

**Tax Chamber**  
**First-tier Tribunal for Scotland**

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[2025] FTSTC 1

Ref: FTS/TC/AP/24/0026

***Land and Buildings Transaction Tax – 3 year lease review tax return – penalties for late submission – sections 159, 160 and 161 of Revenue Scotland and Tax Powers Act 2014 – Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020 – Reasonable excuse or special circumstances for failure to make a return – no – appeal dismissed***

**DECISION NOTICE**

IN THE CASE OF

**Centred Learning Limited**

Appellant

- and -

**Revenue Scotland**

Respondent

**TRIBUNAL: ANNE SCOTT  
CHARLOTTE BARBOUR**

The Tribunal determined the appeal on 10 March 2025 without a hearing under the provisions of Rule 27 of The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 having first read the Notice of Appeal, and attachments, dated 18 October 2024 and Revenue Scotland's Statement of Case, and attachments, received by the Tribunal on 27 November 2024, the Appellant's response thereto dated 29 January 2025 and Revenue Scotland's response thereto dated 30 January 2025.

## DECISION

### Introduction

1. This is an appeal against a Penalty Assessment Notice (“the Notice”) issued by Revenue Scotland to the appellant under section 179 of the Revenue Scotland and Tax Powers Act 2014 (“RSTPA”) on 27 June 2024 in a total sum of £1,000. The penalties comprised:

(a) A £100 penalty for a failure to submit a return on time under sections 159 and 160 RSTPA; and

(b) A £900 penalty for the failure to submit a return after three months under sections 159 and 161 RSTPA. The latter penalty had accrued at a daily rate of £10 for a period of 90 days.

2. The penalties were imposed for the failure to make a Land and Buildings Transaction Tax (“LBTT”) 3-year lease review return (the “3 year LBTT Return”) timeously.

3. The due date for filing the 3 year LBTT Return was 17 August 2022 but it was filed, initially, on 8 July 2024 and the completed version on 11 July 2024.

4. The parties were content for the appeal to be categorised as a default paper case and to be decided without a hearing.

### The factual background

5. On 17 July 2019, the appellant entered into a ten year lease for a property in Dundee (“the Property”). The commencement for the lease was 18 July 2019 with an expiry date of 17 July 2029.

6. On 30 July 2019, the appellant’s solicitors submitted an LBTT return to Revenue Scotland. There was no tax due.

7. That return stated that the appellant’s Director was a Ms Hill and the correspondence address was the appellant’s registered office.

8. The LBTT return intimated that the effective date of the lease transaction for the Property was 18 July 2019 but, in fact, since section 63 of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTTA”) stipulates that the effective date is the date of completion of the transaction, it should have stated that the effective date was 17 July 2019. The difference of one day is not material.

9. Under the heading “Payment and submission” in the return, having confirmed that:

(a) the solicitor has authority to act for the appellant,

(b) had been authorised to complete the return, and

(c) that the tenant has declared that, with the exception of the relevant date (which the solicitor certifies) the information is correct and complete

the last paragraph reads:

“I, the agent of the tenant(s), confirm that I have made my client(s) aware of their obligation to submit a three-yearly lease review return, or an assignation or termination return if such an event occurs before the review date.”

The answer given in respect of all of those paragraphs was “Yes”.

10. On 10 September 2019, the registered office address was changed to the address of the Property and that was recorded at Companies House but we have been given no evidence to suggest that the change was intimated to Revenue Scotland.

11. In or about November 2019, the original majority shareholder and Director, Ms Hill, resigned and the business was restructured. The current Director, Mr Christopher Hill, who is Ms Hill’s husband, was notified of a pending redundancy from his main employer in November 2019 and in January 2020, that job was terminated.

12. The Covid-19 pandemic impacted adversely on both the appellant and the Hill family as there was no eligibility for Covid support grants.

