Neutral Citation: [2025] UKFTT 00600 (TC)

Case Number: TC09540

FIRST-TIER TRIBUNAL
TAX CHAMBER

Location: Decided on the papers

Appeal reference: TC/2024/06366

Penalties – Late filing of Annual Tax on Enveloped Dwellings Returns – Whether reasonable excuse or special circumstances – Appeal dismissed

Judgment date: 28 May 2025

Decided by:

TRIBUNAL JUDGE BROOKS

Between

CONCHRI INVESTMENTS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

As both parties consented and the Tribunal considered that it was able to determine the matter without a hearing, this appeal was determined on the papers without a hearing pursuant to Rule 29 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009

The Tribunal was provided with a Document Bundle (which included copes of the Notice of Appeal, Late Filing Penalty Notices and correspondence between the parties), the Respondents 'Statement of Reasons and an Authorities Bundle comprising 89, 39 and 166 pages respectively

DECISION

INTRODUCTION

1. Conchri Investments Limited (the "Company") appealed against penalties totalling £15,700 issued by HM Revenue and Customs ("HMRC") under Schedule 55 to the Finance Act 2009, for the late filing of Annual Tax on Enveloped Dwellings ("ATED") returns on the dates, and in the amounts, set out in the table at paragraph 35 below.

2. On 17 April 2025 the Tribunal released its decision dismissing the Company's appeal. However, the Company, in an email of 22 April 2025, notified the Tribunal that a relevant letter had unfortunately been omitted from the Document Bundle. A copy of that letter was also forwarded to the Tribunal, attached to an email from HMRC later on 22 April 2025.

3. Therefore, on 28 April 2025 the Tribunal wrote to the parties:

> "The recent emails from the parties following the release of the decision in this matter have been referred to Judge Brooks.
>
> It appears that he did not see the letter to which the Appellant refers in its email of 20 April in which it was *inter alia* stated:
>
> > "Finally, as the property value stands at £1,000.000.00 as at 05/04/2024. The returns from 2013/14 to 2015/16 do not meet the requirements to be outstanding as the value of the property was lower than £1 million and therefore lower than the threshold requirements for those tax years. These tax years should therefore have no penalties against them."
>
> He has therefore decided that the decision should be set aside (in accordance with Rule 38 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.
>
> He has also directed that:
>
> 1. Not later than 21 days after the date of this letter the Respondents shall provide their written representations to the Tribunal and Appellant in relation to the value of the property being £1 million as at 5 April 2024 and the effect of this valuation on the Appellant's liability to penalties for 2013-14 to 2015-16.
> 2. The Appellant may not later than 14 days after receipt provide the Tribunal and the Appellant with their written reply in response to the written representations of the Respondents.
> 3. No reminders will be issued and, in the absence of representations under the above directions, it will be assumed that the party concerned has not availed itself of the opportunity to make representations.
> 4. All correspondence with the Tribunal by one party must be copied to the other party.
>
> Shortly after the expiry of the time in which representations are due the Judge will consider re-issue[ing] the Decision having taken account of the representations received.

4. On 29 April 2025 the Company provided a current valuation of the property concerned that had been undertaken by Foxtons which was £1,050,000. The email to which that valuation was attached stated:

> "As the threshold for ATED in 2015 to 2016 was £1 million, it would be extremely unlikely for the property to have only increased in value by £50,000 from 2016 to date and therefore would object to the property being assumed at being above the threshold for this year. In regards to the 2013 to 2015 periods, the ATED threshold was £2 million and as noted it would be extremely unlikely the property had decreased in value by £950,000 to date to have achieved a £2 million property valuation in 2013 to 2015."

5. HMRC's responded to the Tribunal's letter with their written submissions on 8 May 2025 contending that the Company's assertion that the value of the property was below £1,000,000 as at 5 April 2024 (as per the omitted letter) is irrelevant to the ATED obligation as ATED valuations are determined on specific valuation dates. HMRC also contend that the Company has provided no evidence to support its assertion of the value of the property or any financial information to establish whether the threshold has been met.

LAW

ATED

6. ATED was introduced by the Finance Act 2013. It is charged on a non-natural person (eg a company), the "chargeable person", entitled to a "single dwelling interest" with a taxable value of more than £500,000 for the periods between 1 April 2016 and 31 March 2017 and each subsequent 12 month period thereafter (see s 94 Finance Act 2013). For the period 1 April 2014 to 31 March 2014 the value of the interest for a liability for ATED to arise was £2 million and was £1 million for the period from 1 April 2015 to 31 March 2016.

