



TC06358

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Appeal number: TC/2015/02047

10 *INCOME TAX – In respect of 2009-2010 penalties of £200, cancelled by HMRC in 2014. In respect of 2010-2011, 2011-2012 and 2012 -2013 whether reasonable excuse for late submission of self- assessment income tax returns. No. Whether there were special circumstances. No*

15 **FIRST-TIER TRIBUNAL
TAX CHAMBER**

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CHRISTOPHER BURKE MURRAY

Appellant

- and -

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

Respondent

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**TRIBUNAL: PRESIDING MEMBER:
PETER R. SHEPPARD FCIS FCIB
CTA AIT
MEMBER: JULIAN STAFFORD**

**Sitting in public at Alexandra House, 14-22 The Parsonage, Manchester on 28
November 2017.**

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The appellant in person.

Mary Hendrick for the respondent.

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DECISION

1. Introduction

5 The appellant's Notice of Appeal states that it is an appeal against penalties totalling £7,318 for the late submission and late payment in respect of the appellant's self-assessment tax returns for the tax years ending 5 April 2011, 5 April 2012 and 5 April 2013.

2. Legislation

Finance Act 2009 Schedules 55, and 56.
10 Taxes Management Act 1970, in particular Section 8.

Section 8 (1) of the Taxes Management Act 1970 provides:

15 For the purposes of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax during that year,] he may be required by a notice given to him by an officer of the Board-

- (a) To make and deliver to the officer, a return containing such information as may reasonably be required in pursuance of the notice, and
- 20 (b) To deliver with the return such accounts, statements and documents, relating to information contained in the return as may reasonably be so required.

3. The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. This states

A return under this section for the year of assessment (year 1) must be delivered –

- 25 (a) In the case of a non-electronic return, on or before 31st October in year 2, and
- (b) In the case of an electronic return, on or before 31st January in year 2

Schedule 55 of The Finance Act 2009 (“the Schedule”) makes provision for the imposition by HMRC of penalties on taxpayers for the late filing of tax returns.

30 Paragraph 1 (1) to (3) of the Schedule state

1 (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-

- 35 (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—

40 “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 (falling within any of items 1 to 3 and 5 to 13 in the Table, 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 The Table referred to in paragraph 1 (1) above gives details of the tax and returns to which the penalties relate. Item 1 concerns income tax and capital gains tax returns under section 8 (1)(a) and 8 (1)(b) of the Taxes Management Act 1970.

10 If P fails to file a return included in the table by the “penalty date” (the day after the “filing date” i.e. the date by which a return is required to be made or delivered to HMRC), Paragraph 3 of the Schedule provides that the person is liable to a penalty of £100.

Paragraph 4 of the Schedule provides:

“(1) A person is liable to a penalty under this paragraph if (and only if)–

(a) The failure continues after the end of the period of 3 months beginning with the penalty date,

15 (b) HMRC decide that such a penalty should be payable, and

(c) HMRC give notice to the person specifying the date from which the penalty is payable.”

20 (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 subparagraph (1)(c).

Paragraph 5 of the Schedule provides

- a. A person is liable to a penalty under this paragraph if (and only if) - the failure continues after the end of the period of 6 months beginning with the penalty date.
- b. The penalty under this paragraph is the greater of –
 - 25 i. 5% of any liability to tax which would have been shown in the return in question, and
 - ii. £300

Paragraph 6 of the Schedule provides

30 A person is liable to a penalty under this paragraph if (and only if) - the failure continues after the end of the period of 12 months beginning with the penalty date.

- c. The penalty under this paragraph is the greater of –
 - i. 5% of any liability to tax which would have been shown in the return in question, and
 - 35 ii. £300

Schedule 55 paragraph 17 of The Finance act 2009 states:

“17(1) Where P is liable for a penalty under any paragraph of this Schedule which is determined by reference to a liability to tax, the amount of that

penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

(2) In sub-paragraph (1) the reference to “any other penalty” does not include—

(a) a penalty under any other paragraph of this Schedule, or

(b) a penalty under Schedule 56 (penalty for late payment of tax).

