



**TC07841**

*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 her default – appeal allowed. Permission to appeal out of time – allowed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2020/01872**

**BETWEEN**

**AMANDA GATWARD**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE ABIGAIL HUDSON**

The Tribunal determined the appeal on 4 September 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 24 May 2020 (with enclosures), HMRC’s Statement of Case (with enclosures) dated 23 July 2020.

## DECISION

### INTRODUCTION

1. This is an appeal by Mrs Amanda Gatward ('the Appellant') against fixed and daily penalties totalling £970 imposed by the Respondents ('HMRC') under Paragraph 3, and 4 of Schedule 55 Finance Act 2009, for her failure to file a self-assessment ('SA') tax return on time for the tax year ending 5 April 2018.
2. This is further an appeal by the Appellant against penalties totalling £52, imposed by the Respondents ('HMRC') under Paragraph 3(2) and (3) of Schedule 56 Finance Act (FA) 2009, for failures to submit payment on time for the tax year ending 5 April 2018.

### BACKGROUND

3. The Appellant's return for 2017-18, was due no later than 31 October 2018 if filed non-electronically. 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 return for 2017-18 was properly filed on 27 June 2019. It was therefore not filed on time and penalties of £100 and £870 were imposed, under (i) and (ii) above.
5. The Appellant's tax payment for the year ending 5 April 2018, was due by no later than 31 January 2019, under Section 59B Taxes Management Act ('TMA') 1970.
6. 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)).
7. The Appellant's tax liability for the tax year 2017-18 was assessed at £1,121.53. It was paid in full on 30 January 2020 and was therefore late. A payment of £700 was received towards it in February 2019. As a result of late payment two penalties of £26 were therefore imposed under (i) and (ii) above.

### *Filing date and Penalty date*

8. Under s 8(1D) TMA 1970 a non-electronic return must normally be filed by 31 October in the relevant financial year or an electronic return by 31 January in the year following. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.
9. 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*

10. 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).
11. 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.
12. 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).
13. 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.
14. 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 she has a reasonable excuse for the late filing of her SA tax return and the late payment of tax.

### **PERMISSION TO APPEAL OUT OF TIME**

15. The Appellant has not appealed to HMRC directly as required but instead has appealed directly to the Tribunal. However, the Respondent has conceded that it is in the interests of justice for me to treat the appeal as an appeal to HMRC at the same time. The appellant's appeal to HMRC under s31A TMA 1970 was therefore made outside the statutory deadline. 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:

16. The relevant penalty notices were dated 26 March and 29 October 2019. Mrs Gatward did attempt to appeal to HMRC in time against the first penalty notice. However, at that time her return remained outstanding and therefore her appeal was rejected. Her return was not properly received until 1 July 2019 and therefore her appeal was made on that day. She was effectively therefore just over two months late in making that appeal. Although the appeal was specifically against the first penalty only, I am satisfied that the intention was to appeal late payment penalties generally. I therefore do not make any criticism of the fact only the first late filing penalty was included. Although there is a concern that she did not at any point appeal to the Respondent against the late payment penalties, I am willing to treat her April appeal as being against all penalties accruing.
17. All penalty notices were sent to the Appellant's registered correspondence address. The Appellant's appeal was rejected twice because her return had not been properly completed. She was then offered a statutory review which concluded on 6 December 2019. Her time limit for appealing to the Tribunal therefore expired on 7 January 2020. The appeal was not submitted to the Tribunal until May 2020, however, clear efforts were made between January and May to appeal.
18. In relation to the daily penalties and the late tax penalties the appeal is 137 days late. Such delay is serious and significant. However, Mrs Gatward made ongoing efforts to appeal from the moment she received her penalty notice in March 2019. She was prohibited from doing so by the refusal to accept the appeal. Once the review was concluded in December 2019, she then made repeated efforts to appeal to the Tribunal from January 2020 onwards. Her appeal was not in the proper form or addressed properly to the Tribunal, despite clear information on how to do so in letters received from HMRC, but I accept that she made comprehensive and reasonable efforts to bring the appeal.
19. 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, and I accept that she has a good explanation for her delay in appealing.
20. 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.
21. In the circumstance I do consider that the appellant has a good explanation for her delay albeit serious and significant. In balancing the prejudice caused to both parties, I conclude that it would be appropriate to extend the time limit for appeal, and the application for permission to appeal out of time is allowed.

