TC03614

Appeal numbers: TC/2012/10957, TC/2013/04282, TC/2013/04697 & TC/2014/00350

INCOME TAX – penalties for late filing and late payment – ten penalties over two years – suggested approach where multiple penalties – whether honest belief a reasonable excuse – whether unexpected or unusual event necessary for reasonable excuse – whether some of Appellant's appeals were late – whether some of her applications were late – two consecutive mistakes when filing return – whether provide reasonable excuse for late filing – whether belief that tax would be collected via PAYE reasonable excuse for late payment – the law on collecting tax debts via PAYE – whether Appellant's failures remedied without unreasonable delay after excuse ceased – special circumstances – appeal allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

CHRISTINE PERRIN **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE REDSTON
MRS LESLEY STALKER

Sitting in public at 45 Bedford Square, London WC1B 3DN on 10 April 2014

The Appellant in person

Ms Hellie Lai, of HM Revenue and Customs Appeals and Reviews Unit, for the Respondents

DECISION

1. HMRC levied the following penalties in relation to Mrs Perrin's self-assessment ("SA") tax return for 2010-11:

(1) A thirty day fixed penalty for late filing of £100;

(2) A six month fixed penalty for late filing of £300;

(3) daily penalties for late filing totalling £900; and

(4) three fixed penalties for late payment, each of £57, totalling £171.

2. They also levied the following penalties in relation to her 2011-12 SA return:

(1) two £47 penalties for late payment of the tax shown as due on the return Mrs Perrin filed in June 2012; and

(2) two £93 penalties for late payment of the tax shown as due when she amended her return on 1 January 2013.

3. This is a long decision and we have summarised the outcome at paragraphs 6 to 8 below.

4. HMRC submitted that the Tribunal should not make a decision on Mrs Perrin's appeal against the daily penalties until after publication of the Upper Tribunal's decision in *R&C Commrs v Keith Donaldson* ("*Donaldson*"), due to be heard in July 2014. We agree that it is sensible to defer our decision on the daily penalties until after *Donaldson,* as that judgment may be relevant to Mrs Perrin's case. However, we have set out all the relevant facts in this decision notice, and will rely on them when we come to make our further decision following *Donaldson.*

5. This is therefore a final decision in relation to all of Mrs Perrin's applications and appeals, other than her appeal against the daily penalties.

6. In relation to 2010-11 we have decided that her appeals against:

(1) the fixed penalties for late filing of £100 and £300 are **refused**; and

(2) the three £57 fixed penalties for late payment are **refused.**

7. In relation to 2011-12 we have decided that her appeals against:

(1) two £47 penalties for late payment of the tax shown as due on the return filed in June 2012 are **allowed**; but

(2) two £93 penalties for late payment of the tax shown as due when the return was amended on 1 January 2013 are **refused**.

8. **Penalties totalling £757 have therefore been confirmed and penalties totalling £94 have been cancelled.**

9. Mrs Perrin should note that HMRC's bundle discloses further penalties for late payment, see page B1. One is a further £93 penalty and one a further £47 penalty. Those penalties are outside the scope of this decision, so we merely note that the earlier £93 penalties were upheld by this Tribunal and the £47 penalties cancelled.

Introductory remarks

10. The late filing and late payment penalty provisions are relatively new and this is one of the first tribunal cases dealing with both penalty regimes together. Mrs Perrin received three different penalties for late filing, and seven penalties for late payment, three in one tax year and four in the next. Both sets of penalties have their own trigger dates. Some of Mrs Perrin's Tribunal appeals were rejected by HMRC because they were made after the 30 day statutory deadline, so the Tribunal had to consider whether to give permission for these late appeals; we also needed to consider whether any appeals had been notified late to the Tribunal.

11. The tribunal is required to look at each penalty separately. For each of these ten penalties we needed to know the relevant facts; the grounds of appeal; whether or not the Tribunal was being asked to give permission for a late appeal and whether or not the appeal was notified to the Tribunal after a statutory limit.

12. HMRC provided us with a bundle of documents and a skeleton argument, both of which we carefully considered before the hearing. We were nevertheless unable to establish either the chronology of events or the parties' contentions about each penalty.

13. At the hearing it became clear that:

(1) certain key documents had been omitted from the bundle;

(2) two penalties had not been appealed at all (although both parties were under the impression that appeals had been made); and

(3) no trace could be found of appeals against another two penalties, although from other evidence we established that these appeals had in fact been made.

14. Fortunately, Mrs Perrin had made her own file of correspondence to and from HMRC, which she had carefully organised in chronological order. From her documents we were able to make a further bundle, which helped all parties to complete the picture. In our experience it is rare for an unrepresented appellant to have retained such complete records, and even less common for all these documents to be brought to the hearing. It is therefore not something that can be relied upon.

15. With a view to assisting the parties and tribunals in future multiple penalty appeals, we have set out at Appendix 1 a possible method of organising the relevant material.

16. In providing the Appendix and making the above comments, we mean no criticism of Ms Lai. These are new provisions, producing inter-twined penalties which are far from straightforward, particularly when overlaid with the late appeal provisions. There is no established template for HMRC's bundles, unlike the now familiar standardised package provided for VAT default surcharge penalty cases.

17. While we hope the Appendix may be of help in other cases, the parties are of course free to adopt their own approach.

Issues in the case

18. The issues in the case are:

(1) whether any of the penalties were appealed to HMRC after the due date for making an appeal, and if so, whether permission to make a late appeal should be granted by the Tribunal;

(2) whether any of the penalties were notified to the Tribunal after the due date for notification, and if so, whether the Tribunal should hear the appeal;

(3) whether Mrs Perrin had a reasonable excuse for the late filing of her 2010-11 return, so as to cause the Tribunal to set aside either of the two fixed penalties for late filing, being £100 and £300;

(4) whether Mrs Perrin had a reasonable excuse for the late payment of the SA tax shown as due on her 2010-11 return, so as to allow the Tribunal to set aside any of the three £57 penalties for late payment;

(5) whether Mrs Perrin had a reasonable excuse for the late payment of the SA tax shown as due on her original 2011-12 return, so as to allow the Tribunal to set aside either of the two £47 penalties for late payment;

(6) whether Mrs Perrin had a reasonable excuse for the late payment of the SA tax shown as due following the amendments to her 2011-12 return, so as to allow the Tribunal to set aside either of the two £93 penalties for late payment;

(7) if there was no reasonable excuse for one or more of the above, whether any special circumstances applied.

The penalty regimes

19. The law on the two penalty regimes – late filing and late payment – is contained at Schedules 55 and 56 of Finance Act 2009. So far as relevant to this decision, they are set out in Appendix 2. The key points are summarised here.

Schedule 55:penalties for late filing

20. Penalties for late filing arise as follows:

(1) A fixed penalty of £100 is chargeable if the SA return is filed after the due date (Sch 55, para 3). The due date for an online return is normally 31 January following the end of the tax year.[1]

(2) A further fixed penalty is charged if the return is not filed six months after the "penalty date" (Sch 55, para 5). The penalty date is defined as the day after the due date (Sch 55, para (1)(4)). Therefore, if the due date is 31 January, the penalty date is 1 February and the six month fixed penalty is chargeable six months later, on 1 August. The penalty is the higher of £300 and 5% of "any liability to tax which would have been shown in the return in question."

Schedule 56: penalties for late payment

21. HMRC can charge a fixed penalty of 5% of the tax unpaid by the "penalty date" (Sch 56, paras 1 and 3, taken together). However, the definition of "penalty date" in Sch 56 is different from that in Sch 55. It also varies for different taxes.

22. For SA income tax the penalty date is 30 days after the date on which the balance of the SA tax due was to be paid (Sch 56, para 1), normally 31 January following the end of the tax year in question. Thirty days after 31 January 2012 was 1 March 2012, because 2012 was a leap year; in 2013 the 30 day trigger date was 2 March.

23. Further 5% penalties accrue 5 months after the penalty date and 11 months after the penalty date (Sch 56, paras 3(3), (4)).

Reasonable excuse, special circumstances and the Tribunal's powers

24. A penalty is not payable if the person has a reasonable excuse for the late filing/late payment (Sch 55, para 23; Sch 56, para 16). There are statutory restrictions on what counts as a reasonable excuse.

25. A penalty can also be reduced if there are "special circumstances" (Sch 55. para 16; Sch 56, para 9).

26. The Tribunal has the power to:

(1) affirm or cancel the penalty imposed by HMRC; and

(2) to substitute for HMRC's decision another decision that HMRC had power to make (Sch 55, para 22; Sch 56, para 15).

The law on making an appeal

27. The provisions relating to appealing against a Sch 55 or 56 penalty are, so far as relevant to this decision, also set out at Appendix 2 and summarised here.

[1] The due date for a paper return is normally 31 October after the end of the tax year. This brings forward the penalty trigger dates, so they are different to those which apply in Mrs Perrin's case.

28. An appeal against a penalty for late filing or late payment is treated in the same way as an appeal against the SA tax (Sch 55, para 18(3); Sch 56, para 14(1)(1)).

