TC06089

Appeal number: TC/2015/04729

INCOME TAX – penalty for failure to make returns – did appellant have a reasonable excuse for the failure? – No – jurisdiction of Tribunal to consider whether late filing penalties under schedule 55 Finance Act 2009 are unfair or disproportionate – s 6 Human Rights Act 1998 – article 1 of the First Protocol to the European Convention on Human Rights – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

GARETH BEER	**Appellant**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	**Respondents**

TRIBUNAL: JUDGE ROBIN VOS

The Tribunal determined the appeal on 21 August 2017 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 20 September 2015 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 27 March 2017.

© CROWN COPYRIGHT 2017

DECISION

Background

1. The appellant, Mr Beer became self-employed in early 2013 and, as a result, had to file a self-assessment tax return for the year ended 5 April 2013.

2. Unfortunately, his tax return was not filed until September 2014, well after the statutory deadline.

3. As a result of this, HMRC imposed penalties totalling £1,300 even though Mr Beer had no tax to pay for the relevant year.

4. Mr Beer has appealed to the Tribunal against the imposition of the penalties.

Late appeal

5. Strictly speaking, Mr Beer's appeal to the Tribunal should have been received by 17 January 2015, being 30 days after HMRC's review of the original decision to impose the penalties which was completed on 18 December 2014.

6. There was however ongoing correspondence between HMRC and Mr Beer's agent which continued until 20 July 2015.

7. Mr Beer's agents then attempted to appeal to the Tribunal by a letter dated 30 July 2015. The subsequent correspondence with the Tribunal culminated with a notice of appeal dated 20 September 2015.

8. HMRC do not refer in their statement of case to the fact that the appeal to the Tribunal is late. I infer from this either that they believe that the appeal was on time given that the original letter to the Tribunal was less than 30 days after the last letter from HMRC refusing to withdraw the penalties or alternatively that they do not object to the late appeal.

9. The further correspondence between Mr Beer's agent and HMRC between January 2015 – July 2015 was treated by HMRC almost as a second appeal against their original decision or a further review of that decision (although it was made clear in HMRC's letters that only one appeal/review was permitted). Bearing this in mind and given that Mr Beer's agent wrote to the Tribunal less than 30 days after HMRC's last letter refusing to reconsider their decision, I have decided to give permission for Mr Beer's appeal to be notified to the Tribunal out of time.

Self-assessment tax returns and the penalty regime

10. In accordance with s 8 Taxes Management Act 1970, Mr Beer's self-assessment tax return for the year ended 5 April 2013 was due by 31 January 2013 as it was submitted online.

11. Schedule 55 to Finance Act 2009 ("schedule 55") contains a penalty regime which applies if a self-assessment return is submitted after the deadline. There is an automatic penalty of £100 if the return is late. HMRC may impose a daily penalty of £10 for up to 90 days if the return is more than three months late. There is a further automatic penalty of a minimum of £300 if the return is more than six months late. There is also an automatic penalty (not relevant in this case), again of a minimum of £300, if the return is more than 12 months late.

12. There is no liability to a penalty if the taxpayer satisfies the Tribunal that he has a reasonable excuse for his failure to file the tax return on time. An insufficiency of funds is not a reasonable excuse unless it is attributable to events outside the taxpayer's control. In addition, reliance on a third party to do something is not a reasonable excuse unless the taxpayer took reasonable care to avoid the failure.

13. HMRC also has discretion to reduce a penalty if it believes that there are special circumstances which make it right to do so. The Tribunal can only make a reduction for special circumstances if it concludes that HMRC's decision on this issue is "flawed" in a judicial review sense. Schedule 55 provides that special circumstances cannot include the taxpayer's ability to pay.

The facts

14. On 6 April 2013, HMRC issued Mr Beer with a notice requiring him to file a self-assessment tax return for the year ended 5 April 2013. The notice explained the deadlines for filing the return as well as setting out what the penalties would be if the return was filed late. It also made it clear that the tax return had to be filed even if no tax was due.

15. As the return had not been received by 31 January 2014, HMRC charged an automatic £100 late filing penalty on 18 February 2014. The penalty notice which was sent to Mr Beer explained why the penalty had been assessed and also made it clear that further penalties would be charged under schedule 55 if the return was more than three months late.

