



TC06281

**Appeal number: TC/2017/05918
TC/2017/04151**

INCOME TAX – accelerated payment notice – whether notice duly served – yes – whether reasonable excuse for failure to pay – no – whether a special reduction warranted – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CYNTHIA FERGUSON

Appellant

- and -

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

TRIBUNAL: JUDGE JONATHAN RICHARDS

Sitting in public at Taylor House, Rosebery Avenue on 14 December 2017

The Appellant in person

Sophie Rhind, Officer of HM Revenue & Customs, for the Respondents

DECISION

1. Mrs Ferguson has been issued with a first, second and third penalty for failing to pay the “disputed tax” specified in an accelerated payment notice by the due date.
5 HMRC have withdrawn the first penalty, but continue to pursue the second and third penalty and Mrs Ferguson is appealing against those penalties.

Evidence

2. I heard oral evidence from Mrs Ferguson and Ms Rhind cross-examined her. I considered that Mrs Ferguson gave her evidence honestly. I have not accepted all of
10 the evidence that Mrs Ferguson gave. However, that was simply because I regarded her as mistaken on one or two issues.

3. There was also evidence in the form of a bundle of documents.

Facts

4. In the tax year 2010-11, Mrs Ferguson participated in the “Edge Consulting”
15 arrangements. Those arrangements were notified to HMRC under the rules in Finance Act 2014 applicable to tax avoidance schemes ("DOTAS") and HMRC allocated the scheme the reference number 08961695.

5. On 14 November 2013, HMRC issued Mrs Ferguson with a discovery
20 assessment under s29 of the Taxes Management Act 1970 (“TMA 1970”) broadly on the grounds that they did not consider that the Edge Consulting scheme was effective and that accordingly Mrs Ferguson had an additional tax liability for the 2010-11 tax year.

6. On 16 January 2014, Mrs Ferguson appealed to HMRC against this discovery
25 assessment. HMRC agreed, under s55 of TMA 1970 to postpone collection of the amount of tax in dispute.

7. Until early 2015, Mrs Ferguson lived at an address in Maltby Street. She then moved to a new address in Pages Walk. She did not tell HMRC of her new address until 17 June 2015¹.

8. On 20 May 2015, HMRC sent an accelerated payment notice ("APN") in
30 accordance with s229 of Finance Act 2014 ("FA 2014") to Mrs Ferguson at her address in Maltby Street which was the address that HMRC had on file for her since Mrs Ferguson had not yet notified HMRC of her change of address. HMRC also sent a copy to Mrs Ferguson’s accountant and duly appointed tax agent, Johal & Co. I am satisfied that this was an accelerated payment notice as defined in s219 of FA 2014

¹ Mrs Ferguson said in her evidence that she told HMRC of her change of address in “July 2015”. However, I consider that her recollection of the precise date is faulty (understandably since it was nearly 2 ½ years ago) as HMRC records show a change of address being processed on 17 June 2015.

5 since it answered to the statutory description of an accelerated payment notice. I will not, however, make a finding to the effect that all pre-conditions necessary for HMRC to issue an APN were satisfied. Condition A set out in s219(2) of FA 2014 was met (since Mrs Ferguson had appealed to HMRC against the discovery assessment that they had made). HMRC offered no evidence that Condition B or Condition C² was met. However, for reasons that I explain in the Discussion section, I do not consider this affects the validity of the penalty that has been charged.

10 9. The APN informed Mrs Ferguson she had to make an accelerated payment of £8,272.60 by 21 August 2015. The figure of £8,272.60 was HMRC's calculation of the "disputed tax" being the amount necessary to counteract the tax advantage that Mrs Ferguson was claiming from the Edge Consulting scheme.

15 10. On or around 4 June 2015, Mrs Ferguson and HMRC had a telephone discussion. The outcome of that telephone conversation was that HMRC accepted that Mrs Ferguson had not seen the APN that they had sent her. On 4 June 2015, HMRC sent a further copy of that APN but again sent it to the address in Maltby Street. Mrs did not say in her evidence that she told HMRC of her change of address during the telephone conversation of 4 June and that HMRC were therefore wrong to send the further APN to the Maltby Street address. Given that HMRC's records show the change of address as being recorded on 17 June 2017, I have concluded that Mrs Ferguson did not mention her change of address to HMRC during the telephone conversation of 4 June and, accordingly, that HMRC sent the further copy of the APN to the address that they had on file for Mrs Ferguson at the time. Since the further copy of the APN was sent to the Maltby Street address, Mrs Ferguson did not receive it.