(3) Where P is liable for a penalty under more than one paragraph of this Schedule which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.”

Schedule 55 paragraph 23 of the Finance Act 2009 states:

(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 continuing to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Schedule 56 of The Finance Act 2009 (“the Schedule”) makes provision for the imposition by HMRC of penalties on taxpayers for failing to pay tax by the due date.

Paragraph 1 (1) to 1(4) of the Schedule state:

1 (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 paragraph 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 day after the date specified in or for the purposes of column 4 of the table in relation to that amount]

Item 1 in the Table in sub paragraph (5) of Schedule 56 covers income tax and capital gains tax payable under Section 59B (3) or (4) of the Taxes Management Act 1970. Column 4 of the Table covers the date after which the penalty is incurred the wording in this column against item 1 states:

- 5 The date falling 30 days after the date specified in Section 59(3) or (4) of TMA 1970 as the date by which the amount must be paid

Paragraph 3 covers the amount of the penalty; occasional amounts and amounts in respect of periods of 6 months or more.

(1) This paragraph applies in the case of

- 10 (a) A payment of tax falling within any of items 1,3 and 17 to 24 in the Table

(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.

- 15 (4) 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.

Paragraph 27 covers reasonable excuse, and is similar to Schedule 55 paragraph 23 quoted above.

4. Case law

- Clarks of Hove v Bakers' Union [1979]1 All ER 152
20 David Collis v HMRC [201] UKFTT 588
Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967
Keith Donaldson v HMRC [2016] EWCA Civ 761
Rowland v HMRC (2006) STC (SCD 536)
The Clean Car Co. Ltd. v Commissioners of Customs and Excise [1991] BVC 568

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5. Facts

The appellant has been in self-assessment since 13 October 1996 as a TV and audio retailer.

6. Late filing of self-assessment of tax returns

30 **Return for the tax year ended 5 April 2011.**

The appellant's self-assessment tax return for the year ended 5 April 2011 was issued to him by HMRC on 6 April 2011. It was due to be submitted at the latest by 31 January 2012. HMRC received the return on 17 October 2014.

- 35 As the return had not been received by the due date in accordance with paragraph 3 of Schedule 55 HMRC assessed a late filing penalty of £100 on 14 February 2012.

As the return had still not been received 3 months after the penalty date of 1 February 2012,(that is by 1 May 2012) in accordance with paragraph 4 of Schedule 55 of the Finance Act 2009 HMRC issued a notice of daily penalty assessment of £900 on 7 August 2012, calculated at £10 per day for 90 days.

7. As the return had still not been received 6 months after the penalty date of 1 February 2012 (that is by 1 August 2012), in accordance with paragraph 5 of Schedule 55 of the Finance Act 2009 HMRC issued a notice of penalty assessment of £300 on 7 August 2012.

5 8. As the return had still not been received 12 months after the penalty date of 1 February 2012, in accordance with paragraph 6 of Schedule 55 of the Finance Act 2009 HMRC issued a notice of penalty assessment of £300 on 19 February 2013.

9. On 2 September 2014 having not heard from the appellant HMRC estimated that the tax due from the appellant would be £6,200. As 5% of this sum is £310 the penalty due would be £10 greater than the £300 assessed for both the 6 months and 12 months late filing penalties and so HMRC issued estimated assessments for an additional £10 in respect of each.

10. Once HMRC had received the appellant's tax return for the year ended 5 April 2011 this showed tax due of £14,732.02. HMRC reviewed the 6 months and 12 months late filing penalties and calculated that 5% of the tax due was £736.60 which is greater than £300. On 21 October 2014 HMRC therefore assessed a further £426 penalty in respect of each of those late filing penalties. The total penalty due under each of paragraphs 5 and 6 was £736 being the greater of 5% of the tax due and £300. The £736 due under each paragraph was assessed in 3 parts that is £300, £10 and £426.

20 **11. Return for the tax year ended 5 April 2012.**

The appellant's self-assessment tax return for the year ended 5 April 2012 was issued to him by HMRC on 6 April 2012. It was due to be submitted at the latest by 31 January 2013. HMRC received the return on 17 October 2014.