7. The taxable value is determined on a valuation date in accordance with s 102 Finance Act 2013. For years on or before 1 April 2022, 1 April 2012 and each 1 April falling five years or a multiple of five years from 1 April 2012 is the valuation date. For subsequent years it is the date of acquisition.

8. Section 108(2) Finance Act 2013 provides that a:

> … chargeable interest that is exclusively in or over land consisting (on any day) of a single dwelling is a single-dwelling interest (on that day).

9. For present purposes a "dwelling" is "a building or part of a building" which is "used or suitable for use as a single dwelling" or "is in the process of being constructed or adapted for such use" (see s 112(1) Finance Act 2013).

10. Where ATED is charged, a chargeable person is required by s 159 Finance Act 2013 to file an ATED return "by the end of the period of 30 days beginning with first day in the period on which the person is within the charge with respect to the interest."

11. Sections 133 – 150 Finance Act 2013 provide for relief from ATED. Under s 100 Finance Act 2013 a person may claim relief before the end of the chargeable period. However, s 100(2) Finance Act 2013 provides that all claims for relief must be made in an ATED return or an amendment to such a return. If a claim for relief reduces the charge to ATED to £nil, the claim may, under s 159A Finance Act 2013 which came into effect for chargeable periods beginning on or after 1 April 2015, be made in a "relief declaration return". A relief declaration return is subject to the same filing dates as an ATED return.

Penalties

12. Schedule 55 to the Finance Act 2009 contains provisions for the imposition of penalties for the failure to make tax returns (see s 106 Finance Act 2009). All subsequent references to paragraphs are, unless otherwise stated, references to the paragraphs of schedule 55 to Finance Act 2009.

13. In *Barry Edwards v HMRC* [2019] UKUT 131 (TCC) ("*Edwards*") at [84], the Upper Tribunal observed that the "aim" behind the schedule 55 penalty regime "is to penalise taxpayers who fail to comply with their obligations" and:

> "… to incentivise them to comply with future notifications that they must file a tax return (and pay any tax due) on time. In our view, a penalty regime which seeks to incentivise taxpayers to comply with a requirement to file a return is a legitimate aim, regardless of whether it is subsequently determined that any tax is due. …"

14. The Upper Tribunal continued, at [85], by confirming that there is a "reasonable relationship" of proportionality between this "legitimate aim" and the schedule 55 penalty regime which establishes:

> "… a fair balance between the public interest in ensuring that taxpayers file their returns on time and the financial burden that a taxpayer who does not comply with the statutory requirement will have to bear."

15. Turning then, to the provisions of schedule 55, paragraph 1 provides that a penalty is payable where there is a failure to make or deliver certain types of return. These are set out in a table in the paragraph and includes an ATED return as required by s 159 Finance Act 2013.

16. Paragraph 3 provides for an initial late payment penalty of £100 if an ATED return is submitted late.

17. Paragraph 4 provides for HMRC to issue £10 daily penalties for a period of 90 days from the date specified in a notice given by HMRC (which may be earlier than when the notice was given).

18. A further liability to a penalty of 5% of any tax due or £300 (whichever is greater) arises under paragraph 5 if the failure to make or deliver a return continues beyond six months.

19. If the failure continues beyond 12 months, a liability to a penalty of 5% of any tax due or £300 (whichever is greater) arises under paragraph 6.

20. However, paragraph 23 provides that if HMRC (or the Tribunal on appeal) are satisfied that there is a "reasonable excuse" for the failure to make a return, liability to a penalty "does not arise in relation to that failure".

21. The legislation does not define "reasonable excuse", which "is a matter to be considered in the light of all the circumstances of the particular case" (see *Rowland v HMRC* [2006] STC (SCD) 536 at [19]).

22. Paragraph 23 also provides that, unless it is attributable to events outside a taxpayer's control, an insufficiency of funds is not a reasonable excuse (see paragraph 23(2)(a)). Neither is reliance on another person to do anything a reasonable excuse unless the taxpayer took reasonable care to avoid the failure (see paragraph 23(2)(b)). Provided the failure is remedied without unreasonable delay after it has ended, the reasonable excuse will be treated as having continued until the failure is remedied (see paragraph 23(2)(c)).

23. A penalty may also be reduced by HMRC, under paragraph 16, because of the presence of "special circumstances". However, paragraph 16 specifically excludes the ability to pay, or the fact that a potential loss of tax from one taxpayer is balanced by the over-payment by another, from constituting special circumstances.

