



TC04374

Appeal number: TC/2014/06649

ANNUAL TAX ON ENVELOPED DWELLINGS– penalties for late submission of tax returns - ignorance of law -no reasonable excuse- alleged unfairness and proportionality cannot be considered - appeal disallowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LUCAS PROPERTIES LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE BARBARA KING

The Tribunal determined the appeal on 9 April 2015 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 13 December 2014 (with additional page of Grounds for Appeal) , HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 12 February 2015

DECISION

The Issue

- 5 1. This appeal concerns fixed penalties amounting to £1300 for the late submission of a tax return due by 29 November 2013 and £100 for a tax return due by 30 April 2014.
2. The Annual Tax on Enveloped Dwellings (ATED) came into effect from 1 April 2013. It applies to high value residential property owned by companies,
10 partnerships with companies as members and collective investment schemes. ATED is due in respect of dwellings valued at over £2 million on 1 April 2012 (or on acquisition, if later) and details of these properties must be included on ATED returns
3. The first returns for the tax year 1 April 2013 to 31 March 2014 were due to be filed on 1 October 2013. Thereafter a return must be filed within 30 days of the
15 acquisition of a relevant property. For future tax years returns must be submitted by 30 April each year in respect of all relevant residential properties owned.
4. A large number of reliefs apply, but these reliefs must be claimed and a tax return must be completed to claim those reliefs.

The facts.

- 20 5. The appellant company (“Lucas”) acquired a property which was potentially subject to ATED on 29 November 2013. The first return for it was due within 30 days of acquisition ie by 29 December 2013 and the second return was due by 30 April 2014 for the tax year 1 April 2014 to 31 March 2015.
6. HMRC did not receive an ATED return from Lucas until 31 July 2014, by
25 which time the first return was over six months late and the second return was three months late.
7. Under schedule 55 of the Finance Act 2009 a tax payer is liable to a fixed penalty of £100 for failing to deliver a return by the filing date. A further penalty of £10 per day is due for each day that the failure continues during the period of 90 days
30 thereafter. If the failure continues after the end of six months then the penalty is the greater of ‘5% of any tax due’ or £300.
8. A penalty is not due if the tax payer can show that they had reasonable excuse for the failure.

The appellants arguments

- 35 9. Oliver Simars, accountants, on behalf of the appellant have submitted that
- (1) The appellant has reasonable excuse for his delay

(2) The penalty is unfair and should therefore be quashed

(3) The penalty is disproportionate as there is no tax due as the appellant was able to claim full relief.

10. In their 'Grounds for appeal' Oliver Simars refer to their earlier letters dated 1
5 September 2014 and 1 October 2014 in which they point out that Lucas have been
buying residential properties since 2009 and whilst they were aware of the need to pay
stamp duty they had never previously encountered nor had they been made aware of
ATED when purchasing properties. Their clients had remedied the failure as soon as
they became aware of it and had no intention to withhold information from HMRC.
10 They further contend that HMRC did not inform the appellant company of their duty
to file an ATED return before July 2014.

Discussion and Findings

11. . The appellant has the obligation of satisfying the Tribunal on a balance of
15 probabilities that the appellant has a reasonable excuse for not filing the returns on
time.

12. In considering a reasonable excuse the Tribunal examines the actions of the
appellant from the perspective of prudent tax payers exercising reasonable foresight
and due diligence and having regard for their responsibilities under the Tax Acts.

13. The Tribunal has limited jurisdiction in penalty appeals which reflects the
20 purpose of the legislation which is to ensure that persons file their returns and pay
their tax on time. The Tribunal has no power to reduce or mitigate the penalty. The
Tribunal can confirm the penalty or quash it if satisfied that the appellant had
reasonable excuse.

14. The only evidence put forward by Lucas as to why they were late is via the
25 letters of their accountants, Oliver Simars. They state that their client was unaware
that it was liable for ATED returns

15. Ignorance of the law does not by itself provide a reasonable excuse. There has
to be some other reason as to why the party was ignorant and an assessment as to why
that ignorance could be said to be reasonable. I find that the assertion that the
30 legislation is new and therefore one should be excused from knowing about it, is not
reasonable.

16. Lucas has been buying residential properties since June 2009. I would have
expected a company buying properties at this level to keep abreast of legislation
which affected their business. The responsibility for keeping themselves informed lies
35 with Lucas and not HMRC. There is no suggestion that Lucas were misled about the
need for an ATED return.

17. On a balance of probabilities I find that it has not been shown that Lucas have a
reasonable excuse.

18. Where no reasonable excuse is found, then the penalties must be applied in accordance with the law. The Tribunal has no power to substitute an amount other than the correct amount. The cases of *HMRC v Hok* [2012] UKUT 363 and *Bosher* [2013] UKUT 0579 (TCC) have held that it is not open to a first tier tribunal to adjust a penalty because it is felt to be unfair.

19. The question of proportionality, such as raised in the cases of *Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC) and *Trinity Mirror PLC* [2014] UKFTT 355 (TC) related to the question of penalties based on percentages of VAT. Proportionality is not a matter which can be considered in relation to United Kingdom fixed penalties for the late filing of tax returns. See *Hok*.

Decision

20. The appeal is dismissed and the penalties of £1,300 and £100 are confirmed

21. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**BARBARA KING
TRIBUNAL JUDGE**

RELEASE DATE: 27 April 2015