



Reference number: TT/APL/LBTT/2016/0004

THE TAX TRIBUNALS FOR SCOTLAND
FIRST-TIER TRIBUNAL

Land and Buildings Transaction Tax –LBTT- Penalty for late submission of LBTT return – whether penalty proportionate – yes – whether there was a reasonable excuse – no – Appeal refused.

WILLIAM G ANDERSON

Appellant

- and -

REVENUE SCOTLAND

Respondents

TRIBUNAL: W RUTHVEN GEMMELL WS
TRIBUNAL PRESIDENT

The Tribunal determined the appeal on 11 November 2016 without a hearing under the provisions of Rule 27 of the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 (default paper cases) having first read the Notice of Appeal dated 29 July 2016 (with enclosures) and Revenue Scotland's Statement of Case (with enclosures) acknowledged by the Tribunal on 12 September 2016.

DECISION

1. This is an appeal by William G Anderson ["WA"], of 3 Council House, Alcaig,
5 Dingwall, IV7 8HT against a penalty notice dated 18 May 2016 issued by Revenue
Scotland ["RS"] under sections 159 and 160 of the Revenue Scotland and Tax Powers
Act 2014 ["RSTPA"] for failure to make a Land and Buildings Transaction Tax
["LBTT"] return under section 29 of the Land and Buildings Transaction Tax
10 (Scotland) Act 2013 ("LBTTA") by the date on which the return was required. The
amount of the penalty, being a first penalty for the failure to make a return under
section 160(2) RSTPA, was for an amount of £100.

Legislation

15 2. See Appendix 1.

Cases Referred To

20 3. See Appendix 2.

Evidence and Findings of Fact

4. WA runs a small local high street business in Dingwall and in January 2016, as
an opportunity came up for a cheaper and better location on the same street, leased a
25 property at 2 High Street, Dingwall. The start date as specified in the lease was
1 January 2016 for a rental amount of £8760 per annum. The move happened quickly
and the paperwork followed behind. WA's accountants, Innes & Partners stated that
there was "some initial confusion" as to whether the lawyers or Innes & Partners, as
his accountants, would prepare the LBTT return but eventually the accountants took
30 it on.

5. In order to do so, further details from the lease were obtained from a document
signed by the landlord on 25 January 2016. The return when finally completed was
signed on 6 April 2016 and received by RS on 8 April 2016 stating that the effective
35 date of the transaction was 1 January 2016. Innes & Partners apologised by email
dated 14 April 2016, when explaining the circumstances that gave rise to the late
filing of the return.

40 6. The email said:

"Mr Anderson runs a small, only marginally profitable, local high-street
business, trying in good faith to comply with the new restrictions which he was
not aware of prior to entering into a new arrangement, and the lateness did not
cause any delay of revenue flowing to Revenue Scotland (as there was no LBTT

due), I do hope you will show grace to his cause and that Revenue Scotland will see fit not to charge a penalty to his Account.”

5 7. In terms of section 1(1) of LBTTA, LBTT is to be charged on land transactions and section 3 provides that a land transaction is the acquisition of a chargeable interest. A chargeable interest is defined as one which is not an exempt interest but one which includes “a real right or other interest in or over land in Scotland”. The lease entered into by WA related to the acquisition of a chargeable interest.

10 8. The acquisition of a chargeable interest includes the creation of an interest (section 6(1)(a) LBTTA), where the person becomes entitled to that interest on its creation (section 6(3)(a)). The buyer, in relation to land transaction, is the person who acquires the subject matter of the transaction (section 7(1)) and has given consideration for, or is a party to, the transaction (section 7(2)).

15 9. The buyer in a notifiable transaction has a duty to make a return (section 29(1) LBTTA) before the end of the period 30 days beginning with the day after the effective date of the transaction (section 29(3) LBTTA). The land transaction is notifiable unless it is excluded by section 30. The effective date of the transaction is, amongst other things, the date of the completion of the land transaction (section 20 63(1)(a) LBTTA).

10. WA’s lease was a notifiable transaction which was not excluded by section 30 LBTTA. Accordingly, the filing date for WA’s return was 31 January 2016 as 25 required by section 29(3) LBTTA and, accordingly, the return was submitted 68 days late.

11. As a result of WA’s failure to submit a return by the filing date, RS made enquiries of WA in order to ascertain the circumstances that gave rise to the failure to 30 submit the return on time and received an email dated 14 April 2016 which set out the circumstances noted at paragraphs 4 and 6 of this judgement.

