

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

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[2025] FTSTC 2

Ref: FTS/TC/AP/24/0030

***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 – no – appeal dismissed***

**DECISION NOTICE**

IN THE CASE OF

**SOUTH WEST PAINT SUPPLIES LIMITED**

Appellant

- and -

**Revenue Scotland**

Respondent

**TRIBUNAL: PAUL DOYLE  
KATRINA LUMSDAINE**

The Tribunal determined the appeal on 7 March 2025 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 7 November 2024 and Revenue Scotland's Statement of Case, and attachments, received by the Tribunal on 6 January 2025, and the appellant's response thereto dated 4 February 2025.

## DECISION

1. The Appellant is South West Paint Supplies Ltd, a company incorporated under the Companies Acts (registered number SC027369; and having its registered office at Crofthead Farm, Ryelands, Strathaven, Scotland, ML10 6QF.
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 Penalty Assessment Notices to the Appellant on 15 August 2024.
4. Both parties asked us to decide this appeal on the documentary evidence only.

### Findings in Fact

5. The Appellant is a company incorporated under the Companies Acts (registered number SC027369). Their registered office is at Crofthead Farm, Ryelands, Strathaven, Scotland, ML10 6QF.
6. On 9 January 2020, the Appellant entered into a 10-year lease for premises at 110 Glasgow Road, Rutherglen, Glasgow G73 1SU (“the Property”). The Appellant did not have legal representation in that transaction. They placed the Landlord’s solicitors in funds, and the Landlord’s solicitor submitted the LBTT return on 9 January 2020. £579.00 was due (and paid) on the transaction.
7. Paragraph 10(1)(a) of Schedule 19 of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTTA”) applies to the lease.
8. Under paragraph 10 of LBTTA, the Appellant must make a further return to the Respondent if, on a review date, the lease has not been assigned or terminated. The lease review return must be submitted not later than 30 days counting from the day 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.
9. The Appellant’s first three-year lease review return was due by 8 February 2023.
10. On 16 December 2022, the Respondent issued a three-year lease review return reminder letter to the Appellant at the correspondence address used in the LBTT return. The letter told the Appellant that a lease review return was due in relation to the Property not later than

8 February 2023. The 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 is due. The letter also said that if the return was late, the Appellant may be charged a £100 late filing penalty, and that returns more than three months late will be charged at £10 per day for up to 90 days (ie up to a maximum of £900). The Appellant claimed not to have received this letter, as it was addressed to their former solicitors' address, who are no longer in business. This was not disputed by the Respondent. We accept that this letter was not received by the Appellant.

11. On 19 December 2022, the Respondent issued a second lease reminder letter addressed to "the Occupier" of 110 Glasgow Road, Rutherglen, Glasgow, G73 1SU. This was the address of the Property. The letter contained the same information as the first lease reminder. The Appellant claimed not to have received this letter, as there is another occupier at the Property. This too was not disputed by the Respondent. We therefore accept that this letter too was not received by the Appellant.

12. On 15 August 2024, the Respondent issued a Penalty Assessment Notice to the Appellant, addressed to the Appellant's registered office as recorded at Companies' House. Before issuing the Penalty Assessment Notice the Respondent checked the Appellant's registered office at Companies' House. The Penalty Assessment Notice was sent to the appellant's registered office at Crofthead Farm, Ryellands, Strathaven, ML10 6QF. 15 August 2024 was the first time the Respondent wrote to the Appellant at that address.

13. On 20 August 2024 and 21 August 2024 there was correspondence between the Appellant and the Respondent. The Appellant did not know that a lease review return was due, and was perplexed by the Penalty Notice.

14. The Notice contained two penalties. The first penalty was for £100 for a failure to submit a return on time under sections 159 and 160 RSTPA ("the First Penalty"). The second penalty was for £900 for failure to submit a return after three months under sections 159 and 161 RSTPA ("the Second Penalty"). The Second Penalty had accrued at a daily rate of £10 for a period of 90 days.

15. The Appellant submitted the lease review return on 21 August 2024.

16. On 21 August 2024 the Appellant requested a review of the Respondent's decision to issue the Penalties. The ground for review was that the Appellant's lawyer no longer exists, and the Appellant was therefore unaware that the lease review return had to be submitted.

17. On 1 November 2024, the Respondent issued its Review Conclusion letter to the Appellant, which adhered to the decision to issue Penalty Notices.

