



**TC07964**

**Appeal number: TC/2020/00537**

*Income tax - fixed and daily penalties for late filing of Individual SA return - significant delay before submitting return - appellant asserts that she had been ill and also confused her tax credit annual renewal with her tax return - whether reasonable excuse for delay - no - appeal refused*

**FIRST-TIER TRIBUNAL**

**TAX**

**FADUMA YUSUF MOHAMED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL CONNELL**

**The Tribunal determined the appeal on 10 June 2020 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 31 January 2020 and HMRC's Statement of Case received by the Tribunal on 5 March 2020.**

## DECISION

### **The appeal**

1. This is an appeal by Miss Faduma Yusuf Mohamed (“the appellant”) against penalties totalling £1,600 imposed by the Respondents (“HMRC”) under Paragraphs 3, 4, 5 and 6 of Schedule 55 Finance Act 2009 for the late filing by the appellant of her self-assessment (“SA”) tax return for the tax year 2015-16.
2. The appeal includes an application to the Tribunal by the appellant to appeal out of time.
3. Although the initial appeal to HMRC was late HMRC have chosen to admit the appeal

### *Penalties for late filing of self-assessment returns*

4. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.
5. Penalties for late filing of a return can be summarised as follows:
  - i. A penalty of £100 is imposed under Paragraph 3 of Schedule 55 Finance Act (“FA”) 2009 for the late filing of the Individual Tax Return.
  - ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties at £10 per day up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA 2009.
  - iii. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 5 of Schedule 55 FA 2009.
  - iv. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 6 of Schedule 55 FA 2009.

### *Filing date*

6. Under s 8(1D) TMA 1970 et seq. a non-electronic return must be filed by 31 October following the end of the relevant tax year or an electronic return by 31 January of the following year. The ‘penalty date’ is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.

### **The background facts**

7. On 8 May 2013 the appellant registered as self-employed from 4 April 2013, trading as a caterer.
8. The appellant filed her SA returns for 2013-14 and 2014-15 on time.
9. The notice to file for the year ending 5 April 2016 was issued to the appellant on or around 6 April 2016.

10. The notice to file was issued to the appellant at her last recorded address at 51 Lockerbie Avenue, Leicester, LE4 7NL. There is no assertion by the appellant that she did not receive the notice.
11. The filing date was 31 October 2016 for a non-electronic return or 31 January 2017 for an electronic return.
12. In accordance with Paragraph 3 of Schedule 55 FA 2009, as the appellant did not submit a return by the filing date of 31 January 2017, she was liable to a penalty of £100.
13. HMRC issued a notice of penalty assessment on or around 7 February 2017 in the amount of £100. The notice (SA326D) serves as a warning of the daily penalties and so satisfies the requirement of Schedule 55 FA2009 para 4(1) (c).
14. Pursuant to Paragraph 4 of Schedule 55 FA 2009 as the return had still not been received 3 months after the penalty date, the appellant was liable to daily penalties of £10 per day up to a period of 90 days. HMRC issued a notice of daily penalty assessment on or around 11 August 2017 in the amount of £900, calculated at £10 per day for 90 days.
15. Pursuant to Paragraph 5 of Schedule 55 FA 2009, as the return had still not been received 6 months after the penalty date, the appellant was liable to a penalty of £300.
16. HMRC issued a notice of penalty assessment on or around 11 August 2017 in the amount of £300.
17. Pursuant to Paragraph 6 Schedule 55 FA 2009 as the return had still not been received 12 months after the penalty date, the appellant was liable to a penalty of £300. HMRC issued a notice of penalty assessment on or around 20 February 2018 in the amount of £300.
18. The appellant's electronic return for the year ending 5 April 2016 was received on 22 August 2019 and processed on 22 August 2019. The return was submitted 1,233 days late.
19. On 27 August 2019 HMRC was in receipt of an appeal under the terms of paragraph 20 Schedule 55 FA 2009 in respect of the penalties charged.
20. Section 31 Taxes Management Act ("TMA") 1970 gives the right of appeal against tax assessments and s 31A says the appeal must be within 30 days of the specified date, being the date the notice was given.
21. When an appeal is received by HMRC more than 30 days after the penalty has been issued, HMRC can consider the appeal if there is a reasonable excuse for the delay in appealing. HMRC do not object to the late appeal.
22. HMRC issued its view of the matter to the appellant upholding the decision to charge the penalties. This letter also offered a statutory review or the option to appeal to the First-tier Tribunal
23. On 24 September 2019 the appellant requested a review.
24. HMRC issued its conclusion of review letter to the appellant, which upheld the decision to charge late filing penalties.

