



[2024] FTSTC 5

Ref: FTS/TC/AP/24/0009

Land and Buildings Transaction Tax - 3 year lease review tax return – penalties for late submission - Sections 159, 160 and 161 of Revenue Scotland and Tax Powers Act 2014 – Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020 – reasonable excuse or special circumstances for failure to make a return - no - appeal dismissed

DECISION NOTICE

IN THE CASE OF

Aberdeen Riding Club Limited

Appellant

- and -

Revenue Scotland

Respondent

**TRIBUNAL: KATRINA LUMSDAINE, Legal Member
ANNE SCOTT, President**

The hearing took place by WebEx video on Tuesday 1 October 2024.

Ms Sally McCarthy, for the Appellant

Ms Caitlin Hislop, Solicitor for Revenue Scotland

DECISION

Introduction

1. This is an appeal against a decision of the Respondent to issue penalties to the Appellant under sections 159, 160 and 161 of the Revenue Scotland and Tax Powers Act 2014 (“RSTPA”) on 11 December 2023 (the “Penalties”).
2. The Penalties were imposed for failure to make a Land and Buildings Transaction Tax (“LBTT”) 3 year lease review return (the “3 year LBTT Return”) timeously. The due date for lodging was 11 June 2023. The 3 year LBTT Return was lodged by the Appellant on 7 February 2024, which was in excess of 90 days late.
3. The Appellant expressed a preference that the hearing be conducted by video conference. The Respondent consented to this. The appeal hearing took place by video conference.
4. The appeal was lodged late. The Respondent’s review conclusion letter was dated 1 March 2024. The appeal was lodged on 3 April 2024. It ought to have been lodged within 30 days of the date of the review conclusion letter. The Appellant explained that the late lodging was due to late receipt of the review conclusion letter and delays over the Easter weekend. The Respondent confirmed in writing on 4 April 2024 that it had no objection to the appeal proceeding, although late. We therefore consented to the appeal proceeding.

The factual background

5. Whilst the parties had lodged a Statement of Agreed Facts which was slightly amended in the course of the hearing, we narrate here the key facts as found by the Tribunal.
6. On 12 May 2017, the Appellant entered into a lease for premises known as Nether Anguston Farm, Peterculter, Aberdeen, AB14 0PN. The Statement of Agreed Facts indicated that the lease was for 12 years. The parties confirmed at the hearing that the correct period of the lease was 22 years.
7. The Appellant’s solicitor submitted an LBTT return on 7 June 2017. The total amount of tax due was £5,444 and that was paid on the same day.

The Appellant’s first 3 year LBTT Return

8. On 27 April 2020, the Respondent generated a 3 year LBTT Return reminder letter by post addressed to the Appellant. The letter explained that the lease which had been subject to LBTT must be reviewed every three years from the effective date and a further return submitted to Revenue Scotland to reflect the actual rent paid. The letter advised that a further LBTT return must be completed by no later than 11 June 2020. The letter explained that if the further return was late, the Appellant would be liable for an initial penalty of £100, with possible additional penalties amounting to £900 if the return was more than three months late.
9. Caroline Nicol had provided a witness statement for the Respondent. In the Statement of Agreed Facts, that statement was accepted into evidence as her oral evidence. She was

not cross-examined. Ms Nicol stated in her witness statement that the letter of 27 April 2020 was issued by the Respondent to the Appellant. The Appellant, through its director, Ms Sally McCarthy, gave evidence that the Appellant did not receive this letter. We found Ms McCarthy to be an honest and reliable witness, making concessions where appropriate. We accept her evidence that the Appellant did not receive the letter of 27 April 2020.

10. The Appellant did not submit a first 3 year LBTT Return.

11. The Respondent did not issue a penalty for the failure to submit the first 3 year LBTT Return because the Respondent suspended all penalties during the Covid-19 pandemic. The suspension decision covered the period from 23 March to 30 November 2020.

12. There was no further correspondence from the Respondent to the Appellant in relation to this non return.

The Appellant's second 3 year LBTT Return

13. On 14 April 2023, the Respondent generated a 3 year LBTT Return review reminder letter by post addressed to Breedon Northern Ltd, Nether Anguston Farm, Peterculter, Aberdeen, AB13 0PN. The address should have read, Aberdeen Riding Club Limited, Nether Anguston Farm, Peterculter, Aberdeen, AB14 0PN. Ms McCarthy was clear that that letter had never been received by the Appellant and that, as she had told the Respondent in her email of 19 December 2023, "Breedon Northern Limited" was not a neighbour or a business known to her.

