[2020] UKFTT 332 (TC)

TC07812

INCOME TAX – Permission to make a late appeal – section 49 Taxes Management Act 1970 – penalties for late filing of tax returns – Schedule 55 Finance Act 2009 – reasonable excuse – special circumstances

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/01294

BETWEEN

CONNOR MCNAUGHTON **Appellant**

-and-

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

TRIBUNAL: JUDGE ROBIN VOS

The Tribunal determined the appeal on 6 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 12 March 2020 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 18 May 2020 and a bundle of documents and correspondence prepared by HMRC.

DECISION

INTRODUCTION

1. The Appellant, Mr McNaughton has been charged penalties totalling £3,300 in respect of the late filing of his self-assessment tax returns for the tax years ended 5 April 2014, 5 April 2015 and 5 April 2016.

2. In 2018, Mr McNaughton engaged an accountant who has been trying to sort matters out for him. The accountant has submitted an appeal against the penalties to HMRC. However, they have refused to accept the appeal as it was made outside the statutory time limit.

3. Mr McNaughton has therefore lodged a notice of appeal with the Tribunal in respect of the penalties.

4. The first question for the Tribunal is whether it should give permission to Mr McNaughton to notify his appeal to HMRC outside the statutory time limit. If so, HMRC are content for the Tribunal to go on and consider the underlying merits of the appeal against the penalties rather than requiring HMRC to first consider the appeal. The Tribunal agrees that this is the most sensible way of proceeding given that, if HMRC were to reject the appeal (as seems likely), this would then mean that Mr McNaughton had to submit a fresh appeal to the Tribunal.

BACKGROUND FACTS

5. Until May 2013, Mr McNaughton was a self-employed contractor under the Construction Industry Scheme. He submitted self-assessment tax returns for all relevant years up to and including the year ended 5 April 2013.

6. Mr McNaughton did not however submit a self-assessment tax return for the year ended 5 April 2014 as, with the exception of the first six weeks of the year, he was in PAYE employment.

7. At around this time, there were a number of changes to the place where Mr McNaughton lived. Prior to 2012, he and his partner both lived at home with their respective parents. They had a child in 2012 and moved into their own home. After having another child in September 2013, they had to move in with the mother of Mr McNaughton's partner in January 2014. They then found a new home of their own in March 2014.

8. HMRC issued Mr McNaughton with a notice requiring him to file a tax return for the tax year ended 5 April 2014 on 6 April 2014. This notice was sent to the address which HMRC had on file for Mr McNaughton at that time. This is an address which Mr McNaughton is recorded as having lived at between October 2012 – February 2013 and then again from April 2013 – July 2014.

9. On 30 July 2014, Mr McNaughton called HMRC to tell them about his new address. However, he was told that this had already been recorded on HMRC's systems.

10. In November 2014, Mr McNaughton's son was unwell and had to have surgery. He continued to be unwell during 2015.

11. For the whole of the tax years ended 5 April 2015 and 5 April 2016, Mr McNaughton was employed and tax was deducted from his earnings under PAYE.

12. As Mr McNaughton had not filed his tax return for the year ended 5 April 2014 by the statutory deadline of 31 January 2015, HMRC charged an initial penalty of £100 on 18 February 2015. Mr McNaughton called HMRC about this on 27 March 2015 and told HMRC that he was no longer self-employed.

13. HMRC sent a notice requiring Mr McNaughton to file a tax return for the year ended 5 April 2015 on 6 April 2015. This was sent to his current address which has been recorded by HMRC as his address since July 2014.

14. On 14 August 2015 HMRC charged daily penalties of £900 in respect of the failure to file the tax return for the year ended 5 April 2014. At the same time, they charged a £300 penalty as, by that time, the return was more than six months late.

15. Mr McNaughton called HMRC again on 17 October 2015. He was told that HMRC would consider taking him out of self-assessment but was told that a written appeal may be required in relation to the penalties.

16. HMRC called Mr McNaughton on 8 January 2016 and left a message for him to call back which he did on 12 January 2016. He was told that, as he was self-employed in April/May 2013, he did need to file a tax return for the tax year ended 5 April 2014. He was also told that, as he had not formally declared to HMRC that he had ceased his self-employment, he would need to file a tax return for the tax year ended 5 April 2015 as well. Mr McNaughton told HMRC that he would get in touch with an accountant in order to file the returns.

