



TC07044

Appeal number: TC/2017/03922

Income tax - fixed and daily penalties for late filing of self-assessment return - Donaldson considered - appellant and family members ill - no supporting evidence - whether reasonable excuse - no - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

FARHAD ALI

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL CONNELL

The Tribunal determined the appeal on 8 February 2019 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 10 May 2017, and HMRC's Statement of Case received by the Tribunal and the Appellant on 4 July 2017 with enclosures. The Tribunal wrote to the Appellant on 8 July 2017 stating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. The Appellant did not respond.

DECISION

1. This is an appeal by Farhad Ali ('the appellant') against penalties totalling £1,200 imposed by the Respondents ('HMRC') under Paragraphs 4 of Schedule 55 Finance Act 2009 for the late filing by the appellant of his self-assessment ('SA') tax return for the tax year ending 5 April 2012.
2. The penalties for late filing of a return can be summarised as follows:
 - i. A penalty of £100 is imposed under Paragraph 3 of Schedule 55 Finance Act ('FA') 2009 for the late filing of the Individual Tax Return.
 - ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA 2009.
 - iii. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 5 of Schedule 55 FA 2009.
 - iv. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 6 of Schedule 55 FA 2009.
3. As the appellant's return had not been filed on time, a £100 penalty was issued on 12 February 2013 and as the return had still not been received, a daily penalty of £900 on 14 January 2014.
4. Daily penalties have been the subject of appeal in the case of *Donaldson v Commissioners for Her Majesty's Revenue and Customs* [2016] EWCA Civ. 761 (the "Donaldson case"). Mr Donaldson challenged aspects of HMRC's standard approach to these penalties.
5. The appellant appealed the £900 penalty to HMRC on 7 February 2014.
6. On 19 February 2014, because the outcome of the *Donaldson* appeal was relevant to the appellant's appeal against daily penalties, HMRC postponed collection of the penalties until the *Donaldson* appeal was determined.
7. The three issues before the Court of Appeal in respect of daily penalties were:
 - a) whether HMRC had made a decision required by paragraph 4(1)(b) of Schedule 55 FA 2009 to charge daily penalties;
 - b) whether HMRC had given notice required under paragraph 4(1)(c) of Schedule 55 FA 2009, specifying the date from which the daily penalties were payable;

- c) whether HMRC had specified the period in respect of which the daily penalties were assessed in the notice of assessment, required under paragraph 18 of Schedule 55 FA 2009.

8. Although only issue (b) was before the Upper Tribunal, Mr Donaldson was given permission to raise the two further points (a) and (c).

9. The Court of Appeal decided that:

- a. Parliament had not intended that HMRC should only be able to exercise discretion under para 4(1)(b) on an individual taxpayer-by-taxpayer basis. The policy decision taken by HMRC in June 2010 that all taxpayers who were at least three months late in filing their returns would be liable to a daily penalty, satisfied the requirements of para 4(1)(b).
- b. HMRC had given notice under paragraph 4(1)(c) specifying the date from which the penalty was payable in the SA reminder and SA326 Notice. Both notices stated in terms that Mr Donaldson would be liable to a £10 daily penalty if his return was more than three months late and specified the date from which they were payable depending on whether the person filed an electronic or paper return. The notice could be given in advance of any default.
- c. HMRC's notice of assessment under paragraph 18 did not specify the period for which the daily penalties had been assessed. The notice should have specified the period over which the penalty had been incurred and should also have specified the three month period for which the penalty had been charged, or at least state the date when the penalties started. However, the court decided the omission fell within the scope of s 114(1) TMA 1970 and thus did not affect the validity of the notice of assessment. The court's view was that Mr. Donaldson was not misled or confused by the omission and the period of assessment could be worked out without difficulty.

How the Court of Appeal decision affects this appeal

10. HMRC submit that following the Court of Appeal decision, the Tribunal should find that in the present appeal, HMRC have satisfied the requirements of paragraph 4(1)(b) and 4(1)(c) and despite the omission of the correct period for which daily penalties had been assessed, in the notice of assessment under paragraph 18, the omission does not affect the validity of the notice.

Filing date and Penalty date

11. Under s 8(1D) TMA 1970 et seq. which states that a non-electronic return must be filed by 31 October following the end of the relevant tax year or an electronic return by 31 January of the following year. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.

12. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.

Reasonable excuse

13. Paragraph 23 of Schedule 55 FA 2009, provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, a Tribunal) that they had a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse ceased.

14. The law specifies two situations that are not reasonable excuse:

- (a) An insufficiency of funds, unless attributable to events outside the Appellant's control, and
- (b) Reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

15. There is no statutory definition of "reasonable excuse". Whether or not a person had a reasonable excuse is an objective test and "is a matter to be considered in the light of all the circumstances of the particular case" (*Rowland V HMRC* (2006) STC (SCD) 536 at paragraph 18).

16. HMRC's view is that the actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends upon the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard.

17. If there is a reasonable excuse it must exist throughout the failure period.

The background facts

18. The notice to file for the year ending 5 April 2012 was issued to the appellant on 6 April 2012.

19. The filing date was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return.

20. As the return was not received by the filing date, HMRC issued a notice of penalty assessment on or around 12 February 2013 in the amount of £100.

21. As the return had still not been received 3 months after the penalty date, HMRC issued a notice of daily penalty assessment on or around 14 January 2014 in the amount of £900, calculated at £10 per day for 90 days.

22. As the return had still not been received 6 months after the penalty date, HMRC also issued a notice of penalty assessment on or around 14 January 2014 in the amount of £300.

23. The appellant's electronic return was filed on 10 January 2014.

24. On 7 February 2014 the appellant appealed against £1,200 of penalties, on the grounds:

“I have some medical conditions in which I forget things to do. I changed address and did not receive the filing reminder.”

25. HMRC sent the appellant a decision letter on 19 February 2014 rejecting his appeal and offering a review.

26. HMRC sent a follow up letter to the appellant on 14 February 2017.

27. On 6 March 2017 the appellant requested a review of HMRC's decision, saying:

“I started working self-employed in 2011-2012 as a van driver, it was a completely new experience for me and I didn't know much about tax returns and its ending period.

I was struggling to survive and mentally disturbed because I didn't have any experience to work as self-employed. Because of this I didn't file the tax return.

In 2012 I went home for a month because my mum was ill.

The penalty of £979 is too much to pay.”

28. HMRC carried out a review and issued their review conclusion on 12 April 2017. The outcome of the review was that HMRC's decision should be upheld.

29. On 10 May 2017 the appellant notified his appeal to the Tribunal, giving his grounds as:

“In 2011 it was my first life experience to work self-employed and due to this I was mentally stressed and could not file my return on time.

My wife was suffering from breast cancer and my whole attention was on taking her to appointments at the hospital and GP.

My mum was sick back home and I went to Pakistan to look after her.

Due to these conditions I was in a state of depression and was struggling in my self-employment driver work.”

30. HMRC had postponed collection of the penalties until after the decision in *Donaldson*.

31. The *Donaldson* appeal lasted for several years, as the Donaldson decision was appealed to the Upper Tribunal, and then to the Court of Appeal. In July 2016 the Court of Appeal released its decision (*Donaldson* [2016] EWCA Civ 761).

32. The Court of Appeal's decision became final when the Supreme Court refused permission for leave to appeal on 21 December 2016. Thereafter, HMRC have been asked to provide statements of case on the many appeals postponed or stayed behind *Donaldson* in order that they could be resolved.

33. HMRC's Statement of Case was received by the Tribunal and copied to the appellant on 4 July 2017

Relevant statutory provisions

Taxes Management Act 1970

Section 8 - Personal return- provides as follows:

(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year,] he may be required by a notice given to him by an officer of the Board-

- a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may, reasonably be required in pursuance of the notice, and
- b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

(1A) The day referred to in subsection (1) above is-

- (a) the 31st January next following the year of assessment, or
- (b) where the notice under this section is given after the 31st October next following the year, the last j day of the period of three months beginning with the day on which the notice is given]

(1AA) For the purposes of subsection (1) above-

- (a) the amounts in which a person is chargeable to income tax and capital gains tax are net amounts, that is to say, amounts which take into account any relief or allowance a claim for which is included in the return; and
- (b) the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate amount of any income tax deducted at source and any tax credits to which [section 397(1) [or [397A(1)] of ITTOIA 2005] applies.]