29. The taxpayer can appeal the penalties under TMA s 31. The time limit for appealing is 30 days from the date on the penalty notices (TMA s 31A(1)(b)).

30. Once notice of appeal has been given to HMRC, HMRC may offer the taxpayer a statutory review, or the taxpayer may ask for a review (TMA s 49A). If the review officer upholds the original penalty, and the taxpayer wishes to notify his appeal to the Tribunal, he must do so within 30 days of the date on the review letter (TMA s 49G(2), (5)(b)(ii)).

31. If a statutory review is neither offered nor requested, the taxpayer can notify his appeal to the Tribunal (TMA s 49D). There is no statutory time limit for this notification.

32. HMRC are allowed by statute to accept a late appeal, but only if the taxpayer has made the request in writing, are satisfied that the taxpayer has a reasonable excuse for the delay, and the late appeal request was made without unreasonable delay after the reasonable excuse ceased (TMA s 49(2)(a), (3)-(5)). If HMRC refuse to accept the late appeal, the Tribunal can give permission (TMA s 49(2)(b)). There is no statutory time limit for this permission application.

33. A person seeking to bring an appeal to the Tribunal must comply with Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules"). Rule 20 requires that a Notice of Appeal be sent or delivered to the Tribunal, and also sets out what must be included in, and attached to, that Notice.

34. If a party has failed to comply with any of the requirements in the Tribunal Rules, the Tribunal may "take such action as it considers just," which can include waiving the requirement (Rule 7 of the Tribunal Rules).

The evidence

35. HMRC provided a bundle containing some of the correspondence between the parties, to which Ms Lai added copies of internal HMRC screenprints and guidance. As already stated, Mrs Perrin supplied other letters and penalty notices. In addition she and her husband gave oral evidence. The Tribunal found both Mr and Mrs Perrin to be credible witnesses.

36. On the basis of this evidence, the Tribunal makes the findings of fact set out in this decision notice.

The facts about the penalties for late filing

37. The story begins with the 2009-10 tax year, the year before the penalties under appeal.

The 2009-10 penalty

38. On 2 January 2011, Mrs Perrin went into the HMRC online filing system to file her 2009-10 tax return. She thought she had filed her return correctly, but in fact she had not. HMRC issued a penalty which Mrs Perrin appealed on the basis that she had already submitted her return and received a submission receipt.

39. On 27 March 2011 HMRC wrote to Mrs Perrin advising that the tax return had not in fact been submitted and that "this may be because you did not complete the final stage of online submission." On 26 May 2011 HMRC's SA Notes say "t/p did not complete final submission for online return. Now in and penalty capped to £2. Accepted appeal this time only. Letter to t/p to advise." The £2 penalty was added to Mrs Perrin's SA statement of account.

40. On 27 May 2011 HMRC wrote to Mrs Perrin, saying that "the penalty has been cancelled" and "to avoid penalties being charged in the future, please make sure you submit your tax returns on time."

The 2010-11 penalties for late filing

41. On 2 January 2012 Mrs Perrin went online to file her 2010-11 return. She printed out a copy and received a submission receipt with a reference number. However, she did not complete the final step in the submission process and as a result the return was not filed. She did not receive an email confirmation.

42. The filing due date was 31 January 2012. On 15 February 2012 HMRC issued Mrs Perrin with a £100 penalty under Sch 55, para 3. The penalty notice says:

> "if you still haven't sent us your tax return, please do so now to avoid further penalties.
>
> - If your tax return is more than three months late we will charge you a penalty of £10 for each day it remains outstanding.
> - Daily penalties can be charged for a maximum of 90 days starting from 1 February for paper returns or 1 May for online returns."

43. On 28 February 2012 Mrs Perrin appealed the £100 penalty, saying "this is the second year that I have submitted online within the timescales and the second time that you have incorrectly stated that I have not complied with the timescales."

44. She sent the appeal letter to HMRC's SA office in Cardiff, the address on the penalty notice. The appeal was received by HMRC but mislaid.

45. By letter dated 26 March 2012, HMRC reminded Mrs Perrin that she had still not submitted her return. The letter also warned her that "you haven't got much time left if you want to avoid daily penalties of £10 a day, every day, for three months."

46. On 2 April 2012 HMRC sent Mrs Perrin a letter headed "last chance to avoid daily penalties". It says "we have already told you that if you do not file your return you could end up paying at least £1,600 in penalties."

47. On 11 April 2012 Mrs Perrin called HMRC and was told she needed to send a copy of her appeal to HMRC's Liverpool office. She did so and it was received on 12 April. By letter dated 18 April 2012 HMRC informed Mrs Perrin that they could not consider her appeal until she filed her return. On 17 May 2012 Mrs Perrin called HMRC again and said she had already filed the return.

48. On 24 May 2012, HMRC wrote to Mrs Perrin, saying:

> "I understand you had a similar problem with your online submission last year. This is because you have not completed the final steps in the online process to submit your completed tax return. There is another step to follow after receiving your submission reference number. Once your tax return has been successfully received you will receive a confirmation email from HMRC."

49. The letter also asked her to send HMRC a further copy of her appeal letter as the copy they had was not signed.

50. HMRC's SA Notes state that on 5 June 2012 a "30 day daily penalties reminder" was sent to Mrs Perrin. Ms Lai told us that HMRC do not retain copies of these penalty reminders, and this note was therefore HMRC's evidence that the reminder had been issued. Mrs Perrin had no copy of this reminder, and said she would have kept it with the other documents had she received it. As her file contained an otherwise complete record of all letters received from HMRC, the Tribunal found on the balance of probabilities that this reminder had either not been sent, or if sent, had not been received.

51. On 19 June 2012 Mrs Perrin sent HMRC a signed copy of her original appeal letter, confirming she wished to continue with her appeal.

52. On the same day she wrote to HMRC saying "I have now been online and again submitted my return with another submission receipt number, a copy of which is enclosed…please note that I have not received a confirmation email." The receipt says "the 2011-12 tax return for C PERRIN was successfully submitted and was received at 13.49 GMT on 19 June 2012."

53. On 3 July 2012 HMRC issued a "60 day daily penalties reminder" letter to Mrs Perrin, saying that daily penalties had been accruing at £10 a day since 1 May 2012, and they already totalled more than £600. Mrs Perrin had this reminder on her file.

54. On 13 July 2012 HMRC wrote again to Mrs Perrin. The first page sets out HMRC's view of reasonable excuse. It also tells her that HMRC cannot consider her appeal until her 2010-11 return has been filed. Under the heading "daily penalties" it warns that "if your tax return is more than 3 months late, we

will charge you a penalty of £10 for each day it remains outstanding. Daily penalties may already be building up."

55. On the second page of the letter is the word "interest" in bold type. This is followed by two paragraphs explaining that interest is charged on penalty assessments. There is then a line break followed by two paragraphs which include the following sentences:

> "the submission receipt you have provided is not, in isolation, proof of submission. If a submission is successful you will receive an onscreen message that includes the reference number to confirm receipt. A confirmation email will also be sent if your email address was provided on the return."

56. The final two paragraphs inform Mrs Perrin that she has used the 2011-12 tax return form to file her 2010-11 return information. The letter says "we cannot accept this as your 2010-11 return, which must be filed to the correct tax year."

57. The trigger date for the second fixed penalty was 1 August 2012, being six months after the penalty date of 1 February 2012. HMRC issued a penalty of £300 on 7 August 2012. On the same day, they also issued the cumulative daily penalty of £900, which had been charged at £10 a day from 1 May 2012. Both penalty notices arrived when Mrs Perrin was away on holiday.

58. By letter dated 31 August 2012 HMRC wrote again to Mrs Perrin, saying they had not yet received her 2010-11 return. Half way down the page are the words "Daily penalties" in bold. The next two paragraphs warn about daily penalties. The final paragraph reads:

> "As mentioned in my letter of 13 July 2012, it would appear you have filed your 2010/11 tax return but to the 2011/12 tax year. You still therefore need to file a 2010/11 tax return to the correct tax year and submit an amendment to the 2011/12 tax year with the correct information."

59. On 20 September Mrs Perrin called HMRC and insisted she had filed the 2010-11 return. The HMRC SA notes say "advised tp that 11-12 return has been submitted and that the submission reference she provided was for that." Mrs Perrin re-entered the SA online system and filed her 2010-11 return correctly the same day.

60. The deadline for appealing the £300 fixed penalty and £900 daily penalties was 6 September 2012. Neither party could locate the letter of appeal sent by Mrs Perrin in relation to either penalty, although it is referred to in HMRC's SA notes dated 16 October 2012. In reliance on that evidence, we find as a fact that Mrs Perrin did appeal these penalties at some point between 6 September and 16 October 2012.

61. By letter dated 5 November 2012 HMRC said that Mrs Perrin's appeals against all three penalties were late, and refused to accept a late appeal unless she could provide a reasonable excuse. Mrs Perrin received this letter on 22 November. She replied on 24 November saying:

> "I have been writing and calling tax offices in Newcastle and Cardiff since January trying to sort this matter out to no avail. I would estimate I have spent at least a day and a half of my time on this."