16. HMRC sent Mr Beer a self-assessment statement on 6 March 2014. This showed the £100 penalty which had been charged.

17. As a result of this, Mr Beer called HMRC on 26 March 2014 (the day before the £100 penalty was due to be paid). The HMRC adviser made it clear to Mr Beer that he needed to submit his tax return for the year ended 5 April 2013 as soon as possible and that, if he did so, and then called back, HMRC might well cancel the £100 penalty. Nothing was said in the conversation about further penalties which might be charged.

18. HMRC issued a 30 day penalty reminder letter to Mr Beer on 3 June 2014. This explained that daily penalties had been accruing for a minimum of 30 days and that Mr Beer's tax return should be submitted as soon as possible in order to minimise the amount of the penalty that might be payable.

19. A 60 day daily penalty reminder was sent to Mr Beer on 1 July 2014. Like the 30 day reminder, this emphasised the fact that, the longer it was until the return was filed, the greater the penalty would be.

20. On 15 July 2014, HMRC was notified that Mr Beer had appointed an agent to deal with his tax affairs on his behalf.

21. The tax return had still not been received by HMRC by the end of July 2014 (six months after the deadline for submission of the return) and so, on 18 August 2014, HMRC assessed a daily penalty totalling £900 (£10 per day for 90 days) and a further penalty of £300 as the return was by then more than six months late.

22. The return was finally submitted online on 18 September 2014.

Mr Beer's grounds of appeal

23. This case has been stayed pending the decision in *Donaldson v HMRC* [2016] EWCA Civ 761. That case dealt with a number of arguments relating to HMRC's computerised system for assessing penalties for the late submission of tax returns. Those arguments do not form part of Mr Beer's grounds of appeal and, in any event, the Court of Appeal decided the case in favour of HMRC.

24. Mr Beer, through his agent, has put forward a number of grounds of appeal:

(1) He had no tax or national insurance to pay for the year ended 5 April 2013 – indeed he was due a small tax refund.

(2) Mr Beer did not realise the urgency in submitting his tax return given that he had no tax to pay.

(3) The penalties are unfair.

(4) Mr Beer's tax return was submitted as soon as the agents were instructed and he has been up to date with his tax returns since then.

(5) Mr Beer cannot afford to pay the penalties.

(6) Mr Beer was not told by the HMRC adviser in his conversation on 26 March 2014 that there would be further penalties if there were additional delays in filing his tax return.

25. There was also a suggestion in a call which Mr Beer had with HMRC on 14 May 2014 that he had submitted a tax return at the end of March or beginning of April 2014. However, there is no evidence that he did in fact do so and HMRC have no record of him attempting to do so. It is not referred to in Mr Beer's agent's letters to HMRC, nor in the notice of appeal to the Tribunal.

26. To the extent it is relevant, I find as a fact that, on the balance of probabilities, Mr Beer did not submit his tax return for the year ended 5 April 2013 at the end of March or the beginning of April 2014. There is no evidence other than his conversation with HMRC on 14 May 2014 that he did so and there is strong evidence

that he did not, in particular the fact that he only created an online account with HMRC in June 2014.

HMRC's case

27. HMRC remind the Tribunal that the test for whether a taxpayer has a reasonable excuse is an objective test. The question is what a responsible taxpayer who wishes to comply with his obligations would have done in the circumstances.

28. HMRC say that it is clear that Mr Beer was aware that he needed to file a tax return for the year ended 5 April 2013. That is not denied.

29. It is also clear, they say, that Mr Beer was aware (or should have been aware) that penalties would be payable if he failed to submit his tax return on time. This was made plain in the notice requiring him to file the tax return which was sent to him on 6 April 2013.

30. HMRC draw attention to the fact that this notice also made it clear that the tax return needed to be filed even though no tax was due.

31. According to HMRC, a standard letter was sent to Mr Beer in December 2013 reminding him that he still needed to file his tax return and that penalties would be due if he failed to do so by the relevant deadline.

