



TC07743

INCOME TAX – Schedule 55 & 56 Finance Act 2009 - fixed and daily penalties for failure to file a self-assessment return on time - penalties for late payment - whether taxpayer had a reasonable excuse for his default – appeal dismissed. Permission to appeal out of time – refused.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/04442

BETWEEN

VICTOR MORRELL

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ABIGAIL HUDSON

The Tribunal determined the appeal on 22 May 2020 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 July 2018 (with enclosures), HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 3 September 2018, and the Appellant’s Reply dated 17 September 2018. I have also seen the Appellant’s submissions dated 29 April 2020 and the Respondent’s submissions in response, dated 5 May 2020.

DECISION

INTRODUCTION

1. This is an appeal by Mr Victor Morrell ('the Appellant') against fixed and daily penalties totalling £4,000 imposed by the Respondents ('HMRC') under Paragraph 3, 4, 5 and 6(5) of Schedule 55 Finance Act 2009, for his failure to file a self-assessment ('SA') tax return on time for the tax years ending 5 April 2012, 2015, 2016 and 2017.
2. This is further an appeal by the Appellant against penalties totalling £26, imposed by the Respondents ('HMRC') under Paragraph 3(2), (3), and (4) of Schedule 56 Finance Act (FA) 2009, for failures to submit payment on time for the tax year ending 5 April 2013.

BACKGROUND

3. The Appellant's return for 2011-12, was due if not filed electronically no later than 31 October 2012. The 2014-15 return was due by 11 April 2016. For 2015-16 the return was due if not filed electronically no later than 31 October 2016, and for 2016-17 by 31 October 2017.
4. 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 of £10 per day 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.
5. The Appellant's paper return for 2011-12 was filed on 12 March 2018. It was therefore not filed on time and penalties of £100, £900, £300 and £300 were imposed, under (i), (ii), (iii) and (iv) above. The Appellant's paper return for 2014-15 was filed on 13 February 2018. It was therefore not filed on time and penalties of £100, £300 and £300 were imposed, under (i), (iii) and (iv) above. The Appellant's paper return for 2015-16 was filed on 13 February 2018. It was therefore not filed on time and penalties of £100, £900, £300 and £300 were imposed, under (i), (ii), (iii) and (iv) above. The Appellant's paper return for 2016-17 was filed on 16 February 2018. It was therefore not filed on time and penalties of £100 was imposed, under (i) above. The Respondent is not arguing that there was any deliberate withholding of information.
6. The Appellant's tax payment for the year ending 5 April 2013, was due by no later than 31 January 2014, under Section 59B Taxes Management Act ('TMA') 1970.
7. Paragraph 3 of Schedule 56 FA 2009 sets out the provisions in relation to the late payment penalty system. The penalties for late payment can be summarised as follows:
 - i) Under paragraph 3(2) the first penalty is calculated at 5% of all tax remaining unpaid after the expiry of 30 days from the due date.

- ii) Where tax remains unpaid, after the end of the period of five months beginning with the penalty date, a further penalty of 5% of the tax unpaid at that date is imposed (paragraph 3(3)).
 - iii) Where tax remains unpaid, after the end of the period of 11 months beginning with the penalty date, a further penalty of 5% of the tax unpaid at that date is imposed (paragraph 3(4)).
8. The Appellant's tax for the tax year 2012-13 was paid over a year late on 20 March 2017 and penalties of £10, £8 and £8 were therefore imposed under (i), (ii) and (iii) above. I note that the outstanding tax due is calculated by the Respondent at £10 initially, and then £8 upon remaining unpaid at 5 months, and £8 upon remaining unpaid at 11 months. I can find no reason for the reduction from ten pounds to eight, however, the Respondent has set out the penalties at £8 and therefore that is the amount of the penalty.

Filing date and Penalty date

9. Under s 8(1D) TMA 1970 a non-electronic return must normally be filed by 31 October in the relevant financial year or an electronic return by 31 January in the year following. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.
10. The 'penalty date' for late payment is defined at Paragraph 1(4) Schedule 56 FA 2009 and is the date on which a penalty is first payable for failing to pay the amount, the day after 30 days from the date payment became due.

Reasonable excuse

11. 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. A taxable person who is otherwise liable to a late payment penalty, may nevertheless escape that liability if he can establish that he has a reasonable excuse for the late payment which gave rise to the penalty (Paragraph 16 of Sch 56 of FA 2009).
12. 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.
13. 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).
14. 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.