18. On 7 November 2024, the Appellant appealed the Penalty Assessment Notices dated

15 August 2024.

### The area of dispute

19. The Appellant says that they did not receive any correspondence from the Respondent until the Penalty Notice was issued. It is common ground that the Respondent used the Appellant's registered office address for the first time when they issued the Penalty Notices. The two earlier letters, warning of the need to make a lease review return, were addressed to the address used by the Appellants in the original LBTT return and the correspondence address held on file by the Respondent. It is not in dispute that these letters were not received by the Appellant. The effect of the letters not being received is in dispute.

20. The Respondent says that the Appellant cannot establish a reasonable excuse for failure to make a lease review 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

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

### Analysis

22. There is little dispute about the facts of the case. The Appellant says there has been procedural irregularity. The Appellant says that they have been treated unfairly and if the Respondent had issued a correctly addressed reminder, they would have made the lease review return on time. The Appellant says the fine is disproportionate.

23. The Appellant submitted their first lease review return on 21 August 2023. It was due on 8 February 2023. The lease review return was 6 months and 13 days late.

24. Even though the Appellant used the address of a firm of solicitors (who now no longer trade) in Glasgow when they entered into the lease, they were not represented, and relied on their Landlord's solicitor to submit the LBTT return.

25. Because they entered into a commercial transaction without legal representation, it is possible that the Appellant was not given any advice about the continuing liability to submit a lease review return to the Respondent. The harsh truth is that even though they might not have been aware of their obligation to the Respondent, it still exists.

26. The Appellant's appeal proceeds almost entirely on an argument that the Respondent has a duty to send a correctly addressed reminder before a three-year lease review return

is due. The fundamental problem with that argument is that it has no foundation in law. The Respondent is not under any duty to send reminders about the need to send a three-year lease review return.

27. On the facts as we find them to be, the Respondent sent two reminders. One to the address the Appellant had provided as a correspondence address and one to the Property address. We accept that the Appellant did not receive those reminders. However, there is no obligation on the Respondent to send reminders. The obligation to submit the lease review return rests entirely with the Appellant.

28. Section 161 RSTPA provides that if a failure to make a three-year lease review 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. That is £900 in total.

30. The Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020 deals 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 August 2024, after receipt of the Penalty Assessment Notice. The Appellant says that if they had been contacted, the lease review return would have been completed and submitted on time. The Appellant says that they did not know a lease review return was due.

34. The Tribunal has looked at the penalty regime in a number of cases. In particular, the

penalty regime for three-year lease review returns was considered in detail in *Ying Chun Kot v Revenue Scotland 2019 FTSTC 1* (“Kot”).

35. In paragraph 41 the Tribunal in *Kot* held that “*In our view it matters not whether the appellant received the reminder issued by Revenue Scotland because Revenue Scotland is under no obligation to remind taxpayers about their obligations since this is a self-assessment system.*”

36. Although not binding upon us, we agree. LBTT is a self-assessed tax. The Respondent is not required to notify a taxpayer of their responsibility to submit a three-year lease review return. Therefore, the Appellant does not have a reasonable excuse simply due to the Respondent’s failure to send a reminder letter to the Appellant’s address at Companies House.

37. 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 did not produce sufficient reliable evidence of reasonable care to avoid the failure. The Appellant does not blame a third party. Their argument boils down to a lack of knowledge.

38. The Appellant does not establish reasonable excuse.

#### *Special circumstances*

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

40. The Appellant says that the Penalty Notices came as a shock because they did not know a three-year lease review return was due, that they acted promptly in August 2024, and they imply that they have been treated unfairly. Perhaps the Appellant’s argument is that the level of penalty is harsh and disproportionate. Perhaps the Appellant wants, at least, a reduction in the level of penalty.

41. Like reasonable excuse, special circumstances is not defined in RSTPA, but guidance is found in case-law.

42. In a House of Lords decision dealing with special circumstances in the Finance Act 1965, Lord Reid in *Crabtree v Hinchcliffe (Inspector of Taxes) 1971 3 All ER 967* said:

“Special must mean unusual or uncommon - perhaps the nearest word to it in this context is ‘abnormal’”.

43. The expression “special circumstances” was considered in relation to employment law in the decision of the Court of Appeal in *Clarks of Hove Limited v Bakers Union 1978 1 WLR 1207* in which Jeffrey Lane LJ said [at 1216]:

“What, then is meant by ‘special circumstances’? Here we come to the crux of the case ... In other words, to be special the event must be something out of the ordinary, something uncommon; and that is the meaning of the word ‘special’ in the context of this Act”.

44. More recently, the meaning of the expression “special circumstances”, in Schedule 24 Finance 25 Act 2007, was examined by the Tribunal in *Collis v HMRC* [2011] UKFTT 588 (TC) in which the Tribunal said [at 40]:

“To be a special circumstance the circumstance in question must operate on the particular individual, and not be a mere general circumstance that applies to many taxpayers by virtue of the schemes or provisions themselves”.

