TC03994

Appeal number: TC/2013/04764

INCOME TAX – penalties and surcharges for late payment – penalties for late filing – interaction with inheritance tax IHT200 form – outside the time limit to amend – provisional returns not filed – whether actions of advisers provided reasonable excuse – no – whether reliance on advisers provided reasonable excuse – no – whether special circumstances – no – appeals dismissed and penalties upheld

FIRST-TIER TRIBUNAL
TAX CHAMBER

THE EXECUTORS OF THE ESTATE OF MR SIMON VERDEGAAL — **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE REDSTON
MR DAVID E WILLIAMS CTA (Fellow)

Sitting in public at the Tribunal Centre, Bedford Square, London on 7 August 2014

Mr Kevin Edwards, of MHA MacIntyre Hudson, for the Appellants

Mrs N Stove, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is the appeal by the executors of the estate of Mr Simon Verdegaal ("Mr Veredegaal") against surcharges and penalties for late payment of self-assessment ("SA") tax liabilities and penalties for late filing of SA returns.

2. The total sum appealed was £24,061.62. The surcharges and penalties related to three tax years, 2008-09, 2009-10 and 2010-11 as set out below.

3. In relation to 2008-09:

   (1) First penalty for late filing, of £100

   (2) Second penalty for late filing, of £31.

4. In relation to 2009-10:

   (1) First and second penalties for late filing, each of £100.

   (2) First and second surcharges for late payment, each of £1,119.81.

5. In relation to 2010-11

   (1) Late filing penalty of £100.

   (2) Daily penalty for late filing of £900.

   (3) Six month late filing penalty of £300.

   (4) Second six month late filing penalty of £9,035.

   (5) 30 day late payment penalty of £9,335.

   (6) Six month late payment penalty of £1,821.

6. The Tribunal dismissed the executors' appeals other than in relation to the £900 daily penalties; the appeal against those penalties has been adjourned at the request of the parties until after publication of the Upper Tribunal's decision in *R&C Commrs v Keith Donaldson* ("*Donaldson*"), which was heard in July 2014 but at the date of this hearing had not yet been published. The parties agreed that the Tribunal should then make a decision on the daily penalties on the basis of the findings of fact made in this hearing, unless we consider it necessary to ask for further submissions on the law once the *Donaldson* decision has been published.

Issues in the case

7. Mr Edwards accepted on behalf of the executors that the payments and filing which triggered the surcharges and penalties had all been late. There was also no issue with the delivery of the notices, the calculation of the amounts charged or with the timing of the executors' appeals.

8. The single issue in the case was whether the executors had a reasonable excuse for the late filing of one or more of the SA returns and/or for the late payment of the tax due following submission of those returns.

The legislation

9. Different legislation applies to late filing and late payment, and the law changed with effect from 5 April 2010, so four sets of statutory provisions need to be considered. The legislation so far as relevant to this appeal can be found in the Appendix. However, for ease of reference, we have also set out in this part of the decision notice, the provisions relating to reasonable excuse.

Reasonable excuse in 2008-09 and 2009-10

10. The legislation on reasonable excuse which applied to the 2008-09 and 2009-10 late filing penalties is at Taxes Management Act 1970 ("TMA") s 93(8)(a). It states that "if it appears that, throughout the period of default, the taxpayer had a reasonable excuse for not delivering the return" the Tribunal may set the penalty aside.

11. No late payment surcharge was issued for 2008-09. The legislation which applied to the 2009-10 late payments is at TMA s 59C(9)-(10):

> (9) On an appeal under subsection (7) above that is notified to the tribunal section 50(6) to (8) of this Act shall not apply but the tribunal may—
>
> (a) if it appears that, throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax, set aside the imposition of the surcharge; or
>
> (b) if it does not so appear, confirm the imposition of the surcharge.
>
> (10) Inability to pay the tax shall not be regarded as a reasonable excuse for the purposes of subsection (9) above.

Reasonable excuse in 2010-11

12. The Finance Act 2009 ("FA 2009"), Sch 55, para 23 sets out the reasonable excuse provisions which apply to late filing of returns from 2010-11.

> **23. Reasonable excuse**
>
> (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.
>
> (2) For the purposes of sub-paragraph (1)—
>
> (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
>
> (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

> (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

13. The legislation on reasonable excuse in the context of late payment penalties for 2010-11 is FA 2009, Sch 56, para 16. This is identical to that for late returns, other than that the words "failure to make a return" are replaced by "failure to make a payment."

The evidence

14. HMRC provided a bundle containing relevant correspondence between the parties. Mr Edwards provided a response to HMRC's Statement of Case, with 11 attachments. In addition, as Mr Edwards was the partner at MacIntyre Hudson who had acted for the executors in relation to the filing of the returns, he also gave oral evidence. He was cross-examined by Mrs Stove on behalf of HMRC and answered questions from the Tribunal. We found him to be a credible witness.

The facts

15. On the basis of that evidence, we make the following findings of fact.

16. Mr Verdegaal died on 29 March 2005, at the age of 91. Some time previously he had appointed his two sons, John and Michael, as executors. Before Mr Verdegaal's death, Mr Michael Verdegaal suffered a serious accidental injury which had some lasting effects on his state of health, and Mr John Verdegaal had moved to Tasmania.