15. The onus lies with HMRC to show that the penalties were issued correctly and within legislation. If the Tribunal find that HMRC have issued the penalties correctly the onus then reverts to the Appellant to show that he has a reasonable excuse for the late filing of his SA tax return.

The background facts

16. Mr. Morrell has been required to complete a self-assessment return since 2006-07.
17. The Appellant's grounds of appeal are that he was only requested to file 3-5 years post the relevant tax years, and that he did not have any tax liabilities. Accordingly, he had a reasonable excuse for the delay in filing his returns.

2011-12

18. The Appellant's 2011-12 return was issued to him on or around 6 April 2012 and was due to be returned by 31 October 2012 if not returned electronically. The Notice to file a return was issued to the correspondence address provided by the Appellant. The SA return was received non-electronically by HMRC on 12 March 2018. It was over four years late.

2014-15

19. The Appellant's 2014-15 return was issued to him on 4 January 2016 and was due to be returned by 11 April 2016. The Notice to file a return was issued to the correspondence address provided by the Appellant. The SA return was received electronically by HMRC on 13 February 2018. It was nearly two years late.

2015-16

20. The Appellant's 2015-16 return was issued to him on or around 6 April 2016 and was due to be returned by 31 January 2017 if returned electronically. The Notice to file a return was issued to the correspondence address provided by the Appellant. The SA return was received electronically by HMRC on 13 February 2018. It was over 12 months late.

2016-17

21. The Appellant's 2016-17 return was issued to him on or around 6 April 2017 and was due to be returned by 31 January 2018 if returned electronically. The Notice to file a return was issued to the correspondence address provided by the Appellant. The SA return was received electronically by HMRC on 16 February 2018. It was over two weeks late.

Late payment 2012-13

22. The Appellant's SA return for the year 2012-13 disclosed a tax liability of £200. The tax was due to be paid by 31 January 2014. Payment was made on 20 March 2017 and was therefore over three years late. The Appellant does not dispute that the payments were made late.

PERMISSION TO APPEAL OUT OF TIME

23. The appellant's appeal to HMRC under s31A TMA 1970 was made outside the statutory deadline in relation to the tax years 2011-12 and 2014-15. HMRC refused consent under s49(2)(a) of TMA 1970. For the following reasons, I have decided not to give permission for the appeal to be notified late:

24. The relevant penalty notices were dated February, August 2013 and February 2014 in relation to 2011-12. In relation to 2014-15 they were dated May and November 2016 and May 2017. They were sent to the Appellant's registered correspondence address. Therefore the time limit for appealing expired between March 2013 and March 2014 for 2011-12, and between May 2016 and May 2017 for 2014-15. The appeal was not submitted until April 2018 and is therefore 4-5 years late for 2011-12, and 1-2 years late for 2014-15. Such delay is serious and significant.
25. From Mr. Morrell's correspondence he does not suggest that he was unaware of the penalties accruing, but simply that he feels that the penalties are disproportionate. In receiving penalty notices and statements of accounts, and of course debt collection letters, it must have been obvious that debt was accruing. Those letters provided ample information as to the method of appeal. No explanation has been offered as to why the Appellant did not pursue that avenue within a month of the various penalty notices.
26. The consequences to either party of an extension of time limits must be considered in light of my assessments of the merits of the substantive appeal. The Respondent is entitled to some finality in properly administering the SA tax regime and the time limits have been imposed by statute to provide that finality. The Appellant would be prejudiced by a refusal to extend the time limits, however, he has offered no good explanation for his delay in appealing, and I do not consider that the explanation given for his late filing of his returns constitutes a reasonable excuse for either delay.
27. In considering the application for permission to appeal out of time, pursuant to *Data Select Ltd v HMRC [2012] UKUT 187 (TCC)* I have considered:
 - a) The length of the delay;
 - b) Whether there is a good explanation for that delay;
 - c) The consequences of permission to appeal;
 - d) The consequences of refusal of permission.
28. In the circumstance I do not consider that the appellant has a good explanation for his delay which is of some significant length. In balancing the prejudice caused to both parties, I conclude that it would be inappropriate to extend the time limit for appeal, and the application for permission to appeal out of time is refused. That disposes of the appeals in relation to the tax years 2011-12 and 2014-15.

The Appellant's case

29. The Appellant's grounds of appeal are that he only became aware of the requirement to file the return after the due date had passed, and that the penalties are disproportionate.