45. None of the circumstances set out by the Appellant are either unusual or uncommon.

46. Section 177(2)(a) of RTSPA provides that “special circumstances” do not include an inability to pay.

47. In *HMRC v Total Technology* 2012 UKUT 418 (TCC) the Upper Tribunal stated [at 74]:

“We turn then to the question whether proportionality is to be assessed at a high level, that is to say whether it is correct to view the default surcharge regime as a whole, recognising the possibility of its producing, in some cases, a disproportionate and possibly entirely unfair result; or whether proportionality is to be assessed at an individual level by asking whether the penalty imposed on a particular taxpayer on the particular facts of its case is disproportionate.”

48. The Upper Tribunal went on to say [at 76] that:

“Even if the structure of the surcharge regime is a rational response to the late filing of returns and the late payment of VAT, it is, nonetheless necessary to consider the effect of the regime on the particular case in hand. It is necessary to do so not least because ... a penalty must not be disproportionate to the gravity of the infringement ...”.

49. We are not concerned here with the penalty scheme as a whole but rather confine ourselves to looking at the penalty at an individual level.

50. In circumstances in which the Appellant submitted a three-year lease review return for the Property over six months late, we do not find the penalty to be disproportionate when judged against the objective of the relevant legislative provisions to ensure timeous returns.

51. We do not find the penalty imposed, in these circumstances, to be harsh and unfair nor an excessive burden.

52. More generally, it is well established that the Tribunal's jurisdiction and powers are only those that are given to it expressly by statute and that it does not have jurisdiction to consider issues of fairness in determining the matter in question.

53. Section 244(2) RSTPA provides that:-

“The Tribunal is to determine the matter in question and may conclude that Revenue Scotland's view of the matter in question is to be:-

- (a) Upheld,
- (b) Varied, or
- (c) Cancelled.”

54. In *HMRC v Hok* [2012] UKUT 363 (TCC) (“Hok”) the Upper Tribunal reiterated that the First-tier Tribunal's jurisdiction is limited to those functions conferred on it by statute. At [56-58] of that decision the Upper Tribunal said:

“56. Once it is accepted, as for the reasons we have given it must be, that the First-tier Tribunal has only that jurisdiction which has been conferred on it by statute, and can go no further, it does not matter whether the Tribunal purports to exercise a judicial review function or instead claims to be applying common law principles; neither course is within its jurisdiction. As we explain at paras 36 and 43 above, the Act gave a restricted judicial review function to the Upper Tribunal, but limited the First-tier Tribunal's jurisdiction to those functions conferred on it by statute. It is impossible to read the legislation in a way which extends its jurisdiction to include—whatever one chooses to call it—a power to override a statute or supervise HMRC's conduct.

57. If that conclusion leaves ‘sound principles of the common law ... languishing outside the Tribunal room door’, as the judge rather colourfully put it, the remedy is not for the Tribunal to arrogate to itself a jurisdiction which Parliament has chosen not to confer on it. Parliament must be taken to have known, when passing the 2007 Act, of the difference between statutory, common law and judicial review jurisdictions. The clear inference is that it intended to leave supervision of the conduct of HMRC and similar public bodies where it was, that is in the High Court, save to the limited extent it was conferred on this Tribunal.

58. It follows that in purporting to discharge the penalties on the ground that their imposition was unfair the Tribunal was acting in excess of jurisdiction, and its decision must be quashed. The appeal is allowed and we determine that all five of the penalties are due.”



55. In *Dr Goudie and Dr Sheldon v Revenue Scotland* [2018] FTTSC 3, the Tribunal, having quoted as above from the Upper Tribunal in *Hok* found [at 67] that “This Tribunal does not have jurisdiction to consider...fairness.”

56. On the facts as we find them to be, the Appellant does not have a reasonable excuse for failure to submit the three-year lease review return on time. On the facts as we find them to be, the Appellant cannot establish special circumstances which would merit a reduction in penalty.

57. The Penalty Notices are not disproportionate. There are no harsh or unjustifiable consequences flowing from the Penalty Notices. We do not have jurisdiction to consider whether the Appellant has been treated unfairly.

### Decision

58. The appeal is dismissed

59. The Respondent’s penalties (under sections 159, 160 and 161 RSTPA) issued in Assessment Notices to the Appellant on 15 August 2024 are confirmed.

### Right of Appeal

60. 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 DOYLE**  
Legal Member

**RELEASE DATE: 20 March 2025**