



TC04471

Appeal number: TC/2012/05029

PAYE. Penalty under Schedule 56 Finance Act 2009 for late payment. The Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682). Whether appellant can choose to allocate to previous tax year the liability arising under regulations 68 and 69. Held: No. Whether penalty should be cancelled for unfairness because HMRC did not notify penalties until after end of tax year. Held: No, following Hok Limited [2012] UKUT 363 (TCC). Whether penalty should be cancelled for disproportionality or for being unduly onerous. Held: No, following Hok Limited [2012] UKUT 363 (TCC). No reduction for special circumstances. No reasonable excuse on the facts.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

OPTRAK DISTRIBUTION SOFTWARE LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE RACHEL PEREZ
SONIA GABLE**

Sitting in public at 45 Bedford Square, London on 14 August 2012

Mrs Barbara Stewart of the appellant for the appellant

Miss Susan Crane and Mrs Lynne Ratnett of HMRC for the respondents

DECISION

Introduction

5 1. This is an appeal under paragraph 13 of Schedule 56 to the Finance Act 2009 (c.10). The appeal is against a penalty of £1,564.01 imposed by HMRC for the appellant's late payment of PAYE payments which HMRC said were due for the tax year 2010 to 2011.

2. By summary decision, we dismissed the appeal.

10 3. We received a letter from the appellant which did not purport to be a request for anything that could be requested under the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273 as amended). We decided it was best for the appellant if we treated the letter as a request for a full decision. We now therefore give our full decision.

Background

15 4. By a penalty notice dated 27 September 2011, the appellant was notified of a £3,632.13 penalty for late PAYE payments for the year ended 5 April 2011.

5. On 18 October 2011, the appellant wrote to HMRC appealing against the penalty. The letter included records of PAYE and national insurance due with adjustments and requested that the penalty be reduced to £969.48.

20 6. By letter to the appellant dated 24 October 2011, HMRC sought further information.

7. By letter dated 10 November 2011, the appellant provided further information. The letter enclosed P32 sheets and schedules of payments and of amounts due. It explained that the appellant calculates pay up to the 6th of the month and pays it on the 7th and that "month 1 is included in the previous year's P35".
25

8. By letter dated 14 November 2011, HMRC told the appellant that no reduction in the penalty would be made.

9. On 7 December 2011, the appellant requested a review. In the letter, Mrs Stewart explained again that she calculates pay up to the 6th of the month and pays it on the 7th of the month and that month 1 is included in the previous year's month 12. The letter said—
30

"I pay electronically and my bank doesn't appear to give me an option to indicate which month the payment belongs to and Shipley allocate payments themselves, this has not been an issue in previous years but is now relevant to 2010-11."

35 10. By letter dated 22 March 2012, HMRC told the appellant that, following a review, they would reduce the penalty to £2,576.61. This was said to be due to the

tribunal's decision in *Agar Limited* [2011] UKFTT 773 (TC). That decision had ruled that lateness in making a payment due on 19 or 22 April 2011 should not be treated, for the purposes of late payment penalties, as a default in the tax year 2010-11. A copy of the revised penalty calculation was attached to the letter.

5 11. By letter dated 18 April 2012, an appeal was made to the First-tier Tribunal against the revised penalty of £2,576.61.

12. By letter dated 21 June 2012, HMRC told the appellant that, having taken account of representations, HMRC were reducing the penalty to £1,564.01.

10 13. By letter dated 6 July 2012 prior to the tribunal hearing, the appellant set out how the appellant wished PAYE payments to be allocated. Using that mode of allocation, the appellant contended that there should be a penalty of £610.12 based on five late payments for the tax year ended 5 April 2011. (The late payment schedule to that letter still showed late payments for month 12, which HMRC had by then abandoned in light of *Agar*. But that did not affect the thrust of the appellant's arguments.)
15

14. HMRC did not accept that mode of allocation. HMRC's mode of allocation had resulted in eight late payments. By virtue of paragraph 6(3) of Schedule 56, the first late payment did not count as a default for the purpose of calculating the penalty. That made seven defaults, according to HMRC. Seven defaults attracted
20 a 3% penalty under paragraph 6(6) of Schedule 56. This resulted in the £1,564.01 penalty under appeal.

15. Any payment unpaid after six months would have attracted an additional penalty under paragraph 7 of Schedule 56. It was common ground that no payment was unpaid after six months. So the 3% penalty under paragraph 6(6) was the only
25 one which HMRC had applied.

Appeal to First-tier Tribunal

16. Mrs Stewart argued the following grounds before us—

30 (1) The penalty is unfair because HMRC failed to notify about the introduction in the legislation of penalties for the first time in 2010-11 and failed to notify that a penalty had been incurred and was mounting up.