HMRC's Case

30. A late filing penalty is raised solely because a SA tax return is filed late 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.
31. Where a return is filed after the relevant deadline a penalty is charged. The later a return is received, the more penalties are charged.

Reasonable Excuse

32. Under Paragraph 23 (1) Schedule 55 FA 2009 liability to a penalty does not arise in relation to failure to make a return if the taxpayer has a reasonable excuse for failure.

33. 'Reasonable excuse' was considered in the case of *The Clean Car Company Ltd v The Commissioners of Customs & Excise* by Judge Medd who said:

"It has been said before in cases arising from default surcharges that the test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. 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?" [Page 142 3rd line et seq.].

34. HMRC considers a reasonable excuse to be something that stops a person from meeting a tax obligation on time despite them having taken reasonable care to meet that obligation. HMRC's view is that the test is to consider what a reasonable person, who wanted to comply with their tax obligations, would have done in the same circumstances and decide if the actions of that person met that standard.
35. If there is a reasonable excuse it must exist throughout the failure period.
36. The Appellant has not provided a reasonable excuse for his failure to file his tax returns on time for the year 2011-12, 2014-15, 2015-16 and 2016-17, and his failure to pay tax on time for the tax year 2012-13 on time and accordingly the penalties have been correctly charged in accordance with the legislation.
37. 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.

Special Reduction

38. 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.
39. 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).
40. 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'.
41. HMRC have considered the Appellant's grounds of appeal but assert that his circumstances do not amount to special circumstances which would merit a reduction of the penalties.
42. Accordingly, HMRC's decision not to reduce the penalties under paragraph 16 was not flawed. There are no special circumstances which would require the Tribunal to reduce the penalties.

FINDINGS OF FACT

43. Mr Morrell asserts that he was asked to file returns 3 to 5 years post tax year, however the Respondent tells me that in fact the requests were made at the end of the tax year, with the exception of the 2014-15 return which was requested within a year of that end date.
44. The notices to file along with numerous penalty notices, statements of account and requests for payment were all sent to the correspondence address on record - The Old Manse of Cruden, AB42 0QB. There is a slight variation in that the address is sometimes referred to as Cruden Old Church Manse, however, with such an unusual address I find it unlikely that such variation would cause any disruption to the delivery of post. The correspondence was sent to that address and not returned undelivered. It is therefore deemed served. The Appellant has not indicated that the documentation was not received by him, but in any event I find it grossly unlikely that such a significant volume of mail would go astray. I consider that it is likely in those circumstances that he received the notices to file, and the penalty notices.
45. Mr. Morrell was contacted by the Respondent in October 2013 and was advised that his 2011-12 return was outstanding. Further efforts were made to speak to Mr. Morrell in early 2017 but the person answering his provided telephone number refused to take a message. Further efforts were made to speak to him in the first quarter of 2017 but while the person answering the telephone gave the Appellant's name, he refused to discuss the account for a variety of reasons. I find as a fact that Mr. Morrell was or ought to have been aware that the returns were overdue.
46. Mr Morrell indicates that he spoke to someone at HMRC in 2017 who gave him more time to file his return. There is no record of this telephone call in the Respondent's call logs. I find it implausible that an HMRC employee would have indicated that it was "OK" to delay even further, without drawing Mr. Morrell's attention to the fact that penalties had been accrued and may further accrue with further delay. Similarly Mr. Morrell asserts that he had a conversation on 19 February 2018 and that he was told that he had time left to submit a return that was issued five years previously. I find that extremely unlikely to be the content of any conversation. If the return is already five years overdue, then no HMRC employee would have failed to make reference to accrued penalties. The conversation said to have taken place on 19 February 2018 is in fact a few days after all but the earliest return was submitted.
47. On 7 February 2018 a debt management letter was served upon Mr. Morrell and I consider it likely that the immediate submission of returns was prompted by that letter.
48. I have had sight of a letter from Balfour Manson Solicitors dated 29 April 2020 in which a Mr McMahon indicates that the Appellant has "spent the majority of his time working and living overseas" and was therefore not aware that notices to file returns had been issued. No explanation has been proffered as to whether he was still the occupier of his correspondence address and if not why he did not notify HMRC of a change of address. No explanation has been provided of what monitoring of the post at that address was carried out. No information has been provided as to when he was out of the country. He was specifically told in October 2013 of the requirement to file and his failure to do so and took no action. I find as a fact that Mr Morrell was obliged to make significantly better efforts to maintain contact with HMRC and to engage with his tax liabilities. The letter is then inconsistent in indicating that Mr Morrell believed that he could not submit a UK tax return until he had two years' worth of US tax returns. That implies that he was aware of the notices to file but chose not to return because of a misunderstanding

regarding the procedure. It does not explain why tax returns spanning six years were delayed. I find that Mr Morrell knew of the notices to file and chose to ignore them.

