

LBTT Technical Bulletin 5

August 2019

This bulletin sets out Revenue Scotland’s view and provides an update on its approach to daily penalties following a recent decision of the Upper Tribunal for Scotland (UTS).

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1. LBTT Penalty Assessments

Background

On 4 July 2019, the Upper Tribunal for Scotland (UTS) published its decision on appeals by Revenue Scotland against two decisions of the Tax Chamber of the First-tier Tribunal for Scotland (the FTTS)ⁱ. The decisions concerned assessments to penalties made by Revenue Scotland due to the late filing of LBTT returns.

In both cases the LBTT return was filed more than six months after the filing date, incurring penalties totalling £1,000. This comprised an initial fixed penalty of £100 plus daily penalties of £10 per day for 90 days. The appeals to the FTTS and UTS related to the daily penalties totalling £900.

The UTS upheld the decision of the FTTS to cancel the daily penalties but for slightly different reasons.

In line with the decision of the FTTS, the UTS considered that Revenue Scotland had failed to provide evidence of its decision to charge the penalties as required under section 161(1)(b) of the Revenue Scotland and Tax Powers Act 2014 (RSTPA).

The UTS also considered the statutory provisions of sections 161(1)(c) and 179 RSTPA and the question of whether a single Penalty Assessment Notice may suffice as both a notice of liability (under section 161(1)(c)) and an assessment notice (under section 179) or whether two separate notices have to be issued. The UTS concluded that a single Penalty Assessment Notice was not sufficient and that two separate notices were required.

The UTS acknowledged that:

“...requiring Revenue Scotland to issue two separate notices, one under section 161(1)(c) and the other under section 179, will serve no useful function in the case of many LBTT penalties for late returns and, where it is unnecessary, would be potentially confusing for the taxpayer and could involve him or her in making an redundant, additional appeal.”ⁱⁱ

The UTS opined that Revenue Scotland need not give advance warning of the date from which daily penalties will be incurred before the 90 days start to elapse, and it confirmed that the date specified under section 161(1)(c) may be earlier than the date on which notice is given. Importantly, the Judge also confirmed that:

“...there is no reason to think (as the FTTS suggests at paragraphs 86 and 87 of its decision) that daily penalties are unworkable in the scheme of LBTT.”ⁱⁱⁱ

However, these cases have highlighted administrative issues in the interpretation and application of sections 161(1)(c) and 179 of the RSTPA, such that two notices may be required in future with the notice under section 161(1)(c) preceding the Penalty Assessment Notice issued under section 179.

The FTTS findings that the taxpayers in both cases did not have a reasonable excuse for filing late, no special circumstances existed to justify reducing the penalties and the penalties were not disproportionate were not the subject of the appeal to the UTS and were therefore not considered by it.

What type of penalties do these decisions relate to?

Penalties incurred under section 161 RSTPA 2014 for any LBTT return which was not received within 3 months of the filing date.

The initial fixed penalty of £100 and penalties for late payment of LBTT were not considered by the UTS.

Will Revenue Scotland be appealing the decision of the Upper Tier Tribunal?

Revenue Scotland has decided not to appeal these decisions.

Will Revenue Scotland be repaying penalties already issued?

Revenue Scotland will not repay daily penalties applied in previous late return cases because it considers those matters to have been finalised due to the fact that the penalty assessments have been paid without dispute or, for a small number, they have previously been upheld by decisions of the FTTS or UTS.

Revenue Scotland could, in many of these cases, issue fresh penalty assessments to taxpayers but to do so would be costly to the public purse, confusing for taxpayers and serve no useful purposes other than to set out an existing position that is not in dispute.

Will Revenue Scotland continue to charge daily penalties?

Yes. As noted, the UTS decisions confirm that, subject to the administrative process adopted, daily penalties can lawfully be charged. Revenue Scotland will continue to charge daily penalties for a failure to submit a return more than three months after the filing date but will review the administrative process for doing so.

Can I seek a review or late review by Revenue Scotland of a decision to charge a penalty that was taken prior to the UTS decision?

Revenue Scotland's guidance regarding requesting Reviews and Late Reviews can be found at [RSTP6006](#). Please note that, if you wish to give a late notice of review, we must agree to your request and will do so only if we are satisfied that:

- you have a reasonable excuse for not notifying us about your request before the time limit as described in the guidance; and
- you have made the request without unreasonable delay after the reasonable excuse ceased to apply.

Guidance on the types of factors that we might and might not consider to be a reasonable excuse can be found at [RSTP6009](#). Revenue Scotland does not consider the fact that the UTS decision was not available by the due date for the notice of review if itself to be a reasonable excuse for submitting a late review request. It would be a matter for you or your adviser to take a view on whether you have a reasonable excuse for submitting a late review request.

If Revenue Scotland does not agree to your request for a late notice of review, you can apply to the Tax Chamber of the FTTS to give its permission to your request.

Can I appeal or make a late appeal to the Tribunal regarding a penalty I have received prior to the UTS decision being published?

We have provided guidance on appeals against Revenue Scotland decisions (including late notice of appeal) at [RSTP6008](#). If Revenue Scotland does not agree to your request for a late notice of appeal, you can apply to the Tax Chamber of the FTTS to give its permission to your request. Please note that a request for a late notice of appeal must be considered by Revenue Scotland first. To agree to the request Revenue Scotland must be satisfied that:

- you have a reasonable excuse for not notifying us about your request before the time limit as described in the guidance; and
- you have made the request without unreasonable delay after the reasonable excuse ceased to apply.

Guidance on the types of factors that Revenue Scotland might and might not consider to be a reasonable excuse can be found at [RSTP6009](#). Revenue Scotland does not consider the fact that the UTS decision was not available by the due date for the notice of appeal of itself to be a reasonable excuse.

You can view guidance for applicants on the website of the Tax Chamber of the FTTS at www.taxtribunals.scot.

Contact Revenue Scotland

For LBTT queries please email : lbtt@revenue.scot

For general queries please call the Support Desk on 03000 200 310

www.revenue.scot

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Tax Chamber of the First Tier Tribunal for Scotland	Upper Tribunal for Scotland
Harrison & Ross	Revenue Scotland and Michael Robert Harrison & Sharon Ross
Bebbies Traynor	Revenue Scotland and Bebbies Traynor (Central) LLP

ii Harrison and Ross – Para 85 / Bebbies Traynor – Para 85

iii Harrison and Ross – Para 81 / Bebbies Traynor – Para 81