17. As the tax return for the year ended 5 April 2015 had not been received by HMRC by 31 January 2016, they charged an initial £100 late filing penalty on 17 February 2016.

18. Shortly after this, on 23 February 2016, they also charged an additional £300 penalty in respect of the tax year ended 5 April 2014 as the return was, by then, more than 12 months late.

19. HMRC sent Mr McNaughton a notice requiring him to file a tax return for the tax year ended 5 April 2016 on 6 April 2016. Again, this was sent to his current address.

20. On 12 August 2016, HMRC charged further penalties for the late filing of the tax return for the year ended 5 April 2015. These comprised daily penalties totalling £900 as a result of the return being more than three months late and a further penalty of £300 as the return was, by then, more than six months late.

21. Perhaps, as a result of this, Mr McNaughton called HMRC again on 25 August 2016. He acknowledged that he had received the penalty notices in respect of the tax year ended 5 April 2015 and stated that he would submit the outstanding tax returns as soon as possible.

22. As HMRC had not received Mr McNaughton's tax return for the year ended 5 April 2016 by the statutory deadline of 31 January 2017, they charged an initial £100 late filing penalty on 7 February 2017.

23. The final £300 late filing penalty in respect of the tax year ended 5 April 2015 was charged on 21 February 2017, the tax return being more than 12 months late by that time.

24. Throughout the relevant period, HMRC sent Mr McNaughton regular self-assessment statements (initially quarterly and then six monthly) which, amongst other things, showed the late filing penalties which had been charged.

25. In around September 2018, Mr McNaughton approached a firm of accountants to help him sort out his tax affairs. They arranged for tax returns for each of the years ended 5 April 2014, 5 April 2015 and 5 April 2016 to be submitted. The tax return for the year ended 5 April 2014 was submitted in paper form on 11 March 2019. The return for the tax year ended 5 April 2015 was submitted in paper form on 10 April 2019 and the tax return for the year ended 5 April 2016 was submitted electronically on 8 April 2019.

26. The accountants also lodged appeals against the late filing penalties. The appeal in respect of the tax year ended 5 April 2014 was made on 8 March 2019 and the appeal in respect

of the other two tax years was made on 5 February 2019. All of these appeals were rejected by HMRC on the basis that they were made outside the 30 day statutory time limit.

27. Mr McNaughton's accountants wrote again to HMRC on 27 November 2019 asking them to reconsider their position. HMRC responded on 18 February 2020 confirming that they would not consider the appeals as they had been made outside the statutory time limit. Mr McNaughton therefore notified his appeal to the Tribunal on 12 March 2020.

LATE APPEALS

28. The normal time limit for appealing against an assessment (including a penalty assessment) is 30 days from the date of the assessment (s 31A Taxes Management Act 1970).

29. However, both HMRC and the Tribunal have power to extend that time limit (s 49 Taxes Management Act 1970).

30. As HMRC have explained in their Statement of Case, the approach which the Tribunal should take in deciding whether to give permission to make a late appeal is set out in the decision of the Upper Tribunal in *Martland v HMRC* [2018] UKUT 0178 (TCC) at [44]:

> "When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton*:
>
> (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being 'neither serious nor significant'), the FTT 'is unlikely to need to spend much time on the second and third stages' – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.
>
> (2) The reason (or reasons) why the default occurred should be established.
>
> (3) The FTT can then move on to its evaluation of 'all the circumstances of the case'. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission."

31. The Upper Tribunal also makes a point at [45] that the balancing exercise:

> "Should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected."

32. The Upper Tribunal however cautions at [45] that:

> "The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist."

33. As far as the underlying merits of any appeal are concerned, the Upper Tribunal observed at [46] that:

> "The FTT can have regard to any strength or weakness of the applicant's case; this goes to the question of prejudice – there is

> obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal."

34. Looking first at the length of the delay, the appeal against the oldest penalties is almost four years late. The appeal against the most recent penalty is two years late. By any standards, this is a significant delay.

35. In this context, HMRC refer to the comment of the Upper Tribunal in *Romasave (Property Services) Limited v HMRC* [2015] UKUT 0254 (TCC) at [96] that:

> "In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant."