17. Mr Verdegaal's affairs were complicated. He had numerous shareholdings in many countries and a property in Peterborough for which the executors hoped to obtain planning permission.

18. The executors appointed Roythorne & Co[1], a firm of solicitors in Spalding, Lincolnshire, to deal with the estate. The partner responsible was a Mr Graham England. He asked Mr Alan Swann, a partner in MacIntyre Hudson, [2] Peterborough, to prepare the estate accounts as well as the SA returns for the two tax years before Mr Verdegaal's death. There was no formal letter of engagement: Mr Edwards described it as a "subcontracting" arrangement.

19. The IHT200 form was submitted to HMRC by Roythornes on 4 August 2005.

20. Mr Swann died unexpectedly in December 2007, but had completed the SA returns for the two years before Mr Verdegaal's death. However, the estate had still not been finalised.

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[1] The firm later became Roythornes LLP. For ease of reference we refer to it throughout this decision as "Roythornes"

[2] MacIntyre Hudson later changed its name to MHA MacIntyre Hudson, but in this decision we have retained the old name throughout for simplicity.

21. On Christmas Day 2008, the property in Peterborough (for which planning permission had been refused) burnt down. The whole property was professionally valued as having been worth £600,000 before the fire. The insurance company paid £500,000 into the estate. This was a "capital sum derived from an asset" under the Taxation of Chargeable Gains Act 1992 ("TCGA"), s 22(1)(b). MacIntyre Hudson were instructed by Roythornes to calculate the related capital gains tax. Planning permission was subsequently given and the land was sold on 21 December 2010 for just over £1m.

22. In July 2009 Mr Edwards took over the case. He realised there was no formal engagement letter and this was issued to the executors and returned signed on 15 July 2009. It specifically covered both the capital gains calculation on the part-disposal and also, more generally, the SA returns for all periods from the year of Mr Verdegaal's death.

23. As Mr Edwards began to carry out his task, he came to the view that some shares had been omitted from the IHT200 form, that some had been included at too low a value and others at too high a value. He realised this would have implications for the values of the relevant shares for CGT purposes at the date of Mr Verdegaal's death, because it is that value which establishes the base cost for disposals by the executors. On 21 November 2011, he wrote to Roythornes, attaching a detailed analysis of the problem areas. MacIntyre Hudson and Roythornes then corresponded, seeking to confirm the position in respect of each shareholding

24. On 14 February 2012 MacIntyre Hudson had notified HMRC of chargeability in relation to the executors' SA obligations from the date of Mr Verdegaal's death. Attached to that letter was a schedule of taxable income up to and including 5 April 2011; MacIntyre Hudson said in the letter that they "hope to be in a position to supply with [sic] the capital gains tax computations in the near future."

25. On 29 March 2012, HMRC issued Trust and Estate tax returns for the years 2008-09, 2009-10 and 2010-11, together with a request for a statement of income received and assets disposed of for the period from 29 March 2005 to 5 April 2009. The due date for submission of the SA returns was 5 July 2012, three months from the issue date (HMRC allowed a few more days for postal delays).

26. On 15 May 2012, Roythornes wrote to HMRC seeking to amend the IHT200. Attached to the letter was a schedule setting out the proposed new probate values. HMRC responded on 5 July 2012, saying that the application to amend the return was out of time under Inheritance Tax Act 1984, s 241. On 20 July 2012, Roythornes replied, stating that the new four year time limit did not apply to these years, because the old six year time limit was still operative, and repeating their request that the IHT200 should be amended.

27. On 30 July 2012 and 28 August 2012, the executors paid tax of £175,500 and £76,194.94 respectively.

28. On 26 September 2012, HMRC responded to the 20 July 2012 time limit letter, saying that Roythornes were incorrect: the time limit had changed, and therefore the claim was out of time and had been rejected. Roythornes passed this letter to MacIntyre Hudson on 18 October 2012 and it was only then that the latter firm concluded that the IHT200 figures could not be displaced.

29. On 6 November 2012, HMRC issued a warning that the executors had already incurred 30 days of daily penalties in relation to the 2010-11 return, and on 11 December 2012 issued a further warning that 60 days of penalties had accrued.

30. On 14 January 2013, MacIntyre Hudson received the following penalties relating to the 2010-11 return, which totalled £1,400:

(1) a £100 late filing penalty because it was more than a month late, under Sch 55, para 2;

(2) an interim six month late filing penalty of £300 under Sch 55, para 5(2)(b); and

(3) a daily penalty for being 90 days late, charged at £10 a day, being £900, under Sch 55, para 4.

31. On 25 January 2013, MacIntyre Hudson appealed the penalties and informed the executors. Mr John Verdegaal travelled from Tasmania to meet with MacIntyre Hudson and Roythornes, so that he could understand what had happened. He had suffered from angina for some time, and after this visit became more seriously unwell. On 28 February 2013 MacIntyre Hudson finalised and despatched the returns for the three tax years in issue.

32. On 4 March 2013, HMRC received these returns, along with those for 2005-06 through to 2007-08, which were being dealt with under HMRC's informal procedure. The covering letter said that MacIntyre Hudson had used the figures shown on the IHT200 as the base cost. For assets not included on the IHT200, MacIntyre Hudson had used the market value at the date of death.

