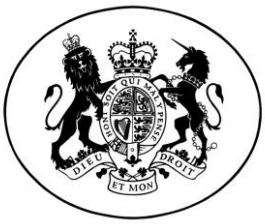

TC07231

Appeal number: TC/2018/06168

Income tax - fixed and daily penalties for late filing of self-assessment returns for three years - application for permission to appeal out of time - Appellant had undergone a Solicitors Regulation Authority disciplinary hearing and a criminal investigation by HMRC leading to suspension from practising and acute personal and professional difficulties - whether reasonable excuse continuing throughout default period - no - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

RAJOB ALI **Appellant**

- and -

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

TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER JOHN WILSON

Sitting in public at Bradford Tribunal Service, Phoenix House, Rushton Avenue, Bradford on 10 December 2018

The Appellant in person

Ms Rose Grainger, Officer of HMRC, for the Respondents

DECISION

Introduction

1. This is an appeal by Rajob Ali ('the appellant') against penalties totalling £4,500 imposed by the respondents ('HMRC') under Paragraphs 3,4,5 and 6 of Schedule 55 Finance Act 2009 for the late filing by the appellant of his self-assessment ('SA') tax returns for the tax years ending 5 April 2013, 2014 and 2015 ('the default years').

2. The appeal was made outside the 30 day time limit within which penalties must be appealed. HMRC object to the late appeal. The appellant therefore applies for permission to appeal out of time.

Background

3. The appellant's returns, if filed electronically, were due no later than 31 January in the year following each tax year.

4. The appellant's returns were received on 29 November 2017. The 2013 return was therefore three and a half years late. The 2014 return over two and a half years late and the 2015 return over one and a half years late.

5. The penalties for late filing of a return can be summarised as follows:

   i. A penalty of £100 is imposed under Paragraph 3 of Schedule 55 Finance Act ('FA') 2009 for the late filing of the Individual Tax Return.

   ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties of £10 per day up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA 2009.

   iii. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 5 of Schedule 55 FA 2009.

   iv. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty £300 is imposed under Paragraph 6 of Schedule 55 FA 2009.

6. Penalties of £100, £900, £300 and £300 were imposed for each of years 2012-13 and 2013-14 under paragraphs 3 to 6 of Schedule 55. Penalties of £100, £900 and £300 were imposed for the year 2014-15 under paragraphs 3-5 of Schedule 55.

7. The appellant's appeal is against all the penalties.

Filing date and Penalty date

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

9. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.

Reasonable excuse

10. Paragraph 23 of Schedule 55 FA 2009, provides that a penalty does not arise in relation to a failure to make a return if the person satisfies HMRC (or on appeal, a Tribunal) that they had a reasonable excuse for the failure and they put right the failure without unreasonable delay after the excuse ceased.

11. The law specifies two situations that are not reasonable excuse:

> (a) an insufficiency of funds, unless attributable to events outside the appellant's control, and
>
> (b) reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

12. There is no statutory definition of "reasonable excuse". Whether or not a person had a reasonable excuse is an objective test and "is a matter to be considered in the light of all the circumstances of the particular case" (*Rowland V HMRC* (2006) STC (SCD) 536 at paragraph 18).

13. HMRC's view is that the actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends upon the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard.

14. If there is a reasonable excuse it must exist throughout the failure period.

15. The notice to file for the default years was issued to the appellant on 6 April for each tax year. The filing date was 31 October for a non-electronic return or 31 January in the following year for an electronic return.