(1B) In the case of a person who carries on a trade, profession, or business in partnership with one or more other persons, a return under this section shall include each amount which, in any relevant statement, is stated to be equal to his share of any

income, [loss, tax, credit] or charge for the period in respect of which the statement is made.

(1C) In subsection (1B) above "relevant statement" means a statement which, as respects the partnership, falls to be made under section 12AB of this Act for a period which includes, or includes any part of, the year of assessment or its basis period.

(1D) A return under this section for a year of assessment (Year 1) must be delivered-

- (a) in the case of a non-electronic return, on or before 31st October in Year 2, and
- (b) in the case of an electronic return, on or before 31st January in Year 2.

(1E) But subsection (1D) is subject to the following two exceptions.

(1F) Exception 1 is that if a notice in respect of Year 1 is given after 31st July in Year 2 (but on or before 31st October), a return must be delivered-

- (a) during the period of 3 months beginning with the date of the notice (for a non-electronic return), or
- (b) on or before 31st January (for an electronic return).

(1G) Exception 2 is that if a notice in respect of Year 1 is given after 31st October in Year 2, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice.

(1H) The Commissioners-

- (a) shall prescribe what constitutes an electronic return, and
- (b) may make different provision for different cases or circumstances.

(2) Every return under this section shall include a declaration by the person making the return to the effect that the return is to the best of his knowledge correct and complete.

(3) A notice under this section may require different information, accounts and statements for different periods or in relation to different descriptions of source of income.

(4) Notices under this section may require different information, accounts and statements in relation to different descriptions of person.

(4A) Subsection (4B) applies if a notice under this section is given to a person within section 8ZA of this Act (certain persons employed etc. by person not resident in United Kingdom who perform their duties for UK clients).

(4B) The notice may require a return of the person's income to include particulars of any general earnings (see section 7(3) of ITEPA 2003) paid to the person.

(5) In this section and sections 8A, 9 and 12AA of this Act, any reference to income tax deducted at source is a reference to income tax deducted or treated as deducted from any income or treated as paid on any income.

Schedule 55 Finance Act 2009

34. The penalties at issue in this appeal are imposed by Schedule 55 FA 2009.

Paragraph 1 (4) states that the ‘penalty date’ is the date after the ‘filing date.’

Paragraph 3 of Schedule 55 imposes a fixed £100 penalty if a SA return is submitted late.

Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

- (1) P is liable to a penalty under this paragraph if (and only if)--
 - (a) P's 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 P specifying the date from which the penalty is payable.
- (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).
- (3) The date specified in the notice under sub-paragraph (1)(c)--
 - (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

- (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this paragraph is the greater of--
 - (a) 5% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.

Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:

- (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return 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)--
 - (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

- (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

Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of “special circumstances” as follows:

- (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any para-graph of this Schedule.
- (2) In sub-paragraph (1) "special circumstances" does not include--
 - (a) ability to pay, or
 - (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.

Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal’s jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of “special circumstances” as set out below:

- (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- (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.
- (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.
- (4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

The appellant’s case

35. The appellant’s case is as set out in his Notice of Appeal to the Tribunal.

HMRC’s Case

36. Late filing penalties for the years ended 5 April 2012 are due in accordance with Schedule 55 FA 2009, even if a customer has no tax to pay, has already paid all the tax due or is due a refund.

37. Where a return is filed after the relevant deadline a penalty is charged. The later a return is received, the more penalties are charged. This information was clearly shown on the notice to file issued to the appellant on 6 April 2012.

38. The 2011-12 tax year was not, as the appellant stated, his first experience with self-employment. HMRC's records show that the appellant registered for self-employment on 15 February 2011 as a self-employed driver from 1 January 2009. He was also a self-employed Grocer during the 2010-11 tax year. HMRC would expect him to be aware of his obligations under self-assessment. Filing the return by the due date forms part of his responsibility to meet these obligations.

39. The appellant was automatically issued with a notice to file (SA316) a 2011-12 return on 6 April 2012, to the address held on record at the time, namely 12 Chester Road. The SA316 clearly states the return must be completed by law even if you don't owe any tax or have already paid all the tax you owe. The form also gives details of the late filing penalties.