25. On 31 January 2020 the appellant lodged an appeal before the First-tier Tribunal.

### **Points at issue**

26. Whether the appellant has a reasonable excuse for the late filing of her 2015-16 return.

### **Burden and standard of proof**

27. The onus of proof is for HMRC to show that the penalties have been correctly calculated. The burden then shifts to the appellant to demonstrate that a reasonable excuse exists for the defaults and if a reasonable excuse exists, the appellant must show that the return was filed without any unreasonable delay once any excuse had ended.

28. The standard of proof is the ordinary civil standard, which is on the balance of probabilities

### **Relevant statutory provisions**

#### **Taxes Management Act 1970**

Section 8 - Personal return- provides as follows:

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

- a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may, reasonably be required in pursuance of the notice, and
- b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

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

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

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

- (a) the amounts in which a person is chargeable to income tax and capital gains tax are net amounts, that is to say, amounts which take into account any relief or allowance a claim for which is included in the return; and
- (b) the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate amount of any income tax deducted at source and any tax credits to which [section 397(1) [or [397A (1)] of ITTOIA 2005] applies.]

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

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

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

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

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

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

- (a) during the period of 3 months beginning with the date of the notice (for a non-electronic return), or
- (b) on or before 31st January (for an electronic return).

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

(1H) The Commissioners-

- (a) shall prescribe what constitutes an electronic return, and
- (b) may make different provision for different cases or circumstances.

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

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

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

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

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

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

## **Schedule 55 Finance Act 2009**

29. The penalties at issue in this appeal are imposed by Schedule 55 Finance Act 2009. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a SA return is submitted late.

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

- (1) P is liable to a penalty under this paragraph if (and only if)--
  - (a) P's failure continues after the end of the period of 3 months beginning with the penalty date,
  - (b) HMRC decide that such a penalty should be payable, and
  - (c) HMRC give notice to P specifying the date from which the penalty is payable.
- (2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).
- (3) The date specified in the notice under sub-paragraph (1)(c)--
  - (a) may be earlier than the date on which the notice is given, but
  - (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

31. 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.

32. 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

33. 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.

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

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

### **The Appellant's case**

35. The appellant's grounds for making an application for permission to bring a late appeal, as set out in her Notice of Appeal to the Tribunal are:

"I am single mother and have one child. I work part time as I have illness and could not work full time. This was also my reason that I had stopped self-employment.

For the concerned year 2015-16 (as well for the year 2013-14, and 16-17 my appeal with HMRC is in process) I did not complete the assessment on time as it was my misunderstanding and lack of knowledge that I need to declare this separately. I mixed up myself with the Tax credit annual renewal as I was completing the income detail there each year once. I thought that as Tax credit office is also HMRC so I do not need to do anything else.

Further due to my health conditions which is bad since 2013 and until today I have been suffering with depression, anxiety and illness and that is still ongoing. I did not show your letters to someone professional person to read for me, I do apologise for that and seek your forgiveness.

I request you please remove the penalties in those years by considering my personal and financial circumstances being a single mother and having one child with low income and that you can see. I cannot afford to pay.

I request you please forgive me this time and remove the penalty as soon as possible."

### **HMRC's Case**

36. HMRC set up a self-assessment record for the appellant on 4 April 2013, trading as a caterer.

37. This appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every-day responsibilities of the appellant to ensure her SA return for the year ending 5 April 2016 was filed by the legislative date and payment made on time.

