



TC06107

Appeal number: TC/2016/02822

Income tax - Schedule 55 Para 23 of the Finance Act 2009 - fixed and daily penalties for late filing of self-assessment return - Appellant suffering from illness and depression causing initial delay - agent later added to delay by overlooking to file return despite reminders from Appellant - whether reasonable excuse - on the facts - yes - appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL O'NEILL

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER SONIA GABLE**

**Sitting in public at the Tribunal Hearing Centre, Chichester Street, Belfast on 14
June 2017**

Mr Alan Curry, accountant, for the Appellant

Ms Kate Murphy, Officer of HMRC, for the Respondents

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DECISION

5 1. This is an appeal by Michael O'Neill ('the Appellant') against penalties of £900 and £14,097 imposed by the Respondents ('HMRC'), under Paragraphs 4 and 5 of Schedule 55 Finance Act 2009, for the late filing by the Appellant of his self-assessment ('SA') tax return for the tax year ending 5 April 2014.

2. The Appellant's return, if filed electronically, was due no later than 31 January 2015, but was filed on 12 October 2015.

10 3. 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.

15 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, under Paragraph 5 of Schedule 55 FA 2009 the penalty is the greater of -

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

(b) £300.

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

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

(b) £300.

4. Penalties of £100, £900 and £14,097 were imposed, (i), (ii) and (iii) above.

30 5. The Appellant's appeal is against the £900 and £14,097 penalties. The Appellant has not appealed the £100 penalty.

Filing date and Penalty date

6. Under s 8(1D) TMA 1970 et seq. for the year ended 5 April 2012 et seq. a non-electronic return must be filed by 31 October 2012 and an electronic return by 31

January 2013. The ‘penalty date’ is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.

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

5 *Reasonable excuse*

8. 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.

10 9. The law specifies two situations that are not a 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.

15 10. 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).

20 11. 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
25 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.

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

The background facts

30 13. The notice to file for the year ending 5 April 2014 was issued to the Appellant on 6 April 2014.

14. The filing date was 31 October 2014 for a non-electronic return or 31 January 2015 for an electronic return.

35 15. Between November 2014 and mid-January 2015, the Appellant’s accountants reminded the Appellant on five separate occasions that they were awaiting

information from him, particularly with regard to capital gains tax losses, so that they could complete his tax return.

5 16. On 20 January 2015, the Appellant contacted his accountant and advised that he was having difficulty accessing the information he needed to calculate his capital gains tax losses and that he probably would not have the information ready by 31 January 2015.

17. By 31 January 2015, the Appellant had paid on account the sum of £350,675. (In October 2015, the Appellant's tax liability was eventually determined at £281,940, payable, which meant that an overpayment of £68,735 had been made.)

10 18. On 16 February 2015, the Appellant's accountant informed the Appellant that he would receive a late filing penalty of £100 because his return had not been submitted by 31 January 2015.

19. As the return was not received by the filing date, HMRC issued a notice of penalty assessment on or around 3 March 2015 in the amount of £100.

15 20. The Appellant had been suffering matrimonial problems and left the matrimonial home on 19 April 2016, thereafter having no fixed abode but travelling between Newry, London and Spain. He did not advise his accountant of these difficulties.

20 21. On 27 April 2015 the Appellant's accountant once again reminded the Appellant that his return had not yet been submitted and that he was still awaiting the outstanding information.

22. A meeting was arranged by the Appellant with his accountant for 28 May 2015. In the event the Appellant was unable to attend as he was suffering from shingles and chickenpox.

25 23. On 5 June 2015 the Appellant provided his accountant with the necessary information for the filing of his return.

24. On 7 July 2015 the Appellant emailed his accountant to enquire why his return had not been filed.

30 25. Despite the fact that the accountant had all the information he needed and the email reminder by the Appellant, which the accountant acknowledged, he overlooked filing the Appellant's return by the six month deadline of 31 July 2015.

35 26. On 14 August 2015, HMRC issued the three-month late filing daily penalty of £900 and the six month fixed penalty of £14,097. HMRC also issued a six month late payment penalty of £1,562. It appears however that the penalty notices were not sent out to the Appellant.