13. On 20 June 2022, Revenue Scotland issued a Lease Review Reminder letter relating to the Property which was addressed to the appellant at the original registered office of the appellant and was the address given in the LBTT return. That letter stated that:

(a) A further LBTT return was due to be filed by no later than 17 August 2022 and that could be done online.

(b) It was the appellant’s responsibility to submit the return and recalculate the tax, if any.

(c) If the return was late then there would be an initial £100 late filing penalty and if it was more than three months late then penalties would be charged at the rate of £10 per day for a maximum of 90 days.

14. On 27 June 2024, Revenue Scotland issued the Notice, sending it to the Property. The Notice pointed out that the appellant was entitled to request a review of the decision if dissatisfied with it.

15. Mr Hill contacted Revenue Scotland requesting a review of the penalties. He argued that:

(a) No correspondence had been received from Revenue Scotland prior to receipt of the Notice, yet home and email addresses had not changed and nor had telephone numbers.

(b) There had been no change in circumstances in relation to the lease and there was no reason why they would not have filed a 3 year LBTT Return had they been aware of the need to do so.

(c) The solicitor had stated that Revenue Scotland will and should have sent reminder notices about the review date and that they had “....heard from others here that there are occasions when clients don’t seem to have received the reminders”.

(d) A penalty charge of £1,000 was “crippling at an already difficult time for small business”.

16. The 3 year LBTT Return was filed on 11 July 2024.

17. On 6 August 2024, Revenue Scotland issued a letter by email setting out its View of the Matter which was to uphold the penalties. Revenue Scotland referred to their published Guidance and asked the appellant for any further representations.

18. Mr Hill responded immediately explaining that his wife had resigned in 2019, the business restructure had been at a very difficult time, not least because of his own redundancy, Covid 19 and stress. The reminder had been sent to an address that was no longer the registered office and the postal redirection had long expired. He argued that any reminder letter should have been issued to the address of the Property and the return had now been submitted.

19. Revenue Scotland state that, on 15 August 2024, Mr Hill had argued by email that he would have expected that the solicitor would have included the correct correspondence address in the LBTT return (that email has not been produced to the Tribunal).

20. On 19 September 2024, Revenue Scotland issued the Review Conclusion letter and the outcome of the review was to uphold the penalties. The basis for so doing was the same as Revenue Scotland’s submissions in this appeal (see paragraph 32 below).

21. Mr Hill responded immediately asking for information on a number of points and intimating that he would appeal to the Tribunal.

22. Revenue Scotland responded on 1 October 2024 enclosing a copy of the LBTT return, confirming that until a 3 year LBTT Return was late, the address used for correspondence would always be the address on the LBTT return and Revenue Scotland had no obligation, in terms of the legislation, to send reminders to taxpayers.

23. On 18 October 2024, the appellant appealed to the Tribunal.

## **The Legislation**

24. The requirement to file the 3 year LBTT Return is found in paragraph 10, Schedule 19, LBT TA. The penalties arise in consequence of sections 159, 160 and 161 RSTPA. These provisions are not in dispute.

25. Section 160 RSTPA provides for a £100 penalty if a return is filed late. Section 161 RSTPA provides that if a failure to make a return continues after the end of the period of

three months after the month beginning with the penalty date, a person is liable for a further penalty of £10 for each day that the failure continues during the period of 90 days beginning with the day after the end of the period described in section 161(1)(a).

26. Section 177 RSTPA provides that “Revenue Scotland may reduce the penalty... if it thinks it right to do so because of special circumstances”. The full text of section 177 is set out at Appendix 1 but:

1. Section 177(2) makes it explicit that special circumstances does not include the ability to pay.

2. Section 177(3) specifies that reducing a penalty includes:

- “(a) remitting a penalty entirely,
- (b) suspending a penalty, and
- (c) agreeing a compromise in relation to proceedings for a penalty.”

