/AP/18/0007

TAX – Land and Building Transaction Tax (LBTT) – Penalty failure to make LBTT Return – whether penalty valid – yes – whether there was a reasonable excuse or special circumstances – no – Appeal refused.

DECISION NOTICE

IN THE CASE OF

LT Manufacturing Limited

Appellant

- and -

Revenue Scotland

Respondent

TRIBUNAL: KATRINA LUMSDAINE, Legal Member

The Tribunal determined the appeal on 12 December 2018 without a hearing under the provisions of Rule 27 of The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 (Default Paper case) having first read the Notice of Appeal and attachments dated 24 September 2018; Revenue Scotland's Statement of Case with attachments, acknowledged by the Tribunal on 12 November 2018; and the Appellant's response thereto dated 14 November 2018.

DECISION

1. This is an appeal by LT Manufacturing Limited (“the appellant”) against a penalty assessment notice (“the penalty”), issued by Revenue Scotland on 9 April 2018 in the sum of £100, under sections 159 and 160 of the Revenue Scotland and Tax Powers Act 2014 (“RSTPA”). The penalty was in respect of a failure by the appellant to make a timeous return under section 29 of the Land and Building Transaction Tax (Scotland) Act 2013 (“LBTTA”).

The Facts

2. It is not disputed that on 11 January 2018 the appellant entered into a non-residential lease with Fife Council for a new build property in Glenrothes (“the Property”).

3. Although the Property was leased from 11 January 2018, the property reference was only issued to the appellant by the Scottish assessors on 23 March 2018 and the official postal address confirmed on 1 April 2018. Initially, the appellant had had two addresses for the Property.

4. On 6 April 2018, Revenue Scotland received from the appellant a paper Land and Buildings Transaction Tax (LBTT) return dated 29 March 2018. That return stated that the effective date of the transaction, being the date of the lease, was 11 January 2018 and included the Local Authority number, an address and postcode for the Property and details of the rental. It did not include the Title number or the Parent title number for the Property.

5. In terms of section 29(3) RSTPA, the filing date for a LBTT return where the effective date is 11 January 2018 is 10 February 2018. The return was therefore 55 days late.

6. It is a matter of agreement between the parties that no tax is payable in respect of the transaction.

7. On 9 April 2018 Revenue Scotland issued the penalty to the appellant in the sum of £100.

8. After a review, Revenue Scotland upheld its decision to issue the late filing penalty. This was intimated, with reasons, to the appellant by letter dated 14 September 2018.

9. The current appeal was lodged timeously on 24 September 2018.

Legislation

The obligation to submit a LBTT Return

10. The appellant accepts that it was obliged to submit a LBTT return to Revenue Scotland. This obligation arises out of section 29(1) of the LBTTA. Sub-section 29(3) provides that the return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction (see Appendix).

The effective date

11. Part 7 of the LBTTA sets out Interpretations. In section 63 an interpretation is given of the “effective date” of a transaction. Section 63(1)(a) provides that the effective date is the date of

“completion”. Section 64(1)(a) provides an interpretation of “completion” in relation to a lease as “when it is executed by the parties or constituted by any means”.

5 12. The date of issue of the property reference or the property address are not referred to in the legislation in relation to the effective date.

Penalties for failure to make a LBTT Return

10 13. Section 159(1) of RSTPA provides for a penalty where a person fails to make a LBTT return under section 29 of LBTTA on or before the filing date.

14. Section 82 of RSTPA provides the meaning of the filing date in relation to a tax return as “the date by which that return requires to be made by or under any enactment.”

15 15. Section 160 of RSTPA provides for a £100 first penalty for failure to make a return.

Circumstances in which a penalty may be reduced or waived

20 16. RSTPA provides certain circumstances in which a penalty for failure to make a return under sections 159 and 160 may be reduced or waived. These include special circumstances and reasonable excuse.

25 17. Section 177 provides that Revenue Scotland may reduce a penalty if it thinks it is right to do so because of special circumstances. There is no definition of special circumstances. The examples of what do not constitute special circumstance are not relevant to this appeal.

30 18. Section 178(1) provides that if the appellant satisfied Revenue Scotland or (on appeal) the Tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under sections 159 to 167 does not arise in relation to that failure. There is no definition of reasonable excuse. The examples of what do not constitute a reasonable excuse are not relevant to this appeal.

35 19. The text of sections 29, 63 and 64 of LBTTA and sections 82, 159, 160, 177 and 178 of RSTPA are all set out in full in the Appendix.

The appellant’s submissions

20. The appellant argues that:

40 (a) “Once we received the postal address information and the SAA property assessment paperwork we completed the LBTT paperwork in a timely manner”.

(b) The wording of Revenue Scotland’s Guidance notes (“the Guidance”) was confusing and intimidating. It was this which induced the appellant to withhold submitting the return until it had received the Property reference number and official postal address.