62. On 8 December 2012 Mrs Perrin completed a Notice of Appeal to the Tribunal in relation to £2,243.13. This was made up of the three penalties (£100, £300 and £900) and the tax due for 2010-11 of £940.40, plus a further £2.76 which may have been interest. Mrs Perrin clarified at the hearing that she was only appealing the penalties (there is, in any event, no right of appeal against SA tax calculated by the taxpayer and there is also no right of appeal against interest). The Tribunal reference for this appeal is TC/2012/10957.

63. On 14 December 2012 Mrs Perrin emailed the Tribunal and asked for permission to appeal out of time. She informed the Tribunal that she had been late in making the appeal because her father had been ill and that he subsequently died on 16 November 2012.

Procedural issues around Mrs Perrin's appeal against the £100 penalty

64. As set out above, HMRC's letter of 5 November 2012 stated that all three appeals were late. Ms Lai took the same position in her written skeleton argument. However, she accepted before the Tribunal that Mrs Perrin's appeal against the £100 penalty was made when originally received by HMRC, in other words on or around 1 March 2012, rather than when a further signed copy was sent to HMRC in May 2012. The Tribunal agrees, and finds as a fact that the appeal was not late. We therefore did not need to consider the permission application.

65. Where there has been no offer of, or request for, an HMRC review of the decision, there is no statutory deadline for appeals to be notified to the Tribunal (TMA s 49D). Mrs Perrin included this penalty in her Notice of Appeal to the Tribunal, which she made on 8 December 2012. There are no procedural issues with that notification.

Procedural issues about Mrs Perrin's appeal against the other two penalties

66. Mrs Perrin appealed the daily penalties of £900 and the second fixed penalty of £300 at some point between 6 September and 16 October 2012. This was more than 30 days after HMRC's letter of 5 August, so both appeals were late.

67. At the hearing, Ms Lai said that HMRC no longer objected to the late appeals, given the further information about Mrs Perrin's father. Although Mrs Perrin asked the Tribunal on 14 January 2013 for permission to make a late appeal, the Tribunal no longer needs to consider that application.

68. We have taken it that Mrs Perrin's appeal was "given" to HMRC when she made the appeal, namely at some date between 6 September 2012 and 16 October 2012. She was therefore able to notify her appeal to the Tribunal under TMA s 49D and has done so. As stated above, there is no statutory time limit for this notification.

69. We therefore proceeded to consider the substantive issues raised by Mrs Perrin's appeals against the two fixed penalties for late filing.

The fixed penalties for late filing: submissions of the parties

Ms Lai's submissions on behalf of HMRC

70. Ms Lai said that Mrs Perrin should have realised, from the problem she had in 2009-10, that she had to carry out a further step in order to complete the online return submission. In her skeleton argument she said that Mrs Perrin "could not have held a reasonable or honest belief that she had submitted the return on time."

71. Ms Lai also provided a copy of an internal HMRC document showing the number of transactions the HMRC computer carries out after the point when Mrs Perrin had mistakenly thought that she had finished the return submission. In answer to a question from the Tribunal she clarified that these further transactions would not be visible to the taxpayer and that from the taxpayer's perspective only one step remained after the point reached by Mrs Perrin.

72. Ms Lai had no submissions relating specifically to Mrs Perrin's second mistake, being the completion of the 2011-12 return rather than the 2010-11 return.

73. Ms Lai said that neither mistake provided Mrs Perrin with a reasonable excuse. She said that, when establishing whether or not such an excuse exists "it is necessary to consider the actions of the person from the perspective of a prudent person exercising reasonable foresight and due diligence having proper regard for their responsibilities under the taxes acts."

74. Her second submission was that:

> "a reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond the person's control and which prevents the person from complying with an obligation to pay on time. A combination of unexpected and foreseeable events may when viewed together be a reasonable excuse...if the person could reasonably have foreseen the event, whether or not it is within their control, we expect the person to take steps to meet their obligations."

75. This interpretation of "reasonable excuse" is repeated throughout HMRC's correspondence with Mrs Perrin. Their letters of 18 May 2012 and 13 July 2012 both say "our view is that a reasonable excuse will only apply where an unforeseeable event beyond your control has prevented you from sending your tax return to us on time." The same phrase is also found in the letters of 3 April

2013 and 23 November 2013, both in the context of late payment, and almost the same words are used in the letter of 5 November 2012: "this reasonable excuse must be an exceptional event beyond your control."

76. Ms Lai also submitted that even if Mrs Perrin did have a reasonable excuse, it did not exist for the whole period of the default, and so cannot take effect so as to cancel the penalties.

Mrs Perrin's submissions

77. In relation to the 2009-10 year, Mrs Perrin said that she had not understood what had gone wrong and that HMRC had not told her. Although the HMRC phone records, which she saw shortly before the commencement of the Tribunal proceedings, said that HMRC had told her why she had made the mistake, this hadn't happened. Their letter dated 27 May 2011 simply advised her to file on time in the future.

78. She agreed that she had noticed the £2 on her SA statement of account, but said she did not know why this had been charged and she was not informed that it related to the 2009-10 penalty. In reliance on HMRC's letter of 27 May 2011 she thought the penalty had simply been "cancelled."

79. As a result she made the same mistake in January 2012. She received a submission receipt and said that "the definition of the words submission receipt indicate that you have submitted your tax return and it has been received." HMRC had been wrong to say that failure to receive an email should have alerted her to the error, because when she did file her 2011-12 return, she still did not get a confirmation email. As soon as she realised that she had not properly submitted the return, she went online to file the return properly.

80. She accepted that HMRC had told her about her second mistake in their letters of 13 July 2012 and 31 August 2012, but said she had overlooked the relevant paragraphs. In the 13 July letter, these paragraphs were under a heading which had led her to believe that it contained information about the interest accruing on the penalties. In the 31 August letter the relevant paragraph was under the heading "daily penalties"; that letter had also arrived when she was on holiday. It was not until Mrs Perrin spoke to HMRC by phone on 20 September 2012 that she understood what she had done wrong, and she filed the 2010-11 return on the same day.

81. In response to HMRC's interpretation of the phrase "reasonable excuse" she said that "reasonable excuse does not have a definition and is therefore subjective."

82. Throughout the period she had been trying to understand why HMRC thought there was a problem and she asked the Tribunal to cancel the penalties.

The law on reasonable excuse

83. The legislation does not define a reasonable excuse, and there is a divergence of view among different first-tier tribunals as to when a genuine belief provides a reasonable excuse.

84. We have set out first our understanding of the position, before explaining why we have rejected (a) the view expressed by some tribunals that a genuine belief is sufficient for there to be a reasonable excuse and (b) HMRC's submissions on what is required for a reasonable excuse.

The reasonable excuse exception

85. In both Sch 55 and 56, the statute says:[2]

> "liability to a penalty under any paragraph of this Schedule does not arise…if P satisfies HMRC, or (on appeal) the First-tier Tribunal…that there is a reasonable excuse for the failure."

86. In *Coales v R&C Commrs* [2012] UKFTT at [26] Judge Brannan considered the similar wording at TMA s 59C(9) in the context of VAT default surcharge, and said that the reasonable excuse exception was "an objective test applied the individual facts and circumstances of the appellant in question." At [31] he continued:

> "Parliament has balanced the interests of the taxpayer with those of the Exchequer. A taxpayer may be spared a surcharge if the taxpayer has an excuse, but the excuse must be a reasonable one. The word 'reasonable' imports the concept of objectivity, whilst the words 'the taxpayer' recognise that the objective test should be applied to the circumstances of the actual (rather than some hypothetical) taxpayer."

87. At [28] he adopted the summary of Judge Medd QC in *The Clean Car Co Ltd v C&E Comrs* [1991] VATTR 234 who said that in deciding whether a reasonable excuse exists:

> "…the first question that arises is can the fact that the taxpayer honestly and genuinely believed that what he did was in accordance with his duty in relation to claiming input tax, by itself provide him with a reasonable excuse. In my view it can not. 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?"

88. We respectfully agree with both judgments. They are, in our view, as applicable to Schedules 55 and 56 as they are to default surcharge. To be a reasonable excuse,

[2] Sch 55, para 23(1); Sch 56, para 16(1)

the excuse must not only be genuine, but also objectively reasonable when the circumstances and attributes of the actual taxpayer are taken into account.

A genuine belief is not sufficient, without more

89. Some tribunals have taken a different approach. In *Chichester v R&C Commrs* [2012] UKFTT 397 (TC) (Judge Jones and Mr Speller) the tribunal said at [16]:

> "…it is wrong in law to proceed on the basis that an honestly held belief would not amount to a reasonable excuse if, from an objective standpoint, it was considered that that belief was irrational or unreasonable. The objective analysis goes solely to the issue of credibility. If a Tribunal finds that a person, as a matter of fact, held a particular honest and genuine belief, that may amount to a reasonable excuse (on appropriate facts) regardless of whether that belief would be characterised as irrational or unreasonable when viewed objectively."

