



Reference number: TT/APL/LBTT/2017/0002

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

**DECISION NOTICE**

**in the case of**

**MELANIE WATTS**

**Appellant**

**- and -**

**REVENUE SCOTLAND**

**Respondents**

**TRIBUNAL:** Kenneth Campbell QC Legal Member  
Julian Stafford Ordinary Member

The Tribunal determined the appeal on 28 April 2017 without a hearing under the provisions of Rule 27 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 (default paper cases) having first read the Notice of Appeal, and attachments, dated 22 December 2016 and Revenue Scotland's Statement of Case, with attachments acknowledged by the Tribunal on 27 February 2017.

## DECISION

### The appeal

1. This is an appeal by Melanie Watts, of 14 Hartridge Crescent, Jedburgh ("Ms Watts"), against two penalty notices dated 27 October 2016 issued by Revenue Scotland ("RS") under sections 159, 160 and 161 of the Revenue Scotland and Tax Powers Act 2014 ("RSTPA"). The first penalty notice was issued for failure to make a Land and Buildings Transaction Tax ("LBTT") return under section 29 of the Land and Buildings Transaction Tax (Scotland) Act 2013 ("LBTAA") by the date for which the return was required. The amount of penalty under this notice, being a first penalty for failure to make a return under section 160(2), was £100. The second penalty notice was issued in respect of continuing failure to make an LBTT return after three months from the penalty date. In terms of section 161(2) of RSTPA, the amount of penalty under this notice is £10 per day for up to 90 days, and was fixed at £790. The total of penalties which are the subject of this appeal is therefore £890.

### Factual background

2. The facts are in relatively short compass. Ms Watts entered into a contract to acquire land at 3 & 4 Timpendale Cottages, Jedburgh. The effective date for the purposes of LBTT was 8 January 2016. The filing date for the return was thus 7 February 2016. Ms Watts submitted a paper LBTT return which was signed on 18 July 2016, and received on 27 July 2016. The return was 171 days late. No LBTT was payable in respect of the transaction.

25 3. RS wrote to Ms Watts enquiring about the circumstances in which the return was made late. In a letter received by RS on 22 August 2016, she explained that this was "entirely due to my ignorance as I handled the purchase myself and thought that if no payment was due, I didn't need to inform anyone. I only discovered this was not the case when I tried to register the property and my application was returned to me with the rejection letter telling me the reason was the lack of an LBTT. I immediately filled one out and returned it along with my application to Registers of Scotland...".

35 4. RS issued the two penalty notices under appeal on 27 October 2016. Ms Watts wrote to RS by letter received on 18 November 2016 requesting a review of the penalty notices, and explaining that

40 "the reason it was delayed is because I didn't realise it was necessary. I handled the purchase myself due to not being able to afford a solicitor and although I did look into whether I was due to pay any tax on the purchase by using the calculator on your [RS's] website it seems I misinterpreted the following paragraph:

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'LBTT is a self-assessed tax and it is the responsibility of the taxpayer to complete and submit an accurate LBTT return, where required, and pay any tax due. The tax is charged regardless of whether there is a document setting out the terms of the transaction, whether any document was executed in Scotland and whether any party to the transaction was present or resident in Scotland at the effective date of the transaction'.

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I concluded that as I wasn't due to pay any tax this meant an LBTT return was not required, it only came to my attention when Registers of Scotland rejected my application stating the absence of one as the reason. As soon as I was informed I immediately filled one out and returned it...".

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5. RS reviewed the penalty notices, and, by decision letter dated 8 December 2016, upheld the decision to impose the penalties. Ms Watts thereafter made the present appeal.

### Legislation

6. The following provisions of LBTAA are relevant to this appeal: sections 1, 29, and 63. These are set out in Annex 1 .

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7. The following provisions of RSTPA are relevant to this appeal: sections 159-161, and 178. These too are set out in Annex 1 .

### Discussion and reasons for decision

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8. In her Notice of Appeal, Ms Watts gives her grounds of appeal in the following terms:

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"Its the amount of interest charged that I feel is excessive. I had handled the purchase myself and I knew that I was not due to pay any tax on it but I didn't realise that I still had to submit a form even though I didn't owe anything. I know ignorance is not an excuse and the initial £100 penalty is fair and had I been notified at that point I would have paid it immediately. However, I was not informed until October by which time I had been charged £10 PER DAY! Interest (*sic*). Considering this is based on the fact I didn't actually owe any money in the beginning I feel the charge is far too high; by law short term loan companies such as Wonga are not even allowed to charge this much! £890 for an initial bill of £0 is excessive from any point of view".