25 11. On 27 July 2015, HMRC wrote to Mrs Ferguson to remind her that the disputed tax totalling £8,272.60 was due to be paid by 21 August 2015. By then Mrs Ferguson had told HMRC of her change of address so this letter was sent to her address in Pages Walk and Mrs Ferguson accepted that she received it. The letter included the following paragraph:

30 If you have made representations about the accelerated payment notice, or intend to make them before the date that payment is due, then the deadline for paying may change. You can find more information about this in the accelerated payment notice that we sent to you on 20 May 2015.

35 12. Mrs Ferguson's evidence was that she made a number of calls in July and August 2015 to seek to obtain a copy of the APN from HMRC but that problems with the post at her new address in Pages Walk meant that she still did not receive it. I accept Mrs Ferguson's unchallenged evidence that there were problems with the post in Pages Walk as a result of her house being in a new development in which all houses appeared to share the same address thus confusing local postal workers.

² The finding that HMRC allocated the Edge Consulting Scheme a reference under DOTAS is not the same as a finding that the Edge Consulting Scheme was required to be disclosed under DOTAS so as to constitute "DOTAS arrangements".

However, I have not accepted that she made further calls to HMRC to try to obtain a copy of the APN in July or August for the following reasons:

5 (1) She was unable to produce specific dates on which the telephone calls took place and there is no record of them in the "SA Notes" that HMRC produced as evidence.

(2) Mrs Ferguson's evidence as to when the calls took place was somewhat confused. She repeatedly said that she was in regular contact with HMRC "when the debt was brought to my attention". But the date on which the accelerated payment was due was 21 August 2015 and, until then, there was no "debt" that HMRC would have sought to brought to her attention (beyond issuing the reminder letter on 27 July 2015). I consider that it is more likely than not that when Mrs Ferguson referred in her evidence to numerous telephone conversations with HMRC, she was referring to conversations after 21 August 2015 in response to HMRC's attempts to collect the accelerated payment of £8,272.60.

(3) On 27 October 2015, Mrs Ferguson called HMRC having received a letter from HMRC's Debt Management department regarding the accelerated payment. In that call she said that "she didn't know why" HMRC considered that she owed them money. However, if she had been making numerous calls to HMRC to obtain a copy of the APN she would have been in no doubt that the APN asserted that she owed £8,272.60 and would, in her telephone conversation of 27 October 2015, have been more likely to express frustration that, despite repeated requests, she had still not been provided with a copy of the APN itself.

13. Mrs Ferguson was aware that a copy of the APN had also been sent to her accountant, Johal & Co. I accept her evidence (which was not challenged) that she asked Johal & Co to send her a copy of it to her Pages Walk address, but she did not receive anything from them (either because they overlooked her request or because the copy that they sent was lost in the post). Her relationship with Johal & Co only ceased in late 2015 or early 2016 (when she instructed Francis Clark as referred to below). Mrs Ferguson did not say that, when she failed to receive a copy of the APN from Johal & Co she took further steps to chase it up. I have concluded that she did not take any such steps.

14. Mrs Ferguson did not make any representations about the APN under s222 of FA 2014 and therefore the amount of disputed tax specified in the APN ceased to be postponed and fell due for payment on 21 August 2015. It was common ground that Mrs Ferguson has not, by the date of the hearing, paid the amount of disputed tax. On 1 October 2015, HMRC issued a penalty under paragraph 3(2) of Schedule 56 of Finance Act 2009 for £413.63 (5% of the disputed tax).

15. Other users of the Edge Consulting scheme have taken judicial review proceedings challenging HMRC's decision to issue them with APNs. Mrs Ferguson accepted at the hearing that she is not herself party to any such proceedings.

16. On 27 October 2015 Mrs Ferguson made the telephone call to HMRC's debt management department referred to at [12(3)]. In response to that conversation,

HMRC sent further copies of relevant correspondence to the Pages Walk address. Mrs Ferguson accepted that she received that copy correspondence and I have concluded that this was the first time that Mrs Ferguson herself actually saw a copy of the APN. Having received that documentation, on 9 November 2015, Mrs Ferguson emailed
5 HMRC to ask them, given that she had only just received the APN, to “re-issue the APN with a new date in order for me to formally appeal”. Mrs Ferguson was not, at the time she wrote this letter, aware that there was no statutory basis to “appeal” to HMRC against the decision to issue an APN and that her avenue to pursue an argument that the APN should not have been issued was to make representations
10 under s222 of FA 2014.

