[2019] UKFTT 269 (TC)

TC07108

Appeal number: TC/2018/02856

INCOME TAX – penalty for late filing of personal tax return – paragraph 6(2) of Schedule 55 to Finance Act 2009 – whether taxpayer withheld information – yes – whether withholding deliberate – yes – whether taxpayer had a reasonable excuse for his default – no – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

DAVID M^{C}CABE **Appellant**

- and -

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

TRIBUNAL: JUDGE JANE BAILEY
MR DAVID BATTEN

Sitting in public at St Catherine's House, Plymouth on 18 March 2019

Mr David McCabe appeared in person

Mr Ashley Wilkinson, presenting officer, appeared for the Respondents

DECISION

Introduction

1. This appeal by Mr McCabe is against HMRC's decision to issue him with a penalty in the sum of £25,992 for deliberately withholding information by the failing to file his tax return for 2012/13 for more than 12 months after the filing date. This penalty is imposed under Paragraph 6 of Schedule 55 to the Finance Act 2009.

Findings of fact

2. Mr McCabe gave evidence of fact as part of his oral submissions to us. We also heard oral evidence from Mrs Adamson on behalf of HMRC, and read the witness statement of Mrs Adamson filed on 4 March 2019. We found both Mr McCabe and Mrs Adamson to be truthful witnesses and we accept the evidence of both.

3. On the basis of that oral evidence and the documents before us, we find as follows:

a) On 13 October 1996, HMRC registered Mr McCabe for self-assessment. Thereafter Mr McCabe filed tax returns up to and including his return for 2009/10.

b) Mr McCabe did not file a tax return for 2010/11. Mrs Adamson told us that HMRC had issued a Revenue Determination for 2010/11. In the absence of figures, HMRC had made a 20% uplift on 2009/10's figures. Mr McCabe also did not file a tax return for 2011/12. Again, HMRC issued a Revenue Determination for 2011/12, with a 20% uplift on the figures in HMRC's 2010/11 Revenue Determination.

c) On 6 April 2013, HMRC issued Mr McCabe with a full return to file for the tax year 2012/13. The deadline for this return to be filed was 31 January 2014 if filed by electronic means, or 31 October 2013 if filed as a paper return.

d) Mr McCabe did not file his tax return by the filing deadline.

e) On 18 February 2014, HMRC issued Mr McCabe with a penalty in the sum of £100. This penalty was issued under Paragraph 3 of Schedule 55 for the late filing of Mr McCabe's tax return for 2012/13.

f) On 18 August 2014, HMRC issued Mr McCabe with penalties in the total sum of £1,200. These penalties were issued under Paragraphs 4 and 5 of Schedule 55 for the continued late filing of Mr McCabe's tax return for 2012/13. The penalties issued under Paragraph 4 were in the total sum of £900, calculated as £10 per day for each of the 90 days in excess of three months on which Mr McCabe's tax return for 2012/13 had been outstanding. The remaining penalty, of £300, was issued under Paragraph 5 because Mr McCabe's tax return for 2012/13 was more than six months late.

g) On 24 February 2015, HMRC issued Mr McCabe with a penalty in the sum of £300. This penalty was issued under Paragraph 6 of Schedule 55 as Mr McCabe's tax return was more than 12 months late.

h) Mr McCabe apparently paid these penalties but still did not file his 2012/13 return.

i) On 20 July 2016, HMRC issued Mr McCabe with a Revenue Determination for 2012/13 showing tax due in the sum of £98,022. This was a 50% uplift on the figures HMRC had used in the 2011/2012 Revenue Determination. Mr McCabe told us that he knew that the amount of tax which he owed was not as much as the Revenue Determination which had been issued. Nevertheless, Mr McCabe paid the amount due under this Determination and did not file his return.

j) On 26 July 2016, HMRC issued four further penalties. These were each tax-geared penalties, calculated as 5% of the tax due under the Revenue Determination for 2012/13.

k) The first of these four tax-geared penalties was issued under Paragraph 5 of Schedule 55 because Mr McCabe's tax return for 2012/13 was more than six months late. As Mr McCabe had previously been issued with a penalty under Paragraph 5, the amount of the earlier penalty (£300) was deducted from the total of this tax-geared penalty. Thus, the penalty issued was in the sum of £4,601, rather than £4,901.

