

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

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[2024] FTSTC 8

Ref: FTS/TC/AP/24/0017

***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

**Calder Hairdressing Limited**

Appellant

- and -

**Revenue Scotland**

Respondent

**TRIBUNAL: KATRINA LUMSDAINE  
CHARLOTTE BARBOUR**

The Tribunal determined the appeal on 17 October 2024 without a hearing under the provisions of Rule 27 of The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 having first read the Notice of Appeal and attachments dated 3 July 2024, Revenue Scotland's Statement of Case and attachments received by the Tribunal on 19 August 2024 and the Appellant's response thereto dated 15 September 2024.

## 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 27 June 2024 (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 21 August 2022. The 3 year LBTT Return was lodged by the Appellant on 3 July 2024, which was in excess of 90 days late.

### The factual background

3. On 22 July 2019, the Appellant entered into a ten year lease for premises in Edinburgh (“the Property”).

4. On 19 August 2019, the Appellant’s solicitor submitted an LBTT return (the “Filing Date”).

5. On 20 June 2022, the Respondent generated a 3 year LBTT Return review reminder letter by post (“the Reminder Letter”). The Reminder Letter explained that the lease which had been subject to LBTT must be reviewed every three years from the effective date and a further 3 year LBTT Return submitted to Revenue Scotland to reflect the actual rent paid. The Reminder Letter advised that this return must be completed by no later than 21 August 2022. The Reminder Letter explained that if this 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. The Reminder Letter was addressed to a person other than the Appellant, at an address in Edinburgh which was a name and address unconnected to the Appellant. Unsurprisingly, the Appellant did not receive the Reminder Letter.

6. The Appellant did not submit a 3 year LBTT Return by 21 August 2022.

7. On 27 June 2024, the Respondent issued a Penalty Assessment Notice to the Appellant by post. The Notice was addressed to the Appellant at its correct address. The Penalty Assessment Notice was received by the Appellant.

8. The Penalty Assessment Notice contained two penalties (“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.

9. The Appellant submitted its 3 year LBTT Return on 3 July 2024. No additional tax was due.

10. The Appellant did not request a review by the Respondent of its decision.

11. The Appellant lodged a Notice of Appeal with the Tribunal on 3 July 2024.

12. There is no dispute that the effective date for the original transaction was 22 July 2019 (the “Effective Date”) and therefore, since the lease had not been assigned or terminated, the 3 year LBTT Return was due to be filed by no later than 21 August 2022. It was not.

13. There is no dispute that the 3 year LBTT Return was filed on 3 July 2024, but it was nearly two years after its due date.

## **The Law**

14. 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.

15. The Penalties arise in consequence of sections 159, 160 and 161 of RSTPA. This too is not in dispute.

16. The Respondent has discharged its burden of proof in relation to the Penalties, as the 3 year LBTT Return was undisputedly not lodged timeously. 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**

17. The Appellant acknowledged that it was unaware of the requirement to lodge a 3 year LBTT Return. It flows from this, that it was unaware of the timing for lodging this return or the potential penalties. It was for this reason that it did not lodge the 3 year LBTT Return timeously. The Appellant was not seeking to evade the payment of additional tax, as no additional tax was due.

18. The Appellant argued that had it known of the need to lodge the 3 year LBTT Return, it would have done so. This is evidenced by the fact that upon receipt of the Penalties, it lodged the 3 year LBTT Return in under a week.

19. The Appellant argued that it was not given a fair chance to lodge the 3 year LBTT Return on time. This was due to the Respondent failing to advise of the requirement. It argued that it was unfair that the Respondent managed to obtain the correct address from Companies House to issue the Penalties, but had failed to check the correct address when issuing the Reminder Letter. The result was that it did not receive any reminder of its obligations or notification of the potential for penalties from the Respondent until after the 3 year LBTT Return was due. The Reminder Letter which was issued was sent to a business entirely unconnected to the Appellant and was therefore not received by it.

20. Further, the Appellant was not given a fair chance to avoid the second penalty, which accrued at a daily rate of £10 for a period for 90 days. It argued that these penalties are intended to encourage timely submission of returns. It therefore questioned why the

Penalties were not issued until the full amount of £900 for the second penalty had accrued. Had it received an earlier notification, it would have lodged the 3 year LBTT Return earlier, thereby avoiding the second penalty. The Appellant considered it unfair that the Respondent waited until the full second penalty was due before issuing the Penalties.

21. Finally, the Appellant relied on the case of *Begbies Traynor v Revenue Scotland*<sup>1</sup> (“Begbies Traynor”) in support of the proposition that the Respondent required to issue warning letters prior to the imposition of daily penalties.