90. The tribunal in *Chichester* therefore did not accept that there is any objectivity in the test at all, other than that an outrageous view may not in fact have been genuinely held. If the belief is genuine, the fact that it is outrageous does not prevent it from being a reasonable excuse.

91. In *Gray v R&C Commrs* [2014] UKFTT 113 (TC) a different tribunal, but with the same presiding judge, took a similar but (as we read that judgment) not identical approach, saying at [9] that:

> "if the fact put forward by an appellant, as his excuse, is, when viewed objectively, sufficient to amount to a reasonable excuse, the fact that the hypothetical reasonable man may not have believed that fact to be in existence, is irrelevant once it is found as a fact that the appellant honestly believed it to exist."

92. And at [12]:

> "If a person holds an honestly held belief in a fact sufficient to found a finding that a reasonable excuse exists, the sole enquiry is into the subjective state of mind of the person asserting that he holds that honest belief. The reason for this is that the Tribunal must not confuse what it is that amounts to the reasonable excuse. Once it is accepted or admitted that the holding of an honest belief in a relevant state of fact can, on appropriate facts, amount to a reasonable excuse, it is self evidently wrong then to go on to ask whether such an honest belief was reasonably held."

93. The tribunal in *Gray* therefore appears to accept that there is an element of objectivity in the test, so as to eliminate those excuses which are cannot amount to a reasonable excuse, or, to put it another way, are outrageous.

94. The tribunals in *Chichester* and *Gray* both sought to rely on *R v Unah* [2011] EWCA Crim 1837 ("*Unah*") in support of their approach. The issue in *Unah* was whether a person's honest belief that a passport was genuine

constituted a reasonable excuse, so as to avoid criminal liability for possession of a false passport.

95. Of course, criminal cases differ from civil cases in having both judge and jury. The relevance of this is clear in *Unah* at [6] where Elias J, the presiding judge, says:

> "This defence of reasonable excuse is found in various statutory contexts and it has been said on a number of occasions that it is *par excellence* a matter for the jury whether or not a reasonable excuse has been established. A judge ought to withdraw that issue from the jury only if no reasonable jury could conclude on the facts alleged that the explanation was capable of constituting a reasonable excuse…Nothing in the statute suggests that honest belief in the genuineness of the document is a factor which the jury is obliged to ignore."

96. In other words, if the excuse could not be reasonable on any view, it should not be put to the jury. Once it is put to the jury, then it is for the jury to decide. But the jury's task is not limited to considering whether the defendant had an honest belief. Elias J says at [10]:

> "…although the fact that the defendant does not know or believe that the document is false is not of itself and without more a reasonable excuse, a defendant is entitled to ask the jury to consider objectively whether he has a reasonable excuse for possessing the material and for not having destroyed it or handed it into the authorities, and the fact that he does not know or believe that it is a false document, because of the circumstances in which it has been obtained, may well have a bearing on that question."

97. What the Court of Appeal is saying here is that, when a jury has to consider whether or not a person has a reasonable excuse, they may also take into account his honest belief, but honest belief taken alone does not provide a reasonable excuse. Elias J explicitly states "the fact that the defendant does not know or believe that the document is false is not of itself and without more a reasonable excuse", and he uses the same words at [4] of the judgment.

98. We therefore respectfully disagree with the tribunal in *Chichester* that it is sufficient for a belief to be honestly held for it to constitute a reasonable excuse. We also respectfully disagree with the tribunal in *Gray* that a reasonable excuse exists if (a) the excuse is not objectively unreasonable on any view and (b) the belief is genuinely held. We find that *Unah* provides no support for either of these two interpretations.

99. The task of this Tribunal combines the tasks of judge and jury: we must decide whether "there is a reasonable excuse for the failure." We agree with Judge Medd and Judge Brannan that the correct way of doing this is to ask:

> "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?"

100. It is on that basis that we approach this case. When we refer to "the reasonable taxpayer" we are using that phrase as shorthand for "a responsible person with the same experience and other relevant attributes of the taxpayer and placed in the same situation as the taxpayer."

HMRC's submissions on reasonable excuse.

101. Ms Lai had two submissions on the nature of a reasonable excuse. The first of these was that "it is necessary to consider the actions of the person from the perspective of a prudent person exercising reasonable foresight and due diligence having proper regard for their responsibilities under the taxes acts."

102. This is a purely objective test – it does not take into account the experience or other relevant attributes of the taxpayer, which, as we have already found, we are required to consider when assessing whether or not a person has a reasonable excuse. It is therefore not the correct way of deciding the question.

103. Ms Lai's second submission was that a reasonable excuse is normally "an unexpected or unusual event that is either unforeseeable or beyond the person's control." This echoes the judgment of Nolan J (as he then was) in *C&E Commissioners v Salevon* [1989] STC 907, where he referred to a person having a reasonable excuse if he suffered an "unforeseeable and inescapable misfortune."

104. However, in the later case of *C&E Commrs v Steptoe* [1992] STC 757 ("*Steptoe*") at page 768, the same judge, Nolan LJ, said that the phrase quoted above was directed to the facts of *Salevon* and should not be taken as "an all-purpose test of what constitutes a reasonable excuse."

105. It is true that in *Steptoe* (at page 765) Scott LJ endorsed *Salevon,* saying that to be a reasonable excuse there must be an "unforeseeable or inescapable misfortune." But this was not the view of the majority: the judgment of Scott LJ was a dissenting judgment.

106. As a differently constituted tribunal has recently pointed out in *Electrical Installations v R&C Commrs* [2013] UKFTT 419 (TC) (Judge Brannan and Mr Simon) at [50]-[54]:

> "As regards the doctrine of precedent, a dissenting judgment of a member of the Court of Appeal has no precedent value other than as a potentially persuasive authority. Obviously, such a judgment must be treated with considerable respect as befits any judgment delivered by a member of the Court of Appeal. However, the reasoning which led Scott LJ to his conclusion cannot be regarded as a precedent, or indeed as correct, since it contradicts the reasoning of the majority."

107. Although that case, like *Steptoe*, concerned VAT default surcharges, in our judgment the same applies to direct tax appeals: HMRC should not be applying such a narrow view of the "reasonable excuse" concept.

108. We therefore accept neither of HMRC's submissions on the meaning of "reasonable excuse."

109. We observe that it is not only the tribunal which is tasked with applying the "reasonable excuse" concept to taxpayer behaviour: in the first instance, it is for HMRC to decide whether or not a person has a reasonable excuse. It is clear from the correspondence sent to Mrs Perrin that Ms Lai's second submission – that a reasonable excuse is "an unexpected or unusual event" – is a mantra used as a matter of course by HMRC when assessing whether or not a person has met this legal test.

110. As a result, cases will come to the Tribunal when they could have been resolved by HMRC. This is a waste of time and resources, as well as causing unnecessary stress to taxpayers.

Fixed penalties for late filing: discussion and decision

111. In her skeleton argument Ms Lai said that Mrs Perrin did not have an honest belief that that she had failed to file the return. However, she did not press this point at the hearing.

112. Having heard Mrs Perrin's oral evidence and read both the HMRC SA Notes and all the correspondence, we are in no doubt that in January 2011 Mrs Perrin honestly believed she had submitted her return. We therefore find as a fact that this was her genuine and honest belief.

113. Mrs Perrin failed to submit her return because she made two sequential mistakes. First, she believed she had submitted the return (although she had not taken the final step), and she then believed she had completed the 2010-11 return (but had instead completed the 2011-12 return). Ms Lai accepted that this was an honest belief and we so find.

114. The questions we must answer is whether her two honest but mistaken beliefs combine to provide her with a reasonable excuse for failing to file her 2010-11 return.

The first mistake

115. Mrs Perrin's case is that she did not realise she had made a mistake in failing to complete her online filing; she relies in particular on the "submission receipt."

116. HMRC's case is that Mrs Perrin does not have a reasonable excuse because:

(1) a significant number of steps remained after the point at which Mrs Perrin mistakenly thought she had finished the return submission;

(2) Mrs Perrin should have realised from the lack of an email confirming successful submission and/or from the lack of an on-screen confirmation, that the submission was incomplete; and/or

(3) she made the same mistake in 2009-10 and it was not reasonable for her to make it again.

117. We reject the first submission. These further steps would not be visible to the taxpayer; from the taxpayer's perspective only one step remained after the point where Mrs Perrin stopped.

118. The second submission turns on what Mrs Perrin should reasonably have noticed. HMRC accepted in their letter of 13 July 2012 that an email would only have been sent to Mrs Perrin had she provided an email address as part of her online return. As HMRC did not send her an email when she filed her 2011-12 return, we infer that she also did not provide an email address when she filed her 2010-11 return. The absence of an email confirmation is thus irrelevant.