14. The Appellant did not submit a second 3 year LBTT Return by 11 June 2023.

15. On 11 December 2023, the Respondent issued a Penalty Assessment Notice to the Appellant. The Notice was addressed to Aberdeen Riding Club Limited, Nether Anguston Farm, Peterculter, Aberdeen, AB14 0PN. Ms McCarthy for the Appellant confirmed that the Appellant received the Penalty Assessment Notice.

16. The Penalty Assessment Notice contained the Penalties. The first penalty was for £100 for a failure to submit a return on time under sections 159 and 160 of the RSTPA. The second penalty was for £900 for a failure to submit a return after three months under sections 159 and 161 RSTPA. The second penalty had accrued at a daily rate of £10 for a period of 90 days.

17. The Appellant submitted its second 3 year LBTT Return on 7 February 2024. An additional amount of tax of £68 was due and paid.

Review of the Respondent's decision to issue the penalties

18. On 19 December 2023, the Appellant contacted the Respondent by email. The Appellant advised that previous correspondence had been sent to the wrong address. The Appellant further advised that it had no issue completing a 3 year LBTT Return now but had not previously been aware of the requirement due to the lack of correspondence. The Appellant requested a review of the Respondent's decision to issue the Penalties.

19. The Respondent replied later that day telling the Appellant to submit the 3 year LBTT Return, referred to the Revenue Scotland Guidance and explained how to file online.

20. On 21 December 2023, the Respondent contacted the Appellant by email. The Respondent advised that if the Appellant wished to communicate on the matter by email, it would need to provide a disclaimer confirming this. The Appellant chose not to sign the disclaimer as to do so would have been in conflict with its data policy.

21. On the same day the Appellant emailed the Respondent confirming that the appeal was on the basis that no correspondence had been received from the Respondent not least because the Respondent had inaccurate information on file including the Appellant's address. Ms McCarthy requested a review.

22. On 16 January 2024, the Appellant contacted the Respondent by email. The email advised that it had been trying for over a week to complete the 3 year LBTT Return online and was unsure whether it had been submitted that day. The Appellant asked the Respondent to confirm that the return had been submitted. The Appellant highlighted that the process had been very challenging and more difficult than it should be and highlighted a number of specific technical issues it had encountered.

23. On 17 January 2024, the Respondent issued a view of the matter by letter to the Appellant and sought further representations from the Appellant.

24. On 29 January 2024, the Appellant sent a further email to the Respondent. The email highlighted a number of matters that the Appellant considered to be relevant to the review and, in particular, as it states at paragraph 32 of the Statement of Agreed Facts:

“In the same email, the Appellant requested that the Respondent advise how an organisation is meant to be aware of the review process or that Revenue Scotland are ‘racking up such a substantial penalty’ if it does not notify people on its website when it initially submitted its LBTT return and makes an error in the organisations address resulting in no correspondence being received by that organisation”.

25. In their email in reply dated 29 January 2024, the Respondent stated amongst other things that:-

“This is an issue which is known to affect some of the older lease returns however we can only comment on each return on a case-by-case basis as there can be different fixes needed to correct the issue. Based on what you have described the Lease Improvement Team have advised us for you (sic) to submit the return with the incorrect value, as the system will not allow it to be overwritten in this instance, however it is something that we can amend from our side on your behalf.

For this we would either need a written letter or email requesting that we amend the new return, along with a copy of what the details should be ...”.

26. On 1 March 2024, the Respondent issued a Review Conclusion letter to the Appellant. The Respondent's conclusion was that the decision to charge the Penalties should be upheld. As it states at paragraph 34 of the Statement of Agreed Facts:

“The Respondent highlighted the following as relevant to the conclusion:

- The Respondent has guidance on the duty to make an LBTT return, which explains that it is the taxpayer’s responsibility to submit a return on time when there is a notifiable transaction. The Respondent also highlighted its guidance on notifiable lease transactions.
- The Respondent’s guidance and legislation explains what the taxpayer needs to know about LBTT transactions. It also includes varied examples to help taxpayers and agents with their transaction.
- The Respondent operates a support desk and provides a mailbox (sic) in which taxpayers can contact.
- The Respondent has guidance on “reasonable excuse” which explains that the Respondent not reminding a taxpayer to submit a return would not be viewed as a reasonable excuse.”

27. The Appellant lodged a Notice of Appeal with the Tribunal on 3 April 2024.

28. There is no dispute that the effective date for the original transaction was 12 May 2017 and therefore, since the lease had not been assigned or terminated, the second 3 year LBTT Return was due to be filed by no later than 11 June 2023. It was not.

29. There is no dispute that the second 3 year LBTT Return was filed on 7 February 2024, over 90 days after its due date.