33. The 2008-09 return showed bank interest received of £1,907, dividends of £16 and capital gains of £750.[3] The figure for bank interest was the same as on the income schedule sent to HMRC on 14 February 2012.

34. The 2009-10 return showed bank interest of £61, dividends of £32 and capital gains of £124,455, substantially made up of the gain of £208,613 on the part-disposal of the property, offset by losses from the disposal of one shareholding. That shareholding had been valued at £82,406 on the IHT200 but was disposed of for £6 on 19 March 2010. After taking into account tax deducted at source and tax credit relief, the tax due was £22,396, of which almost all arose from the capital gains.

[3] There was no annual exempt amount for any of the years, because TCGA s 3(7) limits this to the year in which the individual dies and the two following years.

35. The 2010-11 return showed small amounts of bank interest and dividends, plus net chargeable gains of £666,479, made up of the gain on disposal of the land, being £671,155, reduced by £4,676 from negligible value claims on nine shareholdings, giving rise to capital gains tax of £186,614 and total tax payable of £186,700.

36. On 19 March 2013, HMRC issued a final 6 month late filing penalty of £9,035 under Sch 55, para 5(2)(a), being 5% of the tax due for 2010-11, less the £300 already assessed under para 5(2)(b). They also issued a 30 day late payment penalty of £9,335 under Sch 56, para 3(2) being 5% of the £186,700 tax for 2010-11, plus a penalty of £1,821 for being over six months late, under Sch 56, para 3(3). In relation to the 2009-10 return they issued two surcharges for late payment, each of £1,119.81, under TMA s 59C(2) and (3), being 5% of the tax due for that year of £22,396.

37. On 7 May 2013, HMRC issued the following late filing penalties:

(1) Penalties totalling £131 in relation to the 2008-09 return;

(2) Penalties totalling £200 in relation to the 2009-10 return;

38. HMRC accepted that MacIntyre Hudson had appealed these remaining penalties and surcharges. On 23 July 2013 Mr Edwards notified the appeals to the Tribunal.

Submissions of Mrs Stove on behalf of HMRC

39. Mrs Stove said the executors had failed to notify their liability to income tax and capital gains tax, and although no penalty had been charged, there was no reasonable explanation for the late notification. It was not until 14 February 2012 that HMRC were notified of chargeability – almost seven years after Mr Verdegaal's death.

40. There was no reasonable excuse for the late filing or late payment. In her submission, the approach to be followed was that set out in *The Clean Car Co Ltd v C&E Comrs* [1991] VATTR 234 where Judge Medd QC said, in the context of VAT default surcharges:

> "It has been said before in cases arising from default surcharges that the test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?"

41. She made the following specific submissions:

(1) MacIntyre Hudson and Roythornes ("the firms") were aware by November 2011 of the issues around the values used in the IHT200. They provided the final schedule to HMRC's IHT department on 14 February 2012, over four months before the filing deadline. Estimated SA returns could have been submitted, either (a) using these numbers and explaining that Roythornes had asked to amend the IHT200, or (b) on the basis of the IHT200, with an

explanation that these figures might need to be changed if the request to amend the IHT200 was accepted.

(2) Had MacIntyre Hudson submitted SA returns with provisional figures, this would have avoided the late filing penalties altogether. She said that there was a lot of helpful HMRC public guidance about the use of estimated or provisional figures. The Self-Assessment Manual at SAM123170 opens by saying "returns that include provisional or estimated figures should be accepted provided they can be regarded as satisfying the filing requirement."

(3) In any event, the information about income received was available at least by 14 February 2012, so this would not have been estimated. There are only very small differences between those figures and those on the SA returns.

(4) The property burned down at the end of 2008, and the land was sold by the end of 2010. The capital gains on the property could easily have been calculated by the due date of 5 July 2012, so this too would not need to have been estimated.

(5) The firms were aware when they received the letter dated 26 September 2012 that HMRC were not going to re-open the IHT200, but it was still a further five months before the SA returns were submitted.

(6) The executors could have protected themselves from late payment penalties by certificates of tax deposit.

42. In summary, the executors had failed to notify on time, failed to file on time, and failed to pay on time, and there was no reasonable excuse.

43. Mrs Stove also said that HMRC had not considered, at the time of the issuance of the Sch 55 and Sch 56 penalties for 2010-11, whether a reduction for "special circumstances" was appropriate under paras 16 and 9 respectively. She said that she appreciated that this would probably now be considered by the Tribunal, but in her submission there were no grounds for a such a reduction.

Submissions of Mr Edwards on behalf of the executors

44. Mr Edwards said that the executors had a reasonable excuse for the late filing and late payment. The root cause of the delays was that they were trying to pay the right amount of tax and make correct returns. In addition, he had the following specific submissions:

(1) Mr Verdegaal's affairs were extremely complicated, and it took a long time for the firms to sort out the true position.

(2) The executors both had health difficulties and Mr John Verdegaal lived in Tasmania.

(3) The executors had accepted professional advice that the best approach was to rectify the errors and omissions in the IHT200, so that the estate paid the correct amount of inheritance tax in relation to the values at the date of death, and then paid the correct capital gains tax on disposal.