27. The Appellant's accountant filed the Appellant's return on 12 October 2015.

28. On 13 October 2015:

- HMRC issued a notice of daily penalty assessment in the amount of £900, calculated at £10 per day for 90 days (as the return had not been received 3 months after the penalty date)

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- On the same date, as the return had not been received 6 months after the penalty date, HMRC also issued a notice of penalty assessment in the amount of £19,914, representing 5% of the Appellant's liability to tax (which replaced a previously imposed fixed penalty of £300).

10 29. On 5 November 2015, the Appellant appealed against the late filing penalties on the basis that he had a reasonable excuse, being that initially he was ill, but that in June 2015 he subsequently provided his accountants with all the information they needed, so that they could complete and submit his return by 31 July 2015. He also queried HMRC's assessment, which showed tax due of £23,943.29, whereas, by his calculations, the sum of £2,147.29 was payable.

15 30. On 22 January 2016, the Appellant's accountants wrote to HMRC appealing the decision.

31. On 24 February 2016, HMRC rejected the Appellant's appeal.

32. On 8 March 2016, the Appellant (via his agent) requested a review, saying:

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- All of the Appellant's tax had been paid on time. He had paid his tax liability of approximately £289,000 on time.

- The Appellant had been suffering matrimonial difficulties, as a result of which he was not able to attend to his financial affairs in as timely a manner as he would have wished.

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- The Appellant's accountants had told him in June and July 2015 that the preparation of his tax return was in hand and assumed that it would be submitted by the end of July 2015.

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- The Appellant himself had made every reasonable effort to be compliant. His matrimonial difficulties contributed to the initial delays which led to the daily penalties being imposed, but following that the Appellant did everything he could to avoid incurring the six month fixed penalty.

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- The delay by the accountants in filing the Appellant's return after the end of July 2015, was an innocent and exceptional oversight. Had the Appellant been able to provide the information they needed when first requested (with regard to capital gains tax losses), the probability was that the return would have been filed in June 2015.

33. HMRC carried out a further review and issued their decision to the Appellant on 20 April 2016, upholding their original decision. HMRC explained that:

- 5 • While sympathising with the Appellant in respect of his matrimonial difficulties and health problems, he had been filing self-assessment returns for many years and would have been aware of the deadlines for doing so. If his problems lead to ill health, the illness had to be so serious that it prevented him from administering his business and private affairs immediately before the deadline and continuing to the date his return was finally submitted to HMRC. The Appellant's tax returns indicated that it was able to trade during this period and show profits.
 - 10 • It is a taxpayer's responsibility to ensure that his tax obligations are met. If the Appellant's accountant failed in his professional capacity or did not follow specific instructions, the Appellant had to take responsibility for that and seek redress from the accountant.
 - 15 • HMRC issued a £100 penalty notice on 18 February 2015 and 30 day and 60 day reminder letters on 2 and 30 June 2015. Therefore the Appellant would have been aware at the beginning of July that his return had still not been submitted.
 - The Appellant has filed tax returns late in the past and therefore was aware of the consequences of doing so. HMRC's records show that late filing penalties were issued for 1998-99, 2001-02, 2007-08, 2008-09, 2011-12 and 2012-13.
- 20 34. On 10 May 2016 the Appellant lodged an appeal with the tribunal.

Legislation

35. The Relevant statutory provisions are:

Taxes Management Act 1970

Section 8 - Personal return- provides as follows:

- 25 (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-
- 30 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-
- 35 (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-

5 (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

10 (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.]

15 (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.]

20 (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.

25 (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).

30 (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

35 (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.

5 (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.

10 (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.

15 (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.

Schedule 55 Finance Act 2009:

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

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

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

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

25 (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
30 (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).
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(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).
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40. 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.

41. 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.

42. 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.

43. 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.

5 (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.

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

Appellant's case

15 44. The Appellant's grounds of appeal are set out by his accountants in the Notice of Appeal to the Tribunal as follows:

- 20 a) "A tax-payer can rely on another person, but the tax-payer must demonstrate that he (the tax-payer) took reasonable care to avoid, in this case, the failure to submit a return by 31 July 2015. In considering the actions of the Appellant and whether or not the Appellant acted reasonably, it is not sufficient for the Appellant to delegate the task in hand, but to demonstrate that he supervised the work."

Paragraph 20 (2) (b) Sch 41 FA 2008 states:

25 "Where (the taxpayer) relies on another person to do anything, that is not a reasonable excuse unless (the taxpayer) took reasonable care to avoid the relevant act or failures."

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

30 "(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)

35 (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."