(2) The penalty is disproportionate and unduly onerous for payments being a day or a few days late which had been common and accepted practice in the past.

35 (3) HMRC had wrongly allocated to month 1 the initial payment of £10,969.53. HMRC had thereby ignored the appellant's argument that nothing was due for month 1 and that payments were made in advance and ignored the appellant's schedules which showed that, once that initial payment was allocated correctly, payments were largely made on time.

(4) The £10,457.29 received on 23 March 2011 should not be treated as late because there is a reasonable excuse for that lateness.

5 17. On the appellant's case, both as to allocation and as to reasonable excuse for the 23 March payment, the only late payments were those received by HMRC on 30 June, 26 November, 10 January, 27 January, 23 February and 28 April.

18. Mrs Stewart did not appear to argue reasonable excuse for those late payments. But in case she was, we find at paragraphs 96 to 98 below that there was no reasonable excuse for the lateness of those payments.

10 19. On the appellant's contended mode of allocation, if the appeal did not succeed outright because of unfairness, onerousness or disproportionality, there were six late payments, and so five defaults which counted towards the penalty. That would attract a 2% penalty under paragraph 6(5) of Schedule 56 rather than the 3% penalty imposed by HMRC.

Summary of appellant's case

15 20. To sum up, the appellant's case was that the penalty should be cancelled altogether because it was unfair, disproportionate or unduly onerous. Alternatively, the appellant's contended mode of allocation meant fewer defaults. Fewer defaults meant a lower amount of late tax and a lower percentage penalty rate, both of which reduced the amount of the penalty. The amount of late tax, and
20 so the amount of the penalty, was on the appellant's case further reduced by the reasonable excuse claimed for the payment received on 23 March 2011.

PAYE legislation

21. Regulation 2(1) of The Income Tax (Pay As You Earn) Regulations 2003, provides, so far as relevant—

25 “2.—(1) In these Regulations, unless the context otherwise requires—

[...]

“tax month” means the period beginning on the 6th day of a calendar month and ending on the 5th day of the following calendar month;

[...]

30 “tax period” means—

(a) tax quarter, if regulation 70 (quarterly tax periods) applies, or

(b) tax month, in every other case;”.

22. Regulation 4 of The Income Tax (Pay As You Earn) Regulations 2003 provides, so far as relevant—

“4.—(1) In these Regulations, any reference (however expressed) to relevant payments means payments of, or on account of, net PAYE income [...]”.

5 23. Regulation 68 of The Income Tax (Pay As You Earn) Regulations 2003 provided, so far as relevant—

“68.—(1) This regulation applies to determine how much an employer must pay or can recover for a tax period.

(2) If A exceeds B, the employer must pay the excess to the Inland Revenue.

10 (3) But if B exceeds A, the employer may recover the excess either—

(a) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later tax period in the tax year, or

(b) from the Board of Inland Revenue.

(4) In this Regulation—

15 A is—

(a) the total amount of tax which the employer was liable to deduct from relevant payments made by the employer in the tax period, plus

20 (b) the total amount of tax for which the employer was liable to account in respect of notional payments made or treated by virtue of a retrospective tax provision as made, by the employer in that period under regulation 62(5) (notional payments);

B is the total amount which the employer was liable to repay in the tax period.”.

24. Regulation 69 provided, so far as relevant—

25 “69.—(1) An employer must pay amounts due under regulation 68(2)—

(a) within 17 days after the end of the tax period, where payment is made by an approved method of electronic communications, or

(b) within 14 days after the end of the tax period, in any other case.”.

30 25. It was common ground that there was no material difference, for the purposes of this appeal, between The Income Tax (Pay As You Earn) Regulations 2003 and the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004). We do not therefore set out the provisions of those 2001 regulations.

Ground (1): Unfairness

26. It was common ground, and we find, that HMRC had warned the appellant during the tax year in question that the appellant may be subject to penalties for late payments.
- 5 27. But HMRC accepted, and we find, that they did not warn the appellant during the tax year that the appellant was definitely incurring penalties for late payment of its PAYE liabilities. This was so despite HMRC having had, as we find, more than one telephone conversation with Mrs Stewart after she had made late payments which later made up the defaults for which HMRC imposed the penalty.
- 10 28. It was common ground, and we find, that the first time HMRC told the appellant it was definitely incurring penalties in relation to the tax year in question was by HMRC's penalty notice of 27 September 2011.