The Law

30. The requirement to file the 3 year LBTT Return is found in the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTTA”) at paragraph 10, Schedule 19. This is not in dispute.

31. The Penalties arise in consequence of sections 159 and 160 RSTPA. This too is not in dispute.

32. Revenue Scotland have discharged their burden of proof in relation to the Penalties, as the second 3 year LBTT Return was not lodged timeously. Therefore the only issue is whether the facts amount to a special circumstance in terms of section 177 of RSTPA, or give rise to a reasonable excuse in terms of section 178 of RSTPA.

The Appellant’s Arguments

33. We are indebted to Ms McCarthy for the Appellant for her well-structured and clear arguments.

34. She argued that the Appellant is a microbusiness, operating on a not for profit basis. Any profit made is used to subsidise free sessions to make horses accessible to all and particularly the disadvantaged and young people.

35. She argued that the Appellant had a reasonable excuse for its failure to file the 3 year LBTT Return timeously.

36. Firstly, the Respondent had a flawed information and data system. She referred us to a number of factual inaccuracies on the Respondent's digital system. The incorrect address had been used in at least the reminder letter for the second 3 year LBTT review being the letter dated 14 April 2023. The effect of this was that it did not receive the reminder to submit the second 3 year LBTT Return. The taxpayer had no control over the Respondent's digital infrastructure. In addition, the Respondent conceded that there was an error in the Statement of Agreed Facts where the lease had been described as being for 12 years and not 22 years.

37. Secondly, the Appellant argued that it was difficult for a microbusiness to obtain information about the obligation to lodge a 3 year LBTT Return. Ms McCarthy submitted that there was no instruction given as part of the initial LBTT return. Fairly, Ms McCarthy conceded that there is information on the Respondent's website regarding the obligation to file a 3 year LBTT Return. However, she argued that this was hard to find and not easily accessible. She placed emphasis on the Respondent's failure to have provided the Appellant with notification that the 3 year LBTT Return was due.

38. She acknowledged that the Appellant had benefited from legal advice at the time of making the LBTT return in 2017. On being asked, she fairly conceded that she may have been advised verbally at that time of the need to file a 3 year LBTT Return. However she now had no recollection of this. In any event until the Penalties were received, the Appellant was not aware of the need to file a 3 year LBTT Return. Had she known she would have done so.

39. Thirdly, the Appellant's ability to submit the 3 year LBTT return was made more challenging by an inability to communicate in detail by email, due to the Respondent's requirement that the Appellant sign a disclaimer.

40. Ms McCarthy argued that these matters were outwith the Appellant's control and therefore amounted to a reasonable excuse for its failure to file the 3 year LBTT Return timeously.

41. It was also argued that the Respondent's review process had been less than robust.

42. Finally, Ms McCarthy's argued that the amount of the penalties were unfair for a microbusiness such as the Appellant, as they amounted to 40 free riding sessions which is a huge amount for a microbusiness working for the disadvantaged in society.

Respondent's Arguments

43. Revenue Scotland submitted that there is no dispute that the 3 year LBTT Return was submitted late. Therefore, the penalty was correctly applied. They did not consider that the Grounds of Appeal disclose any special circumstances or that the penalty should be waived as a result of a reasonable excuse.

44. They did not accept that there was a reasonable excuse for the failure to lodge the 3 year LBTT Return on time. They relied upon the case of *Anderson v Revenue Scotland* (“Anderson”)¹ for the proposition that ignorance of the law is no excuse. They also referred to the more recent case of *Gursoy v Revenue Scotland*² (“Gursoy”). They pointed out that LBTT is a self-assessed tax. Therefore the Respondent is not required to notify taxpayers of their responsibility to file tax returns.

45. They submitted that the Appellant’s arguments relating to the difficulties in submitting the return only arose after the Penalties had been issued. They therefore had no bearing on the Appellant’s ability to have submitted the 3 year LBTT Return on time.

46. They submitted that it was not claimed that there were any special circumstances as no special circumstances exist.

Discussion

Reasonable excuse

47. The Tribunal has looked at the penalty regime in a number of cases and, in particular, the penalty regime for 3 year LBTT Returns was considered in detail in *Ying Chun Kot v Revenue Scotland*³ (“Kot”).

48. We were not referred to *Kot* in the context of reasonable excuse. However, it is relevant as the Respondent relied upon the case of *Anderson* to establish that ignorance of the law cannot be an excuse. We do not accept this.

49. As the Tribunal made clear in *Kot*, developments in the law mean that ignorance of the law can be an excuse in certain circumstances. We set out the law on reasonable excuse at some length in *Kot* and adopt that reasoning here.