36. Turning to the reasons for the delay, Mr McNaughton has put forward a number of points:

(1) He says that, as a result of his various changes of address, he was not aware of the penalties until he instructed his new accountant in 2018. After that, the accountant proceeded promptly to gather together all the information, submit the tax returns and make the appeals.

(2) Mr McNaughton also refers to the fact that, in 2014/2015, he was under significant pressure with two young children, housing problems and one child who was unwell.

(3) The failure to file a tax return for the tax year ended 5 April 2014 was a mistake. Mr McNaughton says he thought there was no need to do so given that he was employed for most of the year and the payments he received in the first six weeks whilst self-employed were all subject to CIS deductions.

(4) As far as the tax years ended 5 April 2015 and 2016 were concerned, he was in full time employment during these tax years with tax being deducted under PAYE and did not therefore think that he needed to file a tax return.

37. Against this, HMRC point out that Mr McNaughton contacted HMRC on a number of occasions between March 2015 and August 2016. They say that this clearly demonstrates that Mr McNaughton was in fact aware of the late filing penalties as well as the need to file his outstanding tax returns.

38. Looking at other relevant factors, HMRC urged the Tribunal to take account of the need for statutory time limits to be respected. In support of this, they refer to the comment of the Upper Tribunal in *Martland* at [34] that:

> "The purpose of the time limit is to bring finality, and that is a matter of public interest, both from the point of view of the taxpayer in question and that of the wider body of taxpayers."

39. They go on to submit that HMRC should be entitled to rely on the time limits for the purpose of allocating resource in administering the tax system and should not normally be required to defend appeals after an excessive gap between the expiration of the time limit and the appeal. They point out that late appeals are normally more resource-intensive to defend and can create issues in obtaining appropriate evidence in meeting the respondents' burden of proving that the penalties were correctly charged.

40. HMRC also say that it would be unfair to other taxpayers who have filed their appeals on time if the Tribunal gives permission for a late appeal to be brought.

41. HMRC accept that there will be a prejudice to Mr McNaughton if he is not allowed to bring his appeals as he will have to pay the penalties without having had the opportunity of challenging them. They submit however that this is not sufficient, on its own, to outweigh the other factors which the Tribunal should take into account.

42. HMRC also draw attention to the fact that, as mentioned at paragraph [33] above, the Upper Tribunal in *Martland* confirmed that the First-tier Tribunal should have regard to any strength or weakness of the appellant's case. This is on the basis that it would be more prejudicial to an appellant to deny them the opportunity of pursuing a very strong case. They submit however that, in this case, the appellant's case is not strong enough to justify granting permission to make a late appeal.

43. There is no doubt in this case that Mr McNaughton's delay in appealing against the penalties was very long. I am also not satisfied that there was any good reason for the delay. It is quite clear that HMRC had Mr McNaughton's correct address from July 2014 onwards and that he was receiving the penalty notices. This is borne out by the various calls which he made to HMRC. He could and should have acted much sooner to appeal against the penalties. Instead, he did nothing until he instructed an accountant in September 2018 which was already far too late to appeal against even the most recent penalty (which had been assessed on 7 February 2017).

44. On the other hand, there is no significant prejudice to HMRC if I were to grant permission for Mr McNaughton to make a late appeal. Whilst, in some cases, the delay may affect the evidence which HMRC are able to compile in order to support their case, there is no suggestion in this case that this has been a problem. Indeed they have submitted all the documents they consider necessary to support their case on the underlying merits of the appeal.

45. Whilst it is true that there is a purpose to the time limit both in terms of bringing finality, enabling HMRC to allocate their resources appropriately and to ensure fairness between taxpayers, in this case HMRC have of course already done all the work which needs to be done in order to defend the underlying appeal. These points are therefore less strong in the current case.

46. As HMRC point out, there will be prejudice to Mr McNaughton if I do not give permission for him to make a late appeal as he would then have to pay the penalties. In this context, it is relevant to consider his prospects of success in relation to the appeal.

47. Whilst I do not consider that Mr McNaughton has any real prospect of showing that he has a reasonable excuse for his failure to file the tax returns on time, it seems to me that he has a much stronger case in showing that there should be some reduction in the amount of the penalties as a result of special circumstances.

