



**TC05667**

Appeal number: **TC/2016/05758**  
**TC/2016/05215**

*INCOME TAX – accelerated payment notice – penalty – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JOGINDER NIJJAR**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JONATHAN RICHARDS**

**Sitting in public at The Royal Courts of Justice, Strand, London on 6 February  
2017**

**The Appellant in person**

**Sadiya Choudhury, instructed by the General Counsel and Solicitor to HM  
Revenue & Customs, for the Respondents**

## DECISION

1. Mr Nijjar is appealing against two penalties that HMRC imposed, under s226 of Finance Act 2014, for late payment of accelerated payments demanded in an accelerated payment notice (“APN”) issued pursuant to s219 of Finance Act 2014.

2. During the hearing, Mr Nijjar gave oral evidence and Ms Choudhury cross-examined him. I was satisfied that he was an honest and reliable witness. HMRC did not rely on witness evidence, but Ms Choudhury made submissions by reference to a bundle of documents.

### 10 **Facts**

3. Relatively few facts were in dispute (although the parties had different views as to the conclusions I should draw from those facts). The facts set out at [4] to [14] were either determined by me or were agreed.

#### *Agreed matters relating to the penalties*

4. The parties were agreed on the following matters relevant to the penalties that HMRC imposed:

(1) On 19 May 2015 HMRC issued Mr Nijjar with an APN relating to the tax year to 5 April 2008 arising out of arrangements known as “Liberty 2” which HMRC considered to be notifiable under the legislation in Part 7 of Finance Act 2004 (“DOTAS”)<sup>1</sup>. At the time HMRC issued the APN, there was an enquiry (under s9A of the Taxes Management Act 1970) open into Mr Nijjar’s self-assessment tax return for the 2007-08 tax year.

(2) The APN specified an accelerated payment due of £61,676.98.

(3) Mr Nijjar, as he was permitted to do by s222 of Finance Act 2014, made representations to HMRC on 17 August 2015 objecting to a number of aspects of the APN. HMRC rejected those representations by letter dated 15 February 2016.

(4) HMRC determined that Mr Nijjar was obliged to make the accelerated payment by 21 March 2016<sup>2</sup>. It was common ground that he had made no payment by that deadline, or indeed by the date of the hearing.

(5) Since Mr Nijjar had not paid the accelerated payment demanded by 21 March 2016, HMRC issued Mr Nijjar with a first penalty assessment for

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<sup>1</sup> At the hearing, Mr Nijjar disputed that Liberty 2 was actually a notifiable arrangement under DOTAS and I will deal with that point later in the decision.

<sup>2</sup> Section 226 of Finance Act 2014 provides that in Mr Nijjar’s situation payment must be made within 30 days beginning on the date on which he was notified of HMRC’s response to his representations. HMRC’s calculation of the due date therefore made ample allowance for Mr Nijjar to receive their letter dealing with his representations.

£3,083.84 on 15 April 2016. It was common ground that this was calculated correctly (as 5% of the amount of accelerated payment).

5 (6) Since Mr Nijjar had not paid the accelerated payment demanded within 5 months of the due date, on 23 September 2016, HMRC issued Mr Nijjar with a second penalty determination (also correctly calculated as being £3,083.84).

10 (7) Mr Nijjar has made valid, in-time appeals to the Tribunal against both penalties. (He did not first make an appeal against the second penalty to HMRC as required by s49D of TMA 1970. However, HMRC were prepared to treat his appeal to the Tribunal against the second penalty as a notification to HMRC for the purposes of s49D TMA 1970 and therefore raised no objection to the appeal against both penalties being heard together.)