(4) The amended schedule was sent to the IHT section of HMRC on 15 May 2012, and it was two months before they replied, rejecting the amendments on the basis that they were out of time. Mr Edwards said that Mr John Verdegaal was "adamant" that a second attempt should be made to re-open the figures on the IHT200.

(5) In accordance with those instructions, Roythornes responded to HMRC's letter within two weeks, saying that the time limits had not been missed and asking HMRC to look at the matter again. It was not until 26 September 2012 – a further two months – that HMRC responded, refusing to reopen the IHT200.

(6) Between receipt of the HMRC letter and the submission of the returns in March 2013, the firms were corresponding between themselves and with the executors about the consequences for the SA returns.

45. Mr Edwards rejected Mrs Stove's suggestion that a provisional return could have been filed, and drew the Tribunal's attention to the following paragraph of HMRC's guidance at SAM12370:

> "the return guidance for box 21.5 advises trustees to put provisional figures in returns rather than delay their submission, provided that the figures are reasonable and take account of all the information available."

46. Furthermore, the actual HMRC return guidance for box 21.5 warns that "if you submit a provisional figure which is either inaccurate, or unnecessary, you may be liable to a penalty."

47. Mr Edwards said that, in the light of these warnings, it was not reasonable to use the IHT200 figures when they were known to be materially incorrect, given that HMRC's IHT section had been asked to accept an amendment.

48. In addition, had such a return been submitted before October 2012, there would have been around 30 provisional entries, and he did not want to advise the executors to submit a return containing so many uncertain figures. He said:

> "the executors took the decision that a provisional return could not have been made as the figures for CGT were not reasonable."

49. He was also concerned about the wide range between the highest and lowest estimates that would be needed; this was not a case where, for example, there was merely some minor item of unvouched expense that needed estimation.

50. Under cross-examination from Mrs Stove, and in answer to questions from the Tribunal, he said that:

(1) he did not know why it took Roythornes from 2005 to 2009 to instruct MacIntyre Hudson to prepare the SA returns;

(2) he did not know why it took MacIntyre Hudson from July 2009, (when the engagement letter was signed instructing that firm to prepare the returns) until 14 February 2012 to notify chargeability;

(3) the executors did not take any professional advice in relation to income tax or CGT before 2009;

(4) MacIntyre Hudson did not advise the executors that there would be penalties and surcharges if the SA returns were filed late, and if tax was paid late. The advice given to the executors was only about whether or not to submit provisional returns; it did not extend to the risk of penalties or surcharges; and

(5) MacIntyre Hudson did not advise the executors to take out a certificate of tax deposit to prevent surcharges or penalties arising on the tax due.

What is a reasonable excuse?

51. We agree with Mrs Stove that the correct approach in assessing whether there is a reasonable excuse is that set out by Judge Medd QC in *The Clean Car Co v C&E Commrs*. We therefore need to establish whether:

> "what the taxpayer did [was] a reasonable thing for a responsible [person] 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…"

52. We also accept the guidance of the Special Commissioner, now Judge Shipwright, in *Rowland v HMRC* [2006] STC (SCD) 536 that we should consider "all the circumstances of the particular case."

53. We consider first whether the firms behaved reasonably, as that term is explained by Judge Medd. If the answer to that question is yes, there is no need to go further. If the answer to that question is no, then the further question is whether the executors have a reasonable excuse because they relied on the firms. Finally, we consider the other submissions and whether there are any special circumstances.

Does the behaviour of the firms provide a reasonable excuse?

Late filing penalties: 2008-09 and 2009-10

54. The statutory reasonable excuse test in TMA s 93(8)(a) is only satisfied if there was "throughout the period of default…a reasonable excuse for not delivering the return."

55. The deadline for filing these two returns was 5 July 2012. The deadline was not met. It was, of course, already a much later deadline than would have applied, had chargeability been notified within six months of the end of each tax year as required by TMA s 7; in consequence the executors and their advisers had the benefit of a much longer preparation period than would have been the case had they complied with TMA s 7. Although no penalty was charged for this failure, this longer time period is a relevant part of the "circumstances" of this particular case.

56. The main reason why the returns were not submitted by the due date was because the firms expected HMRC to accept an amendment to the IHT200. However, the request was not made until 15 May 2012, around three weeks before the filing

deadline. This was over seven years after Mr Verdegaal's death; almost three years after MacIntyre Hudson had been instructed to file the returns, and six months after Macintyre Hudson had sent their schedule to Roythornes, setting out the problems they had identified with the shareholdings on the IHT200.

57. Mr Edwards could provide no explanation, let alone a reasonable one, for these delays. In our judgment, the reasonable professional adviser would have identified these issues much sooner, and once they had been identified, would have resolved any outstanding issues much more quickly.

58. The starting point is therefore that the firms had not dealt with matters on a timely basis. Having got into this position, they should have submitted a provisional return, either (a) on the basis of the IHT200, or (b) on the basis of the schedule, making proper disclosure of the uncertainty and the reasons for it.