48. The reason for this is that, whilst HMRC say that they have considered as one of the circumstances the fact that he was employed during the tax years ended 5 April 2015 and 5 April 2016 in deciding whether any special reduction is appropriate, it is apparent from their reasoning which is set out in their Statement of Case that this particular aspect was not given any critical thought in coming to their conclusion. Mr McNaughton therefore has a strong case on this aspect which increases the importance which I should give to the prejudice which will be suffered by him if I do not give permission to make a late appeal.

49. I acknowledge that it is up to the taxpayer to show why it is right for permission to be granted to make a late appeal. I also acknowledge that the starting point is that permission should not be given unless good reasons can be shown as to why it should and that compliance with time limits should be expected unless there are good reasons to the contrary.

50. However, having weighed up all of the relevant considerations in this case, it is in my view right to give Mr McNaughton permission to notify his appeals outside the statutory time limit.

51. The main reason for this is that there are obvious strengths in his case, at least in relation to the tax years ended 5 April 2015 and 5 April 2016. There is no prejudice to HMRC in giving permission to appeal and significant prejudice to Mr McNaughton in refusing permission to make a late appeal. Therefore, despite the long delay and the fact that there are no good reasons for that delay, I give permission for Mr McNaughton to notify his appeal to HMRC outside the statutory time limit.

52. HMRC have confirmed that, in these circumstances, they are willing for Mr McNaughton to notify his appeal direct to the Tribunal. In those circumstances, there is no statutory time limit for the notification of the appeal to the Tribunal.

53. I therefore move on to look at the merits of the appeal.

SELF-ASSESSMENT TAX RETURNS AND LATE FILING PENALTIES

54. Schedule 55 to Finance Act 2009 provides for penalties where a self-assessment tax return is filed late.

55. There is an initial £100 penalty if the return is filed after the statutory deadline (paragraph 3 of schedule 55).

56. HMRC may charge a further penalty of £10 for up to 90 days if the return is more than three months late (paragraph 4 of schedule 55).

57. A penalty of a minimum amount of £300 is payable if the return is more than six months late (paragraph 5 of schedule 55).

58. A further penalty of a minimum of £300 is payable if the return is more than 12 months late.

59. The deadline for filing a self-assessment tax return is set out in s 8 Taxes Management Act 1970. If the return is filed in paper form, the deadline is normally 31 October after the end of the tax year. If the return is filed electronically, the deadline is 31 January after the end of the relevant tax year. In Mr McNaughton's case, this means that the tax returns for the years ended 5 April 2014 and 5 April 2015 were due by 31 October 2014 and 31 October 2015 respectively. The tax return for the year ended 5 April 2016 was submitted electronically and so the statutory deadline was 31 January 2017.

60. If the taxpayer can satisfy HMRC or the Tribunal that he has a reasonable excuse for the failure to file the tax return on time, no penalty is payable. If the taxpayer relies on another person to do something, that is not a reasonable excuse unless the taxpayer shows that he took reasonable care to avoid the failure. In addition, if a taxpayer has a reasonable excuse, any failure must be remedied without unreasonable delay after the excuse ceases.

61. HMRC is entitled to reduce a penalty if there are special circumstances which they consider make it right to do so. The Tribunal may only interfere with HMRC's decision in relation to special circumstances if that decision is flawed in a judicial review sense. That means that the relevant officer did not take into account all of the relevant considerations or made a decision which no reasonable officer could have reached in the circumstances.

THE ASSESSMENT OF THE PENALTIES

62. HMRC accept that they have the obligation to show that the penalties have been properly assessed and charged.

63. Based on the evidence provided, I am satisfied that the penalties have been properly assessed in accordance with the legislation. The only possible issue is whether the penalties have been notified to Mr McNaughton in accordance with the requirements of the legislation as he has said that he did not receive the penalty notices.

64. It is however clear from the evidence of the calls which he made to HMRC that he did in fact receive at least some of the penalty notices. Bearing this in mind and also taking account of the fact that HMRC held the correct address for Mr McNaughton since at least July 2014 (with the first penalty notice being issued in February 2015), I am satisfied that it is more likely than not that Mr McNaughton did in fact receive all of the penalty notices.

REASONABLE EXCUSE

65. The test as to whether Mr McNaughton has a reasonable excuse for his failure to file the tax returns on time is objective. HMRC refer to the decision of Judge Medd QC in *The Clean Car Co v Customs & Excise Commissioners* [1991] VATTR 234 who said that the question to be asked is as follows:

> "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 the taxpayer found himself at the relevant time, a reasonable thing to do?"