*Mr Nijjar's health and financial problems*

15 5. Since at least 2012, Mr Nijjar has suffered from poor health. I will give a high level summary only of his health issues (and in doing so do not intend in any way to understate the effect that they have had on him). He has suffered from heart problems for a number of years and had a triple heart bypass operation in December 2012 and further surgery in early 2013. He suffers from gastric problems and has type 2 diabetes. His cardiac problems still cause him to feel unwell. In 2016 he attended hospital on a number of occasions and was required to wear an ECG monitor for a number of days as he experienced heart palpitations. Recently he has experienced pain in his knee caused by incipient arthritis. His health problems have, understandably, had an effect on his mental health and he has experienced low mood and fatigue. I agree with Mr Nijjar that he has suffered from a number of separate medical issues since 2012 which have got more serious and which have exacerbated each other. He has not suffered from one medical condition alone.

30 6. Mr Nijjar also has caring responsibilities. His mother lives at home with him and his wife. She suffers from stage two heart failure and needs a lot of care. Mr Nijjar's wife also looks after her own elderly mother with the result that she is not able to work full time. A number of Mr Nijjar's family members have heart disease: his father and one of his brothers died from cardiac failure in their fifties.

7. Mr Nijjar also has financial difficulties. He used to be a partner in a successful solicitors' practice. However, his health issues have prevented him from doing much paid work since late 2012. He was also a victim of a fraud between 2006 and 2008 which cost him several hundreds of thousands of pounds.

35 *Mr Nijjar's dealings with HMRC in relation to the APN*

8. Mr Nijjar has received a number of communications from HMRC informing him what to do if he has difficulty paying the amount of accelerated payment demanded. The "warning letter" that HMRC sent Mr Nijjar on 9 March 2015, informing him that they proposed to issue an APN contained the following section:

40

### **Problems paying**

If you think you may have problems paying, please phone us straightaway on the number shown at the top of this letter.

5 Similar paragraphs appeared in a letter that HMRC sent on 24 July 2015 (reminding Mr Nijjar that the accelerated payment would shortly fall due) and in HMRC's letter of 15 February 2016 rejecting the representations that he had made.

9. Mr Nijjar gave oral evidence as to what, if any, steps that he had taken to tell HMRC that he would have difficulties in paying the amount of accelerated payment demanded. He was asked questions on this issue in cross-examination. Mr Nijjar's  
10 evidence was, in places, somewhat vague and he could not remember precise dates. However, I have concluded that the position was as follows:

(1) Mr Nijjar had a meeting with HMRC at the offices of his accountants on 1 December 2015. Mr Nijjar produced, at the hearing, a note of that meeting and I have concluded that the meeting focused on Mr Nijjar's general financial  
15 situation (as HMRC wanted to check he was paying the right amount of tax), the amount he had lost due to the fraud, rental income from "buy to let" properties that Mr Nijjar owned and the amount that Mr Nijjar received from paid employment. During that meeting Mr Nijjar expressed the view that he had already given some information on his financial position to "HMRC Counter  
20 Avoidance". However, since there was no mention in the meeting notes of the APN at all, I have concluded that Mr Nijjar did not mention the APN specifically or difficulties that he would have in paying the accelerated payment demanded.

(2) At no point, whether prior to the deadline for paying the accelerated  
25 payment or after, did Mr Nijjar initiate contact with HMRC with a view to agreeing a payment plan for that accelerated payment. Nor to date has he made any proposal of a payment plan and no payment plan was in place at the date of the hearing. Initially that was because Mr Nijjar believed that HMRC were already aware of his precarious financial condition following the meeting in  
30 December 2015 and other correspondence he had been having with HMRC.

(3) On 26 April 2016, Mr Nijjar received a letter warning him that enforcement proceedings would be taken in respect of the accelerated payment unless he paid immediately. This made it clear to Mr Nijjar that HMRC were  
35 not giving him any latitude, whether because of his financial situation or otherwise, and prompted him to call to HMRC on the number quoted in that letter.

(4) There was a further meeting between Mr Nijjar and HMRC on 3 August 2016. This went over similar issues to those addressed in the meeting of 1  
40 December 2015. The APN and accelerated payment were not mentioned during that meeting.