59. We do not agree with Mr Edwards that this would have been unreasonable. On the contrary, "placed in the situation that the taxpayer found himself at the relevant time," filing returns with provisional figures, accompanied by suitable "white space" explanations, was clearly reasonable. As Mrs Stove said, the capital gain on the property and the income were both known before the filing deadline. It was only the values of some of the shareholdings which were uncertain.

60. Both firms were appointed to deal with the executors' tax affairs – Roythornes was responsible for the IHT200 and MacIntyre Hudson for the SA returns. We find that the reasonable professional firm dealing with clients' tax affairs would have been aware, before the request was made of HMRC, that they were out of time to amend the IHT200. The relevant legislation changed with effect from 1 April 2011.[4] The new time limit had already been in force for a year by the time the request to amend was made.

61. But even if this is put to one side, HMRC told the firms on 5 July 2012 that the legislation had changed. The reasonable professional adviser, having checked this information, would have found that HMRC were correct. Instead, a further letter was sent out, challenging HMRC's view of the law. On 26 September 2012, HMRC wrote again, repeating the information in the earlier letter.

62. There was then a further delay of five months until the submission of the returns on 4 March 2013, time which was spent discussing the consequences of the changed base costs with each other and with the executors. We have been provided with no explanation of why this process took so long. In any event, we find that the firms had had plenty of time to consider and plan for this outcome: HMRC had told them two months earlier that they were out of time to amend the IHT200.

Conclusion on the 2009-10 and 2010-11 filing penalties

63. We find that the reasonable professional adviser (a) would not have left it until three weeks before the (delayed) filing deadline to approach HMRC about changing

[4] FA 2009, Sch 51, para 13 by virtue of SI 2010/867 Article 2

the IHT200 (b) would have been aware of the change to the time limits affecting the IHT200, and (c) if issues remained unresolved by the filing date, would have filed provisional SA returns.

64. Even if we were to accept (which we do not) that there was a reasonable excuse for not delivering the returns on 5 July 2012, there was no reasonable excuse once HMRC's letter of 26 September 2012 had been received, because it was then absolutely clear that the SA returns would need to be filed on the basis of the values in the IHT200. Despite this, there was a further five month delay. As a result, there was no reasonable excuse "throughout the period of default" as required by TMA s 93(8)(a).

Late filing penalties: 2010-11

65. The statutory "reasonable excuse" test in Sch 55 is slightly different from that in TMA s 93: it is only satisfied if there is "a reasonable excuse for the failure" namely, the failure to file the SA return by the due date, see Sch 55, para 23(1). If there is such a reasonable excuse on the filing date, but that excuse ceases, the person will only be treated as continuing to have the excuse if "the failure is *remedied without unreasonable delay after the excuse ceased*" (Sch 55, para 23(2)(c)).

66. The facts are substantially the same as those set out in the previous section in relation to the surcharges. The actual income and gains were different, but the most significant figure was not in doubt: the capital gain from the disposal of the property was known well before the due date. That this figure was then reduced by negligible value claims does not provide a reasonable excuse for the failure: the reasonable person would have filed a provisional return, making appropriate use of the white space. As already set out in relation to 2008-09 and 2009-10, we find that it was not reasonable to delay filing the 2010-11 return until receipt of HMRC's September 2012 letter stating that the IHT200 could not be amended.

67. Even had there been a reasonable excuse up to that point, the failure was not remedied without unreasonable delay, given the further five months which passed before the return was filed.

The delays in payment and the tax regimes

68. Although chargeability was notified late, this does not affect the tax payment dates. The tax for 2008-09 was due on 31 January 2010; that for 2009-10 was due on 31 January 2011 and that for 2010-11 was due on 31 January 2012.

69. No tax was paid until 30 July 2012, when HMRC received £175,500. A further payment of £76,194.94 was made on 28 August 2012. HMRC allocated these sums against the earliest debt first.

70. The regime for penalising late payments of tax changed with effect from 2010-11. For the first two years, late payments triggered surcharges under TMA s 59C; for the final year, late payments triggered penalties under FA 2009, Sch 56.

The surcharges

71. No surcharges were imposed for the year 2008-09, we assume because most of the tax was paid under deduction.

72. Surcharges were triggered for 2009-10 because the tax due was not paid 28 days after the due date. The reasonable excuse defence operates if "throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax." The period of default here is from 31 January 2011 to 30 July 2012, a period of exactly eighteen months.

73. The tax due on 31 January 2011 was almost all attributable to the capital gain which had arisen following the receipt of the insurance money from the property. The property burned down at the end of 2008. MacIntyre Hudson had been formally appointed in July 2009, and part of their task was to deal with the capital gain arising on the part disposal. A valuation of the whole property was obtained before the insurance proceeds were received, at some point before 31 January 2010. As a result the amount of the gain was known, and the money arising from the disposal had been received, well before the due date for payment of the 2009-10 tax.

74. The executors only made the payment after the first HMRC letter saying that the IHT200 would not be amended. The only explanation for this delay is that the firms wanted to establish the correct overall CGT liability, and realised there would be some further (and/or different) gains and losses if the IHT200 was amended.