66. The reasons put forward by Mr McNaughton for his failure to file the tax returns are as follows:

(1) As he was only self-employed for the first six weeks of the tax year ended 5 April 2014 and any payments he received whilst self-employed were subject to deductions under the Construction Industry Scheme, he did not realise he had to file a tax return for that year.

(2) As he was in PAYE employment for the whole of the tax years ended 5 April 2015 and 5 April 2016, he did not think he had to submit a tax return.

(3) In 2014/15 he was under pressure as a result of having two young children, housing/money problems and one child who was unwell.

(4) He was unaware of the need to file tax returns as a result of not having received communications from HMRC due to his changes of address and only became aware that there was a problem when he instructed accountants in September 2018.

(5) The failure to comply was not deliberate.

67. HMRC accept that Mr McNaughton may have made a mistake in relation to the tax year ended 5 April 2014 but submit that a mistake is not, on its own, a reasonable excuse.

68. As far as the question as to whether Mr McNaughton should have known that he needed to file a tax return for the year ended 5 April 2014, HMRC make the point that Mr McNaughton had filed tax returns for all previous years when he had been self-employed and therefore should have been aware of the requirement.

69. As mentioned above, HMRC rely on the notes of the various telephone conversations which Mr McNaughton had with HMRC in 2015 and 2016 to demonstrate that he was in fact aware of the need to file tax returns.

70. HMRC do not specifically accept that Mr McNaughton would not normally be required to file a tax return for the years ended 5 April 2015 and 5 April 2016 as he was in PAYE employment (although they also do not deny this). However they say that this is irrelevant as

a taxpayer who is sent a notice requiring them to file a tax return has a legal obligation to do so.

71. If, contrary to HMRC's view, Mr McNaughton was in fact unaware of his need to file a tax return, HMRC submit that this is still not a reasonable excuse. In support of this, they refer to the decision of the Upper Tribunal in *Perrin v HMRC* [2018] UKUT 0156 (TCC) where the Upper Tribunal said the following at [82]:

> "One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that 'ignorance of the law is no excuse', and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long."

72. HMRC suggest that it was not objectively reasonable in the circumstances of this case for Mr McNaughton to have been ignorant of his obligation to file self-assessment tax returns for the relevant tax years.

73. Mr McNaughton does not, in my view, have a reasonable excuse for the failure to file his tax returns on time.

74. I accept that it is possible that he did not receive the notice requiring him to file a tax return for the tax year ended 5 April 2014 as, in April 2014, he may not have been living at the address to which that notice was sent. It is however clear from the evidence that Mr McNaughton was aware, at the latest, on 27 March 2015 that HMRC were expecting him to file a tax return for that tax year as he called HMRC on that date to discuss the initial £100 late filing penalty.

75. He was told on a number of occasions in conversations with HMRC in 2016 that he needed to file a tax return for that year and for the subsequent years. Based on these conversations and the receipt of the penalty notices as well as the statements of account showing the late filing penalties, Mr McNaughton cannot have been in any doubt that HMRC were expecting him to file tax returns for the relevant years.

76. Whilst Mr McNaughton may have believed that there was no need for him to file tax returns, given his knowledge that HMRC took a contrary view, it was not reasonable for him simply to do nothing and to wait until September 2018 before instructing an accountant to get help, particularly as he had told HMRC in January 2016 that he would instruct an accountant then. Had he taken action at the relevant time, he would have been able to agree with HMRC whether tax returns were in fact required for the years ended 5 April 2015 and 5 April 2016 and to submit the tax return for the tax year ended 5 April 2014.

77. I accept that Mr McNaughton may have had other things on his mind in 2014/15 due to the financial problems he had, the need to move house on a number of occasions and his son's illness. However, there is no evidence that this continued beyond 2015 and yet he still took no action until September 2018 when he instructed the new accountants other than telephoning HMRC and being told that he did indeed need to file his tax returns.

78. As Mr McNaughton does not have a reasonable excuse for his failure to file the tax returns, I move on to consider whether there are any special circumstances which justify a reduction in the amount of the penalties.

SPECIAL REDUCTION

79. In their Statement of Case, HMRC explain the ability to reduce a penalty due to the existence of special circumstances as being relevant where:

> "in HMRC's opinion, the taxpayer's circumstances are such that the application of a penalty at the statutory level would not be appropriate. This may include circumstances where imposing the penalty would be contrary to the clear compliance intention of the penalty law".

