

Tax Chamber
First-tier Tribunal for Scotland



[2025] FTSTC 5

Ref: FTS/TC/AP/24/0024

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

Norman Will Funeral Directors Limited

Appellant

- and -

Revenue Scotland

Respondent

**TRIBUNAL: ANNE SCOTT
CHARLOTTE BARBOUR**

The Tribunal determined the appeal on 24 April 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 27 September 2024 and Revenue Scotland's Statement of Case, and attachments, received by the Tribunal on 12 November 2024.

DECISION

Introduction

1. This is an appeal against a penalty assessment notice (“the Notice”) issued by Revenue Scotland to the appellant on 24 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 of the Revenue Scotland and Tax Powers Act 2014 (“RSTPA”) and (b) a £900 penalty for 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 was 26 July 2022. The 3 year LBTT Return was filed by the appellant on 18 September 2024 and tax of £163 was paid on the same date.
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 26 June 2019 the appellant entered into a 10 year lease for premises in Turriff (the “Property”). The initial LBTT return was submitted by the appellant’s solicitors on 27 June 2019 and the tax due amounting to £774 was paid on 28 June 2019.
6. That return was accepted by Revenue Scotland although, on the face of it, it was the wrong type of LBTT return as it refers to Additional Dwelling Supplement (“ADS”) and the sale of a main residence.
7. The only address given in the return for the appellant was its registered office and it remains the registered office. The appellant trades from the Property.
8. On 30 May 2022, Revenue Scotland issued a lease review reminder letter to the appellant at its registered office. That letter intimated that the appellant was required to make a further LBTT return by no later than 26 July 2022 and that that could be done online. It pointed out that payment of any additional tax must be made at the same time and that it was the appellant’s responsibility to submit the return and recalculate the tax. The letter furnished information about penalties for both late filing and late payment.
9. In the absence of submission of that return, on 24 June 2024, the Notice was issued to the appellant at its registered office. The Notice pointed out that the appellant was entitled to request a review of the decision if dissatisfied with it.
10. On 28 June 2024, the director of the appellant contacted Revenue Scotland stating that he had not been aware of the requirement to file a 3 year LBTT Return and Revenue Scotland offered advice.

11. On 6 July 2024, the director emailed Revenue Scotland referring to the Notice stating that:

(a) Neither he nor his solicitor had been aware of a requirement to send Revenue Scotland a copy of the lease agreement as a result of “new legislation” in 2022.

(b) He had “received a fine of £1000 for not returning the lease or responding to a request, which I never received”.

(c) He asked for further details.

12. Revenue Scotland treated that email as a request for a review and on 11 July 2024 they issued a letter setting out their View of the Matter. Unfortunately, that letter did not address the obvious misunderstanding about the purported requirement to send a copy of the lease. All the letter did was to acknowledge that the appellant had not been aware of the need to file a 3 year LBTT Return and had not received any communications from Revenue Scotland and then refer the appellant to their guidance on reasonable excuse and penalties. Revenue Scotland pointed out that the return had still not been received. The appellant was offered the opportunity to make further representations but there was no response.

13. On 12 September 2024, Revenue Scotland issued its Review Conclusion Letter upholding the penalties and finding that there was no reasonable excuse or basis for special circumstances reduction.

14. On 18 September 2024, the appellant submitted the 3 year LBTT Return and paid further tax of £163.

15. On 27 September 2024, the appellant submitted a Notice of Appeal to the Tribunal which was received on 30 September 2024.

The Legislation

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

17. 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).

18. 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.”

19. 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.

20. 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.

21. 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.”

22. 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

23. The Grounds of Appeal were that:

- (a) The letter of 30 May 2022 had never been received.
- (b) As he did not have the reminder letter, he did not have a reference number to complete the self-assessment.
- (c) The reminder letter had been sent to the registered office instead of the Property.
- (d) Had he received the penalty notice of £100 he would have investigated the matter promptly and submitted a return.

Overview of Revenue Scotland’s submissions

24. Revenue Scotland argue that:

- (a) This is a self-assessment tax and Revenue Scotland are under no obligation to send any reminders.
- (b) In terms of the legislation, Revenue Scotland can raise penalties within a two year period from the due date for filing so the Notice had been issued timeously.
- (c) 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

25. Revenue Scotland has the burden of proving that the penalties were properly imposed. As we have indicated Revenue Scotland has produced a copy of the original LBTT return and clearly there was a lease. The terms of the 3 year LBTT Return that was eventually filed and which has been produced indicate that the lease had not been either terminated or assigned at the relevant date.

26. It is not disputed that the 3 year LBTT Return 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.

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

28. 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.

29. 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. There was no disclosure in this case.

Reasonable excuse

30. 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. Those paragraphs read:

“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".

31. 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 for this appellant in these circumstances?, and

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

32. 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. In terms of the law, company directors have a duty to ensure that a company fulfills its obligations in terms of the law.

33. The appellant was represented so the director had quite properly taken legal advice, albeit the return that was lodged by the solicitor was the wrong one. It seems that the solicitor may not have told the appellant about the need to lodge a 3 year LBTT Return. If that was the case then that cannot amount to a reasonable excuse.

34. 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.”

35. 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.”

36. LBTT is a self-assessed tax. The suggestion that Revenue Scotland should have sent reminders or otherwise telling 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 apparently the appellant did not receive the reminder cannot amount to a reasonable excuse.

37. The appellant’s argument that a return could not be filed in the absence of a reminder because there was no reference number cannot amount to a reasonable excuse. The director could have contacted Revenue Scotland.

38. Furthermore, as can be seen from paragraph 12 above, the appellant was told on 11 July 2024 that the return had not been filed. At that point the director had all of the relevant information. The return was only eventually filed more than two months later.

39. 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.

40. For the reasons given, none of the arguments advanced by the appellant amount to a reasonable excuse.

Special Circumstances

41. 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”.

42. Unfortunately, none of the circumstances set out by the appellant are either unusual or uncommon.

Fairness

43. Although the appellant has not said in terms that he argues that the penalty regime is unfair, nevertheless that is implied in his arguments.

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

45. 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.

46. 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."

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

Conclusion

48. 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.

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

50. 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: 1 May 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.