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9. Ms Watts goes on to state that the matter should have been dealt with in the following way:

"I think I should have been told as soon as the initial £100 penalty had been applied, allowing me to pay it straight away and avoid any interest. It almost feels like it was purposely left until the interest had accumulated".

10. In its Statement of Case in response, RS points out that there appears to be no dispute that an LBTT return was due, and that it was late. When a return was received, it was 171 days overdue. RS submits that on analysis of the statutory  
5 provisions, the penalties were correctly applied. RS further argues that the arguments contained in Ms Watts' correspondence with RS and in her grounds of appeal do not amount to a reasonable excuse, special circumstances or additional relevant information which would justify RS waiving or reducing the penalties.

10 11. In our view, the following questions arise in this appeal:

- (a) Was a return required, and, if so, was it late?
- (b) Did Ms Watts have a reasonable excuse for submitting the return late?
- (c) Was either penalty excessive?

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*Was a return required, and if so, was it late?*

12. It appears to be common ground that a return was required. In any event, in our view, the terms of section 29(1) LBTAA put the matter beyond dispute, and we  
20 hold that a return was required. Ms Watts has not said in terms that she accepts that the return was late, but there is nothing in her grounds of appeal to suggest that she does not accept that. In any event, in our view, section 29(3) LBTAA puts the matter beyond dispute, and we hold that the return was late.

25 *Did Ms Watts have a reasonable excuse for submitting the return late?*

13. Section 178 RSTPA provides that if a person satisfies RS, or, on appeal, this Tribunal, that there is a reasonable excuse for failing to submit a return, liability to a penalty does not arise. There is no comprehensive definition of reasonable excuse.  
30 However, section 178(3) specifies a number of circumstances which do not amount to a reasonable excuse. On the evidence before us, none of these provisions of section 178(3) is relevant, and the question of whether there is a reasonable excuse for Ms Watts's failure to make a return is therefore one for the Tribunal to consider in the whole circumstances of the case.

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14. In her initial correspondence with RS, Ms Watts said that she had not realised she was required to submit a return until Registers of Scotland rejected her application for registration because there was no details of the return with the application. In her review request in November 2016, Ms Watts says she  
40 "misinterpreted" part of RS's website. In her grounds of appeal, Ms Watts accepts that ignorance is not an excuse, but says that she was "not informed until October" about the second penalty. She goes on to say that she should have been "told as soon as the initial £100 penalty had been applied, allowing me to pay it straight away and avoid any interest. It almost feels like it was purposely left until the interest had

“accumulated”. In our view, Ms Watts correctly accepts that ignorance is not an excuse. That is a well-established general principle in the law, captured in the old legal Latin maxim *ignorantia iuris neminem excusat* (“ignorance of the law excuses no-one”). Further, in this case, Ms Watts directed her attention to the correct part of the RS website, and its terms which she quotes in the correspondence set out in paragraph 4 above are reasonably clear, particularly when seen in the context of the webpage as a whole. These circumstances do not amount to a reasonable excuse.

15. Nor, in our view, is there a sound argument that RS ought in some way to have notified Ms Watts of a penalty at or prior to the time of submission of a return. The position is that in any transaction (not only this one), until a return is submitted, RS will have no knowledge of a transaction. That is why there is an obligation imposed on the buyer by section 29(1) LBTTA to submit a return. It follows that the absence of some form of notification by RS does not amount to a reasonable excuse. Once the return was submitted, it was reasonable for RS to enquire why it was late, but the return was more than three months late by the time it was submitted, so that the further period of time between July and October made no difference to the making of the penalty notices, and also does not amount to a reasonable excuse.

20 *Was either penalty excessive?*

16. In her grounds of appeal Ms Watts both accepts that the penalty of £100 was “fair” and challenges the whole amount of the penalty notified. We therefore deal with the amounts in both penalty notices. We begin by noting that although Ms Watts describes the sum of £790 in the second penalty notice as interest, properly analysed it is not interest, but a daily penalty amount of £10. That is clear from section 161(2) RSTPA. It is possible for RS to levy interest in addition in terms of RSTPA, section 218. There is no notice doing so in this case, though we note that RS has indicated this possibility in correspondence to Ms Watts. So the sums in both notices are penalties.

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17. The fixed penalty of £100 for failing to make an LBTT return on the filing date is specified by statute, namely section 160(2) RSTPA. Ms Watts has not advanced any reason why that amount is excessive, and indeed at one point in her grounds of appeal appears to accept that it was reasonable. In our view, the good administration of the tax system requires all who fall within it to comply with their obligations, including obligations simply to make returns even though no tax is payable. That is one of the purposes of section 29(1) LBTA. In our view, a penalty of £100 for failure to comply with that obligation cannot be described as excessive, particularly where the Scottish Parliament has so provided in recent primary legislation.