49. It is agreed that the returns were in fact submitted on 12 March 2018, 13 February 2018, and 16 February 2018. The Appellant does not suggest that he in fact submitted them earlier. I accept that the returns were not properly submitted on the due dates, or prior to February and March 2018.
50. It is agreed that payment was made on 20 March 2017 for the 2012-2013 tax liability. The Appellant does not suggest that he in fact made payment earlier. I find therefore that the tax was paid late and not before 20 March 2017.
51. A person is liable to a penalty if (and only if) HMRC give notice to the person specifying the date from which the penalty is payable. I am satisfied that the penalty notices issued gave proper notice (*Donaldson v The Commissioners for HM Revenue & Customs* [2016] EWCA Civ 761) and were sent to the postal address linked to the Appellant's SA account.
52. Mr. Morrell has filed his returns late in 2006-07, 2007-08, 2008-09 and 2009-10. He persistently files his returns late. He has also paid his tax late in previous years.

DISCUSSION

53. Relevant statutory provisions are included as an Appendix to this decision.
54. I have concluded that the tax returns for the 2011-12, 2014-15, 2015-16 and 2016-17 tax years were not submitted on time. I have further concluded that the tax due in the tax year 2012-13 was not paid on time. Subject to considerations of "reasonable excuse" and "special circumstances" set out below, the penalties imposed are due and have been calculated correctly.
55. 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. A reasonable excuse is normally an unexpected or unusual event, which prevents him or her from complying with an obligation which otherwise they would have complied with.
56. In *Perrin v HMRC* [2018] UKUT 156, the Upper Tribunal had explained that the experience and knowledge of the particular taxpayer should be taken into account. The Upper Tribunal had concluded that for an honestly held belief to constitute a reasonable excuse it must also be objectively reasonable for that belief to be held. The Appellant had been filing tax returns for many years and so must have been experienced in his tax responsibilities. Having filed tax returns in previous years it was not beyond the realms of possibility that he may have been required to file in the relevant years. Having concluded that notices to file were sent to the registered correspondence address and arrived, Mr. Morrell must have received them. If he did not then he manifestly failed in his duty to access the correspondence sent to the address provided by him to HMRC. A return having been issued there is an obligation that it is submitted prior to the filing date, whether any tax is due or not. Mr Morrell indicates that he was under some confusion due to a differing system of tax operational in the USA, however, he made no efforts to clarify the position, and having received the notices to file, any belief that they were not required is wholly unreasonable.
57. The appellant has argued that the penalties charged are disproportionate because he had no tax liability for the relevant tax years. As noted, this Tribunal does, in certain circumstances, have the power to reduce a penalty because of the presence of "special

circumstances”. In *Barry Edwards v HMRC* [2019] UKUT 0131 (TCC), the Upper Tribunal considered whether the fact that significant penalties had been levied for the late filing of returns where no tax was due was a relevant circumstance that HMRC should have taken into account when considering whether there were “special circumstances” which justified a reduction in the penalties. The Upper Tribunal concluded that the penalty regime set out in Schedule 55 establishes a fair balance between the public interest in ensuring that taxpayers file their returns on time and the financial burden that a taxpayer who does not comply with the statutory requirement will have to bear. Accordingly, the Upper Tribunal determined that the mere fact that a taxpayer has no tax to pay does not render a penalty imposed under Schedule 55 for failure to file a return on time disproportionate and, as a consequence, is not a relevant circumstance that HMRC must take into account when considering whether special circumstances justify a reduction in a penalty. It follows that I have concluded that the mere fact that the appellant had no tax liability for the relevant tax years does not justify a reduction in the penalty either on the grounds of proportionality generally or because of the presence of “special circumstances”.