119. Even had Mrs Perrin supplied an email address, HMRC have not provided the Tribunal with any evidence that a person filing online is told that the absence of an email confirmation indicates that something has gone wrong with the filing process. Similarly, they have provided no evidence that a person filing online is told that an on-screen confirmation is always received at the end of the transaction, and/or that its absence means the transaction is incomplete. The Tribunal can only make its decisions on the evidence.

120. Without evidence that an advance warning is given to the effect that an onscreen confirmation is always sent out following completion of an online return:

(1) we do not accept that a reasonable tax payer should have realised, because of the *absence* of an onscreen statement, that she had not completed the filing process; and

(2) we agree with Mrs Perrin that it is reasonable for a person who receives a submission receipt to think that this means the return has been submitted.

121. HMRC's third point has more substance. We found Mrs Perrin to be an honest witness, and we accept her evidence that she did not understand until June 2012, the nature of the mistake she had made with either the 2009-10 or the 2010-11 return. However, was this reasonable? We found it difficult to understand how she could have filed her 2009-10 return in May 2011, unless she had first realised that it had not been properly submitted in January 2011. Moreover, on 27 March 2011 HMRC had written to Mrs Perrin, saying that her failure to file correctly "may be because you did not complete the final stage of the online submission."

122. On the other hand, SA tax returns are filed only once a year. Although the position was very finely balanced, in the absence of evidence about onscreen or

other HMRC guidance, we accepted that it was reasonable for a taxpayer such as Mrs Perrin, an ordinary person without any computing or tax knowledge, who had previously only used the HMRC system for a single SA return, to have made the same mistake twice.

123. We therefore find that her honest belief was also a reasonable belief. As a result, Mrs Perrin had a reasonable excuse for the failure to file her return at the time the £100 penalty was levied.

124. However, in order for the penalty to be cancelled, Mrs Perrin must have remedied the failure "without unreasonable delay" after the excuse ceased (Sch 55, para 23(2)(c)). We consider that question below.

The second mistake

125. Mrs Perrin's first reasonable excuse came to an end when HMRC told her in their letter dated 24 May 2012 that she had not completed the filing process. On 19 June 2012 she went into the online system to file her return. Other evidence shows that there can be a gap of over two weeks between the date on HMRC's letters and the date they are received. In our judgment, amending the return on 19 June 2012 would not have constituted undue delay.

126. However, Mrs Perrin did not remedy the failure: she mistakenly completed the 2011-12 tax form instead of that for 2010-11. She did not seek to argue that this return was in fact that for 2010-11, and we agree: TMA s 113(1) states that "any returns under the Taxes Acts shall be in such form as the Board prescribe" and thus what Mrs Perrin completed was the 2011-12 return and not the 2010-11 return.

127. Mrs Perrin argued that this was a reasonable mistake. Neither party has put forward any evidence about the format of the online return page so as to support or contradict that submission. The only evidence we have is the submission receipt. This clearly shows that the return was that for 2011-12 and not for 2010-11: the date is in both the body of the text and in the heading. We find it difficult to accept that the reasonable taxpayer would not have read the submission receipt, and having done so, would not have noticed that the wrong year's return had been completed.

128. Even were we to agree with Mrs Perrin that it was reasonable not to have noticed she had completed the wrong year's return, there is a further difficulty. HMRC told Mrs Perrin of her mistake on 13 July 2012, but she did not read the key paragraphs. She is right that these came at the end of a long letter, and under a section headed "interest", but we nevertheless find that the reasonable taxpayer would have read the whole letter, and having done so, would have realised she had filled in the wrong tax return form.

129. Therefore, even were we to accept that Mrs Perrin's failure to realise she had completed the wrong return form was itself reasonable, that excuse came to an end soon after she received HMRC's letter dated 13 July 2013.

130. A penalty cannot be cancelled on the basis of a reasonable excuse unless "the failure is remedied without unreasonable delay after the excuse ceased." Mrs Perrin did not remedy her mistake until 20 September 2012, about two months after she received the letter dated 13 July 2012.

131. As a result, we find that the £100 penalty cannot be cancelled because of reasonable excuse.

132. Furthermore, the second fixed penalty for late filing was issued on 7 August 2013, following the trigger date of 2 August 2013. As we have found that Mrs Perrin did not remedy her failure without unreasonable delay, this penalty also must be confirmed.

Special circumstances

133. Fixed penalties for late filing can be reduced or cancelled if there are special circumstances (Sch 55, para 16). Ms Lai submitted that HMRC consider there to be no special circumstances.

134. In *Algarve Granite v R&C Commrs* [2012] UKFTT 463 (TC) (Judge Brannan and Mr Howard) the tribunal decided that HMRC are required to consider, before they issue the penalty notice, whether there are special circumstances; if they fail to do so, their decision is "flawed". *Algarve Granite* related to Sch 56 penalties but in our judgment the same analysis applies equally to Sch 55 penalties.

135. There is no evidence that special circumstances were considered by HMRC before they issued any of the penalties to Mrs Perrin – or, indeed, at any time subsequently until Ms Lai's preparation of her skeleton argument. None of the letters from HMRC to Mrs Perrin mention special circumstances.

136. As a result, we find that HMRC's decision is "flawed". It falls to the Tribunal to consider whether the special circumstances provisions apply (Sch 55, para 16(3)(b) and (4)).

137. The Court of Appeal in *Clarks of Hove v Bakers' Union* [1978] 1 WLR 1207 held (at page 1216) that in the context of "special circumstances, the word 'special' means "something out of the ordinary, something uncommon, and in *Crabtree v Hinchcliffe* [1971] 3 All ER 967 Lord Reid said (at page 976) that "'special' must mean unusual or uncommon – perhaps the nearest word to it in this context is 'abnormal.'" In the same case, Viscount Dilhorne said (at page 983) that "for circumstances to be special they must be exceptional, abnormal or unusual…"

138. A number of Tribunal cases[3] have relied on one or both of these two authorities in finding that "special circumstances" in the context of Sch 55 or Sch 56 means "unusual or uncommon," and we respectfully concur.

139. We have considered whether there is anything unusual or uncommon about the facts of Mrs Perrin's late filing, so as to bring her within the relief for "special circumstances", but find there is no relevant factor.

140. As a result, there is no basis for us to change HMRC's decisions about the £100 or £300 penalties, even though those decisions were "flawed" because of the failure to consider special circumstances.

Decision on the fixed penalties for late filing

141. Although Mrs Perrin initially had first one, and then a second, reasonable excuse for filing her 2010-11 return late, she did not remedy the failure without undue delay when the second excuse ceased. There are no special circumstances. As a result we confirm the two penalties of £100 and £300 for the late filing of her 2010-11 return.

142. Mrs Perrin's 2011-12 return was filed on time. The next part of our decision considers the penalties for late payment, and we begin by making further findings of fact.

Penalties for late payment: further findings of fact

143. Mrs Perrin said that she had completed both her 2010-11 and 2011-12 SA returns on the basis that she wanted any tax shown as due on those returns collected via the PAYE system. Ms Lai did not seek to argue that Mrs Perrin had not completed her returns on that basis and we find as a fact that she did so.

144. As already explained, Mrs Perrin did not file her 2010-11 return until 20 September 2012. The tax shown as due was £1,142. Over a year later, on 25 October 2013, she paid £940. This was allocated by HMRC to the unpaid 2010-11 tax (although there is a dispute as to whether it should have been allocated to the 2011-12 tax, and we return to this below). As at the date of this hearing the balance of £202 was still outstanding and none of the 2011-12 tax of £2,804 had been paid.

145. Mrs Perrin was charged three late payment penalties for 2010-11 and four for 2011-12.

2010-11: First and second 5% penalties for late payment

146. As already explained, Mrs Perrin submitted her 2010-11 return on 20 September 2012. On 25 September 2012 HMRC issued a Notice charging two fixed penalties for late payment. The trigger date for the first penalty was 1 March 2012, and that for the second penalty was 1 August 2012. HMRC

[3] See for example *Dina Foods v R&C Commrs* [2011] UKFTT 709 (TC); *Knowles Warwick v R&C Commrs* [2014] at [56] and *Morgan and Donaldson v R&C Commrs* at [126].

delayed issuing the penalties until after the submission of the return, because they were tax geared penalties and the amount of the penalty was unknown until 20 September 2012. Both penalties were for £57 (£1,142 x 5%).

2010-11: Third 5% penalty for late payment

147. HMRC issued a third £57 penalty on 19 February 2013. The trigger date for was 1 February 2013, twelve months after the penalty date of 1 February 2012.

148. On 5 March 2013 Mrs Perrin appealed the third penalty to HMRC on the grounds that she had asked for any shortfall to be collected via PAYE. By letter dated 3 April 2013 HMRC did not agree that she had a reasonable excuse and on 10 April 2013 Mrs Perrin asked for a statutory review. HMRC's decision was upheld by Mr Stevenson, the HMRC Review Officer, on 23 May 2013. He told Mrs Perrin that:

> "the deadline for coding underpayments is 30 December 2011. This is to ensure HMRC have sufficient time to issue a revised code number to your employer. Your return was received after this deadline date. This information is available in the tax return guidance and on the HMRC website."