50. In *Gursoy*, the Appellant argued that it was Revenue Scotland’s obligation to send a reminder of the need to lodge a 3 year LBTT Return and a failure to do so amounted to a reasonable excuse. That argument was rejected by the Tribunal, which found at paragraph 35 that:

“LBTT is a self-assessed tax. The Respondent is not required to notify a taxpayer of their responsibility to submit a tax return. The Appellant does not have a reasonable excuse for failing to submit the returns on time.”

51. Although not binding upon us, we agree. Therefore, whilst there are circumstances in which ignorance of the law may be an excuse, the Appellant does not have a reasonable excuse simply due to the Respondent’s failure to send a reminder letter to the correct address.

¹ 2016 TTFT 1

² 2024 FTSTC 4

³ [2019] FTSTC 1

52. In any event, the Appellant was able to access information regarding the requirement to submit a 3 year LBTT Return. As we have indicated, Ms McCarthy fairly conceded that there was information on Revenue Scotland's website regarding the need to lodge a 3 year LBTT Return and that she may have been verbally advised by the solicitor in 2017 at the time of lodging the original LBTT return.

53. Undoubtedly, as can be seen from the Findings in Fact and, in particular, at paragraph 25 above, the Appellant faced technical difficulties. We have sympathy with any taxpayer being explicitly told, in relation to a self-assessed tax, to enter incorrect information. That is unfortunate and no doubt complicated matters for Ms McCarthy.

54. The difficulties faced by the Appellant regarding correspondence by email and the technical issues did not commence until after the 3 year LBTT Return was due to be lodged and after the Penalties were imposed. These issues cannot, therefore, amount to a reasonable excuse for the late lodging of the 3 year LBTT Return. The real issue is simply that the Appellant was not aware of the need for the returns and therefore took no action until the Penalties were received. Even if the technical issues would have been the same prior to the due date for lodging the 3 year LBTT Return, as Ms McCarthy argued, it cannot be an excuse, because there was no attempt to lodge a return at that point.

55. Ms McCarthy argued that the review process was less than robust. We can see why she said this, given the issues identified at paragraphs 25 and 53 above, as well as the incorrect address being used for the letter of 14 April 2023. She also argued that it was unfair that a microbusiness such as her own be asked to self assess, where they do not have time or resources to investigate.

56. Firstly, we are a creature of statute and have only the powers given to us by the Scottish Parliament and we can only apply the law. Secondly, we have no jurisdiction in relation to Revenue Scotland's internal systems; that is a matter for their complaints process. Lastly, we have no jurisdiction to consider whether or not the self-assessment provisions are fair or not. The Upper Tribunal in *HMRC v Hok*⁴ made it clear that the First-tier Tribunal cannot consider whether the law is fair or not.

57. Accordingly, for all these reasons, we find that the Appellant has not established a reasonable excuse for the failure to lodge the 3 year LBTT Return on time.

Special circumstances

58. The Tribunal in *Straid Farms Limited v Revenue Scotland*⁵ ("*Straid*") sets out the law on special circumstances at some length at paragraphs 58 onward. We adopt that reasoning.

59. We also agree with Judge Berner in *Dina Foods Limited v HMRC*⁶ where he stated at paragraph 20(3) and (4) as follows:-

⁴ [2012] UKUT 363 (TCC)

⁵ [2017] FTSTC 2

⁶ 2011 UKFTT 709 (TC)

“20...

- (1) Lack of awareness of the penalty regime is not capable of constituting a special circumstance ...
- (2) Any failure on the part of HMRC to issue warnings to defaulting taxpayers, whether in respect of the imposition of penalties ... is not of itself capable of amounting either to a reasonable excuse or special circumstances.”

60. We were given no evidence that the Penalties were not proportionate or that they amounted to an unfair result at an individual level in that they created an excessive burden on the Appellant. The loss of the equivalent of 40 riding lessons may well be significant for the individual Appellant, however as the Tribunal found in *Straid*, at paragraph 97, the test of what is unfair at an individual level would be if the penalties were “not merely harsh but plainly unfair”. That is a high threshold and is not met in this case.

61. For the reasons there set out, with which we agree, we find that there are no special circumstances in this appeal.

Conclusion

62. We accept the Respondent’s view of the matter. We dismiss the appeal and confirm the Penalties of £100 and £900.

63. 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.

KATRINA LUMSDAINE
Legal Member

Previous release date: 24 October 2024

Amended pursuant to Rule 37 of the First-tier Tribunal for Scotland Tax Chamber
(Procedure) Regulations 2017

RELEASE DATE: 7 November 2024