



**TC06563**

**Appeal number: TC/2016/02748**

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*INCOME TAX – late submission of Self-Assessment Tax returns for 2009-2010, 2010-2011, and 2012-2013. Penalties for 2009-2010 withdrawn. Initial late filing penalty and daily penalties for 2010-2011 confirmed, Schedule 55 paras 1(3) and 17(3) apply so that the aggregate of the 3 month penalty and 6 month penalty cannot exceed the tax liability of nil. Appeal allowed to that extent. No reasonable excuse for late submission of return for 2012-2013.*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

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**SHAUN C. LONG**

**Appellant**

**- and -**

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

**Respondents**

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**TRIBUNAL: PRESIDING MEMBER:  
PETER R. SHEPPARD FCIS FCIB  
CTA AIIT  
MEMBER: JULIAN STAFFORD**

**Sitting in public at Liverpool Civil and Family Court, Vernon Street, Liverpool on  
15 February 2018**

**Ann-Marie Burke for the Appellant**

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**Loretta McLaughlin, HMRC Officer, for the Respondents.**

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## DECISION

### 1. Introduction

5 This considers an appeal received by the Tribunal on 18 May 2016 against penalties totalling £3,100 imposed by the respondents (HMRC) under Schedule 55 Finance Act 2009 for the late filing by the appellant of his Self-Assessment Tax returns for 2009/10 (£200); 2010/2011 (£1,600); and 2012/2013 (£1,300). In the appellant's Notice of Appeal the amount stated as being appealed against is "£2,968.44".

10 On 3 May 2016 HMRC cancelled the two £100 penalties in respect of the tax year 2009/2010 so the appeal considered the penalties totalling £2,900 and interest thereon.

The appeal was made out of time but Miss McLaughlin said that HMRC would not contest the appeal going ahead.

### 2. Legislation

15 Finance Act 2009 Schedule 55  
Taxes Management Act 1970, in particular Section 7, 8, 93 and 115

### 3. Case law

20 Christopher Ryan v HMRC [2012] UKUT 9 (TCC)  
Crabtree v Hinchliffe [1971] 3 All ER 967  
HMRC v Donaldson [2016] EWCA Civ 761  
HMRC v Hok Ltd. [2012] UKUT 363 (TCC)  
The Clean Car Company Ltd v Customs and Excise [1991] VATTR 234

### 4. Facts

25 Schedule 55 of the Finance Act 2009 ("Schedule 55") makes provision for the imposition by Her Majesty's Revenue and Customs ("HMRC") of penalties on taxpayers for the late filing of tax returns.

30 If a person fails to file an income tax return by the "penalty date" (the day after the "filing date" i.e. the date by which a return is required to be made or delivered to HMRC), paragraph 3 of Schedule 55 provides that the person is liable to a penalty of £100.

Paragraph 4 of Schedule 55 provides:

"(1) A person is liable to a penalty under this paragraph if (and only if)–

35 (a) The failure continues after the end of the period of 3 months beginning with the penalty date,

(b) HMRC decide that such a penalty should be payable, and

(c) HMRC give notice to the person specifying the date from which the penalty is payable."

40 (2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

Paragraph 5 of Schedule 55 provides:

A person is liable to a penalty under this paragraph if (and only if) - the failure continues after the end of the period of 6 months beginning with the penalty date.

- 5 The penalty under this paragraph is the greater of –
- 5% of any liability to tax which would have been shown in the return in question, and
  - £300

Paragraphs 6(1) and (5) of Schedule 55 provide:

- 10 A person is liable to a penalty under this paragraph if (and only if) - the failure continues after the end of the period of 12 months beginning with the penalty date.
- .....the penalty under this paragraph is the greater of –
- i. 5% of any liability to tax which would have been shown in the return in question, and
  - 15 ii. £300

Paragraph 1 (3) of Schedule 55 states:

- 20 “ (3) If P’s failure falls within more than one paragraph of this schedule P is liable to a penalty under each of those paragraphs (but this is subject to paragraph 17 (3))”

Paragraph 17 (3) states (in respect of tax years 2011/12 onwards):

- 25 “(3) Where P is liable for a penalty under more than one paragraph of this Schedule which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed the relevant percentage of the liability to tax.”