17. On 12 November 2015, HMRC replied that the APN had been validly served by being sent to Mrs Ferguson’s then current address and that the time limit for making representations had now passed.

18. On 7 December 2015, Mrs Ferguson appealed to HMRC against the penalty that
15 had been issued on 1 October 2015. HMRC agreed to accept that appeal late.

19. Mrs Ferguson also instructed new tax advisers, Francis Clark Tax Consultancy Limited (“Francis Clark”). On 4 January 2016, Francis Clark wrote to HMRC to “contest the APN”. In that letter, Francis Clark asserted that HMRC should not seek to collect tax from Mrs Ferguson but should, instead, have sought to collect it from
20 Edge Consulting under the PAYE and national insurance regimes.

20. On 24 February 2016, HMRC responded to the Francis Clark letter. In their letter, HMRC stated that, since Edge Consulting Limited was not UK resident and had no taxable presence in the UK, it was not possible for HMRC to collect tax from that company under PAYE. HMRC also stated that the arrangements that Mrs Ferguson
25 had entered into engaged the “transfer of assets abroad” legislation in Part 13 of Chapter 2 of the Income Tax Act 2007 with the result that there was a tax charge falling on Mrs Ferguson directly.

21. On 25 October 2016, HMRC imposed a second and third penalty in respect of Mrs Ferguson’s continued failure to pay the “disputed tax” which was no longer
30 postponed. Mrs Ferguson made in-time appeals to HMRC against these penalties. HMRC rejected those appeals (and issued “view of the matter” letters in relation to the second and third penalties on 15 December 2016 and 2 January 2017). HMRC’s “view of the matter” letters stated, broadly, that Mrs Ferguson did not have a reasonable excuse for failing to pay the disputed tax when due. HMRC’s letter of 2
35 January 2017 considered whether there were any special circumstances that warranted a special reduction in the penalty and concluded that there were none. However, that consideration was in highly general terms and did not address specifically the fact that Mrs Ferguson did not actually see a copy of the APN until after the due date for making representations had passed.

40 22. HMRC upheld their conclusions on the second and third penalties in statutory reviews that they performed in April 2017 and June 2017. In those review letters, HMRC confirmed their view that Mrs Ferguson did not have a reasonable excuse for

failing to pay the disputed tax in time. They also considered the question of special circumstances in greater detail and concluded that Mrs Ferguson’s belief that HMRC had been wrong to issue the APN did not amount to a special circumstance. They did not, however, consider whether the fact that Mrs Ferguson did not herself see the APN until after the due date for payment had passed amounted to a special circumstance.

23. In May 2017, HMRC withdrew the first penalty that they had charged. Ms Rhind explained that this was because they were initially concerned that, since HMRC had accepted that the APN was not received when sent on 20 May 2015, valid service of the APN did not take place until the further copy was sent on 4 June 2015. By HMRC’s calculations, that would mean that they were not entitled to charge a first penalty until around 7 October 2015, whereas they had charged that penalty on 1 October 2015. Ms Rhind explained that, on reflection, HMRC considered that they were wrong to withdraw the first penalty (though they are not seeking to reinstate it) as the APN was validly served on or around 20 May 2015 and I will return to that argument in the “Discussion” section below.

Legislative provisions

24. HMRC’s power to issue an APN comes from s219 of FA 2014 which provides (so far as relevant) as follows:

20 **219 Circumstances in which an accelerated payment notice may be given**

(1) HMRC may give a notice (an “accelerated payment notice”) to a person (“P”) if Conditions A to C are met.

(2) Condition A is that—

25 ...

(b) P has made a tax appeal (by notifying HMRC or otherwise) in relation to a relevant tax but that appeal has not yet been—

(i) determined by the tribunal or court to which it is addressed,

30 (ii) abandoned or otherwise disposed of.

(3) Condition B is that the return or claim or, as the case may be, appeal is made on the basis that a particular tax advantage (“the asserted advantage”) results from particular arrangements (“the chosen arrangements”).