40. The return form was due in paper format on or before 31 October 2012 or in electronic format on or before 31 January 2013. As the electronic return was not received until 10 January 2014, nearly 12 months late, the penalties have been charged in accordance with legislation.

41. There is no statutory requirement for HMRC to issue reminders but in December, if a return has still not been received, a reminder SA309 is issued alerting the taxpayer to their obligation to file a return online by 31 January.

42. Despite the first late filing penalty of £100 being issued to the appellant on 12 February 2013 and 30 days and 60 days daily penalty reminders being issued to him automatically on 4 April 2013 and 2 July 2013 respectively at the address held on record at the time, he took no action to file his return or make contact to HMRC.

43. The SA326D warning notice is the same as that considered in the *Donaldson* case to be sufficient.

44. All penalty notices and reminders were sent to the address held on the record at the time. As they were not returned under their returned mail service with the Royal Mail, HMRC have no reason to believe the notices were not delivered within the ordinary course of post-delivery in line with s 7 of the Interpretation Act 1978.

45. HMRC acknowledge and empathise with the appellant for his ill health brought on by the stress of his self-employment, his wife's and mother's illness, but he has not supplied any supporting medical evidence or given the dates he was out of the country despite HMRC's conclusion letter of 12 April 2017.

46. For illness to be considered a reasonable excuse the illness must be so serious that it prevented the appellant from controlling his business and private affairs immediately before the deadline to the date he sent the tax return in. HMRC would agree that coma, major heart attack, stroke or any other serious mental or life threatening illness is a reasonable excuse. Where illness is an ongoing condition the appellant would be expected to make arrangements for completing and sending the tax return in on time. As the appellant had from the end of the

2011-12 tax year on 5 April 2012 until 31 January 2013 in which to arrange for the completion of his return, HMRC believe that this is sufficient time under most circumstances.

47. The serious illness of a domestic partner can only be accepted if the situation took up a great deal of the customer's time and attention during the period from the filing date to the date the return is received.

48. HMRC maintain that the appellant's profit from self-employment has been consistent over a period of time and any such any financial constraints were neither new nor sudden. It is reasonable to expect measures to have been put in place to ensure the appellant met his legal obligation to file his 2011-12 tax return on time. This would indicate a reasonable response to his health, his wife and mother's health problems being encountered.

49. The appellant's self-employed turnover was -

2010-11 Grocer £10,000

2011-12 Driver £11,200

2012-13 Driver £11,800

2013-14 Driver £12,500

50. Although the appellant had no tax liability for 2011-12, late filing penalties are raised solely because the self-assessment tax return is filed late. They are no longer linked to liability and remain fixed even if there is no tax due. The obligation to file even a nil liability return is an important one and failure to comply with that obligation creates unnecessary burdens for both the customer and HMRC.

51. The amount of the penalties charged is set within the legislation. HMRC has no discretion over the amount charged and must act in accordance with the legislation. By not applying legislation and as such not to have imposed the penalty would mean that HMRC was not adhering to its own legal obligations.

52. The appellant was also charged the first £100 late filing penalty, but has not made an appeal to the Tribunal against that charge.

53. Interest is charged under s 101 FA 2009. HMRC have to charge interest when payment is late; this is the law. HMRC cannot ignore or override this law. HMRC charge interest automatically on all tax paid late, whatever the reason for the delay. An interest charge is not a penalty. The concept underlying this legislation is the recognition of which party, HMRC or customer, has benefited from the use of the money in the period beyond the due and payable date. Interest is not intended to be a penalty, but compensates the Exchequer for late payment and prevents those who pay late having an unfair advantage over those who pay on time. Interest is a statutory charge and there is no right to appeal against it

although customers can object to it. Interest can be reviewed once the charges have been paid and the interest has been finalised.

54. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the appellant to ensure his tax returns were filed by the legislative date and any payment made on time.

55. Self-assessment places a greater degree of responsibility on customers for their own tax affairs. This includes ensuring that HMRC receive payment of the correct amount of tax and National Insurance at the correct time. The tax guidance and HMRC's website give plenty of warning about filing and payment deadlines. It is the customer's responsibility to make sure they meet the deadlines.

56. Penalties are in place to promote efficient operation of the taxation system and are intended as a measure of fairness, so that customers who file late do not gain any advantage over those who file on time.