HMRC Compliance Handbook, 155850, states:

"We expect the person (the Appellant) to take reasonable care to explain to the third party (his tax agent) what they require them to do, to set deadlines for the work and to make regular checks on progress, reminding where appropriate."

40 b) The following analysis and evidence will demonstrate that the Appellant did comply with this. We have addressed this under the following headings:

I. How difficult is the task?

5 The Appellant's tax return is complicated. It requires a knowledge of tax relating to: self-employment, Enterprise Investment Scheme Relief for income tax and capital gains tax. Indeed Mr O'Neill's tax affairs are now dealt with by our "Wealthy Mid-sized Business Compliance" department.

The Appellant would not have the skills to complete his tax return. He has acted reasonably in deciding to use a tax agent for this task.

10 The Appellant engaged Hill Vellacott Accountants as his tax agents for 2013-14. The tax partner is Alan Curry who is a qualified tax advisor with almost 35 years' experience of working in tax. Alan Curry has a number of clients with similar circumstances to the Appellant and is personally involved in the preparation of the Appellant's tax return.

15 The Appellant has acted reasonably in choosing a tax agent that is suitably qualified in regard to the work that was required.

II. How unusual is the excuse?

20 There is no requirement for the failure to be exceptional, to qualify as reasonable excuse, and any inference by HMRC that it must be exceptional is incorrect.

The failure was to submit the tax return by 31 July 2015 and such an event is not usual.

25 In the case of *Browne v HMRC* (2011) UKFTT 496 (TC), the tax payer was held to have a reasonable excuse when her solicitor failed to file a land transaction report for SDLT purposes.

III. How does the professional relationship in question normally work?

30 As the tax affairs of the Appellant are relatively complex, the process is as follows:

- The tax agent requests information from the Appellant.
 - The Appellant provides the information.
 - The tax agent tests this information for accuracy and completeness.
 - The tax agent will contact other organisations to corroborate the information.
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- The tax agent will meet with the taxpayer, possibly more than once to finalise the work, and approve submission. These meetings would have extended beyond an hour each.
- The tax agent will submit the approved return.

5 The above demonstrates the high level of interaction between The Appellant and the tax agent.

The actions of the Appellant are not those of a tax payer simply delegating the completion and submission of a return to a tax agent. The Appellant was proactive and involved throughout the process.

10 It is clear that the Appellant was aware of the potential penalty position, and took action to monitor progress, to ensure submission by 31 July 2015.

IV. Whether the Appellant had knowledge of the agent's failure

15 The Appellant cannot have been aware that the tax agent would fail to meet the deadline of 31 July 2015.

If the Appellant had been aware that the tax agent was not going to make the deadline, then it would have been reasonable for the Appellant to take appropriate action. However, the Appellant had been assured that the return would be submitted in good time.

20 The actions of the Appellant in co-ordinating the work, challenging and meeting with the tax agent, all demonstrate that he took reasonable care to avoid the submission failure.

V. Whether The Appellant ought to have had knowledge of the agent's failure

25 The Appellant received a notice from HMRC dated 30 June 2015 stating that the return had not been submitted.

The Appellant immediately contacted his tax agent.

30 In summary, the Appellant acted reasonably and had no reason to doubt that his tax agent would deal with his tax affairs as instructed. His belief was based on previous experience and work undertaken by his agent, over a period of at least five years.

The actions of the Appellant are in accordance with HMRC Compliance Handbook 155850.

“Example

Mary is due to submit her VAT return, and pay her VAT, electronically by the due date. Her accountant is authorized to act on her behalf and is engaged to calculate liability and submit the return and payment.

5 *Mary provides the accountant with all relevant information three weeks before the due date. One week before the due date Mary checks with her accountant that he will submit her payment on time. One week after the due date Mary checks her business bank statements and realizes that he has not submitted her VAT return and payment. Mary immediately contacts HMRC and submits the return and full payment.*

10 *Mary has a reasonable excuse because she took reasonable care to explain to the third party (her accountant) what she required him to do, took reasonable steps to check on progress, checked whether or not the return had been submitted soon after the due date and immediately contacted HMRC to correct her tax affairs.”*

15 In this example, Mary was able to verify failure as the payment was not reflected in her bank statements. In the Appellant’s case, payment had already been made and there was no other ‘alarm’ to bring the failure to his attention. No correspondence was issued by HMRC to the Appellant between 31 July 2015 and the date of submission of the return on 12 October 2015.

