



TC07816

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 allowed in part. Permission to appeal out of time – granted.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/01317

BETWEEN

SAID JAMA

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ABIGAIL HUDSON

The Tribunal determined the appeal on 10 August 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 27 March 2020 (with enclosures), HMRC’s Statement of Case (with enclosures) dated 26 May 2020.

DECISION

INTRODUCTION

1. This is an appeal by Mr Said Jama ('the Appellant') against fixed and daily penalties totalling £500 imposed by the Respondents ('HMRC') under Paragraph 3, and 5 of Schedule 55 Finance Act 2009, for his failure to file a self-assessment ('SA') tax returns on time for the tax years ending 5 April 2012 and 2013.
2. This is further an appeal by the Appellant against penalties totalling £624, 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 2012.
3. HMRC do not seek to defend the daily penalties imposed under schedule 55 FA 2009, para 4, although it is not clear to me on what basis it is conceded that they should be cancelled. In the circumstances however, I do not go behind the concession that the daily penalties of £900 will be cancelled. If those penalties are still in force, an appeal in relation to that is allowed.
4. The Tribunal does not have jurisdiction in relation to balancing payments or interest charges.

BACKGROUND

5. The Appellant's return for 2011-12, was due no later than 7 March 2014. The 2012-13 return was due by 31 October 2014. 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.
6. The Appellant's online return for 2011-12 was filed on 13 November 2014. It was therefore not filed on time and penalties of £100, £900 and £300 were imposed, under (i), (ii) and (iii) above. The Appellant's paper return for 2012-13 was filed on 13 November 2014. It was therefore not filed on time and a penalty of £100 was imposed, under (i) above.
7. The Appellant's tax payment for the year ending 5 April 2012, was due by no later than 7 April 2014, under Section 59B Taxes Management Act ('TMA') 1970.
8. 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)).
9. The Appellant's tax liability for the tax year 2011-12 was assessed at £4,167.40. To date it has not been paid and three penalties of £208 were therefore imposed under (i), (ii) and (iii) above.

Filing date and Penalty date

10. Under s 8(1G) TMA 1970 a return must normally be submitted during the three months period beginning with the date of the notice to file. In this case, returns would have been due by 7 March 2014 and 31 October 2014. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.
11. 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

12. 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).
13. 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.
14. 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).
15. 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.

16. 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 and the late payment of tax.

PERMISSION TO APPEAL OUT OF TIME

17. 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 2012-13. HMRC refused consent under s49(2)(a) of TMA 1970. For the following reasons, I have decided to give permission for the appeal to be notified late:
 18. The relevant penalty notices were dated March, September, November 2014 and March 2015 in relation to 2011-12, and November 2014 in relation to 2012-13. They were sent to the Appellant's registered correspondence address. Therefore the time limit for appealing expired between April 2014 and April 2015 for 2011-12, and in April 2015 for 2012-13. The appeal was not submitted to the Respondents until April 2017 and then to the Tribunal until March 2020. It is therefore between two to three years late. Such delay is serious and significant.
 19. In receiving penalty notices and statements of accounts 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. I consider it likely that no appeal was pursued because Mr Jama was overwhelmed by the letters he received.
 20. 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.
 21. 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:
 - The length of the delay;
 - Whether there is a good explanation for that delay;
 - The consequences of permission to appeal;
 - The consequences of refusal of permission.
 22. In the circumstance I do not consider that the appellant has a good explanation for his delay which is of some significant length. However, in balancing the prejudice caused to both parties, I conclude that it is appropriate to extend the time limit for appeal. The personal circumstances of the Appellant, and the fact that he was unexpectedly brought within the self-assessment regime through no fault of his own are significant circumstances. Although there is a clear need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected, I do consider that the merits of the Appellant's case, particularly in relation to the late payment penalties, to be strong.
 23. The application for permission to appeal out of time is allowed.

The Appellant's case

24. The Appellant's grounds of appeal are that he was not and had never been self-employed and therefore did not understand the requirement that had been put upon him.

HMRC's Case

25. 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.
26. 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

27. Under Paragraph 23 (1) Schedule 55 and Paragraph 16 (1) Schedule 56 FA 2009, liability to a penalty does not arise in relation to failure to make a return or failure to pay tax, if the taxpayer has a reasonable excuse for failure.
28. '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.].