12. On 18 May 2016 RS issued a penalty notice in the sum of £100 under sections 35 159 and 160 of RSTPA and on 10 June 2016 WA requested, by letter, received on 13 June 2016, a review of the penalty decision as provided for under sections 233(1)(g)(iv) and 234(1) of RSTPA.

13. A review was carried out by an officer of RS who had no previous involvement with the decision to impose the penalty. On 20 July 2016, RS upheld the decision to 40 apply the penalty. By Notice of Appeal dated 29 July 2016 WA appealed to the Tax Tribunals for Scotland including a request that WA did not wish to attend a hearing.

14. The appeal is based on the proportionality of the penalty and the reasonableness of the reliance WA placed on professional advisers.

RS's Submissions

15. RS say there is no dispute between the parties that the return was due and was submitted late. The effective date was on 1 January 2016 and consequently, the return was due for filing on 31 January 2016 and was received 68 days late on 8 April 2016.

16. Accordingly, a penalty of £100 was correctly applied under the relevant statutory provisions. RS submit there is no reasonable excuse or special circumstances applicable to WA's case which would warrant the waiving or reduction of that penalty.

17. RS say that WA's claims that a penalty of £100 is disproportionate and that he was not aware of the new law because it was, in WA's opinion, only published on the government website, are not relevant to the question of proportionality but instead are a plea to excuse WA's ignorance of the law. RS say the requirement to make a LBTT return had been in force for some time, (since 1 April 2015), and in any event it is no defence for any taxpayer to plead ignorance of the law as an excuse for failure to comply with it.

18. RS does not accept that WA's claim that he made reasonable efforts to comply with the law is relevant to the question of proportionality nor is it sufficient to qualify as a reasonable excuse.

19. RS say that the imposition of a £100 penalty in circumstances such as this could not "in any sense of the term, be described as disproportionate" and that any penalty could only be seen as disproportionate if it interfered with WA's rights under Article 1 of the First Protocol ("A1P1") to the European Convention for the Protection of Human Rights and Fundamental Freedoms. If it did, it could be considered as special circumstances under section 177 of RSTPA and on appeal a Tribunal could vary the decision in that regard given the powers of disposal and section 244 of RSTPA.

20. RS state that the objective pursued in applying the penalty is sufficiently important to justify a minor limitation to WA's fundamental right to his property under A1P 1. They referred to Lord Sumption's four stage criteria when assessing the question of proportionality, in the UK Supreme Court case at [20] in *Bank Mellat v HM Treasury* [2103] UKSC 39 ("Bank Mellat").

21. RS say "that good administration of the tax system relies on those who fall within it to comply with their legal obligations. The timeous submission of returns, even when no tax is payable, is a requirement of the tax system relating to LBTT. The objective of the penalty provisions is to promote compliance and deter non-compliance and it is clear that in order to achieve this objective, the Scottish Parliament intended for a fixed penalty of £100 to apply whether or not there was tax

to be paid. This is reflected in the architecture of the legislation which does not include a condition that tax must be payable before a penalty can be imposed.”

5 22. RS say that the imposition of a penalty in these circumstances is rationally connected to the objective of encouraging compliance with the statutory requirements of the tax regime. In order to do so, taxpayers must submit returns, on time, with any non-compliance being subject to the penalty regime. Without a penalty regime, making tax returns would effectively be optional in cases such as WA’s.

10 23. RS say that the imposition of what is a minor penalty is not the sort of interference with a person’s A1P1 rights which should be struck down simply because it is possible to conceive of a penalty regime that, for instance, impose lower levels of penalty. Parliament has decided that this level of penalty is appropriate in 15 the circumstances and it is not at such a level that could be said to be unreasonable. The design of the penalty regime as a whole indicates proportionality of that scheme as different types of non-compliant behaviour trigger different penalties such as, for example, fixed, daily and tax geared penalties.

20 24. RS say that the penalty regime for late returns, relevant in this case, is proportionate in that the amount levied, depending on the individual circumstances of the case, can be increased in correlation with the period of lateness of submitting returns, as set out in sections 159 to 164 RSTPA. The penalty applied to WA was the first (and least) penalty applicable in respect of his failure to comply with the 25 statutory requirements.