Prior to 2011/12 the relevant percentage was expressed as 100% in all cases.

The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970.

- 30 5. In this case in respect of the tax year ended 5 April 2011 penalties totalling £1,600 were levied by HMRC. The tax calculation for the appellant for 2010/2011 shows that his income was less than the personal allowance for that tax year, the result being that the Appellant did not have any income tax to pay.
- 35 6. HMRC say they issued a notice to file to the appellant on 6 April 2011. The filing date for a non-electronic return was 31 October 2011 whereas for an electronic return the filing date was 31 January 2012. The appellant’s electronic return was received by HMRC on 4 January 2015.
- 40 7. As the return was not submitted by the filing date of 31 January 2012 HMRC issued a notice of penalty assessment on or around 14 February 2012 in the amount of £100.

8. As the return had still not been received 3 months after the penalty date of 1 February 2012, HMRC issued a notice of daily penalty assessment of £900 on or around 7 August 2012, calculated at £10 per day for 90 days (1 May 2012 to 29 July 2012 is 90 days).

5 9. As the return had still not been received 6 months after the penalty date of 1 February 2012, HMRC issued a notice of six month penalty assessment of £300 on or around 7 August 2012.

10 10. As the return had still not been received 12 months after the penalty date of 1 February 2012, HMRC issued a notice of twelve month penalty assessment of £300 on or around 19 February 2013.

11. In respect of the return for the tax year ended 5 April 2013 it was agreed that this showed tax of £304.55 was due. Late filing Penalties totalling £1,300 were levied by HMRC.

15 12. HMRC say they issued a notice to file to the appellant on 6 April 2013. The filing date for a non-electronic return was 31 October 2013 whereas for an electronic return the filing date was 31 January 2014. The appellant's electronic return was received by HMRC on 4 January 2015.

13. As the return was not submitted by the filing date of 31 January 2014 HMRC issued a notice of penalty assessment on or around 18 February 2014 in the amount of £100.

20 14. As the return had still not been received 3 months after the penalty date of 1 February 2014, HMRC issued a notice of daily penalty assessment of £900 on or around 18 August 2014, calculated at £10 per day for 90 days (1 May 2014 to 29 July 2014 is 90 days).

25 15. As the return had still not been received 6 months after the penalty date of 1 February 2014, HMRC issued a notice of six month penalty assessment of £300 on or around 18 August 2014.

16. HMRC supplied a copy of their internal record showing the dates of issue of the returns and the penalty notices.

### 17. Appellant's submissions

30 In the Notice of Appeal of 18 May 2016 the appellant's agent wrote

“Shaun Long has a family with 3 dependent children to support, and the excessive penalties would create great hardship on my client.....The penalties imposed in 2010/11 was at a time when Mr. Long was unemployed for part of the year claiming JSA and no income tax was liable in this year. 2012/2013 Mr. Long's tax calculation was that he owed £304.55 in tax £1,300 was added for penalties.”

In a letter dated 14 March 2016 to HMRC the appellant's agent had made similar comments to those made later in the Notice of appeal to the Tribunal.

No reasonable excuse for the late returns was given but the penalties were described as excessive.

At the hearing the appellant's agent produced a typed statement from the appellant.

5 The appellant states that his youngest son suffers from severe epilepsy and as a result he or his partner receive the middle rate of the DLA care component. The appellant says he works 30 hours a week and would find it a struggle to do more due to hospital appointments for his son with his consultant, clinical psychologist and occupational therapist. In addition his partner is pregnant with twins due in July.

The appellant states he does not smoke, drink or take extravagant holidays and that his income barely covers the basics and any further financial penalties would have a severe impact on the children's futures.

10 The statement includes "The reason the penalties arose was due to trying to establish a position in a company, so we had long days on the road and with the children I just simply avoided completing as I did not know where to start. Eventually a lady came from HMRC and helped me fill the returns....."

15 The remainder of the statement describes the appellant's unsuccessful attempts to negotiate with HMRC a level of payments which he considers he can afford. The comments have no relevance to whether the appellant had reasonable excuse for the late submission of the returns and so are not reproduced here.

#### 18. HMRC's submissions

20 HMRC did not provide a statement of case but helpfully Miss McLaughlin did provide the Tribunal with a copy of her speaking notes.

