TC07749

INCOME TAX – Schedule 55 Finance Act 2009 - fixed penalties for failure to file a self-assessment return on time - whether taxpayer had a reasonable excuse for her default – appeal allowed in part.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/00383

BETWEEN

PRIYA GREWAL **Appellant**

-and-

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

TRIBUNAL: JUDGE ABIGAIL HUDSON

The Tribunal determined the appeal on 12 June 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 18 January 2020 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 22 April 2020.

DECISION

INTRODUCTION

1. This is an appeal by Ms Priya Grewal ('the Appellant') against fixed penalties totalling £1,300 imposed by the Respondents ('HMRC') under Paragraph 3, 4, 5 and 6 of Schedule 55 Finance Act 2009, for her failures to file a self-assessment ('SA') tax returns on time for the tax years ending 5 April 2015, 2016, 2017 and 2018.

BACKGROUND

2. The Appellant's returns for 2014-15, 2015-16, 2016-17 and 2017-18 were due on 18 December 2018.

3. 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.

4. The Appellant's non-electronic returns for 2014-15, 2015-16, 2016-17 and 2017-18 were filed on 23 August 2019 (albeit the 2014-15 return was initially returned as unsigned). They were therefore not filed on time and a penalty of £100 was imposed in relation to 2014-15; £100 and £300 in relation to 2015-16; £100, £300 and £300 in relation to 2016-17; and £100 in relation to 2017-18. Those penalties purport to have been issued under (i), (iii) and (iv) above.

5. HMRC do not contend that there was any deliberate withholding of information.

   Filing date and Penalty date

6. Under s 8(1G) TMA 1970 a return must normally be filed within three months of the date of a notice. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.

   Reasonable excuse

7. 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.

8. 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.

9. 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).

10. 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.

11. 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

12. The Appellant's 2014-15, 2015-16, 2016-17 and 2017-18 returns were issued to her on 11 September 2018 and were due to be returned by 18 December 2018. The Notice to file a return was issued to the correspondence address provided by the Appellant.

13. The Appellant's grounds of appeal are that she was misled as to her tax requirements, and did not realise that she was obliged to file SA returns. Accordingly, she had a reasonable excuse for the delay in filing returns.

14. The SA returns were received non-electronically by HMRC on 29 August 2019. They were therefore 247 days late.

15. In relation to the tax year 2014-15 HMRC imposed a fixed penalty of £100. In relation to the tax year 2015-16 HMRC imposed a fixed penalty of £100 together with daily penalties [at £10 for each day], totalling £900. The return still having not been received six months after the filing date HMRC imposed a fixed penalty of £300. HMRC does not seek to oppose the appeal in relation to the daily penalties, and so that aspect of this appeal succeeds. In relation to the tax year 2016-17 HMRC imposed a fixed penalty of £100 together with daily penalties [at £10 for each day], totalling £900. The return still having not been received six months after the filing date HMRC imposed a fixed penalty of £300, followed by a fixed penalty of a further £300 because it is asserted that the return had not been received 12 months after the filing date. Again, the appeal against the daily penalties are not opposed by the Respondent. In relation to the tax year 2017-18 HMRC imposed a fixed penalty of £100. It is not at all clear to me why, all returns being 247 days late, different levels of penalty have been imposed in relation to each year.

16. The Appellant appealed to the Tribunal on 18 January 2020.

The Appellant's case

17. The Appellant's grounds of appeal are that she was told that she was not required to file an assessment.

HMRC's Case

18. 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.

19. 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

20. 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.

21. '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.].

22. 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.

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

24. The Appellant has not provided a reasonable excuse for her failures to file her tax returns on time and accordingly the penalties have been correctly charged in accordance with the legislation.

25. 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

26. 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.

27. 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).

28. 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'.

29. HMRC have considered the Appellant's grounds of appeal but assert that her circumstances do not amount to special circumstances which would merit a reduction of the penalties.

30. 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

31. On 14 May 2018 Ms Grewal called HMCTS and updated her correspondence address to 24 Bray Street. She indicated that she had in fact moved from her previous address in April 2014 and so had evidently failed to update HMRC for some four years. In fact her subsequent telephone call suggests that she actually moved to the USA in 2014 but she failed to tell the Respondent that in the May 2018 telephone call. The notices to file were sent to the Bray Street address on 11 September 2018. The following day a letter was sent to the same address which told the recipient that she was required to file a self-assessment return. Ms Grewal gave that address as a correspondence address to HMRC. There is no suggestion within the papers before me that there were any postal difficulties around the relevant time and she has received subsequent correspondence sent to that address. In fact the address is her parents' address. It is likely therefore that she received the notices to file. I conclude that the notices to file were properly issued to the correspondence address provided by Ms Grewal, and received by her.

32. Ms Grewal states that after contacting HMRC for guidance, she registered for self-assessment, and then began the process of compiling her returns. Her enquiry telephone call was made on 14 May 2018 and her SA1 was completed on 11 September 2018, some four months later. Given that she had been receiving rental income since 2014 it is not clear why it took quite so long to register. If the delay is due to her belief that she was to file alternative information, such as an R43, such documentation was not received by the Respondent until June 2019 and therefore that was significantly late also. I cannot envisage that it could have taken some three to four years to consider advice provided by HMRC and turn to her relative for advice, and so I find that Ms Grewal did not begin to reconcile her tax affairs for the tax years ending 2015, 2016, 2017 and 2018 until 2018.

33. During the telephone call of 14 May 2018 Ms Grewal makes it clear that she wishes to file a SA return. At that point therefore she believed a return was required. She had not yet filed an R43 and therefore any erroneous advice must have occurred between May 2018 and June 2019. In September 2018 the returns were issued and so she must have been aware that a SA return was required at that point. On 16 May 2019 Ms Grewal spoke to the Respondent and indicated that she was aware that SA returns were required and that they were on their way. Any suggestion that an R43 was required must therefore have been made between 16 May 2019 and 13 June 2019 when the R43's were filed. By 16 May 2019, the returns were already five months late.