25 25. RS say that given the minor nature of the penalty in question, in all the circumstances, a fair balance has been struck between the rights of the individual and the interests of the community in running an efficient and effective tax regime. That 30 fair balance is further evidenced by the provisions of the penalty regime which allow for mitigation of penalties and individual circumstances. This represents a significant safeguard for those subject to the penalty regime and also strikes an appropriate balance between fairness to the individual and the interests of the community.

35 26. A penalty can be reduced or remitted entirely if there are special circumstances or a reasonable excuse which enable the penalty regime to accommodate particular exculpatory facts in any individual case.

40 27. RS refer to *National and Provincial Building Society v UK* (1988) 25 EHRR 127, a case before the European Court of Human Rights, as authority for the proposition that States have a wide margin of appreciation in relation to the creation and implementation of tax laws and that any interference [with an individual’s rights] must strike a “fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental

rights". The European Court of Human Rights continued that "when framing and implementing policies in the area of taxation, (the State) enjoys a wide margin of appreciation and the court (EHCR) will respect the legislature's assessment in respect of such matters unless it is devoid of reasonable foundation".

5

28. RS say that the legislation applicable in WA's circumstances is not devoid of reasonable foundation.

29. RS say that there is no definition within RSTPA of what constitutes a "reasonable excuse" for failure to make a return on time but section 178(3) states that there are certain matters that are not to constitute a reasonable excuse. These include at section 178(3)(b) "where P (the taxpayer) relies on any other person to do anything that is not a reasonable excuse unless P (the taxpayer) took reasonable care to avoid the failure".

15

30. RS say that it would generally consider that "reasonable excuse" is constituted where something unexpected or outside of the taxpayer's control happens that could not have been foreseen and which prevented them from meeting a tax obligation.

31. RS say that WA's submission that he is not ordinarily a LBTT taxpayer, as there was no sum due for him, is of no consequence as there was a legal obligation to file a return on time whether or not there is a requirement to pay tax.

32. RS say that whereas WA states that he "placed a reasonable reliance on professional advisers" and was "let down", they understand that WA did not engage a solicitor to act for him during the course of this transaction and that the landlord's solicitor (the landlord being the seller for the purposes of LBTT) raised the matter of the return with WA in late January 2016. As a result of this, WA requested that his accountant prepare the return for WA to sign and submit.

30

33. Consequently, RS say in terms of section 178 of RSTPA, a taxpayer cannot avoid a penalty for failure to carry out their obligations by reliance on a third party unless they show they took reasonable care in doing so and furthermore that WA failed to show he took such reasonable care. WA has not provided evidence as to when his accountant was instructed to prepare the return and whether, given the accountant's experience and area of practice, it was reasonable to rely on him to make the return. RS say that WA's accountant's statement that there was "initial confusion" as to who was to prepare the return further suggests a lack of care on WA's part.

35

34. RS say that WA has provided no evidence as to why the return was not submitted by the required time and the only evidence provided relates to him "chasing" his accountant on the progress of the return for the period from 30 March 2016 to 1 April 2016.

40

35. Whereas RS accept that the injury sustained by the accountant might constitute a reasonable excuse in other circumstances, this is not applicable here as the injury was at the beginning of February 2016, which is after the filing date of 31 January 2016. Although it may have contributed to the continued delay in the return being submitted, it was not the reason for missing the filing date.

36. RS say that the architecture of the penalty regime does not discriminate between individuals and businesses be they small, medium or large and applies to all taxpayers equally regardless of their composition. RS say that individual circumstances may be considered and that such mitigation is provided for in the legislation in terms of, for example, reasonable excuse.

37. RS say that having failed to establish grounds to warrant mitigation of the penalty, the appeal should be dismissed and the penalty notice of 18 May 2016 upheld.

WA's Submissions

38. WA considers that a fine of £100 is disproportionate for a nil return especially given the newness of the laws to which he felt subject and where he felt there was little information at the time to point a trader to the existence of such a law prior to the fact.

39. WA says that RS's response to his assertion that he was not aware in good time of his obligations seems "essentially to be 'you should have known better'" or to quote them specifically, "the information and associated legislation (is) available on (RS's) website. This information has been on the Internet since 1 April 2015". WA states that he "hopes and trusts that the Tribunal would agree that the publication on a government website is not a good basis for reasonable assumption that all affected persons will have been appropriately notified".