HMRC say that having been issued with a Tax return for the years in question the appellant was obligated to submit those returns in accordance with the Taxes Management Act 1970.

25 In respect of the tax year 2009/10 the penalties had been imposed under the old penalty regime governed by Section 93 of the Taxes Management Act 1970. That regime allowed penalties to be cancelled where no tax was due.

30 19. In respect of the 2010/2011 return HMRC say the return was filed nearly 3 years late. They say that the tax calculation for the appellant for 2010/2011 shows that his income was less than the personal allowance for that tax year, the result being that the Appellant did not have any income tax to pay. HMRC say that since the new penalty regime introduced in April 2011, tax liability is no longer linked to penalties. Therefore the penalty cannot be reduced to nil if the taxpayer has no tax to pay.

20. HMRC accept that the appellant submitted his tax return for 2011/2012 on time.

21. In respect of the 2012/2013 tax return HMRC say this was filed almost 1 year late.

35 22. HMRC submitted that the appellant received ample reminders, penalty assessments and periodical statements regarding his outstanding returns and resulting penalties. In addition he received advice by telephone advising him to file the outstanding returns. HMRC therefore consider that that the Appellant cannot be said to have acted reasonably, he was an experienced self-assessment taxpayer who should have ensured  
40 he met his tax obligations.

23. HMRC say there is no statutory definition of reasonable excuse. They drew attention to the statements by Judge Medd in the *Clean Car Co. Ltd v HMRC*. His decision included

5       *“one must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?”*

10       24. HMRC say that applying this question to this case they consider the appellant has not provided a reasonable excuse for the late filing of his tax returns for 2010/2011 and 2012/2013.

15       25. In addition with regards to the Appellant’s financial circumstances legislation provides that an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the person’s control. They say that the appellant has not demonstrated that his lack of funds is attributable to events outside his control.

20       26. In respect of the late filing penalties HMRC has considered special reduction (under paragraph 16 Schedule 55 of the Finance Act 2009.) They refer to the case of *Crabtree v Hinchcliffe*. HMRC say that in considering whether there are special circumstances they have considered the reasons put forward by the appellant. HMRC say that during their review of the late filing penalties they noted no special circumstances which would merit a reduction in the penalty.

## 27. Directions

25       In cases such as this one it is necessary for the Tribunal to satisfy itself that the HMRC have charged the penalties in accordance with the legislation. In respect of the tax year 2010/2011 as it was agreed that there was no liability to tax the Tribunal asked Miss McLaughlin whether she thought that Paragraphs 1 (3) and 17 (3) of Schedule 55 should apply so that the aggregate of the two £300 penalties could not exceed the tax due and so should be nil. Miss McLaughlin said that she had not considered those paragraphs and had received no instructions on them. She requested an adjournment of one week  
30       to allow her to make written submissions on the point. The Tribunal issued directions to the effect that it would allow written submissions to be made by each party by 15 March 2018.

28. Both parties responded to the directions.

In an e-mail dated 9 March 2018 the appellant’s agent said:

35       “..... there is a clear indication that the penalty should not exceed the amount liable to tax under paragraph 17.

Mr. Long was on benefits part of the year and the latter part he started self-employment on a low income which made his tax liability nil.

40       .....imposing these penalties is to encourage taxpayers to get their tax returns in on time, but surely if they have been on benefits part of the year and low income then £1,600 is excessive when no tax was due and puts a family such as Mr. Long under pressure.....”

An e-mail with an attachment was received from HMRC. The attachment is dated 8 March 2018. After two introductory paragraphs the attachment states:

**“Legal Submissions**

5 3. Having had the opportunity to seek advice from policy on this matter, the Respondents respectfully submit as follows

4. The £300 penalties levied under both paragraphs 5(2)(b) and 6(5)(b) were not made by reference to tax liability and therefore paragraph 17 (3) is not engaged.

10 5. The penalty of £300 levied on the appellant under paragraph 5(2)(b) was in accordance with legislation. The penalty was imposed as the Appellant’s return was outstanding after the end of the period of 6 months beginning with the penalty date.

15 6. The penalty of £300 levied on the appellant under paragraph 6(5)(b) was in accordance with legislation. The penalty was imposed as the Appellant’s return was outstanding after the end of the period of 12 months beginning with the penalty date.