27. Section 178 RSTPA provides that liability to a penalty will not arise if there is a reasonable excuse for the failure to make a payment timeously. The full text is set out at Appendix 2.

28. For completeness we observe that section 175 RSTPA provides that “Revenue Scotland may reduce the penalty” where a taxpayer discloses information that has been withheld by a failure to make a return. However, there was no such disclosure in this case.

29. Section 244(2) RSTPA provides that:-

“The Tribunal is to determine the matter in question and may conclude that Revenue Scotland’s view of the matter in question is to be:-

- (a) Upheld,
- (b) Varied, or
- (c) Cancelled.”

30. The Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020 deal with failure to make a tax return where the filing date occurs on or after 11 March 2020 (item 1 of the table in section 159 RSTPA). The effect of the Regulations is that there is no need for a notification to be made under section 161 RSTPA before an assessment can be made under section 179 RSTPA.

### **Overview of the appellant’s submissions**

31. In addition to the arguments which we have recorded at paragraph 15 above, the appellant also argued that:

- (a) If the solicitor had made the appellant aware that a 3 year LBTT review would be required, as Revenue Scotland argue, that would have happened when Ms Hill was a Director. Mr Hill had not been made aware of any such requirement.

(b) At the time that the LBTT return was filed by the solicitor, the solicitor had been aware that the registered office would be changed to the address of the Property. The appellant had not been made aware of the potential impact of that.

(c) The whole process for communication was not clear. The LBTT return does not refer to a correspondence address and Revenue Scotland did have the address for the Property. It was logical to assume that correspondence would be sent to the Property.

(d) The appeal process was very stressful at a period when Mr Hill was unwell.

(e) The systems in place are “insufficient and set up to make it difficult for ordinary people to understand”. The whole filing and penalty process “is not practical, efficient or fair”.

## **Overview of Revenue Scotland’s submissions**

32. Revenue Scotland argue that:

(a) This is a self-assessment tax and Revenue Scotland are under no obligation to send any reminders.

(b) The appellant had not provided any evidence to demonstrate prudent or reasonable steps taken in order to ascertain the tax obligation. The requirement to submit a 3 year LBTT Return has been a feature of the LBTT regime since the tax was introduced.

(c) Insufficiency of funds cannot amount to a reasonable excuse or special circumstance.

(d) The Grounds of Appeal do not disclose any basis to justify a reduction of the penalty for disclosure or special circumstances or that the penalty should be waived as a result of a reasonable excuse.

## **Discussion**

33. Revenue Scotland has the burden of proving that the penalties were properly imposed. Revenue Scotland has produced the original LBTT return and it is clear from the terms thereof that there was a lease. The terms of the 3 year LBTT Return indicate that the lease had not been either terminated or assigned at the relevant date.

34. The 3 year LBTT Return was due to be filed by 17 August 2022 and it is not disputed that it was filed late. Both sections 159 and 160 RSTPA apply which means that the appellant is liable to pay the £100 penalty. Since the failure to file the return continued beyond the three-month period specified in section 161 RSTPA the appellant is therefore liable to pay the £900 penalty.

35. We have therefore found that the penalties were correctly imposed and in the correct amounts.

36. The question for decision now is whether Revenue Scotland are correct in stating that the penalties should be upheld and neither varied nor cancelled. Their argument is that there are no grounds to justify a reduction of the penalty for disclosure or special circumstances or waiver as a result of reasonable excuse.

37. Therefore, the burden of proof now turns to the appellant. Although the legislation commences with special circumstances, it is in fact appropriate to start with consideration of reasonable excuse since, if that is established, there is no need to consider special circumstances. As we have indicated at paragraph 28 above, there was no disclosure in this case.

#### *Reasonable excuse*

38. The primary issues here, which are linked, are:

(a) whether the appellant's lack of awareness of the need to file the 3 year LBTT Return could, of itself, constitute a reasonable excuse. In other words, can ignorance of the law in the sense of ignorance of an obligation imposed by the law, constitute a reasonable excuse?, and

(b) whether the suggestion that Revenue Scotland had failed to tell the appellant to file the return could amount to a reasonable excuse.