16. Section 31A TMA 1970 requires that appeals against a penalty are made within 30 days.

17. On 28 May 2018, the appellant submitted a late appeal to HMRC against all the penalties.

18. On 16 August 2018 HMRC wrote to the appellant rejecting the late appeal because it was out of time.

19. On 13 September 2018 the appellant lodged an out of time appeal with the Tribunal. The grounds of appeal were that he was unable to file his returns as all the information he needed to file the returns had been confiscated by HMRC. His letter of appeal to the Tribunal (paraphrased and so far as relevant to the appeal) states:

> "By way of background, HMRC are pursuing a debt relating to late filing penalties and interest in relation to self-assessment dating back from 2013 to 2015.
>
> HMRC instigated a criminal investigation against me (with others) in November 2013 for tax evasion and money laundering. I and my wife were arrested, questioned and bailed until September 2014. Some of my assets were seized; laptop, 2 mobile phones, my home PC, my work PC and all my papers and my wife's jewellery. In addition, papers were seized from my accountant and a liquidator that I had appointed to deal with the closure of solicitor's practice which I was involved in. Around the same time, HMRC obtained a restraining order against me (using inaccurate information) and froze my assets. This had the following consequences:
>
> - my main home was subject to a repossession order (I am still in c £4K arrears)
> - my buy to let property was subjected to a possession order
> - I was in arrears for council tax (I am still paying those arrears)
> - A county court judgement was obtained against me by Yorkshire Water
> - My car was repossessed (debt of c.E12K is still outstanding)
> - Several other utility providers were in arrears
> - I was not able to obtain representation at the Solicitors Disciplinary Tribunal to defend myself and consequently was suspended as a solicitor for 3 years (when I would have been exonerated had I had representation).
> - I had set up a new business in October 2013 but was unable to function without any money or IT equipment or phones
>
> As a result I was put under immense pressure both emotionally and financially. This went on till September 2014. Bizarrely, HMRC decided to drop the charges against me after they had effectively ruined my livelihood in the space of a year.
>
> Nevertheless, I tried to get my life back together. By then, all my funds had depleted and I was effectively penniless and had to start from scratch again.
>
> Then came a COP9 investigation in around May 2015. This had been ongoing for the last 3 years and just this month has been concluded with the decision by HMRC not to take any further action.

So effectively, since November 2013, HMRC have put a halt in my life preventing me from working (I cannot realistically get a meaningful job whilst I was a suspended solicitor and one who had a COP9 investigation going on against him).

HMRC had effectively pursued criminal and civil actions against me spanning a period of nearly 5 years and had dropped all charges. In the process they had ruined my livelihood and life.

This is the basic reason why I had been unable to deal with my tax affairs in a proper manner. I would suggest that I have got good grounds to pursue HMRC for malicious prosecution for both of these investigations.

Also, given that HMRC have ruined my life over the last 5 years, I actually do not have any assets or any means to pay any debt in any event. You can either make me bankrupt and make the situation worse or continue to try and pursue a debt that I do not have any means to pay.

Notwithstanding the above, I would ask HMRC to waive all the late filing penalties together with interest, so that I can basically start rebuilding my life and can start afresh.

You will note that I have kept up to date with my self-assessment over the last 2 years and have submitted these on time. I would hope that that goes someway in demonstrating that I am getting my tax affairs in order and hopefully will continue to do so."

20. At the appeal hearing the appellant reiterated much of the above, saying that his personal papers and other confiscated items were not returned to him until May 2016. He had no information and tax assessments were all "up in the air" during the COP 9 investigation which was not closed until May 2018. He had no papers. Even the papers held by the liquidator of the solicitor's practice had been seized. He says that he wrote to HMRC after receiving the first penalty, but waited three months before he received a reply and there was a similar pattern with later correspondence. He always thought that HMRC would drop the penalties. He asserts that these circumstances provide a reasonable excuse for the late filing of his returns.

21. The appellant accepted when giving evidence that he could perhaps have filed a provisional return, but said that given all his difficulties that "was the last thing on my mind".

Relevant statutory provisions

Taxes Management Act 1970

22. Section 8 - Personal return- provides as follows:

> (1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year,] he may be required by a notice given to him by an officer of the Board-

a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may, reasonably be required in pursuance of the notice, and

b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

(1A) The day referred to in subsection (1) above is-

(a) the 31st January next following the year of assessment, or

(b) where the notice under this section is given after the 31st October next following the year, the last [day of the period of three months beginning with the day on which the notice is given]

(1AA) For the purposes of subsection (1) above-

(a) the amounts in which a person is chargeable to income tax and capital gains tax are net amounts, that is to say, amounts which take into account any relief or allowance a claim for which is included in the return; and

(b) the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate amount of any income tax deducted at source and any tax credits to which [section 397(1) [or [397A(1)] of ITTOIA 2005] applies.]