### **The Appellant's case**

22. The Appellant's grounds of appeal are that she filed on 11 October 2018 and that that filing was correct in substance if not form. She had not understood the proper completion of the form.

### **HMRC's Case**

23. 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.
24. 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*

25. 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.
26. ‘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.].

27. 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.
28. If there is a reasonable excuse it must exist throughout the failure period.
29. The Appellant has not provided a reasonable excuse for her failure to file her tax return on time for the year 2017-18, and her failure to pay tax on time for the same tax year and accordingly the penalties have been correctly charged in accordance with the legislation.
30. 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*

31. 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.
32. 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).
33. 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'.

34. 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.
35. 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**

36. On or around 6 April 2018 the Appellant was issued 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 – 19 Abbotts Road. 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 her, but she did file an incomplete return within the deadline of 31 October 2018 and she responded to documentation in April 2019. I consider that it is likely in those circumstances that she received the notice to file, and the penalty notices.
37. The Appellant attempted to file the tax return on or around 10 October 2018. It was returned to her on 4 December 2018 and she was sent a letter advising that the supplementary pages for self-employment and partnership were missing. The time to file was extended to 5 January 2019. In the telephone call of 21 February 2019 Mr Gatward indicates that although he received that communication in relation to his filing, Mrs Gatward did not receive the same. The completed return was not filed by 5 January 2019. However, the completed partnership return of Mr Gatward was filed on 21 January 2019. Given the fact that Mr Gatward appears to have acted on the letter he received, I accept that no similar letter was received by Mrs Gatward.
38. On 21 February 2019 the Appellant contacted the Respondent. It does appear that the person speaking on that call was Stephen Gatward. Although it is not explicitly stated, in her request for review Mrs Gatward indicates that she did send in a "SA104S and SA103S" on time. Mr Gatward was told that partnership and self-employment pages were missing, and did not dispute that during the phone call. From the comments of Mrs Gatward during that telephone call, it appears that the tax returns for both were dealt with by Mr Gatward. During that telephone call Mr Gatward makes the observation "she had nothing to send in, she's received nothing". The implication of his comment is that he did not realise prior to this call that Mrs Gatward was required to send in a partnership return. He states that she did not send in such a form because "she had nothing to send in". I therefore find that the self-assessment and partnership forms were not sent in with the tax return in October 2018. I further accept that Mrs Gatward did not become aware of this issue until the telephone call of 21 February 2019.
39. During that telephone call it is not at all clear what "Dave" is asking the Appellant to do. He certainly indicates that she needs to send in only one additional form, that being an "SA604". An SA604 is neither a self-employment form nor a partnership form. However, it is similar numerically to a SA104S – the partnership page. On 25 February 2019, following the telephone call with "Dave", the partnership pages were returned but not the remainder of the tax return. It was again rejected.
40. On 26 March 2019 the first penalty notice was issued.

41. Mrs Gatward refers to a telephone call to “Brian” on 3 April 2019. Within the review decision of 6 December 2019 it is acknowledged that this call occurred. I do not have a transcript of this call. However on 13 April 2019 the Appellant contacted the Respondent and spoke to “Brian”. I find that this is the April call referred to as 3 April 2019. Again, although the telephone call is in relation to Mrs Gatward’s account, the speaker is Stephen Gatward. He indicated that a letter had been received by her that morning. Brian told Mr Gatward that a partnership page had been received and was fine, and he should just send in the self-assessment page SA103. On 15 April 2019 the self-employment pages were filed but not the remainder of the tax return. On 17 June 2019 it was rejected again and sent back to the Appellant with an exhortation to file the return. However, Mrs Gatward says it was in fact the return of Stephen Gatward that was returned. I cannot determine what was in fact returned in June, but it matters little in the context of my other findings.
42. The fully completed return was submitted on 27 June 2019 (and received on 1 July 2019). It was therefore 176 days late. I accept that the return was not properly submitted on the due dates, or prior to 27 June 2019.
43. On 27 June 2019 the Appellant submitted her 2017-18 tax return, and a tax liability of £3,722.25 was calculated based on her figures. That payment was due by 31 January 2019. Following the submission of amendment in January 2020, that liability was reduced to £1,121.53. That amount was paid in full on 30 January 2020. The Appellant did make an earlier payment of £700 on 26 February 2019. Although I find therefore that the tax was paid late, much of it was paid within one month of the payment date.
44. 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