35 (4) Condition C is that one or more of the following requirements are met—

...

(b) the chosen arrangements are DOTAS arrangements;

...

40 (5) “DOTAS arrangements” means—

(a) notifiable arrangements to which HMRC has allocated a reference number under section 311 of FA 2004,

...

25. There is no right of appeal to the Tribunal against HMRC's decision to issue an APN. However, s222 of FA 2014 gives taxpayers a right to make representations to HMRC as follows:

222 Representations about a notice

(1) This section applies where an accelerated payment notice has been given under section 219 (and not withdrawn).

10 (2) P has 90 days beginning with the day that notice is given to send written representations to HMRC—

(a) objecting to the notice on the grounds that Condition A, B or C in section 219 was not met

15 (b) objecting to the amount specified in the notice under section 220(2)(b) or section 221(2)(b), or

(c) objecting to the amount specified in the notice under section 220(2)(d) or section 221(2)(d).

(3) HMRC must consider any representations made in accordance with subsection (2).

20 ...

26. Section 221 of FA 2014 specifies the information that must be included in an APN issued pursuant to s219(2)(b) of FA 2014 (when a taxpayer has appealed against an assessment that HMRC have made). That section provides relevantly as follows:

221 Content of notice given pending an appeal

25 (1) This section applies where an accelerated payment notice is given by virtue of section 219(2)(b) (notice given pending an appeal).

(2) The notice must—

(a) specify the paragraph or paragraphs of section 219(4) by virtue of which the notice is given,

30 (b) specify the disputed tax (if any),

(c) explain the effect of section 222 and of the amendments made by sections 224 and 225 so far as relating to the relevant tax in relation to which the accelerated payment notice is given, and

...

35 (3) "The disputed tax" means so much of the amount of the charge to tax arising in consequence of—

(a) the amendment or assessment to tax appealed against, or

(b) where the appeal is against a conclusion stated by a closure notice, that conclusion,

as a designated HMRC officer determines, to the best of the officer's information and belief, as the amount required to ensure the counteraction of what that officer so determines as the denied advantage.

5 (4) "The denied advantage" has the same meaning as in section 220(5).

In essence, the "disputed tax" is the amount of the charge to tax that the designated HMRC officer considers is necessary to counteract the tax advantage that the taxpayer is claiming (and HMRC is disputing).

10 27. An APN has the effect of undoing any arrangement for tax to be postponed pending an appeal. That is provided for by the following provisions of s55 of TMA 1970:

15 (8B) Subsections (8C) and (8D) apply where a person has been given an accelerated payment notice or partner payment notice under Chapter 3 of Part 4 of the Finance Act 2014 and that notice has not been withdrawn.

(8C) Nothing in this section enables the postponement of the payment of (as the case may be)—

...

20 (b) the disputed tax specified in the notice under section 221(2)(b) of that Act

...

25 (8D) Accordingly, if the payment of an amount of tax within subsection (8C)(b) is postponed by virtue of this section immediately before the accelerated payment notice is given, it ceases to be so postponed with effect from the time that notice is given, and the tax is due and payable—

30 (a) if no representations were made under section 222 of that Act in respect of the notice, on or before the last day of the period of 90 days beginning with the day the notice or partner payment notice is given, and

(b) if representations were so made, on or before whichever is later of—

35 (i) the last day of the 90 day period mentioned in paragraph (a), and

(ii) the last day of the period of 30 days beginning with the day on which HMRC's determination in respect of those representations is notified under section 222 of that Act.

40 28. Therefore, an APN causes tax that was previously postponed to become payable on the date set out in s55(8D) of TMA 1970. If the tax is not paid by that date, the penalties for late payment of tax set out in Schedule 56 of Finance Act 2009 ("FA 2009) apply. Paragraph 1 of Schedule 56 provides (by virtue of Item 24 in the table set out in that paragraph) that a failure to pay an amount of tax that becomes due by

virtue of the service of an APN by the “penalty date” attracts a penalty. The “penalty date” for these purposes is 30 days after the date on which the tax falls due. Paragraph 3 of Schedule 56 of FA 2009 specifies that up to three penalties can be charged, each of 5% of the unpaid tax, where tax is unpaid on the penalty date, 5 months after the penalty date or 11 months after the penalty date.