38. Self-assessment places responsibility on customers for their own tax affairs. This includes ensuring that they submit their tax return at the correct time and pay any tax liability by the due date. It is the customers own responsibility to make sure that they meet any deadline without prompt or reminder from HMRC.

39. To support taxpayers with their responsibility HMRC publishes information and advice about their obligations and how they can adhere to them. This information about SA, the completion of returns, tax payment dates, penalties and so on, is well within the public domain and are widely available via the Internet including HMRC's website. An individual acting in a responsible manner to ensure that they adhered to their legal obligations would make themselves aware of such information and act accordingly.

40. In order for the appellant's appeal to succeed, she must demonstrate that a reasonable excuse existed which prevented her from complying with her Income Tax obligations. HMRC have concluded, based on the evidence held, that no reasonable excuse exists for the non-submission of the Individual tax return and the penalties were correctly charged in accordance with legislation.

41. Late filing penalties for the year ended 5 April 2016 are due in accordance with Schedule 55 FA 2009, even if the appellant had no tax to pay, has already paid all the tax due or is due a refund.

42. 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 2015-2016 notice to file issued to the appellant on 1 April 2015.

43. The appellant has been sent statements of account which clearly showed the penalty is charged on numerous occasions. The appellant does not dispute receiving the statements.

44. When the appellant registered herself for SA in April 2013, she familiarised herself with the SA procedures because she filed her returns for the next two years on time.

45. Anyone receiving a notice to file must file a return by the specified date filing deadline or otherwise face penalties.

46. In order for the appellant's appeal to succeed it would have to show that she had a reasonable excuse which prevented her from complying with her income tax obligations and that the excuse continued throughout the period of failure until the date the return was actually filed.

47. 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 has ended.



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

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

49. HMRC consider reasonable excuse to be something that stops a person from meeting a tax obligation despite them having taken reasonable care to meet that obligation. It is necessary to consider what a reasonable person, who wanted to meet their obligation would have done in the same circumstances and decide if the action of the person met that standard as outlined by Judge Medd in *The Clean Car Company* (LON/90/138X):

“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? Put in another way which does it think alter the sense of the question; was what the taxpayer did not an unreasonable thing for a trader of the sort I have envisaged, in the position that the taxpayer found himself, to do?”

50. Reasonable excuse is not further defined beyond paragraph 23 (2) of schedule 55 but was considered in detail in the Upper Tribunal decision in *Christine Perrin v Commissioners for HMRC* ([2018] UKUT 0156 (TCC)). Whilst confirming at paragraph 70 of that decision that reasonable excuse should be judged objectively, Judge Herrington stated at paragraph 71:

“In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in *The Clean Car Co and Coates*).”

51. And at paragraph 56:

“Where a taxpayer's belief is in issue, it is often put forward as either the sole or main fact which is being relied on - e.g. 'I did not think it was necessary to file a return, or genuinely and honestly believed that I had submitted a return' In such cases, the FTT may accept that the taxpayer did indeed genuinely and honestly hold the belief that he/she asserts; however that fact on its own is not enough. The FTT must still reach a decision as to whether that belief, in all the circumstances, was enough to amount to a reasonable excuse. So a taxpayer who was well used to filing annual self-assessment returns but was told by a friend one year in the pub that the annual filing requirement had been abolished might persuade a tribunal that he honestly and genuinely believed he was not required to file a return, but he would be unlikely to persuade it that the belief was objectively a reasonable one which could give rise to a reasonable excuse.”

52. Whilst *Christine Perrin v HMRC* concerned a late filing penalty under schedule 55 FA 2009, as in this case, the conclusions of Judge Herrington in a section headed 'Final comments', summarised his comments on reasonable excuse in relation to the general principle, rather than any particular provision.