*HMRC's consideration of the penalties imposed*

10. Mr Nijjar appealed to HMRC against the first penalty imposed on 11 May 2016 on the grounds that (i) a penalty should only have been imposed if the underlying tax was actually due; (ii) he had not actually obtained a cash flow advantage from his participation in the Liberty 2 arrangements and (iii) he was in grave hardship because of his financial situation and health problems.

11. HMRC rejected that appeal on 6 June 2016 concluding, among other matters, that Mr Nijjar did not have a reasonable excuse for failing to pay the amount due. That letter did not consider whether there were “special circumstances” such as to justify a reduction in the penalty.

12. Mr Nijjar sought and obtained two extensions of the deadline within which to request a review of HMRC’s decision referred to at [11]. On 19 July 2016 (within the revised deadline that HMRC had agreed), Mr Nijjar requested a review. In that letter, he requested disclosure of a number of documents and information including confirmations relating to Liberty 2’s status as arrangements notifiable under DOTAS. He asked for a further 42 days to respond to HMRC with further points after HMRC provided him with the information requested.

13. HMRC did not initially respond to Mr Nijjar’s request for disclosure of documents and information and simply treated his letter of 19 July 2016 as a request for a review of their decision at [11]. On 1 September 2016, they wrote to Mr Nijjar upholding their decision to charge the first penalty. The review letter could have been expressed more clearly, but appears to reject the request for disclosure of information on the basis that the information requested could only be relevant to representations made under s222 of Finance Act 2014, and the deadline for making such representations had long since passed. More generally, HMRC’s review letter expressed the view that Mr Nijjar did not have a “reasonable excuse” for failing to pay the amount demanded and that there were no “special circumstances” that would allow HMRC to reduce the first penalty. In considering the question of “special circumstances”, HMRC focused on Mr Nijjar’s health issues and his request for disclosure of documents. They did not take into account the fact that he had been a victim of fraud.

14. Partly because Mr Nijjar notified his appeal against the second penalty to the Tribunal without first appealing to HMRC, there is no evidence of HMRC’s reasoning in relation to the second penalty. I have concluded, therefore, that they have not considered the issue of special circumstances separately in relation to the second penalty.

**Relevant statutory provisions**

*Statutory provisions dealing with APNs*

15. The circumstances in which an APN may be issued are set out in s219 of Finance Act 2014. That section provides, so far as relevant to this appeal, as follows:

**219 Circumstances in which an accelerated payment notice may be given**

(1) HMRC may give a notice (an “accelerated payment notice”) to a person (“P”) if Conditions A to C are met.

5 (2) Condition A is that—

(a) a tax enquiry is in progress into a return or claim made by P in relation to a relevant tax....

10 (3) Condition B is that the return or claim or, as the case may be, appeal is made on the basis that a particular tax advantage (“the asserted advantage”) results from particular arrangements (“the chosen arrangements”).

(4) Condition C is that one or more of the following requirements are met—

...

15 (b) the chosen arrangements are DOTAS arrangements;

...

(5) “DOTAS arrangements” means—

(a) notifiable arrangements to which HMRC has allocated a reference number under section 311 of FA 2004,

20 (b) notifiable arrangements implementing a notifiable proposal where HMRC has allocated a reference number under that section to the proposed notifiable arrangements, or

...

16. Section 220 of Finance Act 2014 specifies the content of an APN, such as that  
25 issued to Mr Nijjar, which is issued under s219(2)(a). Perhaps most significantly, it must state the amount of “understated tax” which must then be paid as an “accelerated payment” within the time limit specified in s223 of Finance Act 2014.

17. Section 222 of Finance Act 2014 entitles a person receiving an APN to make  
30 representations to HMRC objecting to the APN on the grounds that Conditions A to C referred to in s219 are not satisfied, or objecting to the amount of accelerated payment that is required. Any such representations must be made within 90 days of the date the notice was given and HMRC are obliged to consider any representations that are made.

18. There is no statutory right of appeal to this Tribunal against HMRC’s decision  
35 to issue an APN. As will be seen, however, there is an appeal to this Tribunal against a penalty that is imposed in consequence of a taxpayer’s failure (or alleged failure) to make an accelerated payment.