45 (c) The appellant is a “novice non LBTT expert” and having read the Guidance believed that once they had the requisite information that they had completed the form within what they considered to be the correct timescale.

Revenue Scotland's submissions

21. Revenue Scotland argues that:

- 5 (a) The LBTT return was 55 days late and that results in the proper imposition of a penalty.
(b) Neither a property reference nor an official postal address is required for filing a return.
(c) Although the "address" field is a mandatory section to be completed, the Guidance
10 makes it clear that where there is "no recognised postal address" the person completing the
form should "enter a description of the property". If the appellant was confused by the
Guidance, it was open to it to contact Revenue Scotland for clarification.
(d) The date on which a postal address is assessed and assigned to a property has no bearing
on the statutory definition of the effective date and consequently no impact on the filing
date, or on the penalty where a default occurs.
(e) There are no grounds for reduction or cancellation of that penalty based upon disclosure,
15 special circumstances, or reasonable excuse.
(f) Ignorance of the law is no excuse.

Discussion

20 22. It is for Revenue Scotland to establish that the penalty issued was valid¹. The onus then
shifts to the appellant to establish that there is a reason why the penalty should be reduced or
waived.

25 23. Revenue Scotland correctly rely on section 29(3) of LBTTA which provides that:

"(3) The return must be made before the end of the period of 30 days beginning with the day after the effective
date of the transaction."

30 24. RSTPA provides, at section 159 that if a person fails to make a LBTT return under
section 29 of LBTTA, a penalty is payable. Section 160 provides that a person in such
circumstances is liable to a penalty of £100.

35 25. The return which was filed by the appellant, and not challenged by either party, provided
that the effective date, the relevant date and the date of the contract were all 11 January 2018. As
the return was not received until 6 April 2018, it was not filed before the end of the period of 30
days beginning with the date after the effective date. It is therefore liable to a penalty of £100.

40 26. Revenue Scotland pointed out that, in earlier correspondence, the appellant had requested
that "the effective date is amended" to reflect that the postal address was not assigned until
23 March 2018. Revenue Scotland are correct in stating that the "effective date" is defined in the
legislation. In relation to a lease, it is the date of completion of a land transaction, which is the
date on which a lease is "executed by the parties or continued by any means" (sections 63(1)(a) and
64(1)(a) of LBTTA).

45 27. There are no provisions in the legislation that the effective date is calculated by or
influenced by either the date on which the title of the Property is notified to the buyer, or the date
on which the buyer is notified of the correct address for the Property. It is therefore clear that the

¹ Burgess and Brimheath Developments Limited v HMRC [2015] UKUT 578 (TCC)

effective date is not affected by the date of intimation of the title number or the correct property address.

5 28. Clearly the effective date cannot reflect any external circumstances. It is for that reason that there is provision for reasonable excuse and special circumstances.

10 29. Revenue Scotland have therefore established that the appellant failed to submit a return by the filing date. Therefore the penalty notice is valid. The question, however, is whether there are grounds to reduce or waive the penalty.

15 30. In particular, is there a special circumstance which would entitle Revenue Scotland to reduce the penalty if it thinks it is right to do so? Alternatively, is there a reasonable excuse for the appellant's failure to make a return which would mean the liability to the penalty does not arise in relation to the failure?

Reasonable excuse

20 31. Where a penalty under section 159 of RSTPA is payable, section 178 of RSTPA provides that if there is a reasonable excuse for a failure to make a return, liability to a penalty under section 159 does not arise in relation to that failure.

25 32. The case of *Straid* clarifies that there is no definition of reasonable excuse in RSTPA. It also clarifies that the excuse must be reasonable. *Straid*, at paragraphs 45 and 46 approves the comments of Lord Rodger of Earlsferry at paragraph 81 in *R v G* in which he says:

“... So the courts have recognised that any decision on whether an accused had a reasonable excuse must depend on the particular circumstances of case ... whether or not an excuse is reasonable has to be determined in the light of the particular facts and circumstances of the individual case”.

30 33. Although I was not referred to the case of *Christine Perrin v The Commissioners for Her Majesty's Revenue and Customs*² by either of the parties, it does provide useful guidance on the test for whether an excuse is a reasonable excuse. Paragraph 71 provides:

35 “In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in *The Clean Car Co* and *Coales*).”

40 34. The Upper Tribunal goes on to clarify in paragraph 73 that the test is an objective one:

45 “Once it has made its findings of all the relevant facts, then the FTT must assess whether those facts (including, where relevant, the state of mind of any relevant witness) are sufficient to amount to a reasonable excuse, judged objectively.”