149. Mr Stevenson also reminded Mrs Perrin that there had been two earlier penalties, which she had not appealed.

150. Mrs Perrin notified the appeal against the third 5% penalty to the Tribunal on 23 June 2013, making explicit reference to Mr Stevenson's review letter dated 23 May 2013. The statutory deadline is 30 days after the review decision, so her notification was late. It was recorded by the Tribunal under reference TC/2013/04282.

2010-11: First and second 5% penalties for late payment: appeal position

151. At some point before 17 June 2013, Mrs Perrin emailed the HMRC Complaints team.

152. As a result of that email, on 17 June 2013 HMRC agreed to treat Mrs Perrin's letter of appeal against the third fixed penalty as an appeal against all three penalties. Their SA Notes say "as tax not paid, position the same, no reasonable excuse." The appeals against the two earlier penalties were therefore "given" by HMRC even though they were late.

153. On 18 June 2013 a different HMRC Review Officer (Mr Gillen) wrote to Mrs Perrin, saying that HMRC were treating her appeal of 5 March 2013 and HMRC's refusal of that appeal dated 3 April 2013 as relating to all three appeals. His review decision then confirmed HMRC's decision not to accept appeals against the two earlier penalties.

154. Mrs Perrin notified her appeal against these penalties to the Tribunal on 16 July 2013 and was given the reference number TC/2013/04697. This notification was within 30 days of the review decision and so was not late.

2011-12: First 5% penalties for late payment:

155. As already explained, Mrs Perrin had mistakenly included her 2010-11 numbers in her 2011-12 return. As a result her 2011-12 return was filed early, on 19 June 2012. The tax shown as outstanding was £940. On 1 January 2013 the return was amended, so as to include the correct 2011-12 numbers. The tax now shown as outstanding was £2,804, an increase of £1,864.

156. The trigger date for the first penalty for late payment was 2 March 2013. HMRC issued two separate penalties on 19 March 2013, one for £47 (£940 x 5%, being the underpayment shown on the original return) and the other for £93 (£1,864 x 5%, being the further amount shown as due following the amendment to the return.)

157. Neither party could locate within the Tribunal bundles or in their own papers any document indicating that Mrs Perrin had appealed against these penalties and they were not referred to in any of the four Notices of Appeal to the Tribunal. We find as a fact that no appeal had been made to HMRC and no application to accept a late appeal had been made to the Tribunal, before the commencement of the hearing. We return to this below.

2011-12: second 5% penalties for late payment

158. Two further 5% penalties for late payment were triggered on 1 August 2013, one of £47 and one of £93. These were issued on 14 August 2013 and appealed by Mrs Perrin on 13 September 2013.

159. The appeal was slightly late but HMRC did not take this point and went on to reject the appeal for lack of reasonable excuse on 23 November 2013. The refusal letter was received by Mrs Perrin on 6 December 2013. On 23 December 2013 she wrote to HMRC saying she was bringing a complaint against HMRC via the Tribunals Service.

160. On 7 January 2014 she submitted a Notice of Appeal to the Tribunals Service under reference TC/2014/00350. The amount appealed is £940.40, being the tax payable on her unamended 2011-12 return, rather than the penalties for late payment. However, she attached the correspondence on the second fixed penalties, and we find as a fact that her appeals against those penalties were notified to the Tribunal on that date.

Penalties for late payment: late appeals and applications

161. The first and second 2010-11 penalties were not appealed or notified late.

162. The third 2010-11 penalty appeal followed a review decision. The statutory deadline for notifying an appeal to the Tribunal is 30 days (TMA s 49G(5)(ii)) unless the tribunal gives permission (TMA s 49G(3)). Mrs Perrin should have notified the appeal to the Tribunal by 29 June. Her Notice of Appeal was dated 30 June and was thus a day late. We treated Mrs Perrin's Notice of Appeal to the Tribunal as an application for permission to make a late appeal, and gave permission; we also treated her Notice of Appeal as notifying that appeal to the Tribunal.

163. As regards the first 2011-12 penalties, no appeal had been made to HMRC and no application had been made to the Tribunal. Ms Lai said HMRC had assumed that an appeal had been made, and Mrs Perrin had said she had become confused by the different penalty notices and also thought she had appealed.

164. Ms Lai accepted the appeal on HMRC's behalf. She did not refer to the statutory requirements that appeals must be notified in writing to the officer by whom the penalty was issued (TMA s 31A, via Sch 55, para 18(3)(a)), or that an appeal can only be accepted in writing (TMA s 49(4)). However, HMRC have a general discretion over the care and management of the tax system (TMA s 1(1)) and the tribunal has taken it that Ms Lai was exercising that discretion.

165. Mrs Perrin then notified the appeal to the Tribunal, which she is allowed to do under TMA s 49D.

166. However, Rule 20 of the Tribunal Rules begins:

> "a person making or notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal."

167. Mrs Perrin did not comply with this Rule. However, the Tribunal exercised its power under Rule 7 to waive this requirement, as we thought it just to do so.

168. As regards the second tranche of 2011-12 penalties, Ms Lai submitted in her skeleton argument that Mrs Perrin had made late appeals and/or that the penalties were notified late to the Tribunal. As set out above, we have found as a fact that the appeals, although late, were "given" to HMRC within the meaning of TMA s 49.

169. Once the appeal has been given to HMRC there is no deadline by which it must be notified to the Tribunal (TMA s 49D(1)) and we also have found as a fact that it was notified. As we have previously observed, in the absence of a review request or offer, there is no time limit for notification of an appeal to the Tribunal. There is therefore no procedural failure.

170. As a result of the foregoing, all five penalties for late payment are before the Tribunal and we move on to consider the substantive issues.

The parties' submissions on the penalties for late payment

171. Mrs Perrin said she had consistently asked for the amounts due to be collected via her PAYE code, and she did not understand why HMRC had refused to do this. In her letter of 24 November 2012 (which followed receipt of an SA Statement of Account) she had said:

> "This is the first statement mentioning balancing payments and I would therefore ask you to break down these amounts so I can understand how you have calculated them. You will then need to change my PAYE tax code and collect any unpaid amounts of tax through this method to avoid financial hardship and further penalisation for me and my family."

172. Ms Lai said that an amount shown as outstanding on a person's SA return could only be collected via PAYE if the return was filed before 30 December following the end of the tax year. Ms Lai said that Mrs Perrin did not have a reasonable excuse for the late payment because she should have been aware of this deadline. Before the hearing she provided the Tribunal and Mrs Perrin with several pages of guidance from the HMRC website, which she said should have alerted Mrs Perrin to the end of December time limit.

173. The Tribunal noted that the guidance was dated 15 April 2014. Ms Lai was unable to confirm whether the guidance was worded in the same way in January and September 2012 (when Mrs Perrin was filling in her 2010-11 return) and/or in June 2012 and January 2013 (when she was completing her 2011-12 return). As a result, we were unable to take this guidance into account: we can only make our decisions based on evidence relevant to the facts of the case.

174. The Tribunal asked Ms Lai why HMRC had refused to collect the £940.40 amount, given that Mrs Perrin's return had been filed well before December 30 2012, showing that sum due, but she was unable to assist the Tribunal.

175. Mrs Perrin raised a further point, namely that the 2011-12 overdue amount should have been reduced by the £940 paid on 25 October 2013, instead of being allocated to the amount due for 2010-11. Ms Lai said that HMRC's policy is to allocate payments to the earliest debt, unless a different allocation is requested by the taxpayer at the time the payment is made, and Mrs Perrin had made no such allocation.

The law on collecting underpayments via PAYE

176. The law on PAYE is set out in the Income Tax (PAYE) Regulations 2003 ("the PAYE Regulations"), made under the powers in Part 11 of the Income Tax (Earnings and Pensions) Act 2003. The PAYE Regulations relevant to this decision are at Appendix 2.

177. Regulation 14(c) states that when HMRC determine a person's tax code, they "must" take into account, so far as known to them "any tax remaining unpaid for a previous tax year which is not otherwise recovered". However, this

provision is subject to Regulations 186 and 187, the latter of which says that HMRC "must" collect the amount shown as due on a taxpayer's SA return if (a) that amount is less than £3,000 and (b) the return is delivered electronically by 31 December following the end of the relevant tax year.

178. From 6 April 2012, HMRC "may" also collect underpayments of "relevant debts" including income tax, via PAYE (Reg 14A).

Discussion and decision on reasonable excuse

179. The starting point is that the tax shown as due on a person's SA return for a given tax year is due and payable on 31 January following the end of the tax year. HMRC "must" collect this shortfall via PAYE if the return is "delivered" before the end of the previous December. There is no saving for returns which are amended after delivery.

180. If tax is collected in this manner, it is spread over the following tax year rather than being paid over in one lump sum on 31 January. The taxpayer is thus advantaged in terms of cash flow. If the return has not been submitted by 31 December after the end of the tax year, HMRC is not obliged to use PAYE, so as to give the taxpayer this cashflow advantage.