29. 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.
30. If there is a reasonable excuse it must exist throughout the failure period.
31. The Appellant has not provided a reasonable excuse for his failure to file his tax returns on time for the year 2011-12 and 2012-13, and his failure to pay tax on time for the tax year 2011-12 on time and accordingly the penalties have been correctly charged in accordance with the legislation.
32. 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

33. Paragraphs 16(1) of Schedule 55 and 9(1) of Schedule 56 allow 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) and 9(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.
34. 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).

35. Where a person appeals against the amount of a penalty, paragraph 22(2) and (3) of Schedule 55, and paragraph 15(1) and (2) of Schedule 56 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 paragraphs 16 and 15 (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'.
36. 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.
37. Accordingly, HMRC's decision not to reduce the penalties under paragraph 16 or 15 was not flawed. There are no special circumstances which would require the Tribunal to reduce the penalties.

FINDINGS OF FACT

38. On 3 March 2013 the Respondent informed the Appellant that he had underpaid tax on his income in the tax year 2011-12. He was advised to check and respond. On 11 March 2013 he indicated that he would check his figures and respond. A voluntary payment letter was issued on 18 June 2013 but no voluntary payment was made. Having not had any further contact from the Appellant post March the debt was transferred to the self-assessment system on 29 November 2013, and the Appellant was asked to complete a self-assessment tax return for the relevant year. That notice to file was issued to his home address.
39. Mr Jama did not dispute the figures set out in the letter dated 3 March 2013, and following his acknowledgement telephone call on 11 March 2013 he did not engage with the Respondent.
40. On 29 November 2013 the Appellant was sent a notice to file a self-assessment tax return. The notice to file along with numerous penalty notices, statements of account and requests for payment were all sent to the correspondence address on record – 29 Gurney House, Croyde Avenue, Hayes. 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.
41. The Appellant sought advice from the Respondent between May and September 2014 in relation to the failures to submit his tax return. He was repeatedly advised by telephone to complete the return.
42. On 24 July 2014 he was sent a notice to file a self-assessment tax return for the following year. Again, there is no suggestion that he did not receive that notice and I find that he did.
43. Between 17 September and 13 November 2014 he did attempt to complete the returns online but did not complete the process.
44. On 3 July 2017 he made attempts to amend his 2011-12 tax return.
45. It is agreed that the returns were in fact submitted on 13 November 2014. I accept that the returns were not properly submitted on the due dates, or prior to November 2014.
46. On 13 November 2014 the Appellant submitted his 2011-12 tax return, and a tax liability of £4,167.40 was calculated based on his figures. Payment has not been made for the 2011-

2012 tax liability. The Appellant does not suggest that he in fact has made payment. I find therefore that the tax was paid late.

47. 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.

DISCUSSION

48. Relevant statutory provisions are included as an Appendix to this decision.
49. I have concluded that the tax returns for the 2011-12 and 2012-13 tax years were not submitted on time. I have further concluded that the tax due in the tax year 2011-12 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.
50. 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.
51. HMRC began communicating with the Appellant at the beginning of March 2013 in relation to an issue regarding his tax liabilities. Mr Jama knew that this issue existed because he responded to correspondence within a few days. He then took no action to remedy the situation until November 2013, some nine months. It was clear that there was an issue that needed resolving but he appears to have done nothing. That demonstrates a person who is not diligent in relation to tax affairs.
52. Thereafter at the end of November 2013 he was issued with a tax return. Having been issued there is an obligation that it is submitted prior to the filing date, whether any tax is due or not. Despite this obligation, again the Appellant appears to have made no efforts to resolve this issue prior to the due date in March 2014.
53. A penalty notice was issued in March 2014 following which Mr Jama began to make efforts to communicate with the Respondent. In my judgment therefore there can be no complaint regarding the initial penalty notice. Mr Jama only began to make efforts to comply with his obligations after incurring that initial late filing penalty.
54. I accept that by September 2014 Mr Jama had begun to make efforts to file. However, by that date he was already over six months late and had therefore already incurred the six-month late filing penalty.
55. 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 employed and never previously been asked to file self-assessment returns. It appears that he was only required to file on this occasion because of errors made by his employer in the information supplied to HMRC. He is not experienced at dealing with his tax affairs and did not voluntarily embark upon the self-assessment regime. However, he also had huge amounts of time, and advice, in order to deal with this issue, and was

repeatedly advised that if he failed to file he would be subject to penalty charges. Whilst I would be willing to accept that a certain amount of confusion and prevarication was reasonable, the Appellant had some 18 months before he began to make efforts to deal with his tax issues.