35. In paragraph 82 the Upper Tribunal provides as follows:

50 “One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that ‘ignorance of the law is no excuse’, and on occasion this has been given as a reason

² [2018] UKUT 156 (TC)

5 why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. The Clean Car Co itself provides an example of such a situation.”

10 36. The appellant claims that it is a “novice non LBTT expert”. Revenue Scotland does not challenge the appellant’s expertise in LBTT. With no evidence to the contrary, I find it established that the appellant is indeed without expertise in LBTT.

15 37. Revenue Scotland responds to the appellant’s argument that it is a “novice non LBTT expert”. It submits that LBTT is a self-assessed tax and it is for taxpayers to decide whether to act alone or whether to instruct an agent to act on their behalf. They submit that ignorance of the law is not a reasonable excuse, nor a special circumstance, which negates the appellant’s statutory obligation to file on time, or its liability to a penalty where it fails to do so. In support of this they rely upon the decision in *Anderson v Revenue Scotland*³, paragraph 54.

20 38. I do not accept Revenue Scotland’s submission that ignorance of the law is no excuse. It is clear from *Perrin* that this is too simplistic a submission. The statutory framework for this penalty does indeed provide for an excuse. That excuse must be a reasonable excuse when viewed objectively. This does not exclude ignorance of a particular requirement if that ignorance, when viewed objectively, was reasonable for the particular taxpayer in the circumstances of the case.

25 39. For the appellant to have a reasonable excuse, the facts, viewed objectively, must be sufficient to amount to a reasonable excuse. Account must be taken of the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time.

30 40. The appellant has made no submission and provided no evidence as to whether any attempts were made to ascertain if it was possible to complete the return without the correct address or title number for the Property. In particular, there was no suggestion that the appellant sought professional advice. This is notwithstanding the fact that the appellant itself quotes from the Guidance headed “How to make a paper LBTT return.” It highlighted the first page of that guidance which provides:

35 “It is the buyer’s responsibility to ensure the LBTT return is complete and accurate. If you are unsure about any matter relating to the LBTT return you should seek professional advice.”

40 41. Against that background, I now come to consider whether the Guidance was sufficiently confusing to excuse the appellant withholding from submitting the return pending receipt of the correct address and the title number.

45 42. The appellant comments that there are a number of mandatory fields to be completed in the LBTT return, but a lack of clarity in highlighting which fields are mandatory and which are not. It refers specifically to the Guidance section headed General guidance about the paper LBTT return:

“1. Rules on completing the paper LBTT return

³ 2016 TTFT 1,

When completing the paper LBTT return you **must** follow the rules below:

5 there are several mandatory fields in each section of the LBTT return – these are clearly identified in this guidance. Some fields become mandatory or cease to be mandatory depending on whether or not other fields are answered. A return will not be valid unless you have completed all mandatory fields;”.

43. There is nothing to suggest that, viewed objectively, this would excuse failing to file a return on time.

10 44. The appellant also refers to the section in the “About the Property” Guidance headed “Parent title number” and it reads as follows:

“**Note:** Only complete this question if you know the full parent title number.

15 If you do not know the title number of the property it is possible that it forms part of a larger area. Where this is the case, firstly enter the appropriate county code (see the list above) for the property’s parent title number e.g. for Aberdeen select ‘ABN’.

Secondly, after the county code enter the parent title number(s) to which the property relates.”

20 45. Revenue Scotland states that the Guidance makes it clear there is no requirement to complete the sections for property title number and the parent title number. The Guidance on these sections clarifies that those completing these sections of the return should “only complete this question if you know the full title number”.

25 46. In any event, in the return ultimately submitted after the title number of the Property was known to the appellant, neither the Property title number nor the Parent title number were completed. This is clear evidence that the appellant was not confused into believing that these were mandatory fields.

30 47. The appellant makes no reference to any Guidance which it found confusing in relation to whether the correct Property address required to be completed. However, Revenue Scotland did point out that their Guidance stated that “if there is no recognised postal address” the party completing the form should “enter a description of the property”. The appellant did not suggest in its responses to Revenue Scotland’s statement that this was incorrect or incomplete.

35 48. I have considered all relevant circumstances that have been brought to my attention including, in particular, the appellant’s lack of expertise in LBTT, the fact that the appellant had two addresses for the Property and was not aware of the correct address for the Property until after the return was late. I also have had regard to the fact that the appellant did not know the title number for the Property until after the return was late. I have also considered whether the Guidance was sufficiently confusing to amount to a reasonable excuse.

40 49. Viewed objectively, there is nothing before this Tribunal which satisfies me that there is a reasonable excuse for the failure to make the return timeously. The liability to the penalty therefore arises.

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Special circumstances

50. I turn now to consider whether there are any special circumstances. If special circumstances are made out in terms of section 177 of RTSPA, the penalty may be reduced.