45. Relevant statutory provisions are included as an Appendix to this decision.
46. I have concluded that the tax return for the 2017-18 tax year was not submitted on time. I have further concluded that the tax due in that tax year 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.
47. 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.
48. Although I acknowledge that efforts to file were begun prior to the deadline of October 2018, I accept that a return is unsatisfactory if it is not in the prescribed form. It appears from the notice of appeal that it is accepted that the return submitted in October 2018 was not in the correct form. It is said that that was due to “a lack of understanding”. However, it is contended that the figures used were entirely accurate. That is clearly not true because amendments were then made. The return was sent back to the Appellant on 4 December 2018 and her time to file extended to 5 January 2019. She therefore had another month to correct the error, however I have accepted that in fact she didn’t know of this problem until

21 February 2019 when her husband checked. His checking was prompted by letters in relation to his own account. Although the return should have been submitted by 31 October 2018, when it was not submitted properly, the Respondent was willing to extend time for service by one month from the date that they made the Appellant aware of the problem. Given that I have accepted that she didn't become aware of the issue until 21 February 2019, I accept therefore that she had a reasonable excuse until 20 March 2019.

49. Having been rejected again after 25 February 2019 the first penalty notice was issued on 26 March 2019. It is not clear to me when Mrs Gatward first became aware that the filing had again been rejected, but she therefore became aware of ongoing problems on receipt of the penalty notice. That does appear to have prompted the telephone call of 13 April 2019 wherein I accept that Mr Gatward was told to simply file the self-assessment form. He was not told to file it along with the return. Mrs Gatward therefore did make that further filing immediately, but again the return was not properly completed. I am satisfied that Mrs Gatward (through her partner) was misled into the actions required. She did exactly what she had been told, and I therefore accept that she had a reasonable excuse until June when the rejected return was sent back.
50. 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 registered to file self-assessment returns since 2015 or earlier. Although therefore she and her partner have experience filing such returns, I accept that they held an honest belief that they had submitted everything appropriately in October 2018. In allowing an extension of time to January the Respondent effectively concedes that that was a reasonable belief. Having not received the notification until February 2019 and then immediately made the submission asked of them, in my judgment it is reasonable to rely on the advice given by telephone in both February and April.
51. In the circumstances of this case I conclude that Mrs Gatward does have a reasonable excuse for the late filing of her return for 2017-18.
52. The tax liability was due on 31 January 2019. Mrs Gatward must have been aware that she had earned income and that there would therefore be tax monies due on that date, it being an annual obligation. Notwithstanding the fact that she must have known tax would be due, no payment was made by 31 January 2019. On her figures, submitted in October 2018, she calculated a tax liability of nearly £4,000. However, having not received any response to her filing in October 2018, I accept that it was reasonable not to make payment by 31 January 2019 and instead make enquiries. As soon as those enquiries were made within a few weeks of that date, and a suggestion made that a holding payment be paid, monies were paid. The Appellant paid over half the tax liability notwithstanding having heard nothing from the Respondent.
53. In those circumstances I consider that she did have a reasonable excuse for failing to pay tax on time for the 2017-18 tax year.

#### **CONCLUSION**

54. I therefore allow her appeal and cancel all penalties.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

55. 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: 14 September 2020**

**APPENDIX  
RELEVANT STATUTORY PROVISIONS**

**Finance Act 2009**

56. 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**

57. 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).

58. 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.

59. 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.

60. 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.

61. 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.

62. 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**

63. 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.

64. 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.

65. 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.

66. 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)).

67. 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**

68. 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.