32. HMRC accept that Mr Beer was not told on 26 March 2014 that further penalties would accrue if he continued to fail to file his tax return. However, they refer to the late filing penalty notice sent to Mr Beer on 18 February 2014, the 30 day daily penalty reminder sent on 3 June 2014 and the 60 day daily penalty reminder sent to Mr Beer on 1 July 2014, all of which explain exactly what the penalties were for failing to file a tax return on time.

33. Although Mr Beer was told in no uncertain terms on 26 March 2014 that he was still required to file a tax return for the year ended 5 April 2013, HMRC note that it was still six months before the return was filed. Indeed, they highlight the fact that even though Mr Beer appointed an agent in July 2014, it was another two months before the return was submitted.

34. In summary, HMRC's case is that Mr Beer was given sufficient reminders and ample opportunity to file his tax return but nevertheless failed to do so until September 2014, almost eight months after the filing deadline.

35. As far as proportionality is concerned, HMRC's case is that the penalties are fixed by statute and that they have no discretion as to the amount of the penalties.

36. Although it is not addressed in HMRC's statement of case, they do say in their review letter that the Upper Tribunal has found that the first tier Tribunal does not have power to discharge or adjust a penalty for late filing of tax returns on the grounds that it is unfair although no authority is provided in support of this.

37. HMRC do however argue in their statement of case that the penalty regime for late filing of tax returns is not disproportionate within the meaning of the Human Rights Act legislation, even if that legislation applies. This is on the basis that the penalty regime is proportionate to its aim and that to be disproportionate, it must be "not merely harsh but plainly unfair" (relying on *International Transport Roth GmbH v SSHD* [2002] EWCA Civ 158).

38. HMRC submit that the penalty regime is not plainly unfair and falls within the wide margin of appreciation afforded to Parliament in framing such legislation. In addition, they argue that the fact that there is no liability for a penalty if there is a reasonable excuse and the discretion to mitigate penalties where there are special circumstances also support the conclusion that the regime is not disproportionate.

39. Finally, HMRC have considered whether there are any special circumstances which would justify a reduction in the penalties. They have taken account of the fact that Mr Beer did not have any tax to pay but have taken the view that this does not justify any reduction in the amount of the penalty.

Decision

Reasonable excuse

40. In my view, Mr Beer does not have a reasonable excuse for his failure to file his tax return on time.

41. There is no suggestion that Mr Beer did not receive the original notice to file the tax return, nor that he was unaware that he was required to do so.

42. Even if he was not actually aware of the penalties which could be charged if he failed to file his tax return on time, he clearly should have been given that this was set out in detail in the notice which was sent to him requiring him to submit a tax return.

43. Although it is possible to have some sympathy with the suggestion that a taxpayer might not think it is urgent or important to file a tax return by any particular deadline if there is no tax to pay, the clear purpose of the penalty regime is to encourage taxpayers to submit their tax returns on time, even in circumstances where no tax is payable. This is apparent from the fact that Parliament has provided for minimum penalties to be payable irrespective of how much tax is due. The fact that no tax is payable cannot therefore be a reasonable excuse for the failure.

44. Mr Beer's agents say that the failure was remedied as soon as they were given the reminders. However, it appears that the agents were instructed in July 2015 and yet the tax return was not filed until September 2015. No reason has been given for this delay of two months.

45. Mr Beer complains that he was not told about the additional penalties when he spoke to HMRC in March 2014. Whilst it might have been helpful if the HMRC adviser had mentioned this, there is no obligation on them to do so. Mr Beer had in

any event had adequate notice of the further penalties which could become due and continued to receive reminders after that call (in June and July) but still did not do what he was clearly told in March he needed to do until September 2014.

46. As mentioned above, reliance on a third party to do something can only be a reasonable excuse if the taxpayer takes reasonable care to avoid the failure. There is no evidence at all as to what action Mr Beer took between July 2014 and September 2014 to ensure that his agent submitted the tax return as soon as possible.

Unfairness/proportionality

47. Mr Beer complains that the penalties totalling £1,300 are unfair given that he did not owe any tax and also bearing in mind that he is on a low income and cannot afford to pay the penalties. I do not have any actual evidence of Mr Beer's income or his financial resources.

48. HMRC in their review letter state that:

> "The Upper Tribunal has found that the First Tier Tribunal does not have the power to discharge or adjust a fixed penalty which is properly due because it thinks it is unfair."