7. The appellant’s return for the tax year 2010/2011, which is not in dispute, shows he had no liability to tax.

20 8. In the circumstances, the penalties of £300.00 each made under the aforementioned provisions of Schedule 55, cannot be determined by reference to a tax liability as the appellant had no liability.

25 9. The minimum amount of penalty for a failure to file a return after 6 or 12 months is the greater of 5% of any liability to tax that would have been shown on the return, or £300. If the liability is less than £6,000\*, the penalty is not determined by reference to tax liability but is £300 irrespective of the liability to tax. In this case, as the appellant had no tax liability for 2010/2011, he received penalties of £300 each under paragraphs 5(2)(b) and 6(5)(b).

30 \*The letter from HMRC states £600 but the Tribunal considers that this is an error and should read £6,000

10. Schedule 55 was introduced by Parliament to approve taxpayers’ compliance in the making and delivery of returns and documents to HMRC by the relevant due date. It was therefore Parliament’s intention to increase the penalty in relation to the length of time the return is outstanding.

35 11. If the legislation were to be interpreted in the way suggested, it would (appear) to be advantageous for a taxpayer with a nil liability to file his return later rather than sooner. For example, a taxpayer who filed his return 6 months after the penalty date would be liable to a penalty under 5 (2)(b) but not paragraph 6(5)(b). Therefore paragraph 17(3) could not be relevant  
40 on any reading because the taxpayer would only be liable to only one penalty. Whereas a taxpayer who filed 12 months after the penalty date would find the penalties imposed on him under paragraphs 5(2)(b) and

6(5)(b) could be reduced to nil under paragraph 17(3), as the aggregate amount of these penalties, £600, would be more than his liability to tax. This result would be contrary to the spirit of the Schedule 55 penalty regime.

5                   12. If there were a liability to tax, the penalty would be the greater of 5% of the liability, or £300. The penalty does not take into account liabilities below a certain amount.”

## 29. Tribunal’s Observations

10                   There was no dispute that the returns were submitted late. The appeal is therefore concerned with whether or not HMRC had levied the penalties in accordance with legislation and if so whether the appellant had reasonable excuse for not submitting his self-assessment returns for by the due dates. As HMRC have cancelled the penalties for the tax year 2009/2010 it is only necessary for the Tribunal to consider tax years 2010/2011 and 2012/2013.

15                   30. Although HMRC provide a copy of their internal records showing dates they issued tax returns and penalty notices etc. copies of the actual notices were not provided so the Tribunal had no opportunity to check the dates of issue, the amounts levied, and to what address they had been sent.

20                   31. In respect of paragraphs 1 (3) and 17 (3) The Presiding member and the member agree that these are not a model of clarity. This lack of clarity is apparent in that they disagree on how Paragraph 17 (3) should be applied. The view of the Presiding Member is set out in paragraphs 32 to 36 below. The dissenting judgement of the member Julian Stafford is included at the foot of this decision.

25                   32. In respect of the submissions on paragraphs 1 (3) and 17 (3) the Tribunal notes that HMRC say at item 4 of their paper that the two “£300 penalties .....were not made by reference to tax liability. That statement suggests that HMRC have not followed the legislation in assessing the penalties.

For each penalty the legislation clearly says “The penalty under this paragraph is the greater of –

- 30                   i)       5% of any liability to tax which would have been shown in the return in question, and
- ii)       £300

35                   In order to determine which is the greater it is necessary to consider what 5% of the tax liability is and compare that to £300. Therefore the penalty has to be determined by reference to the tax due.

HMRC say the penalties were made without reference to tax liability. If that is so they have not applied the legislation properly because the terms of paragraphs 1 (3) and 17 (3) have been ignored.

40                   However the Tribunal considers that HMRC levied the penalty of £300 in the knowledge that the tax liability of the appellant was nil and therefore concluded that £300 would be the greater amount. They therefore did determine the penalty by reference to a liability to tax



In the Tribunal's opinion it follows that contrary to what HMRC have said in both items 5 and 6 of their paper they have not levied the penalties in accordance with the legislation.

5 33. The tribunal understand HMRC's submission at item 9 of their paper but disagrees with the statement that the £300 penalty is levied irrespective of the liability to tax because this ignores the legislation to be found in paragraphs 1(3) and 17(3).