Appellant's submissions: unfairness

- 15 29. The appellant argued that it was unfair to have to pay a penalty when HMRC had given no warning that a penalty was definitely being incurred and was mounting up. Mrs Stewart said that this was especially so given that, in previous years and "since the year dot", the appellant had not been penalised for being a few days late.
- 20 30. Mrs Stewart told us that, had she known penalties were being incurred, she would have borrowed the money to pay on time. Although her statement on this point depended on an assumption that she would have been given the necessary loans, she listed a number of possible sources. We decided to give her the benefit of the doubt and accept that the appellant would have started to pay on time had it known it was incurring penalties for late payment. That does not however help the appellant's case, for the reasons set out at paragraphs 33 to 37 below.
- 25

HMRC's submissions: unfairness

- 30 31. Mrs Ratnett explained that the reason HMRC did not warn the appellant during the tax year that it was definitely incurring penalties was because HMRC are not in a position, until after the end of the tax year, to say whether an employer is definitely incurring penalties. She said this is because it will depend on the number of defaults, whether there is a reasonable excuse for any instance of lateness, and on any special circumstances. Mrs Stewart submitted, in response to that, that HMRC could at least have said "Are you aware of this new penalty regime? You are currently straying into that territory".
- 35 32. We stayed the appeal pending the outcome in the Upper Tribunal of the appeal of *Hok Limited* [2012] UKUT 363 (TCC). Once that decision had been issued, the parties had the opportunity to make further submissions in light of it.

Discussion: unfairness

33. In light of the Upper Tribunal’s decision in *Hok*, we have no choice but to find that unfairness cannot be a ground on which to allow the appeal.

34. HMRC drew our attention to the Upper Tribunal’s finding in *Hok* that—

5 “neither [section 100B of the Taxes Management Act 1970] nor any other gives the tribunal a discretion to adjust a penalty of the kind imposed in this case, because of a perception that it is unfair or for any similar reason. Pausing there, it is plain that the First-tier Tribunal has no statutory power to discharge, or adjust, a penalty because of a perception that it is unfair.” (paragraph 36).

10 35. HMRC submitted, and we accept, that the penalty provisions in Schedule 56 to the Finance Act 2009 fall within the Upper Tribunal’s reasoning in *Hok*. Paragraph 11(1) of Schedule 56 provides that, where a person is liable to a penalty under any paragraph of Schedule 56, HMRC “must” assess that penalty. We accept that this gives HMRC no power to consider anything other than the
15 statutory conditions for liability to and amount of the penalty. On appeal against the penalty, the tribunal has power to affirm or cancel it under paragraph 15(1) of Schedule 56. Where the appeal is against the amount of the penalty, the tribunal has power under paragraph 15(2) to affirm it or substitute another decision that HMRC had power to make. We accept that this means that the tribunal, just like
20 HMRC, has no power to consider anything other than the statutory conditions relating to the penalty. This in our judgment brings the present case within the reasoning of the Upper Tribunal in *Hok*.

25 36. In addition, as HMRC also pointed out, the Upper Tribunal in *Hok* concluded that the remarks of Sales J in *Oxfam v HMRC* [2010] STC 686 did not point to a wider jurisdiction. We find therefore that the *Oxfam* case cannot help the appellant either.

37. For these reasons, we do not have power to cancel the penalty for unfairness.

Ground (2): Penalty disproportionate and unduly onerous

Appellant’s submissions: penalty disproportionate and unduly onerous

30 38. Mrs Stewart also argued that her case was far different from the case of *Agar Limited* [2011] UKFTT 773 (TC). She submitted that the number of days’ lateness in her case was much less than in *Agar*. *Agar* had clocked up 256 days’ lateness, she said, whereas the appellant’s payments were for the most part between one and five days late. The one exception was Christmas, said Mrs Stewart, when the
35 payment was 19 days late and was just not on her mind. She said she was ignoring for the purposes of this submission the 37 days’ lateness for month 11, because that was dealt with in her submissions on allocation.

39. Mrs Stewart submitted that she cannot be put into the same camp as *Agar*, both in terms of the way she responds to HMRC and in her transgressions. She said

that, ironically, had she been as obtuse as Agar, she would not have gone under the radar and would have been warned that she was incurring penalties.

5 40. She submitted that it was disproportionate and unduly onerous in her case, especially by comparison with *Agar*, for her to be subjected to the same penalty regime as in *Agar*.

HMRC’s submissions: penalty disproportionate and unduly onerous

10 41. HMRC submitted that *HMRC v Total Technology Ltd* 2012 UKUT 418 (TCC) was a VAT appeal where the taxpayer's argument failed on the question of the proportionality of penalties under European law. HMRC submitted that that was not relevant to the present appeal, where the obligations arise solely under domestic law. They submitted that the present case is governed by what the Upper Tribunal said at paragraphs 29 and 37 of *Hok*. They asked us not to cancel the penalty for being disproportionate or unduly onerous.