49. The relevant case is not mentioned. However, this is presumably a reference to *HMRC v Anthony Bosher* [2013] UKUT 0579.

50. In that case, the Upper Tribunal was dealing with penalties imposed under the Construction Industry Scheme for failure to make monthly returns by the due date.

51. At the time in question, the penalty provisions were contained in the Taxes Management Act 1970 ("TMA"). These provisions have now been replaced by schedule 55.

52. The penalty regime in that case consisted of a penalty of £100 for each month that the return was late up to 12 months. There was then a further penalty if the return was more than 12 months late which varied according to the number of previous defaults with a minimum of £300 and a maximum of £3,000.

53. The powers of the Tribunal on an appeal against any penalties depended on whether the penalty was a fixed amount. So far as is relevant, s 100B TMA provided as follows:

> "(2) On an appeal against the determination of a penalty under section 100 above section 50(6) to (8) of this Act shall not apply but –
>
> (a) in the case of a penalty which is required to be of a particular amount, the First-tier Tribunal may -
>
> (i) if it appears that no penalty has been incurred, set the determination aside,

(ii) if the amount determined appears to be correct, confirm the determination, or

(iii) if the amount determined appears to be incorrect, increase or reduce it to the correct amount,

5 (b) in the case of any other penalty, the First-tier Tribunal may –

(i) if it appears that no penalty has been incurred, set the determination aside,

(ii) if the amount determined appears to be 10 appropriate, confirm the determination,

(iii) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as it considers appropriate, or

(iv) if the amount determined appears to be 15 insufficient, increase it to such amount not exceeding the permitted maximum as it considers appropriate."

54. The result of this is that, in the case of a fixed penalty, the Tribunal's job is to determine whether the penalty has in fact been incurred and, if so, whether the amount 20 which has been charged is correct.

55. In the case of any other penalty, the Tribunal had power to decide whether the penalty was appropriate and, if it was not, to increase or reduce it.

56. There is one other important provision forming part of the previous penalty regime which I need to mention. This was contained in section 102 TMA which 25 provided that:

> "The board may in their discretion mitigate any penalty, or stay or compound any proceedings for a penalty, and may also, after judgement, further mitigate or entirely remit the penalty."

57. HMRC therefore had a very wide power to reduce the amount of any penalty. 30 There was however no right of appeal in relation to HMRC's exercise of their discretion under this power.

Unfairness

58. The Upper Tribunal in *Bosher* made the point [at 17] that the First Tier Tribunal has a wholly statutory jurisdiction, meaning that it only has the powers and rights 35 conferred on it by statute.

59. The result of this was that (bearing in mind the terms of s 102B(2)(a) TMA), in relation to the fixed penalties in *Bosher*, the Upper Tribunal stated unequivocally [at 17] that:

> "It is plain that the First Tier Tribunal has no *statutory* power to discharge, or adjust, a penalty because of a perception that it is unfair."

60. It is however necessary to look at schedule 55 in order to determine what powers are given to the Tribunal in relation to the penalties in this case.

61. Paragraph 20 of schedule 55 sets out the taxpayer's rights of appeal as follows:

> "20(1) P may appeal against a decision of HMRC that a penalty is payable by P.
>
> 20(2) P may appeal against the decision of HMRC as to the amount of a penalty payable by P."

62. The Tribunal's powers in respect of any such appeals contained in paragraph 22 of schedule 55 which provides as follows:

> "22(1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
>
> 22(2) On an appeal under paragraph 20(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.
>
> 22(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16 –
>
> (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 16 was flawed.
>
> 22(4) In sub-paragraph (3)(b) "**flawed**" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

63. Under paragraph 16 of schedule 55, HMRC has power to reduce the penalty if they think it is right to do so as a result of special circumstances.

64. Paragraph 23 of schedule 55 provides that liability to a penalty does not arise if the taxpayer can show that there was a reasonable excuse for the failure to file the return on time.

65. The effect of these provisions is that where there is an appeal under paragraph 20(1) against HMRC's decision that a penalty is payable, the Tribunal can only cancel

the penalty if the statutory conditions for the imposition of the penalty have not been satisfied or it finds that there is a reasonable excuse for the failure (as in those circumstances, liability to a penalty does not arise).