24. The Upper Tribunal in *Edwards*, cited the decision of the First-tier Tribunal (the "FTT") in *Advanced Scaffolding (Bristol) Limited v HMRC* [2018] UKFTT 0744 (TC) ("*Advanced Scaffolding*"). The FTT in *Advanced Scaffolding* had stated, at [101]-[102], that

the scope of "special circumstances" should not be given a "narrow meaning" and that "what matters is whether HMRC (or, where appropriate, the Tribunal) consider that the circumstances are sufficiently special that it is right to reduce the amount of the penalty".

25. The Upper Tribunal in *Edwards* agreed with the FTT in *Advanced Scaffolding* that "special circumstances" should not be narrowly construed and observed, at [74], that:

> "… As the FTT went on to say at [105], special circumstances may or may not operate on the person involved but what is key is whether the circumstance is relevant to the issue under consideration."

26. The Upper Tribunal in *Edwards* also confirmed, at [87], that the fact that no tax is ultimately found to be due cannot constitute a special circumstance to be taken into account by HMRC (and therefore the Tribunal on appeal) when considering the reduction of a penalty.

27. Paragraph 20 provides a right of appeal to the Tribunal against a decision of HMRC that a penalty is payable and/or the amount of any penalty.

28. On an appeal the Tribunal may, under paragraph 22, affirm or cancel HMRC's decision. If the appeal is against the amount of a penalty the Tribunal may substitute HMRC's decision with its own, provided it was within HMRC's power to make such a decision. However, the jurisdiction of the Tribunal in regard to special circumstances is limited to cases where HMRC's decision not to apply a reduction is "flawed" in a judicial review sense, eg where HMRC have taken an irrelevant matter into account or have failed to consider something relevant.

29. In *Christine Perrin v HMRC* [2018] UKUT 156 (TC) ("*Perrin*"), under the heading *The correct test for "reasonable excuse"*, the Upper Tribunal said:

> "69. Before any question of reasonable excuse comes into play, it is important to remember that the initial burden lies on HMRC to establish that events have occurred as a result of which a penalty is, prima facie, due. A mere assertion of the occurrence of the relevant events in a statement of case is not sufficient. Evidence is required and unless sufficient evidence is provided to prove the relevant facts on a balance of probabilities, the penalty must be cancelled without any question of "reasonable excuse" becoming relevant.
>
> 70. Assuming that hurdle to have been overcome by HMRC, the task facing the FTT when considering a reasonable excuse defence is to determine whether facts exist which, when judged objectively, amount to a reasonable excuse for the default and accordingly give rise to a valid defence. The burden of establishing the existence of those facts, on a balance of probabilities, lies on the taxpayer."

30. At [81 of *Perrin* the Upper Tribunal gave the following guidance to the Tribunal when considering a "reasonable excuse" defence, saying:

> "81. … the FTT can usefully approach matters in the following way:
>
> (1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).
>
> (2) Second, decide which of those facts are proven.

> (3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"
>
> (4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.

31. The Upper Tribunal continued by recognising that difficulties could arise if a taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It observed, at [82], that:

> "It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. …"

32. In *Neal v Customs and Excise Commissioners* [1988] STC 131 ("*Neal*") Simon Brown J, who dismissed an appeal by an appellant who had argued that she had a reasonable excuse for failing to register for VAT on the basis of her total ignorance of the law, observed, at 136, that:

> "It seems to me essential to recognise a distinction between on the one hand basic ignorance of the primary law governing value added tax including the liability to register and on the other hand ignorance of aspects of law which less directly impinge upon such liability."

33. Additionally, it is clear that the Tribunal does not have the jurisdiction and therefore cannot reduce or discharge a statutory penalty on the basis that it is unfair (see *HMRC v HOK Limited* [2012] UKUT 363 (TCC) ("*HOK*") at [56]-[58]).