(1B) In the case of a person who carries on a trade, profession, or business in partnership with one or more other persons, a return under this section shall include each amount which, in any relevant statement, is stated to be equal to his share of any income, [loss, tax, credit] or charge for the period in respect of which the statement is made.

(1C) In subsection (1B) above "relevant statement" means a statement which, as respects the partnership, falls to be made under section 12AB of this Act for a period which includes, or includes any part of, the year of assessment or its basis period.]

(1D) A return under this section for a year of assessment (Year 1) must be delivered-

(a) in the case of a non-electronic return, on or before 31st October in Year 2, and

(b) in the case of an electronic return, on or before 31st January in Year 2.

(1E) But subsection (1D) is subject to the following two exceptions.

(1F) Exception 1 is that if a notice in respect of Year 1 is given after 31st July in Year 2 (but on or before 31st October), a return must be delivered-

(a) during the period of 3 months beginning with the date of the notice (for a non-electronic return), or

(b) on or before 31st January (for an electronic return).

(1G) Exception 2 is that if a notice in respect of Year 1 is given after 31st October in Year 2, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice.

(1H) The Commissioners-

(a) shall prescribe what constitutes an electronic return, and

(b) may make different provision for different cases or circumstances.

(2) Every return under this section shall include a declaration by the person making the return to the effect that the return is to the best of his knowledge correct and complete.

(3) A notice under this section may require different information, accounts and statements for different periods or in relation to different descriptions of source of income.

(4) Notices under this section may require different information, accounts and statements in relation to different descriptions of person.

(4A)Subsection (4B) applies if a notice under this section is given to a person within section 8ZA of this Act (certain persons employed etc. by person not resident in United Kingdom who perform their duties for UK clients).

(4B)The notice may require a return of the person's income to include particulars of any general earnings (see section 7(3) of ITEPA 2003) paid to the person.

(5) In this section and sections 8A, 9 and 12AA of this Act, any reference to income tax deducted at source is a reference to income tax deducted or treated as deducted from any income or treated as paid on any income.

Section 31A; provides that notice of appeal must be given within 30 days after the specified date.

Appeals: notice of appeal

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

(a) in writing,
(b) within 30 days after the specified date,
(c) to the relevant officer of the board.

Schedule 55 Finance Act 2009:

23. The penalties at issue in this appeal are imposed by Schedule 55 FA 2009.

Paragraph 1 (4) states that the 'penalty date' is the date after the 'filing date'.

Paragraph 3 of Schedule 55 imposes a fixed £100 penalty if a self-assessment return is submitted late.

Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

(1) P is liable to a penalty under this paragraph if (and only if)-

(a) P's failure continues after the end of the period of 3 months beginning with the penalty date,
(b) HMRC decide that such a penalty should be payable, and
(c) HMRC give notice to P specifying the date from which the penalty is payable.

(2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

(3) The date specified in the notice under sub-paragraph (1)(c)-
(a) may be earlier than the date on which the notice is given, but
(b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of-
(a) 5% of any liability to tax which would have been shown in the return in question, and
(b) £300.

Paragraph 23 of Schedule 55 contains a defence of "reasonable excuse" as follows:

(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)-
(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of "special circumstances" as follows:

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include-

(a) ability to pay, or
(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to-
(a) staying a penalty, and
(b) agreeing a compromise in relation to proceedings for a penalty.

Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal's jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of "special circumstances" as set out below:

(1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
(2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may-
(a) affirm HMRC's decision, or
(b) substitute for HMRC's decision another decision that HMRC had power to make.
(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16-
(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.
(4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

Civil Procedure Rules

24. *[The CPR's are not binding on the Tribunal but reference to the rules and how they have been amended, is necessary to understand the changes in the approach to applications for relief from sanction]*

The rule before the Jackson reforms came into force on 1 April 2013 set out the circumstances that the court must take into consideration on any such application, as follows:

Rule 3.9 of the CPRs in its original form reads as below:

"(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including -
(a) the interests of the administration of justice;
(b) whether the application for relief has been made promptly; (c) whether the failure to comply was intentional;
(d) whether there is a good explanation for the failure;
(e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre- action protocol;

> (f) whether the failure to comply was caused by the party or his legal representative;
> (g) whether the trial date or the likely trial date can still be met if relief is granted;
> (h) the effect which the failure to comply had on each party; and
> (i) the effect which the granting of relief would have on each party."

With effect from 1 April 2013 Rule 3.9 and factors (a) to (i) were removed by the Civil Procedure (Amendment) Rules 2013 with a material change to its substance

CPR 3.9

> "(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
> (b) to enforce compliance with rules, practice directions and orders."

Case Law Authorities

25. The factors to be taken into account by the Tribunal when considering whether to grant permission to bring a late appeal are analogous to those taken into account under the Civil Procedure Rules ('CPR'). A number of recent decisions have clarified the approach to be applied in applications for relief from sanction under CPR r. 3.9. The Court of Appeal heard three conjoined appeals: *Denton v TH White Ltd, Decadent Vapours Ltd v Bevan and Utilise TDS Ltd v Davies* [2014] EWCA Civ 906. The first was an appeal against the grant of relief. The second and third were appeals against its refusal.

26. The Court of Appeal was unanimous in allowing all three appeals and took the opportunity to clarify the approach that had been advanced in *Mitchell v News Group Newspapers Ltd* [2014] 1 WLR 795 A three-stage approach is now required to applications for relief.

27. The Court took the opportunity to clarify the principles applicable to such applications as follows (at [24]):

> "A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]"."

28. In respect of the "third stage" identified above, the Court said (at [32]) that the two factors identified at (a) and (b) in Rule 3.9(1) "are of particular importance and

should be given particular weight at the third stage when all the circumstances of the case are considered".

29. The first stage is a departure from the test of 'triviality' referred to in *Mitchell,* which the Court concluded had caused difficulties in its application. The Court accepted that in many circumstances the most useful measure would be to determine whether the breach imperilled future hearing dates or otherwise disrupted the conduct of litigation generally. If the Court concludes that the breach was neither serious nor significant, relief will usually be granted and it is unnecessary to devote time on stages 2 and 3. At stage 1, only the breach that resulted in the sanction should be considered. Other breaches by the defaulting party fall to be considered at stage 3.

30. The Court of Appeal was divided on the issue of how much importance should be placed on (a) and (b) of Rule 3.9. The majority view was that these two factors are of particular importance and should be given particular weight.

31. The other factors that are relevant in stage 3 will vary from case to case. The promptness of the application is a relevant circumstance to be weighed in the balance. Other breaches by the defaulting party may be considered at this stage.

32. The majority expressed concern that some judges were adopting an unreasonable approach to CPR r. 3.9. In particular, they were approaching applications for relief on the basis that, if the breach was not trivial and there was no good reason for it, the application must fail. This had led to decisions which were manifestly unjust and disproportionate.

33. The court also noted that litigation cannot be conducted efficiently and at proportionate cost without cooperation between the parties and their lawyers. This applies to litigants in person as much as to represented parties. CPR r. 1.3 specifically requires the parties to assist the court in furthering the overriding objective.

34. With this in mind, the court expressed the view that parties should not act opportunistically or unreasonably in opposing applications for relief. The court will now expect parties to agree applications for relief where (a) the breach is neither serious nor significant, (b) there is a good reason for the breach, or (c) it is otherwise obvious that relief should be granted. The court will also expect parties to agree reasonable extensions of time of up to 28 days under the new CPR 3.8(4), which states:

> "… unless the court orders otherwise, the time for doing the act in question may be extended by prior written agreement of the parties for up to a maximum of 28 days, provided always that any such extension does not put at risk any hearing date."