19. Section 226 of Finance Act 2014 imposes a penalty for failure to comply with  
an APN and provides, so far as material, as follows:

40 **226 Penalty for failure to pay accelerated payment**

- (1) This section applies where an accelerated payment notice is given by virtue of section 219(2)(a) (notice given while tax enquiry is in progress) (and not withdrawn).
- 5 (2) If any amount of the accelerated payment is unpaid at the end of the payment period, P is liable to a penalty of 5% of that amount.
- (3) If any amount of the accelerated payment is unpaid after the end of the period of 5 months beginning with the penalty day, P is liable to a penalty of 5% of that amount.
- ...  
10 (5) “The penalty day” means the day immediately following the end of the payment period.
- ...  
15 (7) Paragraphs 9 to 18 (other than paragraph 11(5)) of Schedule 56 to FA 2009 (provisions which apply to penalties for failures to make payments of tax on time) apply, with any necessary modifications, to a penalty under this section in relation to a failure by P to pay an amount of the accelerated payment as they apply to a penalty under that Schedule in relation to a failure by a person to pay an amount of tax.

*Statutory provisions relating to an appeal against the penalty*  
20 20. Section 226(7) of Finance Act 2014 therefore applies certain provisions of Schedule 56 of Finance Act 2009 (“Schedule 56”) to penalties charged under that section. Paragraph 13 of Schedule 56 confers a right of appeal to this Tribunal. Therefore, while there is no appeal to the Tribunal against the APN itself, there is a right of appeal against a penalty that is imposed for failure to make an accelerated  
25 payment. The scope of the right of appeal is set out as follows:

**13 Appeal**

- (1) P may appeal against a decision of HMRC that a penalty is payable by P.
- 30 (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

21. Paragraph 16 of Schedule 56 sets out a defence of “reasonable excuse” as follows:

**16 Reasonable excuse**

- 35 (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a payment if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.
- (2) For the purposes of sub-paragraph (1)—  
40 (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

5 (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

22. Paragraph 9 of Schedule 56 deals with “special circumstances” as follows:

**9 Special reduction**

10 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) “special circumstances” does not include—

(a) ability to pay, or

15 (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

20 23. Paragraph 10 of Schedule 56 provides for penalties to be suspended while “time to pay arrangements” are in place as follows:

**10 Suspension of penalty during currency of agreement for deferred payment**

(1) This paragraph applies if—

25 (a) P fails to pay an amount of tax when it becomes due and payable,

(b) P makes a request to HMRC that payment of the amount of tax be deferred, and

30 (c) HMRC agrees that payment of that amount may be deferred for a period (“the deferral period”).

(2) If P would (apart from this sub-paragraph) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under any paragraph of this Schedule for failing to pay that amount, P is not liable to that penalty...

35 24. Paragraph 15 of Schedule 56 sets out the scope of the Tribunal’s jurisdiction on an appeal as follows:

**15**

(1) On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 13(2) that is notified to the tribunal, the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 9—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.

(4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(5) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 14(1)).

## Discussion

### 20 *HMRC's burden of proof*

25. This is a penalty appeal and therefore I consider that HMRC have the burden of proving the facts and circumstances that result in the penalties being due. In the context of this appeal, that means that they must prove all of the following facts:

(1) That the document issued to Mr Nijjar was an APN. If it were some other kind of document (for example a mere suggestion that Mr Nijjar's exposure to interest would be mitigated if he made a payment on account) there would be no statutory penalty for failing to pay the amount specified in it. I am satisfied that the document I saw was indeed an APN not least since it complied with all of the requirements of s220 of Finance Act 2014 and stated that it was an accelerated payment notice.

(2) That the APN was issued pursuant to s219(2)(a) of Finance Act 2014 (while an enquiry was in progress) as that is a precondition to a penalty falling due under s226 of Finance Act 2014. Mr Nijjar accepted that this was the case (see [4(1)] above).