FACTS

34. The Company, which at all material times had a single dwelling interest in a property in London (the "Property"), is a "chargeable person" for ATED purposes. It was therefore required to complete an ATED tax return for each period it held the single dwelling interest. These periods, the date by which the ATED was due, the date the return was actually filed and the number of days by which it was late are set out in the table below:

Period ending 31 March	ATED Return Filing Date	Date Return Filed	Days Late
2014	30/04/2013	30/01/2024	3,773
2015	30/04/2014	30/01/2024	3,408

2016	30/04/2015	30/01/2024	3,043
2017	30/04/2016	30/01/2024	2,678
2018	30/04/2017	30/01/2024	2,313
2019	30/04/2018	30/01/2024	1,948
2020	30/04/2019	30/01/2024	1,583
2021	30/04/2020	30/01/2024	1,218
2022	30/04/2021	30/01/2024	853
2023	30/04/2022	30/01/2024	488
2024	30/04/202	10/04/2024	193

35. As the ATED returns for the period ending 31 March 2014 to 31 March 2024 (inclusive) were late, HMRC issued the penalties under schedule 55 to the Finance Act 2009 on the dates and in the amounts set out in the table below:

Period ending 31 March	Date	Paragraph*	Description	£
2014	25/10/2024	4	Daily late filing penalty	900
2014	25/10/2024	5	6 month late filing penalty	300
2014	25/10/2024	6	12 month late filing penalty	300
2015	05/09/2024	3	Initial late filing penalty	100
2015	14/10/2024	4	Daily late filing penalty	900
2015	14/10/2024	5	6 month late filing penalty	300
2015	14/10/2024	6	12 month late filing penalty	300
2016	25/10/2024	3	Initial late filing penalty	100
2016	25/10/2024	4	Daily late filing penalty	900
2016	25/10/2024	5	6 month late filing penalty	300
2016	25/10/2024	6	12 month late filing penalty	300
2017	05/09/2024	3	Initial late filing penalty	100
2017	14/10/2024	4	Daily late filing penalty	900
2017	14/10/2024	5	6 month late filing penalty	300
2017	14/10/2024	6	12 month late filing penalty	300
2018	05/09/2024	3	Initial late filing penalty	100
2018	14/10/2024	4	Daily late filing penalty	900
2018	14/10/2024	5	6 month late filing penalty	300
2018	14/10/2024	6	12 month late filing penalty	300
2019	05/09/2024	3	Initial late filing penalty	100

2019	14/10/2024	4	Daily late filing penalty	900
2019	14/10/2024	5	6 month late filing penalty	300
2019	14/10/2024	6	12 month late filing penalty	300
2020	05/09/2024	3	Initial late filing penalty	100
2020	14/10/2024	4	Daily late filing penalty	900
2020	14/10/2024	5	6 month late filing penalty	300
2020	14/10/2024	6	12 month late filing penalty	300
2021	05/09/2024	3	Initial late filing penalty	100
2021	14/10/2024	4	Daily late filing penalty	900
2021	14/10/2024	5	6 month late filing penalty	300
2021	14/10/2024	6	12 month late filing penalty	300
2022	26/09/2024	3	Initial late filing penalty	100
2023	05/09/2024	3	Initial late filing penalty	100
2023	14/10/2024	4	Daily late filing penalty	900
2023	14/10/2024	5	6 month late filing penalty	300
2023	14/10/2024	6	12 month late filing penalty	300
2024	05/09/2024	3	Initial late filing penalty	100
2024	14/10/2024	4	Daily late filing penalty	900
2024	14/10/2024	5	6 month late filing penalty	300
		TOTAL		**£15,700**
* paragraph of schedule 55 Finance Act 2009 under which the penalty was charged				

36. On 23 September 2024, the Company appealed to HMRC against the late filing penalties that had been issued by then. The letter referred to the fact that the Company had filed its self-assessment tax returns and paid its taxes on time. The letter also stated that the Company had filed its CT600 for 2021-22 and that HMRC "would have known from the filed accounts that the property was used solely on a commercial basis, clearly showing its Rental income which entitles it to the Rental Relief [from ATED under s 133 FA 2013]." The letter continued:

> "During the eleven year period, there has never been any communication from the Inland Revenue about the late filing of the ATED Returns and that the Company would incur penalties. This would have alerted the Directors or the Accountants of the Company of the need to file its ATED Returns, which is the normal procedure with Companies House and the Inland Revenue regarding filing Self Assessments or the CT6000 Return."

37. HMRC responded by letter of 15 October 2024 upholding the penalties. Enclosed with HMRC's letter was a leaflet explaining that if the Company disagreed with HMRC's decision it could, within 30 days, either request a review or appeal to the Tribunal.