## **Respondent’s Arguments**

22. The Respondent submitted that there is no dispute that the 3 year LBTT Return was lodged late. Therefore, the Penalties were correctly applied. They did not consider that the Grounds of Appeal disclosed any special circumstances or that the Penalties should be waived as a result of a reasonable excuse.

23. They did not consider that there was a reasonable excuse for the failure to lodge the 3 year LBTT Return on time. They relied upon the case of *Watt v Revenue Scotland*<sup>2</sup> (“Watt”) and *Anderson v Revenue Scotland*<sup>3</sup> (“Anderson”) to establish that ignorance of the law is no excuse. They also referred to the more recent case of *Indigo Sun v Revenue Scotland*<sup>4</sup> (“Indigo Sun”) to support that the Respondent is not required to notify a taxpayer of their responsibility to submit a 3 year LBTT Return. 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.

24. They did not consider that the threshold for special circumstances was met, or that the Penalties were disproportionate. There was nothing uncommon and out of the ordinary which would be significantly unfair to the Appellant to bear the whole Penalties.

## **Discussion**

### *Reasonable excuse*

25. 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*<sup>5</sup> (“Kot”).

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

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<sup>1</sup> 2019 FTSTC 4

<sup>2</sup> 2017 FTSTC 1

<sup>3</sup> 2016 TTFT 1

<sup>4</sup> 2024 FTSTC 3

<sup>5</sup> [2019] FTSTC 1

27. As the Tribunal made clear in *Kot*, developments in the law since those cases mean that ignorance of the law can be an excuse in certain circumstances. The law on reasonable excuse was set out at some length in *Kot* and we adopt that reasoning here.

28. In *Indigo Sun* 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 40 that:

“LBTT is a self-assessed tax. The Respondent is not required to notify a taxpayer of their responsibility to submit a tax return.”

29. 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 reasonable excuse simply due to the Respondent's failure to send a reminder letter to the correct address.

30. As the Respondent was not obliged to send a reminder letter, nothing turns upon why the Reminder Letter was not correctly addressed. We therefore did not seek further information from the parties regarding why this occurred. However, we do find it surprising that the Respondent obtained the correct address to issue the Penalty Assessment Notice, but not the correct address to issue the Reminder Letter.

31. We also have some sympathy with the Appellant that the Penalties were not issued until August 2024. This was almost two years after the Reminder Letter was issued and over 90 days after the 3 year LBTT Return was due. Had the Penalties been issued sooner, the £900 penalty may have been reduced or avoided. However, as we have said, the Respondent is not required to notify the taxpayer of their responsibility to lodge a 3 year LBTT Return, or of the penalty regime.

32. As we are a creature of statute, we only have the powers given to us by the Scottish Parliament and we can only consider if the law has been applied properly. We have no jurisdiction to consider whether or not the self-assessment provisions are fair. The Upper Tribunal in *HMRC v Hok*<sup>6</sup> made it clear that the First-Tier Tribunal cannot consider whether the law is fair or not.

33. 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.

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<sup>6</sup> [2012] UKUT 363 (TCC)

### *Special circumstances*

34. The Tribunal in *Straid Farms Limited v Revenue Scotland*<sup>7</sup> sets out the law on special circumstances at some length at paragraphs 58 to 64. We adopt that reasoning.

35. We also agree with Judge Berner in *Dina Foods Limited v HMRC*<sup>8</sup> where he stated at paragraph 20(3) and (4) as follows:-

“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.”

36. We were given no evidence that the Penalties were not proportionate or that they amounted to an unfair result at an individual level for the Appellant.

37. For the reasons set out, we find that there are no special circumstances in this appeal.

38. The case of *Begbies Traynor* was concerned with the penalty regime in section 161 of RSTPA which was in force at the relevant time. That version of section 161 provided, at subsection 1(c) that a taxpayer was liable to a penalty only after Revenue Scotland had given notice to the taxpayer specifying the date from which the penalty was payable. However, that version of section 161 was repealed with effect from 11 March 2020. The current version in force of section 161 does not include subsection 1(c) and therefore does not require Revenue Scotland to give notice to the taxpayer specifying the date from which the penalty was payable. The Appellant’s obligation to lodge a 3 year LBTT Return arose after 11 March 2020. Therefore, it is the current version of section 161 of RSTPA which applies to this case.

39. The case of *Gursoy v Revenue Scotland*<sup>9</sup> considered this issue at paragraph 30, which found:

“The Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020 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.”

40. We agree.

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<sup>7</sup> [2017] FTSTC 2

<sup>8</sup> 2011 UKFTT 709 (TC)

<sup>9</sup> 2024 FTSCTC 4

41. Given that the case of *Begbies Traynor* was applying an older and quite different version of section 161 to the version relevant in this case, we find *Begbies Traynor* to be of no assistance.

## **Conclusion**

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

42. 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**

**RELEASE DATE: 22 November 2024**