l) The second of these four tax-geared penalties was issued under Paragraph 6 of Schedule 55 because Mr McCabe's tax return for 2012/13 was more than 12 months late. As Mr McCabe had previously been issued with a penalty under Paragraph 6, the amount of the earlier penalty (£300) was deducted from the total of this tax-geared penalty. Thus, the penalty issued was £4,601. At this stage, the total amount of penalties under Paragraph 6 which had been issued to Mr McCabe was £4,901.

m) Mr McCabe paid these two further late filing penalties but he did not file his tax return.

n) The third and fourth of the four tax-geared penalties were both issued under Paragraph 3 of Schedule 56 to the Finance Act 2009. These were issued on the basis that Mr McCabe had been late in paying the tax due for 2012/13. Again, HMRC used the figures in their Revenue Determination to calculate the size of the penalty, resulting in each penalty being in the sum of £4,901. Mr McCabe apparently paid these late payment penalties.

o) At some point before 27 April 2017, HMRC's file for Mr McCabe came to the attention of Mrs Adamson, an Intervention Officer in HMRC. Mrs Adamson conducted a full risk assessment, and noted that Mr McCabe had filed his tax returns for all years up to 2009/10, and that he had filed VAT returns between December 2011 and November 2015. Mrs Adamson formed the view that Mr McCabe must have known what his filing

obligations were because of his previous filing experience, and must have known that tax returns were how HMRC established the correct tax liability. Mrs Adamson concluded that, by not filing personal tax returns, Mr McCabe was deliberately withholding information.

p) On 27 April 2017, Mrs Adamson issued a letter to Mr McCabe warning him that HMRC were considering issuing further late filing penalties under Paragraph 6 due to Mr McCabe's deliberate withholding of information and that the further penalties would be based upon the figures in the Revenue Determination. Mrs Adamson asked Mr McCabe to let her know if he had a reasonable excuse for his delay, and encouraged him to file all of his outstanding returns.

q) Prior to receiving this 27 April 2017 letter, Mr McCabe did not know that any further penalties could be issued for late filing. Mr McCabe told us that it was pressure of work which had resulted in his returns not being filed at the time they were due. Filing outstanding tax returns was not at the forefront of Mr McCabe's thoughts until Mrs Adamson's 27 April 2017 letter brought his tax obligations very firmly to mind.

r) On 30 May 2017, Mrs Adamson issued Mr McCabe with a penalty calculation. HMRC's intention was to issue a penalty as 70% of the tax due under the Revenue Determination, resulting in a proposed penalty of £68,615.40. After subtracting the penalties of £4,901 already issued under Paragraph 6, this resulted in a calculation of £63,714.40. It was this figure which was set out in the penalty calculation issued to Mr McCabe. 70% was the maximum percentage penalty for the withholding of category 1 information, and so by selecting this percentage Mrs Adamson gave Mr McCabe no credit for the quality of disclosure (as no disclosure had, at that stage, been made).

s) On 9 June 2017, HMRC received Mr McCabe's tax return for 2012/13. As this return was filed so long after the 31 January 2014 online filing deadline, it was no longer possible for Mr McCabe to file electronically and so he had to file a paper tax return. Once processed, this return showed that the tax due from Mr McCabe for 2012/13 was £65,306.15, considerably less than the £98,022 that Mr McCabe had already paid under the Revenue Determination.

t) As the figures in Mr McCabe's return supplanted the figures in the Revenue Determination, the tax-geared penalties already issued were re-calculated. The two late payment penalties issued under Schedule 56 were reduced to £3,265 each. The two tax-geared late filing penalties, issued under Paragraphs 5 and 6 of Schedule 55, were also reduced to £3,265 each, and then reduced again – to £2,965 each – to give Mr McCabe credit for the £300 fixed penalties which had been issued under the same paragraphs of Schedule 55. Therefore, at this stage, the total amount of Paragraph 6 penalties issued to Mr McCabe was £3,265.

u) On 3 July 2017, (before Mrs Adamson was aware that Mr McCabe's paper tax return had been received) HMRC issued Mr McCabe with a penalty assessment in the sum of £63,714.40 (calculated as per Sub-paragraph 4. (r) above).

v) By letter dated 9 July 2017 (but not received by HMRC until it was resubmitted in late October 2017), Mr McCabe appealed against the imposition of a further penalty on the basis that:

> The self assessment return was submitted some time ago. The tax already paid under earlier assessment is more than the tax actually due. There is no penalty due.

w) On 8 November 2017, HMRC issued an amended penalty assessment. The calculation showed that a penalty of £29,257.15 had been calculated (as 44.8% of the tax due under the return of £65,306.15). Mrs Adamson explained in her witness statement that this percentage gave Mr McCabe credit for telling, helping and giving access now that his 2012/13 return had been received. From the proposed penalty of £29,257.15, HMRC subtracted the sum of £3,265 (to take account of the penalties already issued under Paragraph 6), resulting in a further penalty of £25,992.15.

x) By letter dated 9 November 2017, HMRC informed Mr McCabe that they had noted receipt of Mr McCabe's return in June 2017, more than three years late, and noted also that the tax shown on this return was £20,000 more than had been shown on his 2009/10 tax return. HMRC maintained that Mr McCabe had deliberately withheld information, and that a further penalty was still due, but explained that the penalty would be reduced to take account of Mr McCabe's disclosure by submitting his return. HMRC noted that the minimum charge would not be below 45% given that Mr McCabe's return was more than three years late.

y) By letter dated 29 November 2017, Mr McCabe sought a review of the decision to maintain a penalty, stating:

> Tax of £65,348 was paid many years ago in respect of year ending 2012-2013, this was way in excess of the tax due and the overpayment was set against tax due for the period 2013-2014. There should be no late filing or late payment penalty.

z) This request for a review was confirmed in Mr McCabe's letter of 1 February 2018:

> As previously stated the tax due was paid, in addition penalties for the late submission of tax returns and late payment of tax due have already been levied. Furthermore interest has already been paid on tax paid late and on the penalties levied. It is completely unjust to try and impose in addition to the penalties and interest already paid further additional penalties, I would therefore request that this penalty is removed.

aa) By letter dated 29 March 2018, HMRC upheld their earlier decision. The reviewing officer considered that there were no special circumstances which would make it right to reduce the penalty imposed on Mr McCabe.

bb) On 26 April 2018, Mr McCabe filed his Notice of Appeal to this Tribunal. Mr McCabe's grounds of appeal were:

> The Late Filing Penalties and Interest have already been paid.
>
> The decision being appealed is the imposition of a further penalty of 45% due to failure to submit a tax return. This penalty has not been revoked even though the return was submitted as soon as possible after receiving the letter from HMRC dated 27th April 2017 warning that they were considering imposing increased penalties. The return had to be submitted in paper form and by post as HMRC had no facility for receiving it by electronic means, which led to further delays in the receipt. It is also the case that letters from HMRC are not even received until 9 to 10 days after they are dated. The penalty was imposed prior to the receipt by HMRC of the tax return and has not been rescinded even though it was clear that the return was submitted as soon as possible after receipt of the warning letter of 27th April 2017. Whilst the return was being prepared I telephoned HMRC to advise that the return was in the process of preparation and would be submitted as soon as possible. I was told to carry on and submit the return as soon as possible and any determination would then be amended. I would therefore request that this unjust penalty be quashed.

Discussion and decision

4. In an appeal against the imposition of a penalty the onus of proof is first upon HMRC to satisfy the Tribunal that the penalty is, on the face of it, properly imposed. If we are so satisfied, the onus then switches to Mr McCabe to demonstrate either that he has a reasonable excuse for his delay. The standard of proof in both cases is the civil standard of the balance of probabilities.

Are the requirements of Paragraph 6 of Schedule 55 met?

5. The relevant parts of Paragraphs 1 and 6 of Schedule 55 provide as follows:

> **1.** (1) A penalty is payable by a person ("P") where P fails to make or deliver a return … on or before the filing date.
>
> …
>
> **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.
>
> **6.** (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

…

6. (4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of–

(a) the relevant percentage of any liability to tax which would have been shown in the return in question, and

(b) £300.

6. (4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is–

(a) for the withholding of category 1 information, 70%,

(b) for the withholding of category 2 information, 105%, and

(c) for the withholding of category 3 information, 140%.

…

6. (6) Paragraph 6A explains the 3 categories of information.