40. On the question of proportionality WA states that he made reasonable efforts to comply with tax law (and did, albeit belatedly) and that he is not an ordinary LBTT taxpayer as there was no sum due by him. He says that his return was "rather to confirm that I should not be noted as a taxpayer for this tax, and that penalising me for late submission of confirmation that I do not fall subject to this tax is heavy-handed and quite inappropriate".

41. WA does not accept RS's response that penalties are provided "to encourage compliance with tax law and to encourage taxpayers to meet their legal obligations" and says the rules are penalising small businesses like his.

42. WA states that he placed reasonable reliance on professional advisers and only learnt from "my lawyer" in late January of the need for an LBTT return. He expected

5 them, the lawyers, to take care of this for him, given that it concerned a property transaction. The lawyers wrote to his accountants on 11 February 2016 sending the lease for the preparation of the return, but unfortunately the accountant broke his leg on 6 February 2016 and was recovering in a foreign country at the time the letter was delivered.

10 43. WA did not find out about his injury and absence until early March and contacted his accountant's office a number of times during the intervening period, yet despite these unforeseeable circumstances, the return was submitted in early April 2016.

15 44. WA says that given his unfamiliarity with the new legal obligation, it seemed reasonable to have relied upon professional advisers and his efforts to correspond with and chase them constituted reasonable care to avoid the failure to meet the obligation. WA says "I trusted them to guide me through my legal obligations and was let down".

20 45. WA says that he does not believe the late filing penalty should have been applied for the reasons of proportionality and because of the reasonable care he took to avoid failure to meet legal obligations by relying on third-party professional advisers.

Decision

25 46. This is the first case to come before the Tax Tribunal for Scotland for decision and to raise in the Tribunal the interpretation of sections of the RSTPA and the LBTTA.

30 47. Having considered the submissions made by WA and by RS, I do not accept that a penalty of £100 for the late submission of a tax return is disproportionate. WA makes the, perhaps understandable, point that the matter is less relevant where no tax is payable but the whole intent of Parliament and the whole purpose of Revenue Scotland is to collect for the Scottish Government the correct amount of tax. This can only be calculated if they are informed of all relevant transactions and it may, indeed, be the case that RS disagree with a taxpayer's assessment of whether or not
35 tax, or the right amount of tax, is payable in circumstances where the issue is less clear than the one before the Tribunal.

40 48. The penalty levied on WA is, in terms of the legislation, the first penalty for failure to make a return and is set at £100. The penalty regime continues to increase the penalty where the failure to make the return increases by three months, six months and 12 months and accordingly looks at successive defaults and imposes higher penalties the longer the failure to make a return lasts. There is, accordingly, a hierarchy of seriousness of breaches.

49. I have considered the circumstances of WA's penalty in terms of the four criteria expounded by Lord Sumption in *Bank Mellat*, where he said, in considering questions of rationality and proportionality:

5

“Their effect can be sufficiently summarised for present purposes by saying that the question depends on an exacting analysis of the factual case advanced in defence of the measure in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objectives; (iii) whether a less intrusive measure could have been used, and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community”.

50. I consider for the reasons set out by RS that it is sufficiently important to have a penalty regime to encourage compliance with the statutory requirements of the tax regime and that objective justifies in this instance the limitations of fundamental rights and that such a regime is rationally connected to that objective. The level of a first penalty for failure to make a return within a period of less than three months at £100 does not constitute an intrusive measure and I agree with RS that is not unreasonable. I believe, in this instance, that a fair balance has been struck between the rights of the individual and the interests of the community. The penalty applied is not “devoid of a reasonable foundation” and does not create a disproportionate interference with WA's A1P1 rights. It is likely that without a penalty regime, making tax returns would, as RS indicate, risk becoming effectively optional.

51. In considering the issue of the amount of the penalty in circumstances where there is, as in this case, no tax payable, I prefer the arguments of RS. There is no condition in the legislation that tax must be payable before a return must be submitted and has already been stated, in order to assess whether or not tax is payable, Revenue Scotland require to be notified of relevant transactions.

52. Section 178(3) states that reliance on another person to do something is not a reasonable excuse unless the taxpayer took reasonable care to avoid the failure. I am not persuaded that WA took sufficient reasonable care to avoid the failure. “Reasonable excuse” is not defined within the RSTPA but it would not cover a lack of knowledge of the law.

53. LBTT was introduced in April 2015 and this transaction took place more than six months later. It is undoubtedly the case that the law is published in different ways and increasingly a great deal of information, rules, regulations and laws set down by the State, and in this case by the Scottish Government, are disseminated by publication on their or other websites.