53. Whether a person has a reasonable excuse will depend on the particular circumstances in which the failure occurred and the abilities of the person who has failed. What is a reasonable excuse for one person may not be a reasonable excuse for another person.

54. In *Christine Perrin v HMRC*, Judge Herrington addressed the question whether ignorance of the law can provide a reasonable excuse at paragraph 82 of his decision, when he concluded

“One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that 'ignorance of the law is no excuse, and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long.”

55. The appellant states she did not know she had to file a SA return as well as a tax credit renewal form due to her misunderstanding and lack of knowledge.

56. A notice to file was issued to the appellant on 6 April 2016 to her home address which advised her of her legal obligation to file a SA tax return by the deadline. The notice to file included information relating to the deadlines for submitting a return and also the late filing penalty charge for not submitting the return on time. The notice also confirmed that more penalties would be due if the return is three, six or twelve months late.

57. HMRC also issued the following correspondence to the appellant:

- Penalty notices on or around 7 February 2017, 11 August 2017 and 20 February 2018.
- Statements on 9 March 2017, 14 September 2017, 6 December 2017, 8 March 2018, 13 September 2018 and 18 April 2019 all clearly showing the penalties charged for the year ending 5 April 2016.
- Daily penalty reminders on 6 June 2017 and 4 July 2017.
- HMRC's Debt Management and Banking team also issued outstanding debt letters to the appellant, to the address, on 27 September 2018 and 22 October 2018.

58. The above correspondence was sent to the address as shown on HMRC's records at the time, which is the same address as stated on the Tribunal appeal. Under Taxes Management Act (“TMA”), Part XI, Section 115, it is deemed to have been served on the appellant.

59. HMRC normally know when correspondence has not been delivered as it is returned to HMRC under their Returned Mail Service with Royal Mail and a note is made on the record of the item undelivered and the actions taken. There is no record of any mail being returned as undelivered from the appellant's address on record and therefore the correspondence is deemed to have been served within the ordinary course of post-delivery in line with s 7 of the Interpretation Act 1978.

60. HMRC contend that any taxpayer wishing to comply with their obligation would have acted upon receipt of a penalty for something they believed they were not required to do. If the appellant honestly believed that she was not required to complete a SA return for the year ending 5 April 2016, that belief ended with the first penalty notice and was not remedied within a reasonable time, so the excuse did not last throughout the period of failure.

61. HMRC also contend that the appellant was correctly made aware of both the requirement to file a SA return for the year ending 5 April 2016 and of the accruing penalties.

62. HMRC's records show that the appellant did not contact HMRC until 20 December 2017 when she queried the penalties. HMRC advised the appellant on what the penalties were and how to appeal and that the SA return for the year ending 5 April 2016 was outstanding and needed to be sent in as soon as possible. There was no further contact from the appellant until her appeal received on 27 August 2019.

63. HMRC submits that it was not "objectively reasonable" in the circumstances of this particular case, for the appellant to have been ignorant of her obligation to complete a SA return for the year ending 5 April 2016 or confuse this with a tax credit application. The appellant successfully completed her SA returns online for the years ending 5 April 2013, 2014, 2015 and 2017 prior to the date the return for the year ending 5 April 2016 was received.

64. In her appeal to the Tribunal the appellant states "I am a single mother and have one child with very low income".

65. Whilst HMRC acknowledge and empathises with the appellant for her domestic situation, HMRC contends that looking after a family does not constitute a reasonable excuse for the failure to comply with the obligation to file a return.

66. The appellant goes on to state / request that her personal and financial circumstances are taken into account saying, "I cannot afford to pay".

67. Paragraph 23 of Schedule 55 FA 2009 specifically excludes an insufficiency of funds as a reasonable excuse for failing to file a return by the due date unless attributable to events outside an appellant's control. The appellant has not provided evidence of any such events.

68. There is also no evidence of the appellant contacting HMRC to advise of any financial difficulties until her appeal of 27 August 2019.

69. The appellant states:

"Further due to my health conditions which is bad since 2013 and until today I have been suffering with depression, anxiety and illness and that is still ongoing".