HRA/ECHR & Proportionality

57. HMRC submits that the penalties under appeal are not criminal in nature for the purpose of Article 6 ECHR.

- The "offence" is merely administrative (i.e. the failure to file a return on time).
- The nature of the offence requires no proof of qualitative misconduct. All that is required is for a return to be filed after the proper filing date.
- The penalties are simply an administrative means of securing the production of timely returns. Their aim is to encourage compliance, not punish defaults.

In any event, even though HMRC do not accept that Article 6 rights are engaged in respect of these penalties HMRC contend that it has fully complied with the requirements of Article 6, in particular the appellant was told what they had done wrong and the statutory basis for the allegation against them. There could not therefore be any reasonable doubt about the "nature and cause of the accusation" against the person. Likewise, the person was made fully aware of their right to a statutory review or to appeal to an independent tribunal. The penalties are not disproportionate and the penalty regime is proportionate to its aim.

Special Reduction

58. Paragraph 16(1) of Schedule 55 allows HMRC to reduce a penalty if they think it is right because of special circumstances. "Special circumstances" is undefined save that, under paragraph 16(2), it does not include ability to pay, or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

59. In other contexts “special” has been held to mean ‘exceptional, abnormal or unusual’ (*Crabtree v Hinchcliffe* [1971] 3 All ER 967), or ‘something out of the ordinary run of events’ (*Clarks of Hove Ltd v Bakers’ Union* [1979] 1 All ER 152). The special circumstances must also apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation (*David Collis* [2011] UKFTT 588 (TC), paragraph 40).

60. HMRC have considered the appellant’s arguments and submit that there are no special circumstances which would merit a reduction of the penalties below the statutory amount and that the penalties are appropriate in the circumstances.

61. Where a person appeals against the amount of a penalty, paragraph 22(2) and (3) of Schedule 55, FA 2009 provide the Tribunal with the power to substitute HMRC’s decision with another decision that HMRC had the power to make. The Tribunal may rely on paragraph 16 (Special Reduction) but only if they think HMRC’s decision was ‘flawed when considered in the light of the principles applicable in proceedings for judicial review’.

62. HMRC submit that its decision not to reduce the penalties under paragraph 16 was not flawed but, if the Tribunal disagrees, HMRC further submit that there are no special circumstances which would require the Tribunal to reduce the penalties.

Conclusion

63. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case.

64. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person’s control, which prevents him or her from complying with an obligation which otherwise would have been complied with.

65. The appellant had previously filed a tax return in 2009-10 and would have been aware of the filing procedures and the penalties payable in the event of default.

66. HMRC sent a late filing penalty to the appellant on 12 February 2013 for £100. Further penalties followed on for £900 and £300. Each of these penalty notices should have acted as a reminder to the appellant that his return was outstanding.

67. The electronic return was not received until 10 January 2014, nearly 12 months late.

68. The Tribunal sympathises with the appellant for his ill health and his wife’s and mother’s illness, but as HMRC say, he has not supplied any supporting medical evidence despite HMRC’s conclusion letter of 12 April 2017.

69. For illness to be considered a reasonable excuse it must be so serious that it prevents a taxpayer from controlling his business and private affairs immediately before the deadline to the date he sent the tax return in. Where illness is an ongoing condition he would be expected to make arrangements for completing and sending the tax return in on time, via an agent if necessary. As the appellant had from the end of the 2011-12 tax year on 5 April 2012 until 31 January 2013 in which to arrange for the completion of his return, this was sufficient time to either deal with and file the return or engage help via an agent or otherwise.

70. The serious illness of a domestic partner can only be accepted if the situation took up so much of the appellant's time and attention during the period from the filing date to the date the return is received that it was not practical to file the return on time. No supporting evidence of this had been provided.

71. The appellant has therefore not shown a reasonable excuse for the late filing of his 2011-12 return. The late filing penalties have been charged in accordance with legislation.

72. The penalties appealed totalling £1,200 are therefore confirmed. The appellant has not appealed the £100 penalty.

73. I find that there are no special circumstances which would allow penalties which have been correctly imposed to be reduced under Special Reduction regulations.

74. 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.

**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 15 MARCH 2019