



[2024] FTSTC 3

Ref: FTS/TC/AP/24/0010

***Land and Buildings Transaction Tax – Sections 159, 160 and 161 of Revenue Scotland and Tax Powers Act 2014 – Procedural irregularity – the Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020 – is a section 161 notification required before an assessment can be made under section 179 RSTPA? – reasonable excuse or special circumstances for failure to make a return***

## **DECISION NOTICE**

IN THE CASE OF

**Indigo Sun Retail Ltd**

Appellant

- and -

**Revenue Scotland**

Respondent

**TRIBUNAL: PAUL F DOYLE**

**The Tribunal determined the appeal on 15 July 2024 without a hearing under the provisions of Rule 27 of The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 (Default Paper case) having first read**

- (i) The Appellant's emails dated 20 December 2023 & 3 April 2024,**
- (ii) The Notice of Appeal, and attachment, dated 16 April 2024,**
- (iii) Revenue Scotland's Statement of Case, with attachments dated 3 June 2024**

## DECISION

1. The Appellant is Indigo Sun Retail Limited, a company incorporated under the Companies Acts, with registered number SC124986 and having its registered office at 63 Glasgow Road, Stirling, Stirlingshire, FK7 0PA.
2. The Respondent is Revenue Scotland, a non-Ministerial Office established as a body corporate under section 2 of the Revenue Scotland and Tax Powers Act 2014 (“RSTPA”). The Respondent is responsible for the collection and management of Land and Buildings Transaction Tax (“LBTT”).
3. This is an appeal against a decision of the Respondent to issue penalties to the Appellant under sections 159, 160 and 161 RSTPA. The Respondent issued two separate Assessment Notices to the Appellant in letters dated 11 December 2023.

### Findings in Fact

4. On 9 May 2017, the Appellant entered into a 10-year lease for property at 134 Lothian Road, Edinburgh (“Property 1”). The lease start date was 23 March 2018, and it is due to expire on 23 March 2028. The Appellant submitted an initial LBTT return on 11 May 2017 (with reference RS2427668). The total amount of tax due was £2,279 which the appellant paid on the day they submitted the LBTT return.
5. On 11 May 2020, the Appellant entered into a 10-year lease for property at Unit 1B, Greenhills Shopping Centre, East Kilbride (“Property 2”). The lease start date was 26 April 2020, and it is due to expire on 25 April 2030. The Appellant submitted an initial LBTT return on 12 June 2020 (reference RS6165736XRFW). On the same day, the Appellant paid the total amount of tax due which was £937.
6. Paragraph 10(1)(a) of Schedule 19 LBTTA applies to each of the leases.
7. Under paragraph 10, the Appellant must make a further return to the Respondent if, on a review date, the lease has not been assigned or terminated. The return must be not later than 30 days, after the review date. The “review date” is defined in sub-paragraph (7) as the day falling on the third anniversary of the effective date of the transaction and on each subsequent third anniversary of that date.
8. The effective date of the original lease transaction for Property 1 was 9 May 2017. The Appellant’s first review date was 9 May 2020, and the return was due by 8 June 2020.
9. The Appellant has not filed a return for the first review for Property 1.
10. The Respondent did not issue any penalties for failure to make a return for the first review for Property 1 because the Respondent suspended all penalties during the Covid-19 pandemic. The suspension decision covered the period from 23 March to 30 November 2020.
11. When the suspension was lifted, the Respondent faced a backlog of cases. Under section 180 RSTPA, the Respondent had two years to penalise the Appellant. The Appellant was not penalised for failing to make a first review return for Property 1 because the

Respondent could not meet the time-bar.

12. The second review date for the lease of Property 1 was 9 May 2023 and the six year lease review return was due by 8 June 2023.

13. The effective date of the original lease transaction for Property 2 was 11 May 2020. The Appellant's first review date was 11 May 2023, and the return was due by 10 June 2023.

14. On 14 April 2023, the Respondent sent a lease review reminder letter for Property 1 to the Appellant's registered office, telling the Appellant that a lease review return for Property 1 was due by 8 June 2023.

15. On 21 April 2023, the Respondent sent a lease review reminder letter to the Appellant at Property 1 telling the Appellant that a lease review return was due by 8 June 2023 in respect of Property 1.

16. On 14 April 2023, the Respondent sent a lease review reminder letter for Property 2 to the Appellant's registered office, telling the Appellant that a lease review return for Property 2 was due by 10 June 2023.

17. On 21 April 2023, the Respondent sent a lease review reminder letter to the Appellant at Property 2.

18. The reminder letters explained that the Appellant must submit a lease review return to the Respondent every three years, even if nothing has changed and no tax was due. The letters also advised that if the return was late, the Appellant may be charged a £100 late filing penalty and that returns more than three months late would be charged at £10 per day for up to 90 days (ie up to a maximum of £900).

19. On 11 December 2023, the Respondent issued a Penalty Assessment Notice to the Appellant's registered office in respect of Property 1. The Notice contained two penalties:

- (i) A £100 penalty for a failure to submit a return on time under sections 159 and 160 of the RSTPA.
- (ii) A £900 penalty for failing to submit a return after three months under sections 159 and 161 RSTPA.

The second penalty was a daily rate penalty of £10 for 90 days.

20. On 11 December 2023, the Respondent issued a Penalty Assessment Notice to the Appellant for Property 2, addressed to the Appellant's registered office. That Notice contained two penalties:

- (i) A penalty of £100 for a failure to submit a return on time under sections 159 and 160 of the RSTPA.
- (ii) A penalty of £900 for a failure to submit a return after three months under sections 159 and 161 RSTPA.