6A. (1) Information is category 1 information if–

(a) it involves a domestic matter, or

(b) it involves an offshore matter and–

(i) the territory in question is a category 1 territory, or

(ii) it is information which would enable or assist HMRC to assess P's liability to a tax other than income tax or capital gains tax.

…

6. The parties are not in dispute that Mr McCabe's return was received on 6 June 2017. The "penalty date" is the day after the filing deadline. Mr McCabe filed a paper return and so the filing deadline was 31 October 2013. Therefore, the penalty date was 1 November 2013. We are satisfied that Mr McCabe's return was still outstanding after the end of the period of 12 months from 1 November 2013.

7. The first two penalties which were issued under Paragraph 6(1) (the penalties of £300 and £2,965) were issued solely on the basis that Mr McCabe's return was still outstanding after 12 months. For HMRC to be entitled to issue a penalty under Paragraph 6(2), they must additionally demonstrate that, by failing to file his return, Mr McCabe deliberately withheld information which would enable or assist HMRC to assess Mr McCabe's liability to tax.

Did Mr McCabe withhold information which would enable or assist HMRC to assess Mr McCabe's liability to tax?

8. HMRC submitted that by failing to file his return, Mr McCabe had withheld information which would enable or assist them to assess his liability to tax. Mr Wilkinson pointed to the dearth of information they held about Mr McCabe's tax affairs prior to receipt of his 2012/13 tax return and noted that they had been obliged

to issue Revenue Determinations using standard uplifts in the absence of any information from Mr McCabe or other sources.

9. Mr McCabe sought to persuade us that the withholding of information could only mean the withholding of information which would result in HMRC being able to assess for a larger amount than they had already assessed (a submission he developed further when making his submissions about the calculation of the penalty, addressed below). Mr McCabe submitted that HMRC's revenue stream was unaffected by his failure to file his tax return on time as he had paid more tax under the Revenue Determination than ultimately was due.

10. We consider that the obligation upon HMRC is to ascertain and collect the correct amount of tax. We consider that Mr McCabe's return for 2012/13 did contain information which would enable or assist HMRC correctly to assess Mr McCabe's liability to tax, as demonstrated by the fact that the tax due under HMRC's Revenue Determination for 2012/13 was considerably higher in the absence of the information in the return. We conclude that, by failing to file his return, Mr McCabe withheld information which would enable or assist HMRC to assess Mr McCabe's liability to tax.

Was Mr McCabe's withholding of information deliberate?

11. HMRC argued that Mr McCabe's withholding was deliberate, and submitted that Mr McCabe was familiar with the requirement to submit tax returns. HMRC relied upon *Clynes v HMRC* [2016] UKFTT 369 in which the Tribunal had considered what was meant by "deliberate". Mr Wilkinson relied upon paragraphs 82, 83, 86 and 102 of *Clynes* in submitting that Mr McCabe's behaviour in not filing his tax return amounted to deliberate behaviour.

12. Mr McCabe submitted that his behaviour could not be considered to be deliberate given that considerably more tax had been paid under the Revenue Determination than under his tax return.

13. We agree with the Tribunal in *Clynes* that "deliberate" involves an element of conscious or purposeful choice. We also agree that this choice does not have to be accompanied by the intention not to pay tax. A deliberate choice may be well motivated but, with hindsight, be revealed to have been an unwise choice in the circumstances.

14. Looking at this case, we have concluded that, whether or not it was a conscious choice initially, from the time that the first penalty determination was received in February 2014 and Mr McCabe either was, or became, aware that his return for 2012/13 was outstanding, Mr McCabe made a conscious choice not to file that return. Upon the receipt of each penalty determination and penalty reminder, and upon receipt of the Revenue Determination, Mr McCabe consolidated that choice. The fact that Mr McCabe knew he was paying considerably more under the Revenue Determination than he would pay if he filed his return, and yet he still chose not to file his tax return, reinforces our conclusion that Mr McCabe's failure to file a return was as a result of a conscious and purposeful decision. Mr McCabe knew the tax consequences of his choice, and he believed (incorrectly as it turned out) that he knew

the penalty consequences of his choice. Mr McCabe was willing to accept those consequences in order not to file a tax return. We agree with HMRC that Mr McCabe's decision not to file a tax return for 2012/13 was deliberate.