34. Ms Grewal indicated that she was told to file R43 forms. She indicates that both she and her accountant 'Anro Accounting Solutions' had been in touch with the Respondent. I have had sight of the transcripts of all telephone calls between the Appellant, her agent and the Respondent and in none of them can I identify an instruction to file an R43. Ms Grewal talks about she and her husband being in a similar position and so it may be that any call referred to is his, however, she also indicates that the call was specifically in relation to personal allowance and that the advice as reported by her to her accountant

was greeted with scepticism. During the telephone call of August 2019 Shalin Chopra – agent – talks of having filed R43's. During an undated call from the Appellant she talks of not knowing whether the miscommunication was through HMRC or through her agent. The implication of that statement is that it may have been the agent who suggested that R43's would suffice, rather than the Respondent. That is reiterated in a telephone call of October 2019. I find that the Respondent did not tell the Appellant that SA returns were not required, or suggest that she file R43's.

35. In her notice of appeal the Appellant acknowledges receiving penalty notices. Between filing R43 documents and filing her returns, Ms Grewal was issued with penalty notices on the 25 June 2019. However, prior to that date, she had also been issued notices on 25 December 2018 and 26 March 2019. Those penalty notices state that a self-assessment return was outstanding and required.

36. The Appellant talks of having been told to ignore the penalty notices during telephone calls with the Respondent. In May 2019 penalties had been accrued and during her telephone conversation with the Respondent Ms Grewal is plainly aware of that. She makes no challenge to those penalties and states that she will pay them. There is certainly no comment from the advisor to suggest that she need not pay those penalties. There is however comment from the advisor in October 2019 which is misleading, in that he talks confidently of appeals being successful and the expectation that penalties will be discharged. He appears to have little basis for that statement other than a blanket acceptance of the Appellant's assertions that she has a reasonable excuse. He does also tell the Appellant to ignore any subsequent penalty notices. It seems that he is actually trying to convey that she should ignore the part of the notice that requires submission of the return (it having now been received), but it is misleading to suggest that the notices can be ignored because it implies that the notices will not be enforced. However, that lack of clarity occurs in October 2019, some two months after the returns had been filed, and almost 12 months after the returns became due. The misleading information conveyed in that call cannot therefore have been causative of the failures.

37. 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 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.

38. It is agreed that the returns were in fact submitted electronically on 23 August 2019. I accept that the returns were not properly submitted on or around 18 December 2018 respectively, or prior to August 2019.

DISCUSSION

39. Relevant statutory provisions are included as an Appendix to this decision.

40. I have concluded that the tax returns for the 2014-15, 2015-16, 2016-17 and 2017-18 tax years were not submitted on time. They should have been submitted by 18 December 2018. It is not clear to me why there are different penalties accrued in relation to each year, given that each of the returns is late to the same degree. The returns are all over eight months late. That being the case no 12-month penalty for the 2016-17 tax year can be payable. Subject to considerations of "reasonable excuse" and "special circumstances" set out below, the remaining penalties imposed are due and have been calculated correctly.

41. 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.

42. The Appellant is not someone who has demonstrated expedition in dealing with her tax affairs. Her UK property was earning a rental income from 2014 and yet it wasn't until May 2018 that Ms Grewal made efforts to reconcile her tax liabilities. Having called the Respondent in May 2018 it then took a further four months to actually register for self-assessments. Her tax returns being required by December 2018 it then took until June 2019 before any information was received, albeit in the incorrect form. The Appellant has failed to prioritise her tax responsibilities and has not exercised due diligence.

43. It appears that the Appellant may have relied upon advice from her agent. No correspondence between the Appellant and her agent has been supplied. If indeed the agent was negligent in their duties then Ms Grewal may have some recourse against her agent, however, her reliance upon an agent cannot be a reasonable excuse unless she took reasonable care to ensure that her obligations were complied with. The responsibility for complying with her tax obligations rests with her. I am not however satisfied that the failure to file can be in anyway the responsibility of the agent, given the Appellant's statements in May 2019 that she knew her returns were overdue and that they were on the way. If she was subsequently misled in relation to the appropriate format of any submission, she was already significantly late in responding to the demand for information. By May 2019 she had already been aware of the requirement for some eight months.

44. Tax returns were issued to the Appellant on 11 September 2018. Having been issued there is an obligation that they are submitted prior to the filing date, whether any tax is due or not.

45. 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. In my judgment it is not objectively reasonable to have failed to respond to her tax correspondence by 18 December 2018.

46. The appellant has argued that the penalties charged are disproportionate because she had little 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".

47. 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.

48. I conclude that Ms Grewal does not have a reasonable excuse for the late filing of her returns for the four years to April 2018.

49. Even when a taxpayer is unable to establish that he / she has a reasonable excuse and he / she 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.

50. 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 Ms Grewal.

51. 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 Ms Grewal relied upon was her belief that she was not required to file a tax return. I have explained above why I do not consider that failure to ensure her tax obligations were complied with can provide Ms Grewal with a reasonable excuse for her late filing. The circumstances are not such as to make it right for me to reduce the penalty which has been imposed.

CONCLUSION

52. I therefore confirm the fixed penalties of £100, £400, £400 and £100. I find that the remaining £300 penalty for the tax year 2016-17 has not been properly imposed and I therefore allow this appeal to that extent.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

53. 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: 22 JUNE 2020

APPENDIX
RELEVANT STATUTORY PROVISIONS

Finance Act 2009

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

55. 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).

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.

Taxes Management Act 1970

61. 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.