80. HMRC also list at paragraph 158 of their Statement of Case the factors which they say they have considered in deciding whether or not there are any special circumstances which would justify a reduction in the amount of the penalties. These are essentially the same factors as have been considered in relation to the question as to whether or not Mr McNaughton has a reasonable excuse for his failure to file the returns on time and includes in particular the fact that he was in full time employment during the tax years ended 5 April 2015 and 5 April 2016.

81. However, in recording their decision that no special reduction is appropriate, the reasons given by HMRC can be briefly summarised as follows:

(1) There is no evidence that Mr McNaughton did not receive the various penalty notices/statements etc., from HMRC.

(2) The various conversations with HMRC made Mr McNaughton aware of the fact that he needed to file the tax returns.

82. Therefore, although HMRC have listed various other factors which they say they have taken into account, it is not apparent that they have given these factors any serious thought. In particular it does not appear that HMRC have considered whether or not a reduction is appropriate on the basis that they would not normally require a taxpayer to file a tax return where that individual's only source of income is employment income subject to tax under the PAYE system.

83. In my view, HMRC have therefore failed to take into account a relevant consideration which means that their decision is flawed in a judicial review sense. In accordance with paragraph 22(3) of schedule 55, this in turn allows the Tribunal to make its own decision as to whether a reduction in the amount of the penalties is appropriate as a result of the existence of special circumstances.

84. In my view, the fact that HMRC would normally take somebody out of the self-assessment system if their only source of income is from PAYE employment is highly relevant in this case. It is the reason why Mr McNaughton did not think he had to file a tax return for those two tax years. He was also encouraged in this belief as a result of his conversation with HMRC on 17 October 2015 when the HMRC officer confirmed that, if all the tax was deducted under PAYE, he was no longer under the self-assessment criteria and that the officer would speak to somebody about bringing Mr McNaughton's self-assessment account to an end.

85. I accept that HMRC then got in touch with Mr McNaughton in January 2016 and told him that he needed to confirm to HMRC the date his self-employment ended and that, until he did this, he would remain within the self-assessment system and that Mr McNaughton took no action following this call. On this basis, it would not be right to cancel the penalties for the tax years ended 5 April 2015 and 5 April 2016 in their entirety. This point however carries relatively little weight as HMRC were clearly aware that Mr McNaughton had only received

payments which were subject to CIS deductions in April and May 2013 (and not subsequently) and so it must have been fairly clear that, even though Mr McNaughton had not given them the exact date on which he ceased self-employment, it had certainly ceased before the beginning of the tax year ended 5 April 2015.

86. I agree with HMRC that one of the situations in which it is appropriate to reduce penalties as a result of special circumstances is where imposing the full amount of the penalty would be contrary to the compliance intention of the penalty provisions.

87. In this case, the clear purpose of schedule 55 is to encourage taxpayers to submit their tax returns on time. This is the case whether or not the taxpayer has any tax liability as it enables HMRC to confirm whether the right amount of tax has been paid.

88. However, there is limited benefit in encouraging taxpayers to file tax returns in circumstances where no tax return is normally needed. This is of course the reason why a taxpayer is not normally required to notify HMRC of any liability to tax if their only income is employment income from which tax is deducted under the PAYE system (see s 7 Taxes Management Act 1970).

89. Bearing all of this in mind, it is in my view appropriate for the penalties which have been charged for the tax years ended 5 April 2015 and 5 April 2016 to be reduced by 90% to reflect the fact that Mr McNaughton would not normally be required to file self-assessment tax returns for those years. He should still have to pay some penalty as he was told by HMRC that he needed to file a tax return and yet still failed to do so and to reinforce the fact that an individual who has been required to file a tax return should ordinarily expect to do so.

90. I have considered all of the other circumstances and have concluded that none of these justify any further reduction in the amount of the penalties.

CONCLUSION

91. The late filing penalties for the tax year ended 5 April 2014 are upheld.

92. The late filing penalties for the tax year ended 5 April 2015 are reduced from £1,600 to £160.

93. The late filing penalty for the tax year ended 5 April 2016 is reduced from £100 to £10.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

94. 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.

ROBIN VOS
TRIBUNAL JUDGE

RELEASE DATE: 14 AUGUST 2020