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51. The meaning of the expression “special circumstances” was examined by the UK Tribunal in *Collis v Revenue & Customs Commissioners*⁴. At paragraph 40 the Tribunal said:

10 “To be a special circumstance the circumstance in question must operate on the particular individual, and not be a mere general circumstance that applies to many taxpayers by virtue of the schemes or provisions themselves.”

52. This analysis was approved in the case of *Straid*.

15 53. Revenue Scotland argue that there are no special circumstances to this case.

54. The appellant does not claim special circumstances. On the contrary, the appellant claims its confusion was caused by the public facing guidance of Revenue Scotland which would apply to many taxpayers. Many taxpayers will not be experts in LBTT. Therefore, there is nothing submitted in this case which would not apply to many taxpayers by virtue of the schemes or provisions themselves.

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55. There are plainly, therefore, no special circumstances in this case.

25 **Conclusion**

56. The LBTT return was not made before the end of the period of 30 days beginning with the day after the effective date of the transaction. The appellant is therefore liable to a penalty of £100 in terms of sections 159 and 160 of RSTPA. Viewed objectively, there is no reasonable excuse for the failure in terms of section 178 of RSTPA. There are also no special circumstances in terms of section 177 of RSTPA. Therefore, the appeal is dismissed and the penalty assessment of 9 April 2018 is upheld.

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57. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has the right to apply for permission to appeal on a point of law pursuant to Rule 38 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017. In terms of Regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016, any such application must be received by this Tribunal within 30 days from the date this decision is sent to that party.

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KATRINA LUMSDAINE

Legal Member

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RELEASE DATE: 6 February 2019

⁴ 2011 UKFTT 58 (TC)

Land and Building Transaction Tax (Scotland) Act 2013**5 29.— Duty to make return**

(1) The buyer in a notifiable transaction must make a return to the Tax Authority.

10 (2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.

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63.— Meaning of “effective date” of a transaction

(1) Except as otherwise provided, the effective date of a land transaction for the purposes of this Act is—

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- (a) the date of completion, or
- (b) such alternative date as the Scottish Ministers may prescribe by regulations.

(2) Other provision as to the effective date of certain land transactions is made by—

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- (a) section 10(2) (substantial performance of contract without [completion] ¹),
- (b) section 11(4) (substantial performance of contract requiring conveyance to third party),
- (c) section 12(4) (options and rights of pre-emption), and
- (d) paragraph 25(2) of schedule 19 (agreement for lease substantially performed etc.).

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64.— Meaning of “completion”

(1) In this Act, “*completion*” means—

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- (a) in relation to a lease, when it is executed by the parties or constituted by any means,
- (b) in relation to any other transaction, the settlement of the transaction.

(2) References to completion are to completion of the land transaction proposed, between the same parties, in substantial conformity with the contract.

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Revenue Scotland and Tax Powers Act 2014**82. Meaning of “filing date”**

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In this Act “*the filing date*” in relation to a tax return is the date by which that return requires to be made by or under any enactment.

159.— Penalty for failure to make returns

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(1) A penalty is payable by a person (“P”) where P fails to make a tax return specified in the table below on or before the filing date (see section 82).

	Tax to which return relates	Return
1.	Land and buildings transaction tax	(a) Return under section 29 , 31 , 33 or 34 of the LBTT(S) Act 2013. (b) Return under paragraph 10, 11 , 20 , 22 or 30 of Schedule 19 to the LBTT(S) Act 2013.
2.	Scottish landfill tax	Return under regulations made under section 25 of the LT(S) Act 2014.

5 (2) If P's failure falls within more than one provision of this section or of sections 160 to 167, P is liable to a penalty under each of those provisions.

10 (3) But where P is liable for a penalty under more than one provision of this section or of sections 160 to 167 which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.

(4) In sections 160 to 167 “*penalty date*”, in relation to a return, means the day after the filing date.

15 (5) Sections 160 to 163 apply in the case of a return falling within item 1 of the table.

(6) Sections 164 to 167 apply in the case of a return falling within item 2 of the table.

20 **160.— Land and buildings transaction tax: first penalty for failure to make return**

(1) This section applies in the case of a failure to make a return falling within item 1 of the table in section 159.

25 (2) P is liable to a penalty under this section of £100.

25 **177.— Special reduction in penalty under Chapter 2**

(1) Revenue Scotland may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.

30 (2) In subsection (1) “*special circumstances*” does not include—

(a) ability to pay, or

35 (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—

(a) remitting a penalty entirely,

40 (b) suspending a penalty, and

(c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the penalty.

5 (5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

178.— Reasonable excuse for failure to make return or pay tax

10 (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under sections 159 to 167 does not arise in relation to that failure.

15 (2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under sections 168 to 173 does not arise in relation to that failure.

(3) For the purposes of subsections (1) and (2)—

20 (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

25 (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.