25 As the return had not been received by the due date in accordance with paragraph 3 of Schedule 55 HMRC assessed a late filing penalty of £100 on 12 February 2013.

As the return had still not been received 3 months after the penalty date of 1 February 2013,(that is by 1 May 2013), in accordance with paragraph 4 of Schedule 55 of the Finance Act 2009 HMRC issued a notice of daily penalty assessment of £900 on 14 August 2013, calculated at £10 per day for 90 days.

30 12. As the return had still not been received 6 months after the penalty date of 1 February 2013, in accordance with paragraph 5 of Schedule 55 of the Finance Act 2009 HMRC issued a notice of penalty assessment of £300 on 14 August 2013.

35 13. As the return had still not been received 12 months after the penalty date of 1 February 2013, in accordance with paragraph 6 of Schedule 55 of the Finance Act 2009 HMRC issued a notice of penalty assessment of £300 on 25 February 2014.

40 14. Once HMRC had received the appellant's tax return for the year ended 5 April 2012 this showed tax due of £8,094.36. HMRC reviewed the 6 months and 12 months late filing penalties and calculated that 5% of the tax due was £404.71 which is greater than £300. On 21 October 2014 HMRC therefore assessed a further £104 penalty in respect of each of those late filing penalties. The total penalty due under each of paragraphs 5 and 6 was £404 being the greater of 5% of the tax due and £300. The £404 due under each paragraph was assessed in 2 parts that is £300, and £104.

15. Return for the tax year ended 5 April 2013.

The appellant's self-assessment tax return for the year ended 5 April 2013 was issued to him by HMRC on 6 April 2013. It was due to be submitted at the latest by 31 January 2014. HMRC received the return on 17 October 2014.

- 5 As the return had not been received by the due date in accordance with paragraph 3 of Schedule 55 HMRC assessed a late filing penalty of £100 on 18 February 2014.

As the return had still not been received 3 months after the penalty date of 1 February 2014,(that is by 1 May 2014) .in accordance with paragraph 4 of Schedule 55 of the Finance Act 2009 HMRC issued a notice of daily penalty assessment of £900 on 18
10 August 2014, calculated at £10 per day for 90 days.

16. As the return had still not been received 6 months after the penalty date of 1 February 2014, in accordance with paragraph 5 of Schedule 55 of the Finance Act 2009 HMRC issued a notice of penalty assessment of £300 on 18 August 2014.

17. Late payment of self-assessment tax returns

- 15 Late payment of tax for the year ended 5 April 2012.

Payment of the tax was due by 31 January 2013

18. As HMRC had not received payment for the appellant's self-assessment tax return 30 days after the due date in accordance with paragraph 3(2) of Schedule 56 of the Finance Act 2009 on 21 October 2014 HMRC issued a notice of penalty assessment of
20 £404 being 5% of the tax outstanding.

19. As HMRC had not received payment for the appellant's self-assessment tax return 6 months after the due date in accordance with paragraph 3(3) of Schedule 56 of the Finance Act 2009 on 21 October 2014 HMRC issued a notice of penalty assessment of £404 being 5% of the tax outstanding.

25 20. As HMRC had not received payment for the appellant's self-assessment tax return 12 months after the due date in accordance with paragraph 3(4) of Schedule 56 of the Finance Act 2009 on 25 August 2015 HMRC issued a notice of penalty assessment of £404 being 5% of the tax outstanding.

21. Late payment of tax for the year ended 5 April 2013.

30 Payment of the tax was due by 31 January 2014

22. As HMRC had not received payment for the appellant's self-assessment tax return 30 days after the due date in accordance with paragraph 3(2) of Schedule 56 of the Finance Act 2009 on 21 October 2014 HMRC issued a notice of penalty assessment of £163 being 5% of the tax outstanding.

35 23. As HMRC had not received payment for the appellant's self-assessment tax return 6 months after the due date in accordance with paragraph 3(3) of Schedule 56 of the Finance Act 2009 on 21 October 2014 HMRC issued a notice of penalty assessment of £163 being 5% of the tax outstanding.