54. It is a truism that ignorance of the law is not an excuse and it is not clear from the facts before me that the issue of making a return was completely unknown to WA as otherwise why would there have been any “initial confusion”?

5 55. The email dated 14 April 2016 by Peter McKenzie of Innes & Partners states clearly that “there had been some initial confusion as to whether the lawyers or ourselves, the accountants, would prepare this for him, but eventually we took it on.” What is not clear from that statement is that the “lawyers” were the lawyers, according to RS, for the landlords and not the lawyers for WA.

10

56. This statement by RS was made in their Statement of Case which was sent to WA on 13 September 2016 with an invitation to submit a formal response to the Tribunal by 12 October 2016. No response was received and accordingly no contradiction of this assertion by RS was received. In view of this, I understand the position to be that WA did not engage a solicitor when negotiating and entering into the lease of 2 High Street, Dingwall. Such a solicitor would have had a professional and direct obligation to advise WA of the need to make a LBTT return. Instead WA relied on his accountant and the solicitor, acting on the other side of the transaction, for the landlord to guide him through his legal obligations and both of whom he felt let him down. That lawyer was not in any real sense “my lawyer” as stated by WA in his Notice of Appeal; she or he was the landlord’s lawyer.

57. I do not consider that it shows sufficient reasonable care for WA to rely on the solicitors for the landlords (who were not the ones under an obligation to make WA’s LBTT return) to provide him with the correct legal advice. If he was relying on his accountant’s advice, it would have been reasonable for him to ascertain that he was familiar with this legislation and how to comply with it. In view of the “initial confusion” it seems likely that the accountant may have been aware of the need to make a return.

30

58. It is unfortunate that the delay was exacerbated by the injury sustained by the accountant in February 2016 but as RS say, this only contributed to the continuing delay in the return being submitted and was not the reason for missing the filing date, which in turn triggered the imposition of the penalty.

35

59. For the reasons given, the appeal is dismissed and the Penalty Notice dated 18 May 2016 is upheld.

60. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Section 34 RSTPA and Regulation 40 of the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015. The application must be received by this Tribunal within 30 days from the date this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the

First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

5

Ruthven Gemmell WS
TRIBUNAL PRESIDENT
RELEASE DATE: 16 November 2016

10 Amended pursuant to Rule 38 of the Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 on 29 November 2016.

Appendix 1

Legislation

5 REVENUE SCOTLAND AND TAX POWERS ACT 2014

Section 159 Penalty for failure to make returns

10 (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).

	<i>Tax to which return relates</i>	<i>Return</i>
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.

(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.

15 (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.

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

(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.

25 Section 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.

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

Section 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.

35 (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.

Section 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.

Section 233 Appealable decisions

- (1) The following decisions of Revenue Scotland are appealable decisions—
- (a) a decision under section 66 to make adjustments to counteract a tax advantage,
 - (b) a decision in relation to the registration of any person in relation to any taxable activity,
 - (c) a decision which affects whether a person is chargeable to tax,
 - (d) a decision which affects the amount of tax to which a person is chargeable,
 - (e) a decision which affects the amount of tax a person is required to pay,
 - (f) a decision which affects the date by which any amount by way of tax, penalty or interest must be paid,
 - (g) a decision in relation to a penalty under the following provisions—
 - (i) section 76,
 - (ii) section 112,
 - (iii) section 151,
 - (iv) Part 8,
 - (v) section 231,
 - (vi) paragraph 5 of schedule 3,
 - (h) subject to subsection (2), a decision in relation to the giving of an information notice or in relation to the use of any of the other investigatory powers in Part 7,
 - (i) subject to subsection (3), a decision in relation to the giving of a notice under section 228.

(2) See section 152 for decisions in relation to the giving of information notices that are not appealable or are appealable only on certain grounds and in certain circumstances.

5 (3) See section 229 for the grounds on which decisions in relation to the giving of notices under section 228 are appealable.

(4) The following decisions of Revenue Scotland are not appealable decisions—

(a) the giving of a notice under section 68,

(b) the making of a Revenue Scotland determination,

10 (c) a decision to give a notice of enquiry under section 85 or paragraph 13 of schedule 3.

(5) The decisions mentioned in subsection (1) are appealable whether they are decisions under this Act or any other enactment.