29. Paragraph 16 of Schedule 56 of FA 2009 permits the Tribunal to set aside a penalty if it is satisfied that the taxpayer has a “reasonable excuse” for the failure in question. Paragraph 16 also circumscribes what can, and cannot, amount to a reasonable excuse in the following terms:

- 10 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,
 - 15 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.

20 30. Paragraph 9 of Schedule 56 permits HMRC to reduce a penalty because of “special circumstances”. Under paragraph 14 of Schedule 56, the Tribunal’s jurisdiction in relation to the question of “special circumstances” is limited and I can only substitute a different decision on “special circumstances” from that which HMRC adopted where I consider that HMRC’s decision was “flawed” in the light of principles applicable in proceedings for judicial review.

25 31. Section 115 of TMA 1970 contains provisions regarding the service and giving of notices on taxpayers. It provides as follows:

115 Delivery and service of documents

- 30 (1) A notice or form which is to be served under the Taxes Acts on a person may be either delivered to him or left at his usual or last known place of residence.
- (2) Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be
- 35 so served addressed to that person—
- (a) at his usual or last known place of residence, or his place of business or employment, or

...

40 32. Section 7 of the Interpretation Act 1978 addresses a slightly different question from s115 TMA 1970 namely when service is treated as effected (and not where it may be effected). It provides as follows:

7 References to service by post

5 Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Discussion

10 33. I have concluded that HMRC “gave” Mrs Ferguson an APN on or around 20 May 2015 in a manner that complied with s115 of TMA 1970. They did so in two ways:

(1) First, they sent that notice by post to her last known address at Maltby Street.

15 (2) Second, they sent that notice to her duly appointed agent.

34. For reasons that I have given in *Joginder Nijjar v HMRC* [2017] UKFTT 0175 (TC) I do not consider that HMRC have to establish that all of Conditions A to C (the necessary preconditions to issuing an APN) were satisfied in order to charge the penalties at issue. If Conditions A to C are not met, that is a matter for representations as to the validity of the APN under s222 of FA 2014 and/or judicial review. Since I
20 have concluded that the document that HMRC sent answered to the statutory description of an APN, I do not need to decide whether Conditions A to C were met.

35. HMRC have satisfied me that the APNs were sent by post, properly addressed and prepaid. It follows that, by virtue of s7 of the Interpretation Act 1978, the notices
25 were deemed to have been given at the time HMRC’s letter would have been received in the ordinary course of post, unless the contrary is proved. There is no suggestion that Mrs Ferguson’s accountants did not receive the APN. On the contrary, Mrs Ferguson admitted that they had received the APN as she referred to her attempt to secure a copy from them. Nor has Mrs Ferguson satisfied me that the APN was not
30 successfully delivered to Maltby Street. She did not even try to do so as the essence of her complaint was not that the APN failed to be delivered to Maltby Street but rather that she was no longer living at Maltby Street when it was delivered. Moreover, the postal difficulties she referred to her in her evidence related to the Pages Walk address and not to Maltby Street.

35 36. Therefore, Mrs Ferguson was given an APN shortly after 20 May 2015. HMRC have correctly determined that “disputed tax” referred to in the APN fell due on 21 August 2015 as Mrs Ferguson made no representations under s222 of FA 2014 before that date³. The “penalty date” fell 30 days later, on 20 September 2015. Since the

³ Francis Clark’s letter of 4 January 2016 did not amount to “representations” because it did not deal with any of the matters set out in s222(2)(a) to (c) of FA 2014. In any event, that letter was sent after the applicable deadline for submitting representations of 21 August 2015.

disputed tax was not paid by the dates falling 5 and 11 months after the penalty date, HMRC were entitled to charge the second and third late payment penalties.

37. Mrs Ferguson argued that she had a “reasonable excuse” for failing to make payment by the due date of 21 August 2015. In part she argued that, since she did not receive the APN until October 2015, and HMRC refused to reissue it (so as to “restart the clock” for the purposes of making representations objecting to the APNs), it was reasonable of her to withhold payment until HMRC gave her that opportunity. In part her argument was that HMRC should never have issued the APN in the first place because Edge Consulting Limited, rather than her, was liable to the tax in question as her employer. For the reasons set out below, I do not accept those arguments.