58. I have also borne in mind the recent comments of the Tribunal in *Hesketh v HMRC* [2017] UKFTT 871 about whether ignorance of an obligation to file could excuse late filing. Judge Mosedale held that Parliament intended all of its laws to be complied with, and that ignorance of the law was not an excuse. I agree with those conclusions and consider that if ignorance of the obligation cannot be a reasonable excuse, then awareness of the obligation but ignorance of the consequences also cannot be a reasonable excuse.
59. I conclude that Mr Morrell does not have a reasonable excuse for the late filing of his returns for 2011-12, 2014-15, 2015-16 and 2016-17.
60. He has offered no separate explanation in relation to his failure to pay his tax on time in 2012-13. Certainly a large number of letters were sent to him giving a statement of account. Although the outstanding tax was assessed at a far higher level than the amount that in fact was due, that was wrongly assessed because of the missing tax return. The assessment having been issued in December 2016, the Appellant then paid the missing tax a few months later. I conclude that he does not have a reasonable excuse for his failure to pay tax on time for 2012-13.
61. Even when a taxpayer is unable to establish that he has a reasonable excuse and he remains liable for one or more penalties, HMRC have the discretion to reduce those penalties if they consider that the circumstances are such that reduction would be appropriate. In this case HMRC have declined to exercise that discretion.
62. Paragraph 22 of Schedule 55 provides that I am only able to interfere with HMRC’s decision on special reduction if I consider that their decision was flawed (in the sense understood in a claim for judicial review). That is a high test and I do not consider that HMRC’s decision in this case (set out in their Statement of Case) is flawed. Therefore, I have no power to interfere with HMRC’s decision not to reduce the penalties imposed upon Mr Morrell.
63. I should add, that even if I did have the power to make my own decision in respect of special reduction, the only special circumstance which Mr Morrell relied upon was his belief that he was not required to file a tax return. I have explained above why I do not consider that failure to ensure his tax obligations were complied with can provide Mr Morrell with a reasonable excuse for his late filing. For the same reasons the circumstances are not such as to make it right for me to reduce the penalty which has been imposed.

CONCLUSION

64. I therefore confirm the fixed penalties of £1,600, £26, £700, £1,600 and £100.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

65. 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.

ABIGAIL HUDSON

TRIBUNAL JUDGE

RELEASE DATE: 16 JUNE 2020

APPENDIX RELEVANT STATUTORY PROVISIONS

Finance Act 2009

66. The penalties at issue in this appeal are imposed by Schedule 55 and 56. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

Schedule 55

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

4—

(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).

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

5—

(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.

69. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

6—

(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 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of —

- (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

- (a) for the withholding of category 1 information, 100%,
- (b) for the withholding of category 2 information, 150%, and
- (c) for the withholding of category 3 information, 200%.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of —

(a) the relevant percentage of any liability to tax which would have been shown in the return in question, and

(b) £300.

(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—

(a) for the withholding of category 1 information, 70%,

(b) for the withholding of category 2 information, 105%, and

(c) for the withholding of category 3 information, 140%.

(5) In any case not falling within sub-paragraph (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.

(6) Paragraph 6A explains the 3 categories of information.

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

23—

(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.

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

16—

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

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

(a) ability to pay, or

(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.

72. 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:

22—

- (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.

Schedule 56

73. Paragraph 1(4) of Schedule 56 states that the “penalty date”, in relation to an amount of tax, means the day after the date falling 30 days after the date specified in section 254(5) of FA 2004 as the date by which the amount must be paid.

74. Paragraph 3 sets out the amount of penalty payable –

3(1)...

(2) P is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

75. Paragraph 9 of Schedule 56 gives HMRC power to reduce penalties owing to the presence of “special circumstances” as follows:

9—

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

76. Paragraph 13 of Schedule 56 gives a taxpayer a right of appeal to the Tribunal and paragraph 15 of Schedule 56 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:

15—

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

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

- (a) affirm HMRC’s decision, or
- (b) substitute for HMRC’s decision another decision that HMRC had power to make.

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

- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
- (b) to a different extent, but only if the tribunal thinks that HMRC’s decision in respect of the application of paragraph 9 was flawed.

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

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

77. Paragraph 16 of Schedule 56 contains a defence of “reasonable excuse” as follows:

16—

(1) If P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make payment

—

(a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure, and

(b) the failure does not count as a default for the purposes of paragraphs 6, 8B, 8C, 8G and 8H.]

(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.

Taxes Management Act 1970

78. 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 the section is given after the 31st October next following the year, the last [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 the 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 the Act for a period which includes, or includes any part of, the year of assessment or its basis period.]

(1D) A return under the 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 the 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 the section may require different information, accounts and statements for different periods or in relation to different descriptions of source of income.

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

(4A) Subsection (4B) applies if a notice under the section is given to a person within section 8ZA of the 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 the section and sections 8A, 9 and 12AA of the 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.