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18. Turning to the second penalty notice, that for £790, being the cumulative total of daily penalties of £10 in terms of section 161(2) RSTPA. In her grounds of appeal, Ms Watts (correctly) notes that short-term consumer lending is regulated, and she asserts that rates equivalent to the £10 per day found in section 161(2) would not be

permitted. There was no evidence about that before us, but in any event whether or not that is correct is not to the point. The daily penalty is prescribed by the Scottish Parliament in primary legislation, namely section 161(2) RSTPA. While Parliament may well limit sums payable in certain circumstances, that is no barrier to it making provision about sums payable in other, completely different, circumstances.

19. Ms Watts correctly points out that there was no tax due on this transaction. In its written statement of case RS referred us to an earlier decision of this Tribunal: *William Anderson v Revenue Scotland* [2016] TTFT 1. That case concerned an appeal against a penalty under section 160(2) RSTPA, in other words the same provision as the first penalty notice in this appeal. There was an argument that because there was no tax due, the penalty was disproportionate. The Tribunal rejected that argument for a number of reasons:

- 15 (i) that the purpose of the LBTAA and RSTPA was for RS to collect the tax due and it could only do so if the correct information was provided, whether or not tax came to be due (paragraph 47);  
10 (ii) there was a hierarchy of penalties depending on the delay in compliance (paragraph 48);  
20 (iii) there was no provision in the legislation which indicated that tax must be paid before a return was to be submitted (paragraph 51).

20. We consider that the same analysis is equally applicable in relation to a penalty under section 161(2). The argument about purpose is identical, and we agree that there is no indication in the legislation that a return is required only where tax is due: section 29 LBTAA is clear, in our view. As to hierarchy of penalty, that also remains a sound conclusion, and in this case the matter is simply being viewed from the next rung up. Therefore the fact that there is no tax payable in this case in our view does not make the imposition of a daily penalty in terms of section 161(2) RSTPA excessive.

21. Having insufficient funds, which was Ms Watts' reason for not using a solicitor and something which she referred to in her review request in November 2016, is not a reasonable excuse in terms of section 178(3) RSTPA for non-payment (and this is an appeal about non-submission rather than non-payment). Nor, without more, in our view, does it make the penalty of £790 excessive.

## **Conclusion**

22. For all of these reasons, we refuse the appeal.

40 23. Although we have refused the appeal, we remind RS of its power under section 177 RSTPA to reduce penalties in the circumstances there set out and in particular section 177(5). It seems to us that the legislative existence of the power to impose daily penalties is intended to improve compliance. It is not evident that the

power to impose a daily penalty will necessarily achieve that perfectly appropriate goal where a buyer genuinely believes that he or she is not required to make a return, however wrong that belief actually is. We say no more than that.

- 5      24. This document contains full findings 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 46 Tribunals (Scotland) Act 2014 and Rule 38 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017. The application must be received by this Tribunal within 30 days from the date this decision is sent to  
10     that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal for Scotland Tax Chamber".

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**Kenneth Campbell QC  
TRIBUNAL LEGAL MEMBER  
RELEASE DATE: 24 May 2017**

## **Annex 1 - applicable legislation**

### Provisions of LBTAA relevant to this appeal:

5      Section 1

#### The tax

(1) A tax (to be known as land and buildings transaction tax) is to be charged on land transactions.

(2) The tax is chargeable—

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- (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
- (c) whether or not any party to the transaction is present, or resident, in Scotland.

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#### Section 29

##### Duty to make return

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

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

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

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#### Section 63

##### Meaning of “effective date” of a transaction

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

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

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### Provisions of RSTPA relevant to this appeal:

35      Section 159:

(1) A penalty is payable by a person (“P”) where P fails to make a tax return specified 35 in the table below on or before the filing date (see section 82).

	<b>Tax to which return relates</b>	<b>Return</b>
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.
- 5     (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.
- 10    (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.

Section 160:

- 15    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.
- (2) P is liable to a penalty under this section of £100.
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Section 161:

Land and buildings transaction tax: 3 month penalty for failure to make return

- 25    (1) P is liable to a penalty under this section if (and only if)—
- (a) P's failure continues after the end of the period of 3 months beginning with the penalty date,
- (b) Revenue Scotland decides that such a penalty should be payable, and

- (c) Revenue Scotland gives notice to P specifying the date from which the penalty is payable.
- 5       (2) The penalty under this section is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subsection (1)(c).
- 10      (3) The date specified in the notice under subsection (1)(c)—
  - (a) may be earlier than the date on which the notice is given, but
  - (b) may not be earlier than the end of the period mentioned in subsection (1)(a).

### 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.
- 15      (2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under sections 168 to 173 does not arise in relation to that failure.
- 20      (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
  - 25      (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.