38. Although the Company wrote to the Tribunal on 11 November 2024 and its letter has been treated as a Notice of Appeal, it would appear that the letter is actually a request to HMRC for a review. This is apparent from the first paragraph of the letter, which states:

> "Following your letter dated 15 October 2024 we are writing to request a reconsideration of the decision to deny the penalty appeals for the above named company for the following years: 2013/14, 2014/15, 2015/16, 2016/17, 2017/18, 2018/19, 2019/20, 2020/21, 2021/22, 2022/23 and 2023/24 tax year."

39. That letter explained that due to its complexity the "overseas entity", the Company, was required to file self-assessment tax returns from 2013-14 to 2020-21. These were always filed and tax paid on time. From 2021-22 Companies House requested that it register as an overseas company and file CT600s. These were filed and paid on time in 2021-22 and 2022-23. It was, the letter explains, only when Companies House requested the entity be registered as a company that ATED was considered applicable. The letter continues:

> "Furthermore, the directors of the above named company were not advised by the two previous accountants(one acting from 2013/14 to 20/21 and the other 2021/22 to 22/23), which both did not consider a return was due, due to the nature of the entity and the payment of taxes via income tax between 2013/14 to 2020/2021, the latter two years being via corporation tax. It wasn't until the company was a registered entity in the UK, that the ATED was considered, once it was understood the returns were required, all were filed promptly and without delay.
>
> In addition, the penalties levied against the Company are very high especially considering there was no tax due on any of the ATED returns filed. It would be our request that a reduction in fines based on the fact the company has had no tax due on the ATED returns for any of the years mentioned and as stated, all previous SA700 & CT600 filings required were completed and paid within the deadlines.
>
> We therefore request the above is considered in the reduction or removal of the penalties in question."

40. On 9 December 2024, the Company sent the above letter to HMRC to confirm an appeal had been made to the Tribunal.

41. HMRC, however (and perhaps not surprisingly given its first paragraph) treated the Company's letter as a request for a review. On 24 January 2025 HMRC issued a letter with its conclusion of the review which had been undertaken. This was to uphold the penalties.

42. Although the Tribunal listed a video hearing to determine the appeal the Company objected as it did not wish to incur the costs of being represented. On 25 March 2025, in response to Tribunal Directions, HMRC, which had provided its statement of reasons to the Tribunal and the Company on 19 February 2025, consented to the matter under appeal being decided on the papers. On 3 April 2025 the Company also confirmed that it consented to the appeal being determined on the papers without a hearing, adding that it had, "no further submissions to the Tribunal in this case".

DISCUSSION AND CONCLUSION

43. It is not disputed that the due dates for filing an ATED return, the dates on which the returns were actually filed by the Company and the days by which the returns were late, are as set out in the table at paragraph 34, above. It is also not disputed that the Company was issued with penalties issued under schedule 55 to the Finance Act 2009 on the dates and in the amounts set out in the table at paragraph 35, above.

44. Therefore, in the absence of a reasonable excuse or special circumstances, the Company is liable to these penalties which were correctly issued by HMRC.

45. However, as is apparent from its letters of 23 September 2024 (see paragraph 31, above) and 11 November 2024 (see paragraphs 33 and 34, above), the Company contends that it does have a reasonable excuse for its failure to file its ATED returns on time, in particular it asserts that:

(1) it had filed its self-assessment and CT600 returns on time and that HMRC would have known from the filed accounts that the property was used solely on a commercial basis and entitled to relief from ATED;

(2) there had not been any communication from HMRC advising the Company or warning of penalties for late filing of returns which would have alerted the directors/accountants of the requirement to file ATED returns;

(3) the directors had not been advised by their previous accountants that ATED returns should have been filed; and

(4) the penalties are "very high" and the Company has "had no tax due on the ATED returns".

46. In summary, therefore, accepting its assertions as proven, the Company contends that it was unaware of its obligation to file ATED returns and had not been notified of the requirement to do so by either HMRC or its accountants. It also questions the amount of the penalties especially as there was no tax due on the ATED returns.

47. First, with regard to the amount of penalties, these are set by statute (ie s 106 and schedule 55 to the Finance Act 2009) and apply even if no tax is due. It is clear from *HOK* the Tribunal does not have the jurisdiction to set aside or discharge such statutory penalties even if it considers them to be unfair. As the Upper Tribunal said in *HOK* at [56]:

> "… It is impossible to read the legislation in a way which extends its [ie the Tribunal's] jurisdiction to include—whatever one chooses to call it—a power to override a statute or supervise HMRC's conduct."