The second penalty was calculated at a daily rate of £10 for 90 days.

21. On 19 December 2023, the Appellant submitted its 6-year lease review return for Property 1 (reference number RS6615662NWRV). Further tax of £113 was due and paid on 20 December 2023.

22. On 19 December 2023, the Appellant submitted a 3-year lease review return for Property 2 (reference number RS6615658GHJV). No further tax was payable.

23. On 20 December 2023, the Appellant emailed the Respondent to request a review of the penalties raised in relation to both Property 1 and Property 2. The Appellant said the three month penalties are unfair.

24. On 1 March 2024, the Respondent issued its Review Conclusion letters to the Appellant for both Property 1 and Property 2. The Respondent adhered to the original decisions to issue penalties.

25. On 17 April 2024, the Appellant appealed both penalties for both Property 1 and Property 2.

### **The Area of dispute**

26. The Appellant says:

(i) The £100 penalty should have been issued before the £900 penalty in each case and failure to do so was a breach of Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020 (SSI 2020/73). The Appellant argues that there must be a single notice for the initial penalty for failure to make a return.

(ii) The Appellant says there was procedural error which means that only the £100 penalties are due. The Appellant accepts that the £100 penalty is payable in each case, because the 3 year lease review returns were late.

(iii) If the £100 penalties for the initial failure to file the returns on time had been issued first, the Appellant would have realised that the returns were late and contacted its solicitor.

27. The Respondent says that the Appellant cannot establish a reasonable excuse for failure to make a return for the purposes of section 178 RSTPA, nor does the Appellant establish special circumstances which would justify a reduction in the amount of penalties due.

### **The Law**

28. The relevant law is contained in sections 159, 160 and 161 of RSTPA.

### **Analysis**

29. There is little dispute about the facts of the case. The Appellant's argument can be summarised as procedural irregularity. The Appellant says that he has been treated unfairly and if the Respondent had issued a £100 (a section 159 penalty) penalty for each property he would have had sufficient warning to submit returns and avoid the £900 (the section 160 penalties)

penalties.

30. The Appellant's agent submitted returns for both Property 1 and Property 2 on 19 December 2023. The returns were submitted over six months late. Both sections 159 and 160 apply. It is common ground that the Appellant is liable to pay a penalty of £100 for each case.

31. 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).

32. The Appellant's failure to submit returns continued beyond the 3-month section 161(1)(a) period. The Appellant is liable to a penalty of £10 per day for the period beginning with the day after the end of the section 161(1)(a) period. Liability to a further penalty of £900 (in each case) arises.

33. The Appellant says that daily penalties may only be charged if the Respondent has served a single Penalty Assessment Notice for the initial penalty, prior to the daily penalties.

34. Section 161(1)(b) and (c) of RSTPA were repealed by the Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020. The Appellant has misinterpreted the 2020 Regulations.

35. The 2020 Regulations 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 before an assessment can be made under section 179.

36. The only competent arguments left to the Appellant are (i) Reasonable excuse; and (ii) Special Circumstances.

#### *Reasonable Excuse*

37. Section 178 RSTPA provides that if a person satisfies the Respondent that there is a reasonable excuse for failing to submit a return, liability to a penalty does not arise.

38. The Appellant says lack of communication from the Respondent led to the Penalty Notices because the Appellant only became aware of the late filing on 19 December 2023, after receipt of the Penalty Assessment Notices dated 11 December 2023. The Appellant says that if they or their solicitor had been contacted by email or telephone, the returns would have been completed and submitted the same day.

39. On the facts as I find them to be, two reminder letters for each property were issued by the Respondent. The letters were addressed to both the individual properties and the Appellant's registered office.

40. LBTT is a self-assessed tax. The Respondent is not required to notify a taxpayer of their responsibility to submit a tax return. The Respondent issued two reminder letters in relation to each property, which the Appellant received. The Appellant does not have a reasonable

excuse for failing to submit the returns on time.

41. The Appellant mentions communication difficulties with their solicitor and a faulty server, but, section 178(3)(b) RSTPA stipulates that reliance on a third party cannot be a reasonable excuse unless the Appellant took reasonable care to avoid the failure. The Appellant does not produce sufficient reliable evidence of reasonable care to avoid the failure.

42. The Appellant does not establish reasonable excuse.

#### *Special Circumstances*

43. Section 177 RSPTA permits the Respondent to reduce a penalty if it thinks it is right to do so because of special circumstances.

44. The Respondent does not advance an argument that there are special circumstances which justify reduction of the penalties.

45. Special circumstances must be something uncommon and out of the ordinary (*Clarks of Hove Limited v Bakers Union* 1978 1 WLR 1207, page 1216). Would it be significantly unfair to the taxpayer to bear the whole penalty? (*Straid Farms v Revenue Scotland* [2017] FTSTC 2, paragraph 64).

46. There is no reliable material which would enable me to find that it is significantly unfair for the Appellant to pay the penalties imposed. There is no reliable evidence of an unfair result at an individual level. It is not pled that the Penalty Notices force an excessive burden on the Appellant.

#### **Decision**

47. The appeal is dismissed.

48. The Respondent's penalties (under sections 159, 160 and 161 RSTPA) issued in two separate Assessment Notices to the Appellant in letters dated 11 December 2023 are confirmed.

49. 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.

**PAUL F DOYLE**  
Legal Member

**RELEASE DATE: 16 July 2024**