38. Mrs Ferguson doubtless genuinely believes that Edge Consulting Limited, rather than her, is liable for the tax in dispute. She is entitled to make that argument in any appeal against the discovery assessment. However, as I have said in *David Beadle v HMRC* [2017] UKFTT 544 (TC), the whole purpose of the provisions relating to APNs is to ensure that, where a taxpayer enters into an avoidance scheme, HMRC (rather than the taxpayer) have the use of the tax in dispute until the efficacy or otherwise of the scheme has been determined. Therefore, the mere fact that Mrs Ferguson believed, however strongly, that the avoidance scheme had succeeded so that she had no tax liability does not amount to a reasonable excuse for failing to pay an amount that HMRC had lawfully demanded.

39. I can understand that HMRC might not have been uppermost in her mind when Mrs Ferguson was thinking about who to notify of her change of address. However, ultimately, the failure to notify HMRC of the change of address was her fault alone. HMRC certainly had a discretion to “restart the clock” by re-issuing the APN and it was natural for Mrs Ferguson to feel aggrieved when they refused to do so. However, it was not reasonable of her to react to what she saw as HMRC’s unfairness by withholding payment of tax that had lawfully fallen due for payment. Moreover, HMRC’s refusal to “restart the clock” did not actually deprive Mrs Ferguson of the ability to make representations objecting to the APN. She had received HMRC’s reminder letter of 27 July 2015 which specifically reminded her of the ability to make representations and that there was a deadline to do so. On receipt of that letter, there were still several weeks remaining until the deadline expired. She could still have made representations or asked Johal & Co (who she knew had a copy of the APN) to do so on her behalf.

40. I am fortified in my view at [39] by my conclusion that Mrs Ferguson did not take reasonable steps in July or August 2015 to secure a copy of the notice once she realised it had been delivered to an address at which she was no longer living. As early as 4 June 2005 she would have realised from her telephone conversation that HMRC considered she owed them over £8,000. She received HMRC’s reminder letter of 27 July 2015 warning that payment was due by 21 August 2015 and that any representations she wished to make objecting to the APN had to be made before that date. However, as I have concluded, she took little action until October 2015, after HMRC had issued her with a penalty and were taking steps to collect the amount of

disputed tax. Moreover, she was aware that her agent had a copy of the notice but, having asked them for a copy, she did nothing more when it was not received by post.

41. I do not, therefore, consider that Mrs Ferguson had a “reasonable excuse” for the failure to pay by the due date. Even if I had considered that there was a reasonable
5 excuse initially, in order for the defence set out in paragraph 16 of Schedule 56 of FA 2009, Mrs Ferguson would need to pay the amount due within a reasonable period of the excuse ceasing. In their letter of 24 February 2016, HMRC explained why they considered that Mrs Ferguson, rather than Edge Consulting Limited, was liable for the
10 disputed tax. While she was entitled to disagree with the views that HMRC expressed in that letter, it should have been clear to her that, even if HMRC had agreed to “restart the clock” and consider representations under s222 of FA 2014, there was no prospect of them cancelling the APN that had been issued on the grounds that she was arguing. In short, even if there had been an initial “reasonable excuse” for non-payment, that excuse ceased on or around 24 February 2016, but Mrs Ferguson has
15 still not paid the disputed tax.

42. That leaves the question of “special circumstances”. HMRC have not, in their various decisions relating to the penalties, explicitly turned their mind to the question of whether a “special reduction” was warranted because Mrs Ferguson did not herself
20 actually see a copy of the APN until October 2015, by which time the deadline for making representations (and the due date for payment) had passed. That was a relevant consideration and, since they did not consider it, I regard HMRC’s decision as “flawed” in the necessary sense so that I have power to change it. However, I will not alter HMRC’s decision. Even if Mrs Ferguson had not herself seen the APN, she knew that the notice amounted to a demand for over £8,000 of tax and her agents had
25 a copy of that notice. Given that she did not take reasonable steps to secure a copy of the APN and has withheld payment of the amount that HMRC have lawfully demanded long after the date on which she knew HMRC’s reasons for concluding that the tax was due, it would not be appropriate to make a “special reduction” in the penalty.

30 43. For all of those reasons, Mrs Ferguson’s appeal is dismissed.

44. 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
35 against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

JONATHAN RICHARDS
TRIBUNAL JUDGE

40

RELEASE DATE: 21 DECEMBER 2017