

Tax Chamber
First-tier Tribunal for Scotland



[2024] FTSTC 4

Ref: FTS/TC/AP/24/0004

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 – reasonable excuse or special circumstances for failure to make a return

DECISION NOTICE

IN THE CASE OF

Mr Muharrem Gursoy

Appellant

- and -

Revenue Scotland

Respondent

TRIBUNAL: PAUL F DOYLE

An in-person hearing took place at George House, Edinburgh on Thursday 29 August 2024

The appellant in person

Ms C Hislop, Solicitor for Revenue Scotland

DECISION

1. The Appellant is Muharrem Gursoy who trades as Café Troy from 15 Jarnac Court, Dalkeith.
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 a Penalty Assessment Notice to the Appellant in a letter dated 15 November 2023.
4. The Appellant was present and unrepresented. The Respondent was represented by Ms C Hislop, solicitor. The Appellant discussed the factual background as set out between paragraphs 6 to 13 of the Respondent’s Statement of Case. He was not asked questions in cross-examination. The Respondent had two witnesses available. The Appellant read through their witness statements and said that he had no questions for either of those witnesses. I then heard both parties’ submissions.

Findings in Fact

5. The Appellant has been in business for approximately 30 years. Throughout his business career he has carefully paid his taxes on time. He has not previously received any penalties for late payment of tax. He was helped in his business by his late wife. Since she passed away, his son has helped him run the business.
6. On 31 May 2020, the Appellant entered into a 20-year lease for property at 15 Jarnac Court, Dalkeith. He submitted a LBTT return on 29 April 2020 and paid the LBTT due.
7. Paragraph 10(1)(a) of schedule 19 LBTTA applies to the lease.
8. 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 counting from the day after the review date. The “review date” is defined in subparagraph (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.
9. The effective date of the original lease transaction for the property was 31 March 2020. The Appellant’s first review date was 31 March 2023, and the return was due by 30 April 2023.
10. On 3 March 2023 the Respondent sent a lease review reminder letter to the Appellant at his home address. That letter told the Appellant that a tax return was due for the property by 30 April 2023. The reminder letter 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 letter 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).
11. The Appellant has no recollection of receiving that letter and thinks it might not have

been delivered to him.

12. On 28 March 2023, the Appellant phoned the Respondent and asked how to submit a paper three year lease review return (rather than submit an online form).

13. On 13 April 2023, the Appellant emailed the Respondent. He concluded his email by saying

“I have been instructed to send you a lease review every 3 years on the property...
...Has this been completed? Have you received a Lease review? This is my first time sending a lease review and I just want to clarify if it has been received.”

14. On 13 April 2023, the Respondent replied to the Appellant by email. Their email included an attachment which was a copy of the LBTT return filed by the Appellant on 29 April 2020.

15. On 15 November 2023, the Respondent issued a penalty assessment notice to the Appellant in respect of the property. The notice contained two penalties:

- (i) A £100 penalty for a failure to submit a return on time under sections 159 and 160 of 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.

16. On 8 December 2023, the Appellant’s agent submitted a three year lease review return for the property. No tax was payable.

17. On 28 November 2023, the Appellant emailed the Respondent to request a review of the penalties raised.

18. On 25 January 2024, the Respondent issued its review conclusion letter to the Appellant. The Respondent adhered to the original decision to issue penalties.

19. On 19 February 2024, the Appellant appealed the penalty assessment notice dated 15 November 2023.

The area of dispute

20. In his Notice of Appeal, the Appellant says:

“Revenue Scotland review decision dated 25/01/2024 states that their guidance at RSTP3022 - Reasonable excuse, states that Revenue Scotland not reminding us cannot be a reasonable excuse, I have informed that during the 28 years period of the lease it has become a practice to receive the application form for the return every three years until 30th April 2023.

As I had stated previously, I received no application form or any reminders for the forms to be completed. In response to this in their review they repeat their claim that a reminder letter was issued to the correspondence address at 9 Sandstone Crescent, Edinburgh, EH15 3FE.

No reminder was received, and I believe that following the chaos caused by the epidemic

no reminders or application forms were sent, and as a precedent was set we did not even think about inquiring about it.

I informed the Revenue Scotland that It could be the case that the post was not delivered to ourselves for reasons we cannot explain. We often receive mail that is addressed to other businesses.

Furthermore, despite having all my contact details including email address and telephone number no attempt was made to inform me about the delay of the form.

As I stated before in the daily grind of paperwork and administration in business it becomes a common practice to respond to repetitive application forms and reminders especially if it has been happening every three years for the last 28 years.

I therefore believe that the decision to treat the return as late and apply 3 month penalty for failure to make return (£900) is wrong and should be removed unless the Revenue Scotland can proof of delivery of the reminder.”

21. 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

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

Analysis

23. 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 reminder he would have made the lease review return on time.

24. The Appellant’s agent submitted a return for the Property on 8 December 2023. The return was submitted over seven months late. Both sections 159 and 160 apply.

25. The Appellant’s appeal proceeds almost entirely on an argument that the Respondent has a duty to send him a reminder before a lease review return is due. There are two problems with that argument:

- (i) It has no foundation in law.
- (ii) The Appellant had an email exchange with the Respondent in April 2023 about the return.

26. The email exchange between the Appellant and the Respondent pre-dates the lease review return date and discloses that the Appellant knew that a return was due.

27. The Appellant reacted with dignified surprise when the email exchange was put to him during the hearing. It was something he had no memory of. After reading the email exchange his expectations of success in this appeal clearly diminished.

28. 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).

29. The Appellant's failure to submit a return continued beyond the three 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.

30. 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.

31. The only competent arguments left to the Appellant are:

- (i) Reasonable excuse; and
- (ii) Special Circumstances.

Reasonable Excuse

32. 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.

33. The Appellant says lack of communication from the Respondent led to the penalty notices because the Appellant only became aware of the late filing in November 2023, after receipt of the penalty assessment notices. The Appellant says that if he or his solicitor had been contacted by email or telephone, the return would have been completed and submitted the same day.

34. On the facts as I find them to be, a reminder letter was issued by the Respondent.

35. 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.

36. 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.

37. The Appellant does not establish reasonable excuse.

Special circumstances

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

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

40. 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).

41. 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

42. The appeal is dismissed

43. The Respondent's penalties (under sections 159, 160 and 161 RSTPA) issued in an Assessment Notice to the Appellant on 15 November 2023 are confirmed.

Right of Appeal

44. 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: 17 September 2024