10 34. In respect of item 10 the Tribunal accepts HMRC's submission that it was Parliament's intention to improve taxpayers' compliance in the making and delivery of returns and documents to HMRC by the relevant due date. However under the previous legislation where there was no tax liability it was often the case that penalties were waived. Under the new legislation there is an initial fixed penalty of £100 and fixed daily penalties of £10 for a maximum of 90 days. Thus the maximum total of fixed penalties made without reference to the liability to tax is £1,000. It appears to the Tribunal that it was Parliament's intention to limit further penalties where there is little or no tax due and this is achieved by paragraphs 1 (3) and 17 (3) which have the effect of placing a limit on the aggregate of the six months and twelve months penalties where the amount of tax due is less than £600.

15 35. In respect of item 11 the Tribunal accepts that the legislation contains the anomaly suggested by HMRC. In fact in this case for tax year 2012/2013 although the appellant has a tax liability of £304.55 the legislation applies so that as well as the fixed penalty of £100 and the daily penalties of £900 under paragraph 5 (2)(b) the appellant incurs a further penalty of £300.

20 36. However if one considers a taxpayer who has a tax liability of £100 and files his return over 12 months late then it appears to the Tribunal that paragraphs 1(3) and 17(3) apply so that the aggregate of the 6 months and 12 months penalties cannot exceed £100. Thus if HMRC's submissions are accepted a person who has no tax liability is penalised £600 under paragraphs 5 (2)(b) and 6(5(b) but a person who has a tax liability of £100 can only be penalised an aggregate of £100 under those two paragraphs. The Tribunal considers that this would be contrary to the spirit of the Schedule 55 penalty regime.

25 37. If all the submissions of HMRC are accepted then this makes paragraphs 1 (3) and 17(3) of no effect where the tax liability is less than £6,000 (5% of £6,000 is £300). The legislation provides no such limitation.

30 38. The Tribunal considers that it was Parliament's intention that the terms of paragraphs 1(3) and 17(3) should have effect. It therefore finds that the aggregate of the penalties under paragraphs 5 (2)(b) and 6(5(b) cannot exceed 100% of the liability to tax. As it is agreed in this case that in 2010/2011 the appellant's liability to tax is nil then the aggregate of the penalties under paragraphs 5 (2)(b) and 6(5(b) cannot exceed nil. The appeal against the two £300 penalties is allowed.

35 39. In respect of the appellant's complaint that the level of the penalties is beyond his ability to pay and excessive the Tribunal points out that the level of the fines is laid down in legislation and the Tribunal has no power to amend them unless they are incorrectly imposed or they are inaccurately calculated.

38. In HMRC v Hok Ltd the Upper Tribunal at paragraph 36 said "...The statutory provision relevant here, namely TMA S100B, permits the Tribunal to set aside a penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further. In particular neither that provision, nor any other gives the Tribunal discretion to adjust a penalty of the kind imposed in this case, because of a perception that it is unfair, or for any similar reason. Pausing there, it is plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust, a penalty because of the perception that it is unfair."

39. There is no definition of reasonable excuse. HMRC refer to wording his Honour Judge Patrick Medd OBE QC used in *The Clean Car Company Ltd v The Commissioners of Customs and Excise*. In that case Judge Medd also wrote;

*"It seems to me that Parliament in passing this legislation must have intended that the question of whether a particular trader had a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered. Thus though such a taxpayer would give a reasonable priority to complying with his duties in regard to tax and would conscientiously seek to ensure that his returns were accurate and made timeously, his age and experience, his health or the incidence of some particular difficulty or misfortune and, doubtless, many other facts, may all have a bearing on whether, in acting as he did, he acted reasonably and so had a reasonable excuse...."*

40. The Tribunal has considered the submissions made by the appellant and his agent. Unfortunately none of the submissions provide the appellant with a reasonable excuse for the late returns. Insufficiency of funds is not a reasonable excuse. The twins due in July 2018 cannot be a reasonable excuse for late submission of tax returns in 2010-2011 and 2012-2013.

41. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalties below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalties and have concluded there are none. The Tribunal does not consider that HMRC's decision is flawed.