75. In our judgment, this cannot constitute a reasonable excuse for the late payment. Where taxpayers are not 100% sure of their exact liability by the due date they should make a best estimate. Deferring payment until the matter is clarified is not the action of a reasonable person. As Mrs Stove said, MacIntyre Hudson could have advised the client to take out a certificate of tax deposit. Alternatively a payment on account using their best estimate of the tax due could have been made.

The late payment penalties

76. The 2010-11 tax due on 31 January 2012 was partly settled in July 2012 and partly in August 2012. Almost all of this tax arose in relation to the capital gain on disposal of the land, as reduced by capital losses and negligible value claims.

77. Again, the only reason for the late payment was the firms' desire to get the numbers exactly right. For the same reasons as set out above in relation to the surcharges, we find that this is not a reasonable excuse.

Do the executors have a reasonable excuse because they relied on their advisers?

78. The causes of the late filing put forward by the firms do not provide a reasonable excuse. We now consider whether the executors nevertheless have a reasonable excuse because they relied on professional lawyers and accountants.

The executors and the 2008-09 and 2009-10 late filing penalties

79. Whether reliance on a professional adviser provides a reasonable excuse was discussed in *Michael Lithgow v HMRC* [2012] UKFTT 620(TC). At [6] the Tribunal judge, Geraint Jones QC, says:

> "I cannot take the view that the failings of a professional agent can ordinarily be considered objectively reasonable as an excuse. If that was the position, then professional agents would be able to ignore deadlines for filing or undertaking other tasks safe in the knowledge that their clients could not be penalised because the clients would simply point to the failings of their various professional agents."

80. Nevertheless, there are some situations in which a taxpayer can be found reasonably to have relied on his solicitor or accountant. Judge Jones distinguishes the two situations at [14] of his decision:

> "If a taxpayer claims that his accountant has been negligent, for example, by failing to meet a deadline for filing a return or undertaking some or other administrative task, then the negligence of the accountant will not usually provide a defence to a penalty because the accountant is simply acting as the taxpayer's agent or functionary in filing the document that needs to be filed by a particular deadline. In other words, he is acting as an agent or functionary for his principal; but not as an independent professional adviser. However, in a situation where a professional adviser is not retained simply to act as a functionary, but is retained to give professional advice based upon the best of his skill and professional ability, he is not then a functionary or agent for his principal. He is a professional person acting under a retainer to give professional advice upon an identified issue. He is bound to provide that advice to the best of his professional skill and ability, whilst taking reasonable care in and about preparing and giving that advice. In other words, he is acting as a true professional, rather than as an agent or functionary."

81. We respectfully agree with that guidance. While the calculation of the exact capital gains, in particular, was a skilled professional task, the filing of the returns themselves was not.

82. We know that one of the executors signed MacIntyre Hudson's engagement letter on 15 July 2009, and that the scope of that letter explicitly covered the calculation of the CGT liability for the part-disposal and the preparation and submission of the SA returns for the estate. In reliance on Judge Medd's guidance, we ask ourselves how the responsible executor: "…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 [he] found himself at the relevant time" would have behaved. There can be no doubt that this hypothetical executor (a) would have realised that no tax returns had been submitted between the date on which MacIntyre Hudson was instructed and March 2013, almost four years later, and (b) would have complied with his SA filing obligations by the statutory time limits.

83. We accept that the executors were advised that it was better to wait, and submit accurate returns, but reliance on that professional advice does not provide them with a reasonable excuse. Whether or not to file a tax return by the due date is not a difficult technical issue. It is a matter of administration and timing. The deadlines are clear. The information is easily and publically available on the HMRC website.

84. Furthermore, as we have seen, the reasonable excuse defence must be present "throughout the period of the default." Mr Edwards said MacIntyre Hudson had discussed with the executors whether or not to file provisional returns and that Mr John Verdegaal was "adamant" that a second attempt be made to reopen the IHT200. The executors therefore knew that the SA returns had not been filed by the due date of 5 July 2012. Once HMRC's letter of 26 September 2012 had been received, the firms accepted that the IHT200 could not be reopened. But it was only after the penalty assessments were received in January 2013 that Mr John Verdegaal came to the UK to meet with the firms, and there was then a further delay before the returns were sent to HMRC.

85. We accept Mr Edwards' evidence that the executors were not informed, in advance, of the penalty risk. They may thus argue that they would have taken action to intervene earlier, had they known. But that does not provide a reasonable excuse *for not delivering the return.* It simply means that, had the executors understood the legal consequences, they might have acted differently. It is a well-established principle of English law that ignorance is no defence.

86. We find that reliance on their professional advisers does not provide the executors with a reasonable excuse.

The executors and the 2009-10 late payment surcharges

87. The executors had received significant insurance proceeds from the Peterborough property and realised a significant capital gain. They knew that tax would be due, and instructed MacIntyre Hudson to calculate that tax. They also instructed MacIntyre Hudson to file the SA returns for the post-death years.

88. We find that the reasonable executor would have confirmed with his advisers when the 2009-10 tax had to be paid. He would also have paid an estimated amount either by way of a payment on account, or by purchasing a certificate of tax deposit, if there was doubt about the exact sum. We find that there is no reasonable excuse for the delay in payment.

