Tax Chamber
First-tier Tribunal for Scotland

[2026] FTSTC 5

Ref: FTS/TC/AP/26/0010

Land and Buildings Transaction Tax – Termination of lease 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 – reasonable excuse but no special circumstances – appeal allowed

DECISION NOTICE

IN THE CASE OF

JUNE KELLY THOMSON

Appellant

- and -

Revenue Scotland

Respondent

TRIBUNAL: ANNE SCOTT
CHARLOTTE BARBOUR

The Tribunal determined the appeal on 27 August 2026 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 8 May 2026, Revenue Scotland's Statement of Case, and attachments, received by the Tribunal on 3 July 2026 and the copy of the Land and Building Transaction Tax return dated 29 June 2022 requested by the Tribunal.

DECISION

Introduction

1. This is an appeal against a Penalty Assessment Notice issued by Revenue Scotland to the Appellant under section 179 of the Revenue Scotland and Tax Powers Act 2014 ("RSTPA") on 15 January 2026 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") Termination Return timeously.

3. The lease was terminated on 30 June 2023 and the due date for filing the Termination Return in question was within 30 days of that date. However, it was only filed on 18 December 2025.

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 22 June 2022, the Appellant entered into a 10 year lease for a property in Ardrossan ("the Property"). The commencement date for the lease was 22 June 2022 with an expiry date of 30 June 2032.

6. On 29 June 2022, the landlord, stating that they were acting as agent for the Appellant submitted an LBTT return to Revenue Scotland. It was assessed that no LBTT was due.

7. The LBTT return provided details of the Appellant's home address, email and telephone contact details.

8. The LBTT return intimated that the effective date of the lease transaction for the Property was 22 June 2022.

9. Under the heading "Payment and submission" in the return, the landlord confirmed that:

(a) the agent (ie the landlord) had authority to act for the Appellant,

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

(c) that the tenant (ie the Appellant) had declared that, with the exception of the relevant date (which the agent certifies), the information is correct and complete, and

(d) "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.".

10. The lease had a "break clause" whereby on the giving of three months notice the lease could be terminated as at 30 June 2023. On 13 March 2023, the Appellant exercised that option and wrote to the landlord by recorded delivery giving three months notice of termination of the lease.

11. On 30 May 2025, Revenue Scotland issued a Lease Review Reminder letter relating to the Property to the Appellant's address given in the LBTT return but it was returned as undelivered. Having traced the Appellant's current address, it was issued again on 16 July 2025.

12. The Appellant contacted Revenue Scotland but unfortunately had various difficulties in filing the Termination Return which was ultimately successfully filed on 18 December 2025.

13. The penalties were issued on 15 January 2026.

14. On 1 February 2026 the Appellant emailed Revenue Scotland requesting a review on the basis that:

(a) The Property had been rented for the Appellant's first business venture.

(b) It had been unsuccessful and she had sustained losses.

(c) She had no awareness of LBTT although she now knew that the landlord had filed the LBTT return.

(d) No LBTT had ever been due and had she known that she was required to make LBTT returns she would have done so.

(e) £1,000 is a huge sum that she did not have and it was unfair that she should have to pay it.

15. She also stated that:

> "…as soon as I was made aware of this situation, I have been trying to deal with it. I had issues submitting the form I was advised to as some of the information given to me was incorrect, yet you still put a penalty charge on for that period also.".

16. On 2 March 2026, Revenue Scotland issued their View of the Matter letter which explained the law and asked the Appellant to provide any further information by 16 March 2026.

17. On 7 March 2026, the Appellant emailed Revenue Scotland reiterating that she genuinely had not known that she was required to file a Termination Return and would certainly have done so had she known. In those circumstances it was unfair to incur such a large penalty.

18. In particular she stated that:

(a) “I had no idea that a lease gets registered with LBTT and that when it gets terminated I then had a duty to inform you…”., and

(b) “All I knew at the time of trying to start a small business was, that I entered into a lease contract with the proprietor. I did not make the initial register of the lease to you…”.

19. On 15 April 2026, Revenue Scotland issued the Review Conclusion Letter and the outcome of the review was to uphold the penalties.

20. On 08 June 2026, the Appellant appealed to the Tribunal.

The Legislation

21. The requirement to file the Termination Return is found in paragraph 11, Schedule 19, LBTTA. The penalties arise in consequence of sections 159, 160 and 161 RSTPA. These provisions are not in dispute.

22. 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).

23. 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.”

24. 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.

25. 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.

26. 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."