15. We conclude that, in not filing his return, Mr McCabe deliberately withheld information which would enable or assist HMRC to assess Mr McCabe's liability to tax. We are satisfied that HMRC have demonstrated that they have met the requirements of Section 6(2) of Schedule 55.

Calculation of the penalty due

16. Mr McCabe made three points with regard to the calculation of the penalty.

17. Mr McCabe's first point was that, because the amount of tax due under his return for 2012/13 was £20,000 greater than the tax due under his return for 2009/10 (the last return he had filed prior to June 2017), HMRC should have treated the tax lost as being £20,000. Therefore, the relevant percentage should be applied to that £20,000 difference. We asked Mr McCabe how he was suggesting we should understand the wording of Paragraph 6(4) (in particular the phrase: "… the relevant percentage of any liability to tax which would have been shown in the return in question…"). Mr McCabe suggested that we should interpret this phrase as meaning the difference between the tax due under his 2012/13 return and the tax due under his 2009/10 return.

18. We do not consider Mr McCabe's interpretation of Paragraph 6(4) is correct. There is no justification for stretching the language of Paragraph 6(4) so far. We consider that the plain and obvious meaning in Paragraph 6(4) is that we should consider the liability to tax which would have been shown in the return. That can only mean the return which has not been filed on time, in this case Mr McCabe's return for 2012/13. The tax due under Mr McCabe's 2012/13 tax return was £65,306. It follows that the penalty is calculated as a percentage of £65,306 and not of the £20,000.

19. Mr McCabe's second point on the calculation of the penalty was that any penalty imposed should be reduced by all the other penalties which had been issued to him, whether they were for late filing of his 2012/13 tax return or for late payment of the tax due for that year. Mr McCabe was unable to direct us to any part of Schedule 55 which would enable us to grant this reduction, but argued that all the penalties had been issued for "the same thing". Mr McCabe submitted that if the penalty of £25,922 was not reduced by the amount of all the other penalties then it would be a breach of natural justice. In HMRC's Reply, Mr Wilkinson directed us to Paragraph 17 of Schedule 55. Sub-paragraph 17(1) required that a penalty issued under any paragraph of Schedule 55 must be reduced by the amount of "any other penalty" incurred; however, sub-paragraph 17(2) specified that "any other penalty" did not include any penalty issued under any other paragraph of Schedule 55 or any penalty issued under Schedule 56.

20. We have found that the penalty under appeal was issued under Paragraph 6 of Schedule 55 and that it has already been reduced by the amount of the earlier penalties issued under Paragraph 6 to Mr McCabe. The other penalties incurred by

Mr McCabe were issued either under other paragraphs of Schedule 55 or under Schedule 56. We appreciate that Mr McCabe views his late filing and his late payment to be the same thing but we consider the penalties which HMRC issued to have been issued for distinct and different defaults. It is clear from the structure of Schedule 55 that it was Parliament's intention that separate penalties be issued for several different defaults, with increasingly large penalties being incurred as the delay in filing increased. We do not consider it a breach of natural justice for a taxpayer who has filed his tax return late and also paid his tax late, to be penalised for both of these defaults.

21. Finally, with regard to the calculation of the penalty, Mr McCabe argued that he should be given a greater reduction for his co-operation and, because he had paid the tax due under the Revenue Determination, it was incorrect of HMRC to consider that his default was more than three years. Mr McCabe argued that his tax was paid only two years late.

22. We agree that Mr McCabe paid the tax due under the Revenue Determination and that this was paid less than three years after the statutory deadline for the payment of tax due for 2012/13. However, late filing is distinct from late payment. The penalty under appeal was issued to Mr McCabe in respect of his late filing. Mr McCabe filed his tax return for 2012/13 more than three years after the filing deadline and we consider that HMRC were entitled to follow their usual policy in not reducing the relevant percentage to less than 45% when a return is filed more than three years late. The statutory penalty range is 35% to 70%. Mr McCabe's penalty was calculated at 44.8%. While we have jurisdiction to vary the amount of the penalty, there is no evidence before us to persuade us that it would be appropriate for a lower percentage penalty to be applied in the circumstances of Mr McCabe.

23. We conclude that the penalty under appeal has been correctly calculated.

24. Subject to Mr McCabe establishing a reasonable excuse for his delay, we consider the penalty of £25,922 was properly imposed.