66. Where the appeal is against the amount of the penalty under paragraph 20(2), the Tribunal's power is limited to either affirming HMRC's decision or substituting another decision which HMRC had power to make.

67. In the context of the fixed penalties which we are talking about in this case, this, on the face of it, limits the Tribunal's power to determine whether the amount of the penalty which has been charged is the correct fixed amount. This is similar to the previous position under TMA.

68. However, paragraph 22(3) of schedule 55 specifically gives the Tribunal power to consider whether a reduction should be made as a result of the existence of special circumstances, but only where HMRC's own decision in relation to this is "flawed" in a judicial review sense.

69. In relation to the question of unfairness, this means that the Tribunal does therefore have power to cancel a penalty if the unfairness derives from something which is a reasonable excuse for the failure or to reduce a penalty if the unfairness results from special circumstances and HMRC's decision on this aspect is flawed.

70. I have already found that Mr Beer does not have a reasonable excuse for his failure.

71. There are two aspects which Mr Beer is effectively putting forward as special circumstances justifying reduction in the amount of the penalties (indeed, the Tribunal is invited to "write off" all of the penalties):

(1) Mr Beer had no tax liability for the year in question (and in fact was entitled to a small repayment of tax).

(2) The penalties represent a high proportion of Mr Beer's income and, as a result, he cannot afford to pay them.

(3) Paragraph 16(2)(a) of schedule 55 specifically provides that a taxpayer's ability to pay cannot be a special circumstance and so HMRC have not taken it into account.

72. They have however considered the fact that Mr Beer did not have any tax to pay for the year in question and have concluded that this does not merit a reduction in the penalties.

73. This brings us on to the question of proportionality.

Proportionality

74. Although it is not mentioned by Mr Beer or his agent, the issue of proportionality is inextricably linked with the European Convention on Human Rights

("ECHR") and the Human Rights Act 1998 ("HRA"). The following provisions in particular are relevant:

(1) Article 1 of the First Protocol to ECHR ("A1P1"):

> "Protection of property
>
> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provision shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

(2) Section 6 HRA:

> "Acts of public authorities
>
> (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
>
> …
>
> (3) In this section "public authority" includes –
>
> (a) a court or tribunal …"

75. It is clear from the decision of the Upper Tribunal in *Bosher* (and indeed from numerous other cases) that a fixed penalty is capable of interfering with a taxpayer's A1P1 rights unless the penalty is "proportionate" for human rights purposes.

76. The Tribunal in *Bosher* however decided that, in that case, the First Tier Tribunal did not have any jurisdiction to consider the question of proportionality given the statutory framework of the penalty legislation in TMA described above.

77. Instead, the correct route for a taxpayer concerned that his Convention rights had been infringed by the imposition of a disproportionate penalty would be to apply for judicial review of any decision by HMRC as to whether (and if so how) to exercise their discretion to mitigate the penalty under s 102 TMA.

78. Schedule 55 however takes a different approach. Rather than giving HMRC an unfettered discretion to mitigate a penalty, HMRC has power to reduce a penalty if there are special circumstances. As a public authority, HMRC should no doubt take into account the question as to whether the penalty constitutes a disproportionate infringement of a taxpayer's A1P1 rights (s 6 HRA).

79. In enacting schedule 55, Parliament has specifically given the First Tier Tribunal a judicial review function in respect of HMRC's decision in relation to special circumstances. This is different to the previous provisions in TMA where

there was no power to appeal to the Tribunal in relation to any decision made by HMRC as to the exercise of its discretion under s 102 TMA.

80. As with a true judicial review, this Tribunal can only interfere with HMRC's decision in relation to special circumstances (and therefore whether the penalty is disproportionate in human rights terms) if HMRC have failed to consider the matter, have not considered all the relevant facts or if they have reached a conclusion which is wholly unreasonable.

81. In this case, HMRC have considered the fact that Mr Beer did not have a tax liability for the relevant tax year but have decided that this is not a special circumstance which would merit a reduction in the penalties.

82. This is not quite the same as considering whether the penalties are disproportionate in a human rights sense. However, HMRC do consider in their statement of case whether the penalty regime itself and the specific penalties imposed on Mr Beer are disproportionate for human rights purposes and have concluded (although without giving any real reasons for their conclusion) that they are not.