(3) That Mr Nijjar had not made the accelerated payment by the due date for payment. Mr Nijjar accepted that this was the case (see [4(4)] above).

(4) That HMRC had calculated the resulting penalty correctly. (As noted at [4(5)] and [4(6)], this was not in dispute.)

26. Mr Nijjar submitted that HMRC also had to demonstrate that all of Conditions A to C set out in s219 of Finance Act 2014 were satisfied. He took issue with Condition C and submitted that, since HMRC had not put forward any evidence that

the Liberty 2 arrangements were “DOTAS arrangements” as defined in s219, they had not discharged their burden on that point. Ms Choudhury argued that this was tantamount to an argument that the APN was invalidly issued and the Tribunal had no jurisdiction to consider it.

5 27. *HMRC v Hok Ltd* [2012] UKUT 363 and other cases have emphasised that, since the Tribunal is a creature of statute with no inherent jurisdiction, the scope of the Tribunal’s jurisdiction has to be discerned from the statutory provisions that confer jurisdiction. In the circumstances of this appeal, the Tribunal’s jurisdiction  
10 derives from paragraph 13 of Schedule 56 as applied by s226 of Finance Act 2014. That gives the Tribunal jurisdiction to determine whether a penalty is payable and the amount of any penalty due.

28. The starting point for the Tribunal in determining whether a penalty is payable, or the amount of any penalty, must be s226 of Finance Act 2014 which imposes the penalty. That section makes no mention of Conditions A to C. The trigger for the  
15 imposition of the penalty is the failure to pay the amount specified in the APN. There is nothing in the express wording of s226 that suggests that the Tribunal must, or may, consider Conditions A to C.

29. Nor do I consider that it is implicit that Parliament intended the Tribunal to consider Conditions A to C. Those conditions go to whether the APN was validly  
20 issued in accordance with s219. The statutory scheme in Finance Act 2014 envisages that a taxpayer who considers that Conditions A to C are not met should make representations under s222 of Finance Act 2014 and, if not satisfied with HMRC’s response to those representations, take judicial review proceedings. The statutory scheme does not give taxpayers who consider that APNs have been wrongly issued  
25 (for example on the grounds that Conditions A to C are not satisfied) any rights of appeal to the Tribunal. That cannot be an oversight given the central role that the Tribunal plays in the adjudication of other tax-related disputes of which Parliament would have been well aware when enacting Finance Act 2014. In those circumstances, Parliament cannot have intended that taxpayers should be able, in  
30 penalty proceedings, to litigate the very issues relating to the validity of the APN on which the Tribunal has been denied jurisdiction.

30. I therefore agree with Ms Choudhury’s submissions. I also reject Mr Nijjar’s argument that, since he obtained no cash flow advantage from the Liberty 2  
35 arrangements (having lost a large amount of cash to the fraud), no penalty could be issued. The penalty is linked to failure to pay an amount when due, not any cash flow advantage. My conclusion is that, for reasons set out at [25], HMRC have demonstrated all of those matters on which they have the burden of proof<sup>3</sup>. In the sections that follow, I will consider Mr Nijjar’s remaining grounds of appeal which, at

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<sup>3</sup> If, contrary to my conclusion, HMRC did have the burden of proving that Condition C was satisfied, they would not have discharged it. In order to be “DOTAS arrangements” as defined, arrangements must be “notifiable” under the DOTAS regime and HMRC must have allocated them a scheme reference number. The evidence before me demonstrated only that a scheme reference number had been allocated. I had no evidence on the underlying planning that would enable me to conclude that those arrangements were notifiable.

the hearing, focused on “reasonable excuse” and “special circumstances”, Mr Nijjar having abandoned other arguments that he made based on the Human Rights Act 1998.