(6) The Scottish Ministers may by order modify subsection (1) or (4) to—

(a) add a decision to either subsection,

15 (b) vary the description of a decision,

(c) remove a decision from either subsection

Section 234 Right to request review

20 (1) A person aggrieved by an appealable decision (the “appellant”) may request Revenue Scotland to review the decision.

(2) An appellant may not request review if subsection (3), (4) or (5) applies.

(3) This subsection applies where—

25 (a) the decision which the appellant seeks to review is a decision of Revenue Scotland to amend a self-assessment under section 87 while an enquiry is in progress, and

(b) the enquiry has not been completed.

(4) This subsection applies where—

30 (a) the appellant has given notice of appeal in relation to the same matter in question, or

(b) the tribunal has determined the matter in question under section 244.

(5) This subsection applies where the appellant has entered into a settlement agreement with Revenue Scotland in relation to the same matter in question and has not withdrawn from the agreement under section 246(4).

35 (6) This section does not prevent the matter in question from being dealt with in accordance with section 246(1) and (2) (settling matters in question by agreement).

Section 244. Disposal of appeal

40 (1) This section applies if notice of appeal is given under section 242.

(2) 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

45 (c) cancelled.

LAND AND BUILDINGS TRANSACTION TAX ACT 2013

Section 1 The tax

- 5 (1) A tax (to be known as land and buildings transaction tax) is to be charged on land transactions.
- (2) The tax is chargeable—
- (a) whether or not there is an instrument effecting the transaction,
 - (b) if there is such an instrument, whether or not it is executed in Scotland, and
 - 10 (c) whether or not any party to the transaction is present, or resident, in Scotland.
- (3) The Tax Authority is to be responsible for the collection and management of the tax.

Section 3 Land transaction

- 15 A land transaction is the acquisition of a chargeable interest.

Section 4 Chargeable interest

- 20 (1) A chargeable interest is an interest of a kind mentioned in subsection (2) which is not an exempt interest.
- (2) The interests are—
- (a) a real right or other interest in or over land in Scotland, or
 - (b) the benefit of an obligation, restriction or condition affecting the value of any
 - 25 such right or interest.
- (3) In subsection (2), “land in Scotland” does not include land below mean low water mark.

Section 6 Acquisition and disposal of chargeable interest

- 30 (1) Each of the following is an acquisition and a disposal of a chargeable interest—
- (a) the creation of the interest,
 - (b) the renunciation or release of the interest,
 - (c) the variation of the interest (but not the variation of a lease).
- 35 (2) The variation of a lease is treated as an acquisition and a disposal of a chargeable interest only where paragraph 29 of schedule 19 (reduction of rent or term or other variation of lease) applies.
- (3) A person acquires a chargeable interest where—
- (a) the person becomes entitled to the interest on its creation,
 - 40 (b) the person's interest or right is benefitted or enlarged by the renunciation or release of the interest, or
 - (c) the person benefits from the variation of the interest.
- (4) A person disposes of a chargeable interest where—
- (a) the person's interest or right becomes subject to the interest on its creation,
 - 45 (b) the person ceases to be entitled to the interest on its being renounced or released, or
 - (c) the person's interest or right is subject to or limited by the variation of the interest.

(5) Except as otherwise provided, this Act applies however the acquisition is effected, whether by act of the parties, by order of a court or other authority, by or under any enactment or by operation of law.

5 **Section 7 Buyer and seller**

(1) The buyer, in relation to a land transaction, is the person who acquires the subject-matter of the transaction.

10 (2) But a person is treated as the buyer only where that person has given consideration for, or is a party to, the transaction.

(3) The seller, in relation to a land transaction, is the person who disposes of the subject-matter of the transaction.

15 **Section 29 Duty to make return**

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

(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.

20 (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.

Section 63 Meaning of “effective date” of a transaction

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

(a) the date of completion, or

(b) such alternative date as the Scottish Ministers may prescribe by regulations.

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

(a) section 10(2) (substantial performance of contract without [F1completion]),

(b) section 11(4) (substantial performance of contract requiring conveyance to third party),

(c) section 12(4) (options and rights of pre-emption), and

35 (d) paragraph 25(2) of schedule 19 (agreement for lease substantially performed etc.).

Appendix 2

Cases Referred To

40

National and Provincial Building Society v. UK (1988) 25 E.H.R.R.

Bank Mellat v. HM Treasury [2013] UKSC 39