24. As HMRC had not received payment for the appellant's self-assessment tax return 12 months after the due date in accordance with paragraph 3(4) of Schedule 56 of the Finance Act 2009 on 21 October 2014 HMRC issued a notice of penalty assessment of £163 being 5% of the tax outstanding.

5 **25. Summary of penalties appealed**

In summary the penalties described by HMRC in their statement of case are as follows;

Tax year ended 5 April 2011

Late filing penalties £2,472

Tax year ended 5 April 2012

10 Late filing penalties £1,808

Late payment penalties £1,212

Tax year ended 5 April 2013

Late filing penalties £1,300

Late payment penalties £489

15 The Grand total of all of these is £7,281

In a letter to HMRC dated 19 December 2014 the appellant's agent attached what is described as a "full list of penalties". The penalties in the list total £7,318 which is stated in the appellant's Notice of Appeal as the amount of penalties appealed against.

20 The explanation of this difference of £37 is that the appellant has appealed against two penalties each of £100 in respect of the tax year 2009-2010 but had not at the date of the letter received the 12 month late payment penalty notified to him on 25 August 2015 of £163 in respect of the tax year 2012-2013. That penalty is included in the figure of £489 above.

The appellant describes the two penalties in respect of 2009-2010 as follows:

25 22/03/2011 First penalty for late tax return £100

06/09/2011 Second penalty for late tax return £100

It appear that these relate to the tax year 2009/2010 and that HMRC SA notes on 7 November 2014, which were included in the hearing bundle, records that no tax was due for that tax period and that both penalties had been cancelled

30 **26. The appellant's submissions**

The appellant accepted that the returns were submitted late.

He argued that he had reasonable excuse for the late submissions

He said that he had serious communication difficulties with his accountant, Peter Ainley. Peter Ainley had merged his practice with Beever and Struthers, and then left suddenly without trace one month later. He said he then, in June 2009, instructed a new accountant, Philip Swales to bring his tax affairs up to date. Philip Swales struggled to
5 obtain any information from, or even trace, Peter Ainley. The appellant said that he considered Beever & Struthers did not want to have the residue of Peter Ainley's clients. The latter had possession of the appellant's books going back several years. Tragically Philip Swales died whilst still in the process of bringing the appellants affairs in order. The appellant said that things moved slowly with Philip Swales, who was often
10 ill, when they met nothing had been prepared for the appellant. During this period the appellant was often attended to by Sue Campbell, a part time employee of Philip Swales, and he had found her to be helpful, but being part time progress was slow. Philip Swales had died in late 2010 or early 2011. He said that things stopped after Philip Swales died and there was total confusion for 18 months. He said Philip Swales's
15 practice eventually merged with TWJ Partnership in Sale, Manchester. He said that the person dealing with his affairs, Sue Campbell, transferred to TWJ. He said that in the three and a half years from when Philip Swales died in late 2010 or early 2011 until the summer of 2014 TWJ never filed anything even though he had provided them with documents quarterly. These included a copy of his quarterly VAT returns which he had
20 done himself after Philip Swales died. He said that in three meetings he had seen three different partners. He said he had been sucked in by the promises of TWJ and a partner, Sue Angliss. He said that when Sue Campbell left it was the final straw and he realised that TWJ were not looking after his interests. The appellant then in October 2014 instructed Steve Crowther of OJK Accountancy, Manchester to bring his affairs up to
25 date as soon as possible, which had now been achieved. He said that Steve Crowther had experienced considerable delays and difficulties in obtaining books and records from TWJ. The appellant said he had made considerable efforts and incurred considerable expense in order to bring his tax affairs up to date.

27. HMRC's submissions

30 Some of HMRC's submissions are included in the paragraphs above.

HMRC say the penalties were determined in accordance with Paragraphs 1, 3,4,5, and 6 of Schedule 55, paragraphs 1,3 and 16 of Schedule 56 of the Finance Act 2009; and Section 8 of the Taxes Management Act 1970.