35. The Court of Appeal was critical of the 'satellite litigation' and uncooperative attitude that the *Mitchell* decision had fostered. In its view, a contested application for relief should be very much an exceptional case. This is because (a) compliance should be the norm, and (b) parties should work together to make sure that, in all but the most serious cases, satellite litigation is avoided even when a breach has occurred.

36. The Supreme Court in *BPP Holdings Limited v Revenue & Customs Commissioners* [2017] UKSC 55, [2017] 1WLR 2945 implicitly endorsed the approach set out in *Denton*. The case was concerned with an application for the lifting of a bar on HMRC's further involvement in the proceedings for failure to comply with an "unless" order of the FtT.

37. In *Martland v Revenue and Customs Commissioners* [2018] UKUT 178 (TCC) the Upper Tribunal also endorsed the approach in *Denton* applying the three stage approach [at 43 to 45]

> "43. ……Whether considering an application which is made directly under rule 3.9 (or under the FtT Rules, which the Supreme Court in BPP clearly considered analogous) or an application to notify an appeal to the FtT outside the statutory time limit, it is clear that the judge will be exercising a judicial discretion. The consequences of the judge's decision in agreeing (or refusing) to admit a late appeal are often no different in practical terms from the consequences of allowing (or refusing) to grant relief from sanctions - especially where the sanction in question is the striking out of an appeal (or, as in BPP, the barring of a party from further participation in it). The clear message emerging from the cases - particularised in Denton and similar cases and implicitly endorsed in BPP - is that in exercising judicial discretions generally, particular importance is to be given to the need for "litigation to be conducted efficiently and at proportionate cost", and "to enforce compliance with rules, practice directions and orders". We see no reason why the principles embodied in this message should not apply to applications to admit late appeals just as much as to applications for relief from sanctions, though of course this does not detract from the general injunction which continues to appear in CPR rule 3.9 to "consider all the circumstances of the case"……..."
>
> 44. It must be remembered that the starting point is that permission should not be granted unless the FtT is satisfied on balance that it should be. When considering "all the circumstances of the case". This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.
>
> 45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FtT's deliberations artificially by reference to those factors. The FtT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist."

38. In doing so, the FtT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice - there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal.

HMRC's case

39. The appellant has not submitted any of the appeals within the 30-day time limit. The allowing of an extension of time should be the exception rather than the norm.

40. The application for permission to bring a late appeal is made pursuant to rule 20(4)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules").

41. Rule 20(1) of the Tribunal Rules 2009 (SI2009/273) provides that a notice of appeal must be sent or delivered to the Tribunal within the time limit imposed by an enactment.

42. HMRC submit that the burden of proof in this matter lies with the appellant to demonstrate why the Tribunal should exercise its discretion to permit relief from sanctions or to admit an appeal that is brought late. HMRC objects to the application and contends that the Tribunal should not exercise its discretion to allow the appellant's application to appeal out of time. There has been a lengthy delay; the appeals against the penalties are up to four years out of time.

43. HMRC therefore submit that the appellant's delay cannot be considered anything but serious and significant.

44. Late filing penalties for the default years were due in accordance with Schedule 55 FA 2009, even if the appellant had no tax to pay.

45. Where a return is filed after the relevant deadline a penalty is charged. The later a return is received, the more penalties are charged. This information and warnings of penalties were clearly shown on the Notice to file issued to the Appellant for each of the default years.

46. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of the appellant to ensure his tax returns were filed by the legislative date and payment of any tax due made on time.

47. Self-assessment places a greater degree of responsibility on customers for their own tax affairs. The tax guidance and HMRC's website give plenty of warning about filing and payment deadlines. It is the customer's responsibility to make sure they meet the deadlines.

48. The Notice to file issued to the appellant in each default year included generic information relating to the penalty regime in order to encourage customers to file their return on time.

49. HMRC issued to the appellant a late filing fixed penalty notice on 18 February 2014 in respect of his late 2012-13 return, informing him that he had been fined because the tax return had not been received and to submit his tax return to prevent

further penalties being charged. Further penalty notices followed in August 2014 and again in February and August in the following years.