Overview of the Appellant's submissions

27. The Appellant argues that:

(a) No correspondence or warning about the need for a Termination Return had been received.

(b) She had never previously owned any property that would have led her to be aware of LBTT and no LBTT had been payable in respect of the lease.

(c) She had never previously been in business and had attempted this business in a bid to be financially self sufficient since she was an unpaid carer for a family member.

(d) £1,000 is a lot of money for a small business which had only lost money; hence the early termination of the lease. It feels like an additional unfair burden.

(e) She believes that a penalty of £1,000 is excessive and would cause her financial difficulties; albeit she would be prepared to pay £100.

Overview of Revenue Scotland's submissions

28. Revenue Scotland argued 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.

(d) The Appellant was a business owner and "Beyond submitting the original lease return they did not make any enquiries nor take any proactive steps to understand their further obligations under LBTT".

(e) Revenue Scotland rely on *HMRC v Katib* [2019] UKUT 189 (TCC) ("Katib") for the proposition that if the Appellant believes that she was poorly advised or not advised then that cannot amount to a reasonable excuse.

Discussion

29. Revenue Scotland has the burden of proving that the penalties were properly imposed. Revenue Scotland has produced the LBTT returns and it is clear from the terms thereof that there was a lease.

30. The Termination Return was due to be filed by 30 July 2023 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. The delay between July and December 2025 had no impact on the penalties which were issued on 15 January 2026.

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

32. Therefore, the burden of proof now turns to the Appellant.

33. 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.

34. 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 Termination Return was filed late and, if so, whether there was a reasonable excuse for that failure or there were special circumstances.

35. 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

36. 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."

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

(a) whether the Appellant's lack of awareness of the need to file a Termination 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.

38. Obviously, Revenue Scotland were under no obligation to "warn" the Appellant that a Termination Return was required because, in the absence of such a return, they could not, and did not, know that the lease had been terminated.

39. As can be seen from paragraph 9(d) above, the original LBTT return suggests that the Appellant did know about the requirement for such a return.

40. Indeed, at paragraph 30 of their Statement of Case, Revenue Scotland argued that:

"Whilst the Appellant disputes that they (sic) had any awareness that an LBTT return was required upon termination, that fact that a lease return was submitted indicates that the Appellant did have an awareness of the need to make a return or was professionally advised of the need to submit LBTT returns."

41. However, the reason that we asked Revenue Scotland to produce that return was because we wanted to know who had filed the return since (see paragraph 18(a) above) it was clear that the Appellant had not filed that return and was not professionally advised.

42. We accept that:

(a) The Appellant has no previous property or business experience, and

(b) since there was no LBTT payable the Appellant knew nothing about LBTT until contacted by Revenue Scotland in 2025.

43. The only documents that the Appellant had were the copy lease and her two sentence Notice of Termination (which was patently produced without professional advice).

44. The landlord is a well-known property and investment business in Scotland. Of course, it is the tenant's obligation to file the LBTT return when entering into a lease but it was obviously the landlord who registered the lease with Registers of Scotland and completed the LBTT return.

45. The Appellant was not separately advised.

46. As we have indicated, Revenue Scotland rely on *Katib,* which, 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."

47. Whilst we agree with that, we do not find that *Katib* applies in this case because the landlord was not the Appellant's adviser. We accept that the Appellant had not been aware of the original LBTT return.

48. For the reasons given, objectively considered, given that the Appellant knew nothing about LBTT and apparently she acted promptly once she was notified of the problem, in the unusual circumstances of this case, we find that the Appellant has established a reasonable excuse and that extends to the entirety of the penalties.

Special Circumstances

49. Having found that a reasonable excuse has been established, we have no need to consider special circumstances, However, for completeness, we address the issue. As we have indicated at paragraph 22(1) above, an inability to pay cannot amount to special circumstances.

50. 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".

51. Unfortunately, none of the circumstances set out by the Appellant, including the fact that the penalties are viewed as "harsh" or "excessive", are either unusual or uncommon.

Fairness

52. Like many others have done, it is argued for the Appellant that the penalty regime is unfair and had we not found that there was a reasonable excuse we would have had to address that. Again, for completeness, we do so.

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

54. In circumstances in which the Appellant has not submitted the Termination 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 that timeous returns are filed.

55. 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.
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> 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."

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

Conclusion

57. For the reasons discussed above, we do accept that the Appellant has established a reasonable excuse for the failure to file the Termination Return. There are no special circumstances.

58. Accordingly, the appeal is allowed and the penalties are cancelled.

59. 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:

03 September 2026

APPENDIX 1

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.

APPENDIX 2

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.