35 HMRC say that the returns were not made by the filing date. They say that reminders for the daily penalties were given.

28. HMRC contend that the appellant did not take care to avoid the failures to ensure that his self-assessment tax returns were filed and paid by the due dates.

29. In respect of reasonable excuse HMRC consider the appellant does not have a reasonable excuse for the late submission of the returns. They say there is no statutory
40 definition of "reasonable excuse". They refer to the decision in *Rowland* which states that reasonable excuse "is a matter to be considered in the light of all the circumstances of the particular case."

30. HMRC's view is that the actions of a taxpayer should be considered from the perspective of a prudent person exercising reasonable foresight and due diligence,
45 having proper regard for their responsibilities under the Taxes Acts. The decision

depends on the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the
5 conduct of the taxpayer can be regarded as conforming to that standard. HMRC refer to the comments made by Judge Medd in the case of *The Clean Car Co. Ltd, v HMRC*

He wrote “*the test of whether or not there is a reasonable excuse is an objective one.... 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
10 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.*”

HMRC contend that the appellant has not provided a reasonable excuse for his failure to file the returns and pay tax due on time and that the penalties have been correctly charged in accordance with the legislation.

15 HMRC say that reliance on another person is not a reasonable excuse under Schedule 55 and Schedule 56 unless the appellant took reasonable care to avoid the failure. They say the appellant has not provided any details of any steps he took to comply with his tax obligations once he was aware of issues with his accountants. No dates or evidence have been provided to show when and how these issues affected his affairs.

20 31. Having heard the appellant’s submissions HMRC pointed out that after Philip Swales had died it was clear that the appellant realised there was a problem and he should not have left matters for 18 months knowing his tax returns were due.

HMRC observe that the appellant was able to continue trading throughout the period in question. As his business was able to continue as usual HMRC presume that the
25 appellant could have taken steps to comply with his tax obligations.

At the hearing HMRC suggested that the appellant could have telephoned HMRC to discuss the position he was in. They said that in such circumstances estimated returns may have been acceptable. They pointed out that the problem covered three consecutive returns.

30 32. HMRC say they considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009. They say special circumstances must be “exceptional, abnormal or unusual” (*Crabtree v Hinchcliffe*) or something out of the ordinary run of events (*Clarks of Hove Ltd v Bakers’ Union*). However they consider that there are no special circumstances which would allow them to reduce the penalty.

35 **33. Tribunal’s Observations**

It was accepted by the appellant that he both filed the returns and paid the tax due late.

34. The Tribunal has considered the discrepancy between the amounts of the penalties included in the notice of appeal and the amount in HMRC’s statement of case. It is clear that the appellant intended to appeal against all penalties in respect of the tax years
40 2009/2010, 2010/2011, 2011/2012, and 2012/2013 but at the date of the Notice of Appeal the 12 month penalty of £163 for the late payment of the tax due in 2012/2013 had not been notified to him.

35. The Tribunal has decided to allow the appellant to include the 12 month penalty of £163 for the tax year 2012/ 2013 in the appeal thus making a total appealed against of £7,481. However this figure has to be reduced by £200 being the two £100 penalties in respect of the tax year 2009/2010 which were cancelled by HMRC on 7 November
5 2014. As they had been cancelled it is not understood why the appellant's agent included them in the list attached to their request for review to HMRC dated 19 December 2014 or why they were included in the amount included in the Notice of Appeal dated 27 February 2015. The cancellations by HMRC reduce the total amount appealed against to £7,281.

10 36. The appellant has made no submissions that the level of the penalties is disproportionate, harsh or unfair.

37. The Tribunal has therefore to determine the following;

1. Whether HMRC have correctly addressed and notified the penalties.
- 15 2. Whether HMRC have applied the penalty legislation correctly and calculated the amount of the penalties correctly.
3. Whether the appellant has a reasonable excuse for his failure to submit the returns by the statutory date, and whether the appellant has a reasonable excuse for his failure to pay the tax due by the statutory date.
- 20 4. Whether there are special circumstances which would allow HMRC to reduce the penalty and whether in the Tribunal's opinion HMRC's decision on special circumstances is flawed.