39. The starting point is that the appellant is a company. As a matter of law, a company has a separate legal personality from its directors. The LBTT return submitted by the solicitors made it clear that they had told the appellant, presumably Ms Hill but that is not clear, about the requirement to file a three year return. The fact that Ms Hill resigned and her husband took over does not affect the basic position which is that the appellant, ie the company via its then director, had apparently been told about the obligation to file.

40. As the Tribunal indicated at paragraph 30 in *Straid Farms Limited v Revenue Scotland* [2017] FTSTC 2 ("Straid"):

"The explanatory notes to RSTPA state:

"The effect of [the legislation] is that the jurisprudence concerning the proper bounds of the tax authority's role is imported into the devolved tax system. This jurisprudence includes not only case law from the UK jurisdictions but other English-speaking jurisdictions."

41. Perhaps, as a result of Ms Hill's resignation, there was a muddle about what should have been done, but the question as to whether a genuine mistake can amount to a reasonable excuse has been considered in *Garnmoss Limited t/a Parham Builders v HMRC* [2012] UKFTT 315 (TC) where Judge Hellier said in the context of reasonable excuse for VAT default surcharges at paragraph 12:

"What is clear is that there was a muddle and a *bona fide* mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse. ...".

42. If the LBTT return was inaccurate in stating that the appellant had been told about that obligation, then that cannot amount to a reasonable excuse. The Upper Tribunal in *HMRC v Katib* [2019] UKUT 189 (TCC), albeit dealing with different circumstances, made it clear at paragraph 58 that

“It cannot be the case that a greater degree of adviser incompetence improves one’s chances of an appeal, either by enabling the client to distance himself from the activity or otherwise.”

43. That echoes the decision of Judge Bishopp in the Upper Tribunal in *Ryan v HMRC* [2012] UKUT 9 (TCC) where, in relation to an appeal against the imposition of a penalty for the late filing of a return, he said at paragraph 6 that:

“The plain purpose of the legislation is to encourage the prompt submission of returns by imposing penalties on those who submit them late. The penalty is imposed on the person concerned, and not upon his solicitor or any other representative. The purpose of the legislation would be defeated if a penalty could be escaped by the expedient of placing the blame on a dilatory solicitor. If Mr Ryan believes he has been let down by his solicitor, his remedy is to take the matter up with the solicitor.”

44. Accordingly, the fact that the solicitor gave the address for the appellant in the LBTT return whilst knowing that it was about to change and, allegedly, did not explain the impact of that to the appellant cannot amount to a reasonable excuse either.

45. In any event, it is incumbent on any taxpayer to tell the revenue authority, whether Revenue Scotland or HMRC, if their address changes. That did not happen in this instance.

46. As a result of the entries in the LBTT return (see paragraph 9 above) we have found that the appellant, being the company, was made aware of the need for a 3 year LBTT Return. Therefore, the issue of ignorance of the law does not arise. For completeness, we observe that Revenue Scotland rightly accept that in certain circumstances ignorance of the law can amount to a reasonable excuse and in that regard they cite paragraphs 81 and 82 of *Perrin v HMRC* [2018] UKUT 0156 (TCC). We agree with the Upper Tribunal and we annex a copy of those paragraphs at Appendix 3.

47. LBTT is a self-assessed tax. There is no evidence that either of the Directors made any enquiries about LBTT or the appellant’s obligations in that regard. The suggestion that Revenue Scotland should have sent reminders or otherwise told the appellant about the obligation to file a return is simply not correct. Revenue Scotland are under no obligation to send reminders, albeit they did do so in this instance. The fact that the appellant did not receive the reminder cannot amount to a reasonable excuse.