HMRC’s Case

25 45. While HMRC sympathises with the Appellant in relation to his matrimonial problems, it is noted that he continued to trade during the default period and operated a successful business showing a substantial profit. No evidence has been put forward to show that his matrimonial problems affected his ability to submit returns.

30 46. The Appellant has been self-employed for a considerable length of time and must have been aware of his legal obligations to file and the deadlines for doing so. HMRC considers that ample time is given for the completion of tax returns, and expect taxpayers to make arrangements to complete returns before the deadlines. As the return was already six months late (immediately prior to the six month penalty) and penalties had already been imposed, it is reasonable to have expected the Appellant to check to ensure the return had been submitted as promised.

35 47. Self-assessment returns were submitted late in earlier years and penalties for late filing have been previously imposed. The Appellant must have been well aware of the penalty procedures and should have taken steps to ensure that the accountant had submitted the already late return as expected.

40 48. HMRC accepts that no correspondence was issued to the Appellant between 31 July 2015 and the date of submission of the return on 12 October 2015. However penalty notices had already been issued on 18 February 2015, 2 June 2015 and 30

June 2015 and the responsibility to submit returns on time rests with the taxpayer. There is no legal responsibility on HMRC to continually issue reminders.

49. HMRC does not consider that an agent's failure to fulfil an individual's expectations is a reasonable excuse. Where a person has asked somebody else to do something on their behalf, that person is responsible for ensuring that the other person carries out the task. They cannot claim they had a reasonable excuse merely because the task was delegated to a third party and the third party failed to complete it. HMRC expects the taxpayer to take reasonable care to explain to the third party what they require them to do, to set deadlines for the work and to make regular checks on progress, reminding where appropriate [Schedule 55 Para 23(2)(b) Finance Act 2009]. HMRC expect the person to be able to tell HMRC exactly what action they took to ensure that the obligation to submit a return on time was met. It is a taxpayer's responsibility to ensure all tax obligations have been met. There is no evidence to show that the Appellant made any contact with the agent between 31 July 2015 and 12 October 2015 when the already late return was submitted. If the Appellant feels his accountant has failed in a professional capacity or not followed specific instructions he should seek redress directly from him.

50. Late filing penalties for the year ended 5 April 2014 are due in accordance with Schedule 55 Finance Act 2009, even if a customer has no tax to pay, has already paid all the tax due or is due a refund.

51. 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 was clearly shown on the 2013-14 notice to file issued to the Appellant on 6 April 2014.

52. Penalties are in place to promote efficient operation of the taxation system and are intended as a measure of fairness, so that customers who file late do not gain any advantage over those who file on time.

53. 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.

Conclusion

54. When a person appeals against a penalty they are required to have a reasonable excuse which existed for the whole period 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.

55. 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.

56. With regard to the daily penalties of £900, we find that the Appellant's personal difficulties and illness constituted a reasonable excuse for the delay that occurred from the beginning of the [90 days] period which followed 1 May 2015 until 5 June 2015 when he provided his accountant with the necessary information for the filing of his return. Following that the Appellant emailed his accountants twice, to seek an assurance, which he was given, that his return would be filed by 31 July 2015. The reasonable excuse therefore continued.

57. With regard to the six month penalty, we find that the Appellant took reasonable care to avoid the failure to submit his return by 31 July 2015. We accept the Appellant's submissions as set out in paragraph 44 above. The tax agent, who had dealt with the Appellant's tax affairs for many years, knew what was required of him and initially at least pressured the Appellant for the information he needed. The Appellant having provided the information then reminded him of the deadline for filing and made regular checks on progress. The Appellant's actions satisfied the provisions of Schedule 55 Para 23(2)(b) Finance Act 2009.

58. The Appellant had been assured that the return would be submitted in good time. His actions were not those of simply delegating the completion and submission of a return to a tax agent. He was proactive and involved throughout the process. Although the Appellant did not make any contact with the agent between 31 July 2015 and 12 October 2015, that was because he had received, and not unreasonably accepted, his longstanding accountant's assurances that the return would be filed before the deadline. Clearly if the Appellant had any lingering doubts about that, he would, as his previous actions show, have been prompted to query the position again with his accountant. The fact that he did not do so simply emphasises his not unreasonable belief that the return had been filed.

59. The appeal is therefore allowed and the late filing penalties discharged.

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

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**MICHAEL CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 12 SEPTEMBER 2017

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