The executors and the 2010-11 late filing and late payment penalties

89. The 2010-11 late filing and late payment penalties engage Sch 55, para 23(2)(b) and Sch 56, para 16(2)(b), which say that where a person relies on any other person to do anything, that is not a reasonable excuse unless the person "took reasonable care to avoid the failure."

90. Here, the executors relied on MacIntyre Hudson to file the returns, and they relied on Roythornes to provide the relevant information about the assets and income.

However, for the same reasons as set out in relation to the 2008-09 and 2009-10 late filing penalties, we find that the executors did not "take reasonable care to avoid the failure" – ie the failure to file the return by the due date.

91. The executors knew that a significant capital gain had been received on sale of the Peterborough land. As was the case in relation to the late payment surcharges, if there was doubt about the exact sum, we find that the reasonable executor would have paid an estimated amount either by way of a payment on account, or by purchasing a certificate of tax deposit. We find the executors did not "take reasonable care to avoid the failure" – ie the failure to pay the tax by the due date.

92. As a result, reliance on their advisers does not provide the executors with a reasonable excuse for the late filing of their 2010-11 SA return or for the late payment of the related tax.

Other submissions

93. Mr Edwards submitted that there was a reasonable excuse because the executors' health was poor, but we do not agree. Although Mr John Verdegaal's health deteriorated after his visit to the UK in January 2013, this was very late in the day and long after the deadlines for the payment and filing of the tax returns. We accept that Mr Michael Verdegaal had ongoing health difficulties, but the liability of executors is joint and several. The filing of returns and the and payment of tax are tasks which either or both of the executors must complete.

94. Mr Edwards also submitted that the distance between Tasmania and the UK provided a further reasonable excuse for the delays. Again, we reject this. Mr Verdegaal and his advisers could and did communicate by email.

Special circumstances

95. Fixed penalties under Sch 55 and 56 can be reduced or cancelled if there are special circumstances (Sch 55, para 16; Sch 56, para 9). Mrs Stove accepted that HMRC had not considered these provisions at the time of issuing the penalties, but submitted that there were no special circumstances.

96. In *Algarve Granite v R&C Commrs* [2012] UKFTT 463 (TC) (Judge Brannan and Mr Howard) the Tribunal decided that HMRC are required to consider, before they issue the penalty notice, whether there are special circumstances; if they fail to do so, their decision is "flawed". *Algarve Granite* related to Sch 56 penalties but in our judgment the same analysis applies equally to Sch 55 penalties. We agree with that Tribunal, and as a result, we find that HMRC's decisions in relation to these Sch 55 and 56 penalties are "flawed". It therefore falls to the Tribunal to consider whether the special circumstances provisions apply (Sch 55, para 16; Sch 56, para 15).

97. The Court of Appeal in *Clarks of Hove v Bakers' Union* [1978] 1 WLR 1207 held (at page 1216) that in the context of special circumstances, the word "special" means "something out of the ordinary, something uncommon." In *Crabtree v Hinchcliffe* [1971] 3 All ER 967 Lord Reid said (at page 976) that "'special' must

mean unusual or uncommon – perhaps the nearest word to it in this context is 'abnormal.'" In the same case, Viscount Dilhorne said (at page 983) that "for circumstances to be special they must be exceptional, abnormal or unusual…"

98. A number of Tribunal cases[5] have relied on one or both of these two authorities in finding that "special circumstances" in the context of Sch 55 or Sch 56 means "unusual or uncommon," and we respectfully concur.

99. We have considered whether there is anything unusual or uncommon about the facts of this case, so as to bring the executors within the relief for "special circumstances." The fact that a person's tax affairs are complex, that his health is poor, and/or that he lives abroad is not "unusual or uncommon"; nor is it unusual or uncommon for there to be some temporary difficulty in finalising the figures for a tax computation, leading to the need to file provisional figures if a time limit is to be met. Where the person's tax affairs are complex, it is also not "unusual or uncommon" for such provisional entries to be quite numerous, and/or for the range between the highest and lowest estimates to be large – two of Mr Edwards' expressed concerns. We find, therefore, that there are no special circumstances in this case.

100. As a result, there is no basis for us to change HMRC's decisions about the 2010-11 penalties, even though those decisions were "flawed" because of the failure to consider special circumstances.

Decision and appeal rights

101. For the reasons set out above, we find that there is no reasonable excuse for either the late payments or the late filing for any of the three years and we confirm the penalties and surcharges, other than the £900 daily penalties for 2010-11 which has been adjourned pending the Upper Tribunal's decision in *Donaldson.*

102. 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.

ANNE REDSTON
TRIBUNAL JUDGE

RELEASE DATE: 9 September 2014

[5] See for example *Dina Foods v HMRC* [2011] UKFTT 709 (TC); *Knowles Warwick v HMRC* [2014] at [56] and *Morgan and Donaldson v HMRC* [2013] at [126].

APPENDIX: LEGISLATION

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

1. Penalty for failure to make returns etc

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

(2) Paragraphs 2 to 13 set out—

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

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

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

(4) In this Schedule—

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

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

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

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

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

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

Amount of penalty: occasional returns and annual returns

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

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

4. (1) P is liable to a penalty under this paragraph if (and only if)—

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

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

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

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

(3) The date specified in the notice under sub-paragraph (1)(c)—

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

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

(2) The penalty under this paragraph is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

6. (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2)-(4a) …

(5) In any case not falling within sub-paragraph (2) the penalty under this paragraph is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

16. Special reduction

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

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

(a) ability to pay, or

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

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

18. Assessment

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

(a) assess the penalty,

(b) notify P, and

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

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

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

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

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

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

Appeal

20.