48. As reliance on a third party is specifically precluded from being a reasonable excuse by paragraph 23(2)(b), I am unable to find the Company's reliance on its accountants to advise it of the requirement to file ATED returns amounts to a reasonable excuse.

49. Even if that were not the case, I find myself in the same position as the Tribunal in *Hughes Property Partners Limited v HMRC* [2023] UKFTT 352 (TC). This was a case, like the present, which was concerned with penalties for the late filing of ATED returns which the appellant contended arose due to its agents lack of knowledge of ATED. At [25] of its decision the Tribunal referred to the decision of the Upper Tribunal in *HMRC v Katib* [2019] UKUT 189 (TCC), noting:

> "… the Upper Tribunal found that reliance on an accountant who fails the taxpayer cannot assist where a statutory time limit is missed. At paragraph 58 the Upper Tribunal stated unequivocally that:-
>
> > 'It cannot be the case that a greater degree of adviser incompetence improves one's chances of an appeal, either by enabling the client to distance himself from the activity or otherwise.'
>
> The Upper Tribunal went on to find at paragraph 59 that:-
>
> > '… We do not consider that, given the particular importance of respecting statutory time limits, Mr Katib's complaints against

> Mr Bridger or his own lack of experience in tax matters are sufficient to displace the general rule that Mr Katib should bear the consequences of Mr Bridger's failings and, if he wishes, pursue a claim in damages against him or Sovereign Associates for any loss he suffers as a result…'.
>
> 26. Whilst we certainly accept that at all times both the appellant and the appellant's agent have acted in good faith, nevertheless the reasons advanced for the late filing do not amount to a reasonable excuse. HMRC's website provides clear and extensive information as to when and how an ATED return must be filed."

50. Given the "clear and extensive" information on HMRC's website, the fact that the Company was not notified by HMRC, which has no obligation to do so, of the requirement to file ATED returns cannot amount to a reasonable excuse either.

51. Also, because of that clear and extensive information, I consider that the requirement to file ATED returns on time falls within the first category identified by Simon Brown J in *Neal*, a primary obligation of which it cannot be objectively reasonable for the Company to have been ignorant. The Company's appeal cannot therefore succeed on the basis of its lack of knowledge that it was required to have filed ATED returns.

52. Although the Company contends that because of the value of its interest in the Property ATED returns were not required and that, as such, it should not be liable to the penalties (see paragraph 4, above) it has not provided any valuation evidence in support. In the absence of such evidence I am not able to accept what is in effect no more an assertion by the Company as to the value of the Property and that it was not required to submit ATED returns.

53. In its correspondence with the Tribunal following the Tribunal's letter of 28 April 2025 (see above) the Company has asked whether it could provide additional documents subsequent to the decision. I am afraid the answer is no. Although this matter has been determined on the papers the position is identical to it being determined after a hearing.

54. As the Supreme Court observed in *AIC Limited v Federal Airports Authority of Nigeria* [2022] 1 WLR 3223 at [29]:

> "... the higher courts have in a number of respects laid down important and binding principles regarding what justice requires in the context of litigation which are relevant to the application of the overriding objective in the CPR, and one of these is that there should be finality in litigation. This is a general principle with various aspects, including the rule in *Henderson v Henderson* (1843) 3 Hare 100 by which a party is precluded "from raising in subsequent proceedings matters which were not, but could and should have been raised in earlier ones" (see *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd)* [2014] AC 160 para 17). This rule "is firmly underwritten by and inherent in the overriding objective [in the CPR]" (*Sainsbury's Supermarkets*, para 239). As Sir Thomas Bingham explained in *Barrow v Bankside Members Agency Ltd* [1996] 1 WLR 257, 260 in a passage quoted in *Sainsbury's Supermarkets*, para 239:
>
> > 'The rule in *Henderson v Henderson* ... requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided ... once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise.'"

55. Lewison LJ made the same point in his oft-quoted remark in *FAGE UK Ltd v Chobani UK Ltd* [2104] EWCA Civ 5 at [114] when he said:

> "The trial is not a dress rehearsal. It is the first and last night of the show."

56. Finally, having carefully considered the circumstances of the case I am unable to find anything "special" for it to be right to reduce the penalty especially as it is clear from *Edwards* that the fact that no tax is due cannot amount to special circumstances to be taken into account when considering a reduction in the penalty.

57. Therefore, for the reasons above, the Company's appeal is dismissed and penalties, in the amounts stated in paragraph 30 above, confirmed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

58. 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.

Release date: 28th MAY 2025