*Reasonable excuse*

5 31. At the hearing, I asked Mr Nijjar on more than one occasion to be as specific as  
he could about why he believed his health problems had resulted in his failure to pay  
the accelerated payment on time. He did not satisfactorily address this point and  
instead focused on the extent of the health problems that both he and family members  
have. That was not enough to establish a “reasonable excuse” since paragraph 16 of  
10 Schedule 56 applies only where there is a reasonable excuse for the failure to make  
payment. A taxpayer is not entitled to be excused from a penalty by reason only of the  
fact that he or she has serious health problems. Mr Nijjar criticised HMRC for not  
putting forward their own medical evidence. However, there is nothing in that point:  
the burden is on Mr Nijjar to prove the extent of his health problems (which he has  
15 done) and their effect on his ability to make payment on time (which he has not).

20 32. Despite Mr Nijjar’s health problems, he has dealt competently with procedural  
issues relating to the APN. He submitted detailed and articulate representations under  
s222 within the stipulated time limits. When those representations were rejected, he  
navigated (for the most part) the procedure for appealing against the penalties that had  
been imposed. He realised he needed to obtain an extension of time to request a  
review of HMRC’s decision to impose the first penalty. Since Mr Nijjar’s health  
problems did not prevent him from taking those steps, I do not consider that they  
would have prevented him making payment on time particularly given that HMRC  
told him on a number of occasions when the due date for payment was, and what he  
25 needed to do if he could not make payment on time.

30 33. I accept that Mr Nijjar’s financial difficulties are attributable to events outside  
his control (they have arisen as a result of his protracted poor health and the fraud of  
which he was a victim). They are not therefore excluded by paragraph 16 of Schedule  
56 from being a reasonable excuse. However, by the time the accelerated payments  
fell due, Mr Nijjar had suffered from financial difficulties for a long time. He should  
have realised from the point at which he received a letter warning him that he was  
about to receive an APN that he would not be able to pay the amount demanded and  
taken steps to get in touch with HMRC to arrange a payment plan. It was not  
reasonable for Mr Nijjar simply to assume that HMRC were aware of his financial  
35 situation and would make due allowance for it, particularly given that the APN was  
not mentioned at all in the meeting he had with HMRC in December 2015. Mr Nijjar  
is clearly an intelligent man and a qualified solicitor. He should have realised that the  
issue of the APN meant that he would owe HMRC money and that the onus was on  
him, as a debtor, to get in touch with HMRC before the due date for payment to agree  
40 an instalment plan.

34. Mr Nijjar has criticised HMRC’s failure to provide him with the documents that  
he requested in his letter of 19 July 2006. It may well have been discourteous of  
HMRC to ignore that request until they announced the conclusions of their review.

However, this failing cannot be a reasonable excuse for Mr Nijjar's failure to make payment by the due date as he did not need the information he was requesting in order to make payment and indeed he had requested that information after the due date for payment.

- 5 35. For the reasons set out above, I do not consider that Mr Nijjar has a reasonable excuse.

*Special circumstances*

- 10 36. HMRC have considered whether there are "special circumstances" in relation to the first penalty. However, as I have noted at [13], they did not take into account that Mr Nijjar had been the victim of a fraud. I have concluded that HMRC did not consider "special circumstances" at all in relation to the second penalty (although Mr Nijjar's actions in notifying his appeal against the second penalty direct to the Tribunal have contributed to this result).

- 15 37. It follows from what I say at [36] that HMRC's conclusions on "special circumstances" are "flawed" in the sense set out in paragraph 15 of Schedule 56 of Finance Act 2009 and I therefore have the power to substitute my own decision on that issue for that of HMRC. I will not, however, alter HMRC's decision. I do not think that that Mr Nijjar's health problems have contributed to his failure to pay the accelerated payment to such an extent as to warrant a special reduction. The real  
20 reason why Mr Nijjar has not paid on time is his financial situation. That is an "inability to pay" which is excluded by statute from being a "special circumstance". In any event, since I do not consider that Mr Nijjar has taken reasonable steps to address the consequences of the inability to pay, I would not anyway have reduced the penalty for this reason.

- 25 38. My overall conclusion is that the appeal is dismissed.

- 30 39. 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.

35 **JONATHAN RICHARDS**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 10 FEBRUARY 2017**

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