42. In summary in respect of tax year 2009/10 HMRC have cancelled the two £100 penalties. In respect of tax year 2010/2011 the appellant has failed to establish he had reasonable excuse for the late return therefore his appeal against the initial late return penalty of £100 and the daily penalties of £900 is dismissed. However in respect of the 6 months late filing penalty and the 12 month late filing penalty HMRC have failed to apply the terms of paragraph 1(3) and 17(3) of Schedule 55 and therefore the appeal against those penalties is allowed. In respect of tax year 2012/2013 the appellant has failed to establish he had reasonable excuse for the late return therefore his appeal against the initial late return penalty of £100, the daily penalties of £900, and the 6 month late filing penalty of £300 is dismissed. Thus the overall total penalties of £3,100 for the tax years 2009/2010, 2010/2011 and 2012/2013 are reduced to £2,300. It will be necessary for HMRC to recalculate the interest in the light of this decision.

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43. This document contains full facts 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  
5 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.

**PETER R. SHEPPARD**  
**TRIBUNAL JUDGE**

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**RELEASE DATE: 26 JUNE 2018**

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### **Dissenting judgement of Tribunal Member Julian Stafford in relation to the operation of Para 17(3)**

- 5 1. Presiding Member Sheppard and I are in agreement on the majority of the judgement in this case. However we do diverge in one limited respect – namely the interpretation of Para 17(3).
- 10 2. I agree with HMRC that the two £300 penalties were not determined by reference to a liability to tax. If the legislation had said “P will be liable to a penalty of 5% of the tax shown in the return or £300 if greater” the situation might be different. Clearly the liability to tax is used as a comparator in determining the amount of the penalty but where the actual penalty is based on the fixed monetary amount I do not think that, on a normal reading of the wording, the penalty can be said to have been *determined* by reference to liability to tax.
- 15 3. I agree that the revised penalty regime was introduced to encourage prompt filing, as otherwise a taxpayer with no tax liability would have no incentive to file a return in the absence of a determination.
- 20 4. It also seems clear that the percentage penalties were to cover the situation where a taxpayer had a liability significantly over £6,000 and considered a £300 penalty a small price to pay for deferring a large tax bill.
- 25 5. I also agree with the HMRC comment that interpreting the schedule in the way suggested would provide an anomalous result for taxpayers who are liable to two rather than one £300 penalties and who have little or no liability to tax.
- 30 6. Under the previous legislation in S93(7) TMA 1970, the penalty could not exceed the tax liability.
- 35 7. I do not perceive anything in the legislation which evidences an intention to restrict penalties where liability to tax is small. It would have been simple to do this by omitting the reference to £300. In other words the six-month and 12 month penalties would simply be directly geared to the amount of tax due. 5% of nil would be nil. This would admittedly have the effect that a taxpayer with no liability would have no further incentive to file a return. However, as mentioned earlier, HMRC can issue a determination to provide a new incentive in appropriate cases.
- 40 8. Para 17(3) must presumably have some intended effect. So what is it? In my view the answer lies in Para 17(3) *and* 17(4).

9. Firstly, Schedule 55 covers a variety of situations: late filing, 3,6 and 12 month late filing, deliberate withholding of information to enable HMRC to assess, RTI penalties, CIS penalties and others. Most of those penalties have a similar structure to the late self-assessment return filing penalties. Para 17 comes after all those and is presumably meant to qualify some or all of the preceding provisions. It is notable that the provisions relating to deliberate behaviour involve much higher % penalties and I think it is those penalties that Para 17(3) is aimed at.
10. If P indulges in deliberate concealment the >12 month penalty under Para 6(3A) is the greater of 100% of the liability to tax and £300 for Category 1 offences. If the tax liability for the year were £10,000, the penalties would be £100 (Para 3), £900 (Para 4(2)), £500 (Para 5(2)) and £10,000 (Para 6(3)/(3A)). However, Para 17(3) would restrict the sum of the 6 and 12 month penalties to £10,000 giving a total penalty charge of £11,000 not £11,500.
11. Therefore, in my view, the wording of Para 17(3) does not act to reduce or eliminate penalties for ordinary taxpayers with little or no liability because it goes against the intention of the legislation to encourage compliance and would encourage non-filing beyond 6 months. However it does act to “cap” serious penalties as set out above.