70. Whilst HMRC empathises with the appellant for her ongoing health problems she has not provided any evidence of how this affected her ability to deal with her tax affairs. Where an illness is long term and ongoing HMRC contend that it is reasonable to expect the appellant to put alternative arrangements or processes in place to ensure she met her legal obligations. This would include the submission of her SA return

71. HMRC's records show that on 4 April 2013 HMRC processed form CWF1, Registering for Self-assessment, as the appellant had commenced self-employment as a caterer. A SA

record was created and a SA return for the year ending 5 April 2013 was issued on 25 April 2013. This return was completed and successfully submitted online by the deadline, 31 January 2014.

72. The appellant successfully submitted online the following two years SA returns (for the years ending 5 April 2014 and 2015) although the former was submitted late.

73. According to HMRC's records the appellant did not contact HMRC to advise of her health problems until her appeal of 27 August 2019.

74. HMRC contend that having registered as self-employed the appellant was obliged to complete SA returns each year. If the appellant was having difficulties in completing her SA returns she could have contacted HMRC who could have provided help and assistance.

75. HMRC records show the SA return for the year ending 5 April 2016 was received on 22 August 2019 and should have been delivered to HMRC by 31 January 2017 in accordance with s 8(1D) TMA 1970. The return was submitted 1,233 days late.

76. HMRC have concluded, based on the evidence held, that no reasonable excuse exists for the late submission of the appellant's tax return and the penalties were correctly charged in accordance with legislation.

77. 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.

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

### *Special Reduction*

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

80. "Special circumstances" is undefined save that, under paragraph 16(2), it does not include ability to pay, or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

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

82. At paragraph 36 of his decision in *David Collis*, Judge Roger Berner said:

“In the context of a decision of HMRC as to whether a reduction in a penalty should be made on account of special circumstances, the general test will be whether the decision is so demonstrably unreasonable as to be irrational or perverse, such that no reasonable authority could ever have come to it.”

83. At paragraph 86 in the Upper Tribunal case of *Barry Edwards v HMRC* [2019] UKUT 137 (TCC), it was confirmed that the Schedule 55 regime was proportionate and penalties are correctly due even in circumstances where there is no additional tax liability,

“In view of what we have said about the legitimate aim of the penalty scheme, a penalty imposed in accordance with the relevant provisions of Schedule 55 FA 2009 cannot be regarded as disproportionate in circumstances where no tax is ultimately found to be due. It follows that such a circumstance cannot constitute a special circumstance for the purposes of paragraph 16 of Schedule 55 FA with the consequence that it is not a relevant circumstance that HMRC must take into account when considering whether special circumstances justify a reduction in a penalty.”

84. Part of the consideration for Special Reduction includes whether in HMRC’s opinion a penalty has been raised when the legislation did not intend that taxpayer to be subject to the penalty regime. As the taxpayer was in the SA process, had not submitted a return as required by the notice and failed to do so after penalties and warnings of further penalties, HMRC do not consider that special reduction applies.

## **Conclusion**

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

86. In considering whether the appellant has a reasonable excuse for the default it is necessary to consider her actions from the perspective of a prudent tax-payer exercising reasonable foresight and due diligence and having proper regard for their responsibilities provided by legislation. 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 would have been complied with.

87. Even if the appellant had a reasonable excuse at the time of the initial failure, too much time has elapsed since then. Any reasonable excuse has to continue to the date when the failure is remedied which clearly did not happen in this case.

88. I concur entirely with HMRC’s submissions as set out in paragraphs 36 – 78 above. I find that the appellant’s appeal is out of time and that in any event she has not shown a reasonable excuse for the late filing of her 2015-16 return.

89. There are no special circumstances which might have merited a reduction in the penalties.

90. The appeal is refused and the penalties are confirmed.

91. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent

to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**MICHAEL CONNELL**

**TRIBUNAL JUDGE**

**RELEASE DATE: 4 DECEMBER 2020**