181. In Mrs Perrin's case, this means that:

(1) HMRC were legally obliged to collect the tax of £940.40 shown on Mrs Perrin's 2011-12 unamended return, by way of adjustments to her PAYE coding for 2012-13; but

(2) they were not obliged to collect any of the other amounts using PAYE, although from 6 April 2012 they were able to do so. Mrs Perrin has no right to demand that they collect these sums via PAYE.

182. Although Mrs Perrin understandably made no reference to the PAYE Regulations, we find that it is objectively reasonable for a taxpayer to assume that HMRC will collect PAYE when it is obliged by law to do so.

183. As a result we allow her appeals in relation to the two amounts of £47 charged as penalties for late payment of the tax shown on her unamended 2011-12 return.

184. The more difficult issues are (a) the three £57 penalties for late payment of the outstanding amount shown on her 2010-11 return and (b) the two penalties of £93 charged on the balance of the amount due after Mrs Perrin amended her 2011-12 return on 1 January 2013. HMRC were not obliged to amend Mrs Perrin's PAYE code to collect these sums.

185. However, we have already found as a fact that she nevertheless believed that the tax would be collected via PAYE. The question for us is whether her genuine belief was reasonable.

186. Although HMRC submit that Mrs Perrin should have known about the 30 December[4] deadline at the time she filed her returns, no contemporaneous evidence was provided to the Tribunal showing the information available to her, either when she filed the 2010-11 return and/or made the 2011-12 amendment. In other words, there is nothing to indicate that she was told about the deadline when she filed the returns.

187. We therefore accept that she had a reasonable excuse at the time she filed the 2010-11 return, and amended the 2011-12 return, on the basis that her belief that the amounts would be collected via PAYE was both honest and reasonable.

188. However, as with fixed penalties for late filing, penalties for late payment can only be cancelled on the basis of reasonable excuse if "the failure is remedied without unreasonable delay after the excuse ceased." The failure we have to consider here is Mrs Perrin's failure to pay the tax by the due dates.

189. On 23 May 2013 Mr Stevenson of HMRC told Mrs Perrin that her 2010-11 underpayment would not be collected via PAYE because her return had not been filed by the end of December 2011. He also alerted her to the existence of online guidance about this deadline.

190. In our judgment, the reasonable taxpayer would have been aware, from the date of receiving Mr Stevenson's letter, that the 2010-11 underpayment would not be collected via PAYE and thus that she had to pay the balance owing to HMRC by other methods, such as cheque or bank transfer.

191. Furthermore, Mr Stevenson had explained why the deadline existed: namely that HMRC needed to know the amount involved before 30 December, so that they could make the appropriate adjustments to the employer's code. In our judgment, a reasonable taxpayer, considering this information, would either:

(1) realise that HMRC would also be unable to take into account extra tax shown as due when she amended her return on 1 January 2013 so as to increase the amount payable; or

(2) would take steps to check whether or not this was the case, by calling HMRC or checking the online guidance.

192. As a result, while we accept that Mrs Perrin had a reasonable excuse until around 31 May 2013, we find that the excuse ceased soon after the receipt of the letter from Mr Stevenson. Mrs Perrin paid no tax until 13 October 2013, over four months after the receipt of his letter, and then only £940 was paid rather than the full amount overdue.

193. Mrs Perrin therefore did not remedy the failure without unreasonable delay after the excuse ceased. As a result we cannot allow her three 2010-11 late

[4] The Tribunal was unclear why HMRC stated that the deadline was 30 December rather than 31 December, but nothing turns on that in this decision.

payment appeals, or the two appeals which relate to the failure to pay the further tax shown as due following her 2011-12 amendment.

194. For completeness, we note that the £940 has been allocated so as to reduce the tax due for 2010-11. We agree with HMRC that unless the taxpayer makes an allocation before payment, the right to allocate the money passes to HMRC, see the discussion in *Mansell v R&C Commrs* [2012] UKFTT 602 (TC) at [47]-[49]. However, this makes no difference to our decision, as even the £940 was not paid without unreasonable delay.

Special circumstances

195. Late payment penalties can be reduced or cancelled if there are special circumstances. Ms Lai again submitted that HMRC consider that there are no special circumstances.

196. The law on special circumstances was set out earlier in this decision in the context of Sch 55, and the same analysis applies to Sch 55. There are no facts relevant to late payment which amount to special circumstances and the provisions do not apply.

Decision on penalties for late payment

197. Mrs Perrin had a reasonable excuse for the late payment until after she received Mr Stevenson's letter. From that point her excuse ceased. She did not pay the tax without undue delay after her excuse ceased.

198. As a result her reasonable excuse does not cancel the penalty. There are no special circumstances. We therefore dismiss Mrs Perrin's appeals against the following penalties for late payment:

(1) three penalties of £57 for 2010-11; and

(2) two penalties of £93 for 2011-12.

The Tribunal's lack of jurisdiction over complaints

199. Mrs Perrin's correspondence makes frequent reference to complaining about HMRC to the Tribunal. Although she has emailed and written to the HMRC complaints department, she emailed the Tribunals Service as recently as January 2014 asking for a complaint form.

200. This Tribunal has no jurisdiction over complaints about the behaviour of HMRC's officers. Any such complaints must be made to HMRC in the first instance and can then be escalated to the HMRC Adjudicator. In this case, the Tribunal's jurisdiction only encompasses whether Mrs Perrin had appealed the penalties issued by HMRC, whether she had notified those appeals to the Tribunal, and whether we should allow her appeals.

Appeal rights

201. 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 Rules. 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.

ANNE REDSTON
TRIBUNAL JUDGE

RELEASE DATE: 21 May 2014

APPENDIX 1: NOTES ON SCHEDULE 55 AND 56 APPEALS

As stated in the decision notice, this Appendix sets out the information which we would have found useful when considering this appeal. It may also provide a helpful template for future appeals against multiple penalties for late payment and late filing.

1. An overall chronology of events covering all the penalties under appeal, to include the following, with each item in the chronology cross-referenced to the documentation provided in the Tribunal bundle:
    a. The statutory due date relevant to each alleged failure by the taxpayer (eg filing due date)
    b. Penalty trigger dates
    c. Penalty issued dates
    d. Dates of appeals to HMRC
    e. Dates of any review letters
    f. Dates of any other relevant communications including both letters and phone contact.
    g. Dates appeals notified to the Tribunal
    h. Dates applications for permission to make a late appeal made to the Tribunal

2. For each penalty under appeal a schedule showing:
    a. Trigger date
    b. Issue date
    c. Amount of penalty
    d. Appeal deadline
    e. Date of the appeal
    f. If a late appeal, whether "given" to HMRC or rejected as late
    g. If the latter, date application for permission to make a late appeal made to the Tribunal
    h. Grounds of appeal to HMRC
    i. Date the appeal was notified to the Tribunal
    j. Grounds of appeal, if other than the grounds of the appeal to HMRC
    k. Tribunal reference number

APPENDIX 2: LEGISLATION

FA 2009, Schedule 55: Penalty for Failure to Make Returns etc

1. Penalty for failure to make returns etc

(1) A penalty is payable by a person ("P") where P fails to make or deliver a return, or to deliver any other document, specified in the Table below on or before the filing date.

(2) Paragraphs 2 to 13 set out—

(a) the circumstances in which a penalty is payable, and

(b) subject to paragraphs 14 to 17, the amount of the penalty.

(3) If P's failure falls within more than one paragraph of this Schedule, P is liable to a penalty under each of those paragraphs (but this is subject to paragraph 17(3)).

(4) In this Schedule—

"filing date", in relation to a return or other document, means the date by which it is required to be made or delivered to HMRC;

"penalty date", in relation to a return or other document, means the date on which a penalty is first payable for failing to make or deliver it (that is to say, the day after the filing date).

(5) In the provisions of this Schedule which follow the Table—

(a) any reference to a return includes a reference to any other document specified in the Table, and

(b) any reference to making a return includes a reference to delivering a return or to delivering any such document.

	Tax to which payment relates	Return or other document
1	Income tax or capital gains tax	(a) Return under section 8(1)(a) of TMA 1970
		(b) Accounts, statement or document required under section 8(1)(b) of TMA 1970

Amount of penalty: occasional returns and annual returns

2. Paragraphs 3 to 6 apply in the case of a return falling within any of items 1 to 5 and 7 to 13 in the Table.

3. P is liable to a penalty under this paragraph of £100.

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).

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.

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)-(4a) …

(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.

16. Special reduction

(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.

18. Assessment

(1) Where P is liable for a penalty under any paragraph of this Schedule HMRC must—

(a) assess the penalty,

(b) notify P, and

(c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under any paragraph of this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under any paragraph of this Schedule—

(a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),

(b) may be enforced as if it were an assessment to tax, and

(c) may be combined with an assessment to tax…

Appeal

20.

(1) P may appeal against a decision of HMRC that a penalty is payable by P.

(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

22.

(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 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 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….

23. Reasonable excuse

(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.