48. The Tribunal is a creature of statute and therefore has only the powers given to it by statute. Accordingly, we can only consider whether the 3 year LBTT Return was filed late and, if so, whether there was a reasonable excuse for that failure or there were special circumstances. Whilst we certainly accept that the whole appeal process has been stressful and difficult for Mr Hill, we cannot consider what happened after the due date for filing.

49. Similarly, we cannot consider whether the returns themselves should be formulated differently; that is not within our jurisdiction.



### *Special Circumstances*

50. Whilst we are aware that the penalties have been paid so the issue does not arise, for completeness, as we have indicated at paragraph 26 above, an inability to pay cannot amount to special circumstances.

51. In a number of Decisions of this Tribunal in relation to penalties, the law on special circumstances has been set out at length. We do not intend to repeat that here. In brief summary, we endorse the words of the UK Tribunal in *Collis v HMRC* [2011] UKFTT 588 (TC) in which the Tribunal said at paragraph 40:

“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. Unfortunately, none of the circumstances set out by the appellant, including the fact that the penalties are viewed as “crippling”, are either unusual or uncommon.

### *Fairness*

53. Like many others have done, it is argued for the appellant that the penalty regime is unfair.

54. We cannot be concerned with the penalty scheme as a whole but must confine ourselves to looking at the penalty at an individual level.

55. In circumstances in which the appellant has not submitted a return for the Property, we cannot find the penalties to be disproportionate when balanced against the objective of the relevant legislative provisions which is to ensure timeous returns.

56. In *HMRC v Hok* [2012] UKUT 363 (TCC) the Upper Tribunal reiterated that the First-tier Tribunal’s jurisdiction is limited to those functions conferred on it by statute. At paragraphs 56 to 58 of that decision the Upper Tribunal said:

“56. Once it is accepted, as for the reasons we have given it must be, that the First-tier Tribunal has only that jurisdiction which has been conferred on it by statute, and can go no further, it does not matter whether the Tribunal purports to exercise a judicial review function or instead claims to be applying common law principles; neither course is within its jurisdiction. As we explain at paras 36 and 43 above, the Act gave a restricted judicial review function to the Upper Tribunal, but limited the First-tier Tribunal’s jurisdiction to those functions conferred on it by statute. It is impossible to read the legislation in a way which extends its jurisdiction to include—whatever one chooses to call it—a power to override a statute or supervise HMRC’s conduct.

57. If that conclusion leaves ‘sound principles of the common law ... languishing outside the Tribunal room door’, as the judge rather colourfully put it, the remedy is not for the Tribunal to arrogate to itself a jurisdiction which Parliament has chosen not to confer on it. Parliament must be taken to have known, when passing the 2007 Act, of the difference between statutory, common law and judicial review jurisdictions. The

clear inference is that it intended to leave supervision of the conduct of HMRC and similar public bodies where it was, that is in the High Court, save to the limited extent it was conferred on this Tribunal.

58. It follows that in purporting to discharge the penalties on the ground that their imposition was unfair the Tribunal was acting in excess of jurisdiction, and its decision must be quashed. The appeal is allowed and we determine that all five of the penalties are due.”

57. That quotation was endorsed by this Tribunal in *Dr Goudie and Dr Sheldon v Revenue Scotland* [2018] FTTSC 3 at paragraph 67.

## **Conclusion**

58. For all these reasons we do not accept that the appellant has established either a reasonable excuse for the failure to file the 3 year LBTT Return or any special circumstances.

59. Accordingly, the appeal is dismissed and the penalties upheld.

60. 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.

**ANNE SCOTT**

**President**

**RELEASE DATE: 18 March 2025**

**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.
- (2) In subsection (1) "special circumstances" does not include—
  - (a) ability to pay, or
  - (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,
  - (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) 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**

(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.

(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)—

- (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
- (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.

**Final comments**

81. When considering a “reasonable excuse” defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer’s own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”

(4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.

82. 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 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.