Does Mr McCabe have a reasonable excuse for his filing delay?

25. Paragraph 23 of Schedule 55 provides that liability to a penalty imposed under Schedule 55 does not arise if there is a reasonable excuse. "Reasonable excuse" is not defined but insufficiency of funds and reliance on a third party are specifically excluded from being a reasonable excuse.

Lack of awareness of the consequences of late filing

26. Mr McCabe referred us to paragraph 71 of *Perrin v HMRC* [2018] UKUT 156, where the Upper Tribunal had explained that the experience and knowledge of the particular taxpayer should be taken into account. Mr McCabe submitted that the possibility of a 45% penalty as a consequence of late filing was outside his knowledge and experience. Mr McCabe submitted, until he had received Mrs Adamson's 27 April letter with enclosed penalty factsheet, he had assumed that the penalties already

issued to him were the extent of the penalties for which he could be liable. We accept that Mr McCabe was telling the truth when he told us that he did not know that HMRC had the capacity to issue such severe penalties and that it was receipt of Mrs Adamson's April 2017 letter which brought filing his tax return to the forefront of his mind.

27. In *Perrin* the Upper Tribunal had concluded that for an honestly held belief to constitute a reasonable excuse it must also be objectively reasonable for that belief to be held. Mr McCabe honestly believed that he would not be issued with a penalty which was as large as 45% of the tax due, but we do not consider that a belief as to the consequences of a default can ever be a reasonable excuse for that default. What Mr McCabe is essentially arguing is that he knew there would be some financial consequences to his failure to file but he acted only when those consequences went beyond a level that he was prepared to suffer. Given that penalties are issued to deter any default, we do not consider the unexpected (to Mr McCabe) size of the penalties can constitute a reasonable excuse.

28. We have also borne in mind the recent comments of the Tribunal in *Hesketh v HMRC* [2017] UKFTT 871 about whether ignorance of an obligation to file could excuse late filing. Judge Mosedale held that Parliament intended all of its laws to be complied with, and that ignorance of the law was not an excuse. We agree with those conclusions and consider that if ignorance of the obligation cannot be a reasonable excuse, then awareness of the obligation but ignorance of the consequences also cannot be a reasonable excuse.

29. Mr McCabe accepted that there were no other matters which would give him a reasonable excuse, as it was pressure of work which had caused him to pay insufficient regard to his tax return obligations.

30. We conclude that Mr McCabe does not have a reasonable excuse for the late filing of his return for 2012/13.

Special reduction

31. Even when a taxpayer is unable to establish that he has a reasonable excuse and he remains liable for one or more penalties, HMRC have the discretion to reduce those penalties if they consider that the circumstances are such that reduction would be appropriate. In this case HMRC have declined to exercise that discretion.

32. Paragraph 22 of Schedule 55 provides that we are only able to interfere with HMRC's decision on special reduction if we consider that their decision was flawed (in the sense understood in a claim for judicial review). That is a high test and we do not consider that HMRC's decision in this case (set out in their Statement of Case) is flawed. Therefore, we have no power to interfere with HMRC's decision not to reduce the penalties imposed upon Mr McCabe.

33. We should add, that even if we did have the power to make our own decision in respect of special reduction, the only special circumstance which Mr McCabe relied upon was his lack of knowledge that such serious penalties could be imposed. We have explained above why we do not consider that ignorance of the consequences for

failing to comply with the law can provide Mr McCabe with a reasonable excuse for his late filing. Similarly, we conclude that ignorance of the severity of the Schedule 55 penalty regime does not constitute a special circumstance which would make it right for us to reduce the penalty which has been imposed.

Conclusion

34. We have looked carefully at the circumstances of this case. We agree with HMRC that the requirements of Paragraph 6(2) are met, and we conclude that Mr McCabe has not provided a reasonable excuse for his delay in filing his tax return. Therefore, for the reasons set out above, this appeal is dismissed. The penalty imposed is confirmed in the sum of £25,922.

35. We informed the parties of our decision at the conclusion of the hearing, and informed them that we would issue a written decision. A summary decision was released to the parties on 27 March 2019. On 3 April 2019, within the 28 days permitted under Rule 35(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, the Respondents applied for a full decision.

36. 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.

JANE BAILEY
TRIBUNAL JUDGE

RELEASE DATE: 24 APRIL 2019