FA 2009, Schedule 56: Penalty for Failure to Make Payments on Time

1. Penalty for failure to pay tax

(1) A penalty is payable by a person ("P") where P fails to pay an amount of tax specified in column 3 of the Table below on or before the date specified in column 4.

(2) Paragraphs 3 to 8 set out—

(a) the circumstances in which a penalty is payable, and

(b) subject to paragraph 9, the amount of the penalty.

(3) If P's failure falls within more than one provision of this Schedule, P is liable to a penalty under each of those provisions.

(4) In the following provisions of this Schedule, the "penalty date", in relation to an amount of tax, means the date on which a penalty is first payable for failing to pay the amount (that is to say, the day after the date specified in or for the purposes of column 4 of the Table).

	Tax to which payment relates	*Amount of tax payable*	*Date after which penalty incurred*
1	Income tax or capital gains tax	Amount payable under section 59B(3) or (4) of TMA 1970	The date falling 30 days after the date specified in section 59B(3) or (4) of TMA 1970 as the date by which the amount must be paid

3. Amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more

(1) This paragraph applies in the case of—

(a) a payment of tax falling within any of items 1, 3 and 7 to 24 in the Table,

(b)-(c) …

(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.

9. Special circumstances

(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.

11. Assessment

(1) Where P is liable for a penalty under any paragraph of this Schedule HMRC must—

(a) assess the penalty,

(b) notify P, and

(c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under any paragraph of this Schedule must be paid before the end of the period of 30 days beginning with the day on which notice of the assessment of the penalty is issued.

(3) An assessment of a penalty under any paragraph of this Schedule—

(a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),

(b) may be enforced as if it were an assessment to tax, and

(c) may be combined with an assessment to tax.

(4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was due or payable…

13. Appeal

(1) P may appeal against a decision of HMRC that a penalty is payable by P.

(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P

14.

(1) An appeal under paragraph 13 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(2) Sub-paragraph (1) does not apply—

(a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b) in respect of any other matter expressly provided for by this Act

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)).

16. Reasonable excuse

(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a payment 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.

EXTRACTS FROM TAXES MANAGEMENT ACT 1970

31 Appeals: right of appeal

(1) An appeal may be brought against—

(a) any amendment of a self-assessment under section 9C of this Act (amendment by Revenue during enquiry to prevent loss of tax),

(b) any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return),

(c) any amendment of a partnership return under section 30B(1) of this Act (amendment by Revenue where loss of tax discovered), or

(d) any assessment to tax which is not a self-assessment.

31A Appeals: notice of appeal

(1) Notice of an appeal under section 31 of this Act must be given—

(a) in writing,

(b) within 30 days after the specified date,

(c) to the relevant officer of the Board.

(2) In relation to an appeal under section 31(1)(a) or (c) of this Act—

(a) the specified date is the date on which the notice of amendment was issued, and

(b) the relevant officer of the Board is the officer by whom the notice of amendment was given.

(3) In relation to an appeal under section 31(1)(b) of this Act—

(a) the specified date is the date on which the closure notice was issued, and

(b) the relevant officer of the Board is the officer by whom the closure notice was given.

49 Late notice of appeal

(1) This section applies in a case where—

(a) notice of appeal may be given to HMRC, but

(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—

(a) HMRC agree, or

(b) where HMRC do not agree, the tribunal gives permission.

(3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.

(4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.

(5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.

(6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.

(7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.

49A Appeal: HMRC review or determination by tribunal

(1) This section applies if notice of appeal has been given to HMRC.

(2) In such a case—

(a) the appellant may notify HMRC that the appellant requires HMRC to review the matter in question (see section 49B),

(b) HMRC may notify the appellant of an offer to review the matter in question (see section 49C), or

(c) the appellant may notify the appeal to the tribunal (see section 49D).

(3) See sections 49G and 49H for provision about notifying appeals to the tribunal after a review has been required by the appellant or offered by HMRC.

(4) This section does not prevent the matter in question from being dealt with in accordance with section 54 (settling appeals by agreement).

49D Notifying appeal to the tribunal

(1) This section applies if notice of appeal has been given to HMRC.

(2) The appellant may notify the appeal to the tribunal.

(3) If the appellant notifies the appeal to the tribunal, the tribunal is to decide the matter in question.

(4) Subsections (2) and (3) do not apply in a case where--

(a) HMRC have given a notification of their view of the matter in question under section 49B, or

(b) HMRC have given a notification under section 49C in relation to the matter in question.

(5) In a case falling within subsection (4)(a) or (b), the appellant may notify the appeal to the tribunal, but only if permitted to do so by section 49G or 49H.

49G Notifying appeal to tribunal after review concluded

(1) This section applies if—

(a) HMRC have given notice of the conclusions of a review in accordance with section 49E, or

(b) the period specified in section 49E(6) has ended and HMRC have not given notice of the conclusions of the review.

(2) The appellant may notify the appeal to the tribunal within the post-review period.

(3) If the post-review period has ended, the appellant may notify the appeal to the tribunal only if the tribunal gives permission.

(4) If the appellant notifies the appeal to the tribunal, the tribunal is to determine the matter in question.

(5) In this section "post-review period" means—

(a) in a case falling within subsection (1)(a), the period of 30 days beginning with the date of the document in which HMRC give notice of the conclusions of the review in accordance with section 49E(6), or

(b) in a case falling within subsection (1)(b), the period that—

(i) begins with the day following the last day of the period specified in section 49E(6), and

(ii) ends 30 days after the date of the document in which HMRC give notice of the conclusions of the review in accordance with section 49E(9).

59B Payment of income tax and capital gains tax

(1) Subject to subsection (2) below, the difference between—

(a) the amount of income tax and capital gains tax contained in a person's self-assessment under section 9 of this Act for any year of assessment, and

(b) the aggregate of any payments on account made by him in respect of that year (whether under section 59A of this Act or otherwise) and any income tax which in respect of that year has been deducted at source,

shall be payable by him or (as the case may be) repayable to him as mentioned in subsection (3) or (4) below…

(2)-(3) ….

(4) In any other case, the difference shall be payable or repayable on or before the 31st January next following the year of assessment….

113 Form of returns and other documents

(1) Any returns under the Taxes Acts shall be in such form as the Board prescribe, and in prescribing income tax forms under this subsection the Board shall have regard to the desirability of securing, so far as may be possible, that no person shall be required to make more than one return annually of the sources of his income and the amounts derived therefrom.…

INCOME TAX (PAYE) REGULATIONS 2003

Matters relevant to determination of code

14

(1) If the Inland Revenue determine a code under this regulation, they must have regard to the following matters so far as known to them--

(a)-(c) …

(d) any tax remaining unpaid for any previous tax year which is not otherwise recovered…

(3) Paragraphs (1)(c) and (d) are subject to regulations 186 and 187 (recovery and repayment: adjustment of employee's code).

14A[5]

(1) HMRC may determine a code so as to effect recovery of all or part of a relevant debt within the meaning of section 684 of ITEPA (sums owed to HMRC)….

Recovery: adjustment of employee's code

186

(1) This regulation applies if, on the assumption mentioned in paragraph (2), the difference for a tax year mentioned in section 59B(1) of TMA (difference between tax contained in a self-assessment and aggregate of payments on account) would be payable by the taxpayer.

(2) The assumption is that, in respect of the tax year, nothing will be deducted at source under these Regulations in a subsequent tax year.

(3) The Inland Revenue must have regard to the difference in determining a taxpayer's code for a subsequent tax year under regulation 14 (matters relevant to determination of code) if--

(a) it is less than £3,000[6], and

(b) the return for the tax year is--

(i) delivered by an approved method of electronic communications before 31st December following the end of the tax year, or

(ii) delivered by any other method before 1st November following the end of the tax year.

(4) …

---

[5] With effect from 6 April 2012

[6] Until 6 April 2012 the amount was £2,000

EXTRACT FROM TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL) (TAX CHAMBER) RULES 2009

7 Failure to comply with rules etc

(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as it considers just, which may include--

(a) waiving the requirement;

(b) requiring the failure to be remedied;

(c) exercising its power under rule 8 (striking out a party's case);

(d) restricting a party's participation in proceedings; or

(e) exercising its power under paragraph (3).

20 Starting appeal proceedings

(1) A person making or notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal.

(2) The notice of appeal must include--

(a) the name and address of the appellant;

(b) the name and address of the appellant's representative (if any);

(c) an address where documents for the appellant may be sent or delivered;

(d) details of the decision appealed against;

(e) the result the appellant is seeking; and

(f) the grounds for making the appeal.

(3) The appellant must provide with the notice of appeal a copy of any written record of any decision appealed against, and any statement of reasons for that decision, that the appellant has or can reasonably obtain.

(4) If the notice of appeal is provided after the end of any period specified in an enactment referred to in paragraph (1) but the enactment provides that an appeal may be made or notified after that period with the permission of the Tribunal--

(a) the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided in time; and

(b) unless the Tribunal gives such permission, the Tribunal must not admit the appeal.

(5) When the Tribunal receives the notice of appeal it must give notice of the proceedings to the respondent.