83. The question of proportionality in relation to penalties was considered in detail by the Upper Tribunal in *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418, in that case in the context of VAT default surcharges. A number of principles can be drawn from the Upper Tribunal's review of the various authorities to which they were referred:

(1) In the context of tax, Parliament has a wide margin of appreciation in deciding what is appropriate and that must inform the approach to be taken by courts or tribunals to challenges based on the principle of proportionality. Indeed, the court or tribunal should respect Parliament's assessment in such matters unless it is devoid of reasonable foundation [at 50].

(2) In deciding whether a measure is proportionate, it is necessary to consider whether:

(a) the legislative objective is sufficiently important to justify limiting a fundamental right;

(b) the measures designed to meet the legislative objective are rationally connected to it; and

(c) the means used to impair the right or freedom are no more than is necessary to accomplish the objective [at 53].

(3) The question of an infringement of Convention rights is clearly to be addressed at an individual level [75] (i.e. the scheme of the legislation may not itself be disproportionate to the aim it is seeking to achieve but may still produce a disproportionate effect (infringing Convention rights) in an individual case).

84. The penalty regime in schedule 55 has a clear legislative objective which is to ensure that tax returns are made on time which in turn will help ensure that HMRC is able to collect the right amount of tax from taxpayers.

85. Indeed, A1P1 itself recognises that States should have the ability to enforce laws to secure the payment of taxes.

86. The imposition of a penalty for late filing of a tax return is clearly connected with the legislative objective.

87. The real question is whether the amount of the penalties in this particular case is more than is necessary to accomplish the objective.

88. Clearly, there needs to be some penalty which is payable in order to encourage taxpayers to submit their tax returns on time otherwise the legislative objective would not be achieved. This is still the case even where a taxpayer may think that he has no tax to pay as it is perfectly reasonable for HMRC to want to see tax returns to ensure that they agree with the taxpayer's assessment of the position.

89. It is here that the margin of appreciation which must be given to Parliament becomes relevant. As the Upper Tribunal observed in *Total Technology* [at 73]:

> "A smaller penalty would always be less interventionist than a larger one; but it cannot sensibly be argued that the State must therefore impose the minimum penalty which might have some deterrent effect. The State must be entitled to impose the penalty which it considers to be the most efficacious for achieving the aim pursued constrained only by the requirement that the penalty is not disproportionate to the gravity of the infringement. And here we would accept that, to use the words of the Convention jurisprudence, a wide margin of appreciation should be afforded to the State."

90. In the absence of any other special circumstances, it is not for HMRC or for a Tribunal or court in this situation to second guess the minimum penalty which Parliament has decided should be payable, even in circumstances where no tax is due. In the words of Simon Brown LJ in *International Transport Roth* (see [37] above), the result may be harsh but it is not plainly unfair.

Special circumstances

91. HMRC have taken into account the fact that there was no tax to pay. Bearing in mind the nature of the penalty regime and the fact that, as described above, it provides for minimum penalties to be payable irrespective of the amount of tax due and even looking at this from the perspective of the Human Rights Act, this is not an unreasonable conclusion for HMRC to come to and is not therefore one which the Tribunal can interfere with.

92. HMRC do not say whether they have taken into account the fact that Mr Beer was not warned in March 2014 that further penalties could be payable. However, in my view, this is not a relevant consideration given that Mr Beer had received a number of notices which referred to those penalties. The position might be different

if Mr Beer had been given misleading information rather than the HMRC adviser just not mentioning the further penalties (having not been asked the question).

Conclusion

93. For the reasons set out above, Mr Beer does not have a reasonable excuse for his failure to file his tax return on time.

94. HMRC should consider the question of proportionality in deciding whether there are special circumstances justifying a reduction in the amount of the penalties. It is however clear that they have done so and their decision that the penalties charged are not disproportionate is not one which is entirely reasonable and so the Tribunal is not entitled to interfere in that decision.

95. HMRC's decisions that the penalties are payable and as to the amount of the penalties are therefore affirmed.

96. 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.

ROBIN VOS
TRIBUNAL JUDGE

RELEASE DATE: 01 SEPTEMBER 2017