38. Whether HMRC have correctly addressed and notified the penalty

Copies of some of the penalty notices which covered penalties totalling £3,818 were included in the bundle of papers provided. The only evidence of the other penalties is a
25 copy of HMRC's own internal record showing that penalty notices were issued. However it is clear from the copy notices that were provided, and from correspondence in the bundle, that the appellant received the penalty notices and therefore the Tribunal finds that on the balance of probabilities HMRC did correctly address and notify all the penalties to the appellant. In addition the appellant made no submissions concerning
30 the notification of the penalties.

39. Whether HMRC have applied the penalty legislation correctly and calculated the penalty correctly.

In respect of the two penalties each of £100 for 2009/10 HMRC SA Notes record that no tax was due for the period and these penalties were cancelled on 7 Nov 2014.

35 In respect of the tax years 2010-2011, 2011-2012 and 2012-2013 the Tribunal considers that HMRC applied the legislation and calculated all the penalties correctly. Therefore the penalties totalling £7,281 for the three tax years are due and payable unless the appellant has reasonable excuse for the failure or there are special circumstances to be taken into consideration.

40. Whether the appellant has a reasonable excuse for his failure to submit the returns by the statutory date, and whether the appellant has a reasonable excuse for his failure to pay the tax due by the statutory date.

5 The Tribunal has considered these questions together because the appellants presented his submissions on reasonable excuse as applying to both the late returns and the late payments.

Unfortunately the appellant has been imprecise as to the chronology of events. At the hearing he said he appointed an agent, Philip Swales, in June 2009.

10 Companies House records show Peter Ainley was a director of Beever & Struthers from 1 September 2006 until he resigned on 2 March 2010. It is therefore difficult to understand why the appellant's records were unobtainable. It is also difficult to understand why the appellant considers that Peter Ainley merged his practice "suddenly" with Beever and Struthers.

15 The death of Philip Swales might have constituted a reasonable excuse if matters had been dealt with within a reasonable time after his death. The Tribunal agrees with HMRC that a delay of 18 months is not reasonable, a further tax year and more had elapsed with no progress being made. It is the responsibility of the taxpayer to ensure that his returns are filed by the due dates.

20 It appears to the Tribunal that prior to the appointment of OJK the appellant's agents and the appellant were not diligent or pro-active enough in attending to completion of the appellant's tax returns including obtaining records.

25 The Tribunal has considered the case of The Clean Car Company and asked itself "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?"

30 The Tribunal considers that such a person would firstly have contacted HMRC to advise them of the problem and secondly would have been more pro-active in ensuring the returns were sent by the statutory date. This is particularly so following the death of Philip Swales. Contact with HMRC might well have resulted in estimated returns being accepted so reducing the time a return was outstanding and hence reducing the penalties.

35 HMRC self-assessment notes for the period from 5 June 2012 to 22 March 2017 show no contact from the appellant and minimal contact from his agents until after the appointment of OJK in October 2014.

40 The legislation is clear that reliance on another to complete a task does not normally constitute a reasonable excuse. The Tribunal considers that where an appellant has appointed an agent to act on his behalf then if that agent for some reason fails in his duties for there to be a reasonable excuse an appellant has to be able to demonstrate that he was diligent in his supervision of the agent he appointed. In this case following the death of Philip Swales the appellant did very little to expedite the submission of his outstanding self-assessment tax returns and payment therefor.

If the appellant considers that his agent or agents have failed in their duties he should take that up with his agent or agents and if necessary with the Institutes to which they belong.

5 **41. Whether there are special circumstances which would allow HMRC to reduce the penalty and whether in the Tribunal’s opinion HMRC’s decision on special circumstances is flawed.**

10 Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal does not consider that HMRC’s decision on that is flawed.

15 42. For all the above reasons The Tribunal dismisses the appellant’s appeal against the late filing and late payment penalties for the tax years 2010-2011, 2011-2012, and 2012-2013..

20 43. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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PETER R. SHEPPARD
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 26 FEBRUARY 2018