50. In each year HMRC issued 30 day daily penalty reminder letters to the appellant and these would have informed him that his tax return was still outstanding and to send it to HMRC to prevent further penalties.

51. Notices of reminder and Penalty Notices were issued for all the default years.

52. The amount of the penalties charged is set within the legislation. HMRC has no discretion over the amount charged and must act in accordance with the legislation. By not applying legislation and as such not to have imposed the penalty would mean that HMRC was not adhering to its own legal obligations.

Special Reduction

53. Paragraph 16(1) of Schedule 55 allows HMRC to reduce a penalty if they think it is right because of special circumstances. "Special circumstances" is undefined save that, under paragraph 16(2), it does not include ability to pay, or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

54. In other contexts "special" has been held to mean 'exceptional, abnormal or unusual' (*Crabtree v Hinchcliffe* [1971] 3 All ER 967), or 'something out of the ordinary run of events' (*Clarks of Hove Ltd v Bakers' Union* [1979] 1 All ER 152). The special circumstances must also apply to the particular individual and not be general circumstances that apply to many taxpayers by virtue of the penalty legislation (*David Collis* [2011] UKFTT 588 (TC), paragraph 40).

55. HMRC have considered the appellant's circumstances, these are not special circumstances which would merit a reduction of the penalties below the statutory amount. There was no reason why he could not have filed provisional returns pending the return of his personal documentation.

56. Where a person appeals against the amount of a penalty, paragraph 22(2) and (3) of Schedule 55, FA 2009 provide the Tribunal with the power to substitute HMRC's decision with another decision that HMRC had the power to make. The Tribunal may rely on paragraph 16 (Special Reduction) but only if they think HMRC's decision was 'flawed when considered in the light of the principles applicable in proceedings for judicial review'.

57. HMRC's decision not to reduce the penalties under paragraph 16 was not flawed. There are no special circumstances which would require the tribunal to reduce the penalties.

Conclusion

58. The appellant's appeal to the Tribunal is inordinately out of time.

59. As HMRC say, the Tribunal should grant permission to appeal out of time, only exceptionally and based on compelling reasons showing why an appeal could not have been made in time, or at least within a reasonable time after the 30 day time limit.

60. We accept that the appellant had serious professional problems. We also accept that the circumstances he describes must have been very distressing.

61. However, in considering whether to grant permission to appeal out of time a number of factors must be taken into consideration including the length of the delay in bringing the late appeal, the reasons why the delay occurred and so far as we are able, the merits of the substantive appeal.

62. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period or periods of the default. There is no definition in law of reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person's control, which prevents him or her from complying with an obligation which otherwise they would have complied with.

63. Is there a good reason for the delay? The appellant received numerous penalty assessments between February 2014 and February 2016. In addition, he would have received periodic statements showing each penalty as and when it was issued. He knew there was a time limit within which he had to appeal.

64. The appellant has not produced any evidence to show why he was unable to appeal the penalties as and when they arose. He has not offered any reason why he could not have sought help to reconstitute his financial affairs and file provisional returns or submit an appeal sooner than 28 May 2018, more than four years after the first default year penalty.

65. The appellant was generally able to manage his other business affairs throughout the default years.

66. HMRC sent numerous late filing penalties to the appellant, which should have acted as a prompt to him that his returns had not been received.

67. The appellant would have been aware of the filing dates. He has not produced any evidence to show why he could not have appointed an agent to help him. The delays appear to be entirely attributable to the appellant's belief that HMRC would eventually waive the penalties.

68. We take into account and accept HMRC's submissions as set out above with regard to the lateness of the appeals, the grounds of the appeal, and special circumstances.

69. The late filing penalties have been charged in accordance with legislation and no reasonable excuse has been shown for the appellant's failure to file his tax returns on time.

70. We find that there are no special circumstances which would allow the penalty to be reduced under Special Reduction regulations.

71. Having taken into account the length of delay in bringing the appeal out of time and the merits of the appeal, the application to appeal out of time is refused and the late filing penalties are confirmed.

72. 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.

MICHAEL CONNELL

TRIBUNAL JUDGE
RELEASE DATE: 25 June 2019