56. 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.
57. I conclude that Mr Jama does not have a reasonable excuse for the late filing of his return for 2011-12.
58. In relation to the 2012-13 tax year Mr Jama received the notice to file at the end of July 2014. He made a telephone call on 1 September 2014 indicating that he had requested a PIN number to login online but had not received it. He therefore had been making efforts to begin to file reasonably expeditiously in relation to this notice, and was continuing to attempt to comply with his obligations throughout August, September and October. By 13 November 2014 he had made an effort to file which was unsuccessful. It is unclear when that was attempted, but certainly a penalty notice was issued to him on 4 November 2014 and that probably prompted his telephone call of 13 November 2014. I am therefore satisfied that he had probably attempted to file both returns prior to 31 October 2014. Given his level of inexperience and the situation he found himself in, I do consider that there is a reasonable excuse in relation to the 14-day default for the 2012-13 tax year.
59. I conclude that Mr Jama does have a reasonable excuse for the late filing of his return for 2012-13.
60. Given the personal circumstances described in the notes – that Mr Jama had been put on a zero hours contract, and that he had worked as a security guard – it seems unlikely that he earned over £28,000 in the 2011-12 tax year. I have seen P60's that indicate he in fact earned nothing from Balfour Beatty during that year. He was plainly taken by surprise to be asked to complete a self-assessment return and buried his head in the sand. It is not however explained anywhere within the evidence provided by the Appellant why he stated in his return that he earned over £23,000 from Balfour Beatty during that year. If in fact he earned nothing then he would be justified in feeling that the debt was unfair. If this was a person who had established himself in self-employment and intentionally taken on the responsibility for his tax affairs I would have little sympathy for that position. However, it appears that this is a man who has been brought into default by an initial error for which he bore no responsibility.
61. This tax liability was due by 7 March 2014. Had he filled in the return correctly the penalty for non-payment would have been £0. Although the delay in seeking to rectify the position was extreme, I have dealt with that above. I do accept that it was Mr Jama's naïveté and inexperience that led to the penalty as imposed. I do consider that given Mr Jama's lack of experience and personal circumstances, and the fact that he found himself in a baffling situation without the skills to rectify it, that his actions in failing to pay the tax – on monies that he had not received – was reasonable.
62. In those circumstances I consider that he had a reasonable excuse for failing to pay tax on time for the 2011-12 tax year.

63. I note that I do not have any jurisdiction in relation to the assessment of tax for the tax year 2011-12, and the Appellant has sought to amend that tax limit well outside the time limit. His application to do so was refused. Although I do wholly understand the Respondent's position in relation to that matter, I also observe that the Appellant was a man without any understanding of the self-assessment regime who appears to have good evidence of his true earnings for that year. The only information in the possession of HMRC at the time indicating that he earned nearly £30,000 came from a self-assessment return from the Appellant without any substantiating documentation. In the circumstances there may in fact be little prejudice caused to the Respondent in allowing the tax liability for that year to be reconsidered based on the evidence submitted – in particular the relevant P60's for 2011-12.
64. 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.
65. Schedules 55 and 56 provide 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 the Appellant.
66. 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 Jama 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 Jama with a reasonable excuse for his late filing in relation to 2011-12. The circumstances are not such as to make it right for me to reduce the penalty which has been imposed.

CONCLUSION

67. I therefore confirm the fixed penalties of £100 and £300 in relation to the failure to file a tax return on time for the 2011-12 tax year. However, the appeal against all other penalties is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

68. 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: 17 AUGUST 2020

APPENDIX
RELEVANT STATUTORY PROVISIONS

Finance Act 2009

69. 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

70. 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).

71. 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.

72. 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.

73. 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.

74. 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.

75. 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

76. 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.

77. 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.

78. 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.

79. 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)).

80. 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

81. 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.