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

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

22.

(1) On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 13(2) that is notified to the tribunal, the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.

(4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review….

23. Reasonable excuse

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

(2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

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

1. Penalty for failure to pay tax

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

(2) Paragraphs 3 to 8 set out—

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

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

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

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

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

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

(1) This paragraph applies in the case of—

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

(b)-(c) …

(2) P is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

9. Special circumstances

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

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

(a) ability to pay, or

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

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

11. Assessment

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

(a) assess the penalty,

(b) notify P, and

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

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

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

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

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

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

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

13. Appeal

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

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

14.

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

(2) Sub-paragraph (1) does not apply—

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

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

15.

(1) On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 13(2) that is notified to the tribunal, the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 9—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.

(4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(5) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 14(1)).

16. Reasonable excuse

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

(2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

TAXES MANAGEMENT ACT

s. 59C Surcharges on unpaid income tax and capital gains tax

(1) This section applies in relation to any income tax or capital gains tax which has become payable by a person (the taxpayer) in accordance with section 55 or 59B of this Act.

(2) Where any of the tax remains unpaid on the day following the expiry of 28 days from the due date, the taxpayer shall be liable to a surcharge equal to 5 per cent of the unpaid tax.

(3) Where any of the tax remains unpaid on the day following the expiry of 6 months from the due date, the taxpayer shall be liable to a further surcharge equal to 5 per cent of the unpaid tax.

(4)-(5) …

(6) A surcharge imposed under subsection (2) or (3) above shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the end of the period of 30 days beginning with the day on which the surcharge is imposed until payment.

(7) An appeal may be brought against the imposition of a surcharge under subsection (2) or (3) above within the period of 30 days beginning with the date on which the surcharge is imposed.

(8) Subject to subsection (9) below, the provisions of this Act relating to appeals shall have effect in relation to an appeal under subsection (7) above as they have effect in relation to an appeal against an assessment to tax.

(9) On an appeal under subsection (7) above that is notified to the tribunal section 50(6) to (8) of this Act shall not apply but the tribunal may—

(a) if it appears that, throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax, set aside the imposition of the surcharge; or

(b) if it does not so appear, confirm the imposition of the surcharge.

(10) Inability to pay the tax shall not be regarded as a reasonable excuse for the purposes of subsection (9) above.

(11) The Board may in their discretion—

(a) mitigate any surcharge under subsection (2) or (3) above, or

(b) stay or compound any proceedings for the recovery of any such surcharge,

and may also, after judgment, further mitigate or entirely remit the surcharge.

93 Failure to make return for income tax and capital gains tax

(1) This section applies where--

(a) any person (the taxpayer) has been required by a notice served under or for the purposes of section 8 or 8A of this Act (or either of those sections as extended by section 12 of this Act) to deliver any return, and

(b) he fails to comply with the notice.

(2) The taxpayer shall be liable to a penalty which shall be £100.

(3) …

(4) If--

(a) the failure by the taxpayer to comply with the notice continues after the end of the period of six months beginning with the filing date, and

(b) no application is made under subsection (3) above before the end of that period,

the taxpayer shall be liable to a further penalty which shall be £100.

(5) Without prejudice to any penalties under subsections (2) to (4) above, if--

(a) the failure by the taxpayer to comply with the notice continues after the anniversary of the filing date, and

(b) there would have been a liability to tax shown in the return,

the taxpayer shall be liable to a penalty of an amount not exceeding the liability to tax which would have been so shown.

(6) –(7) ….

(8) On an appeal against the determination under section 100 of this Act of a penalty under subsection (2) or (4) above that is notified to the tribunal, neither section 50(6) to (8) nor section 100B(2) of this Act shall apply but the tribunal may--

(a) if it appears that, throughout the period of default, the taxpayer had a reasonable excuse for not delivering the return, set the determination aside; or

(b) if it does not so appear, confirm the determination.

(9) References in this section to a liability to tax which would have been shown in the return are references to an amount which, if a proper return had been delivered on the filing date, would have been payable by the taxpayer under section 59B of this Act for the year of assessment.

(10) In this section--

"the filing date" in respect of a return for a year of assessment (Year 1) means--

(a) 31st January of Year 2, or

(b) if the notice under section 8 or 8A was given after 31st October of Year 2, the last day of the period of three months beginning with the day on which the notice is given.

"the period of default", in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return was delivered.

INHERITANCE TAX ACT 1984

241 Overpayments

(1) If it is proved to the satisfaction of the Board that too much tax has been paid on the value transferred by a chargeable transfer or on so much of that value as is attributable to any property, the Board shall repay the excess unless the claim for repayment was made more than [four][6]years after the date on which the payment or last payment of the tax was made.

[6] In sub-s (1) words substituted for words "six years" by FA 2009 s 99, Sch 51 para 13 with effect from 1 April 2011 (by virtue of SI 2010/867 art 2(2)).