Findings and reasons: penalty disproportionate and unduly onerous

15 42. We have sympathy for the appellant’s argument. But we accept HMRC’s submission that we are bound by *Hok* in which the Upper Tribunal found—

20 “29. These arguments were considered, and rejected, by a Special Commissioner in a comprehensive and careful decision in *Bysermaw Properties Ltd v Revenue and Customs Commissioners* [2008] STC (SCD) 322. He concluded that the imposition of a penalty as a means of encouraging the timely submission of a tax return was not merely not an infringement of the First Protocol, but expressly contemplated by it; that the scale of the penalty was within the range permitted by the state’s margin of appreciation; that the fact that an element of banding (that is, the setting of the monthly penalty by reference to the number of employees) had been used did not carry with it an obligation to refine the banding beyond the multiples of fifty which have been adopted; that correspondingly the fact that the penalty was the same for an employer with only a single employee as for one with 50 employees did not render the penalty disproportionate; and that even if those conclusions were wrong, HMRC could not have imposed a different penalty because the requirement was one imposed by, as s 6(2)(b) of the Human Rights Act 1998 puts it, “primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights [and] the authority was acting so as to give effect to or enforce those provisions.” The Special Commissioner concluded that s 98A fell within that description. Accordingly he upheld the penalties which had been imposed.

[...]

35 37. Before moving on to consider whether there is any other route by which it might acquire additional jurisdiction we should add for completeness that, since the requirement imposed on employers to submit year-end returns is a product only of United Kingdom law, the concept of proportionality as it is understood in European Union law, with which we deal in our decision in *Revenue and Customs Commissioners v Total Technology Ltd*, to be released shortly after this decision, does not arise. The slightly different argument, that the penalty should be scaled to reflect the number of employees more precisely, has not been advanced, but in any event we consider the

Special Commissioner was correct to reject it in *Bysermaw Properties Ltd*. We agree with his reasoning and with his conclusions, not only on this issue but on the others with which he dealt, and cannot usefully add anything to what he said.”.

5 43. We find therefore that the penalty cannot be set aside for being disproportionate or unduly onerous.

Ground (3): Allocation

44. Mrs Stewart argued that, if the appeal failed in principle, the amount of the penalty should nevertheless be lower because HMRC had wrongly allocated the payments.

10 **Parties’ positions as to amounts due for each month**

45. By the time of the hearing, HMRC had accepted the appellant’s figures for what was due for each month from month 2 onwards. The parties’ positions on what was due were therefore as follows—

Month for which amount due	Amount appellant says was due (page C4 enclosed with appellant’s letter of 10 November 2011)	Amount HMRC say was due (page B3)
Month 1	£0.00	£10,969.53
Month 2	£12,753.69	£12,753.69
Month 3	£12,901.41	£12,901.41
Month 4	£13,136.41	£13,136.41
Month 5	£12,653.82	£12,653.82
Month 6	£12,992.83	£12,992.83
Month 7	£13,486.99	£13,486.99
Month 8	£13,833.60	£13,833.60
Month 9	£14,393.59	£14,393.59
Month 10	£14,324.89	£14,324.89
Month 11	£14,824.64	£14,824.64

15

Parties' positions as to amounts paid and dates on which paid

5 46. Mrs Stewart referred to the payments occasionally at the hearing by the date on which she had initiated them. The schedule she handed in (enclosed with her letter of 6 July 2012) also referred to each payment, except the one received on 23 February, by a date a few days earlier than the date of receipt by HMRC. But a comparison of the amounts on the schedule Mrs Stewart handed in with the amounts on the schedule at page C30 attached to her letter of 7 December 2011 (where dates of receipt rather than initiation are shown) revealed the dates on the schedule she handed in to be dates of initiation of payment.

10 47. Mrs Stewart also told us that she accepted that the dates amounts were received by HMRC from the appellant were as stated by HMRC and as set out by her at the bottom of page C30. So it was common ground that HMRC received the following amounts on the following dates—

Parties agree that these amounts were received by HMRC on these dates		
10,969.53	18 May 2010	
12,579.37	30 June 2010	
8,000.00	2 July 2010	
948.22	15 July 2010	Appellant wanted this allocated to time to pay agreement for previous tax year. HMRC disagreed.
10,000.00	23 July 2010	Appellant wanted this allocated to time to pay agreement for previous tax year. HMRC agreed and removed it from their final calculations.
10,327.56	26 July 2010	
10,132.75	25 August 2010	
10,000.00	27 August 2010	Appellant wanted this allocated to time to pay agreement for previous tax year. HMRC disagreed.
12,457.45	30 September 2010	
11,255.74	21 October 2010	
10,457.21	26 November 2010	
12,308.33	10 January 2011	
11,231.34	27 January 2011	
10,823.41	23 February 2011	
10,457.29	23 March 2011	
7,831.66	28 April 2011	

15 48. The allocation dispute centred on what each party said was due for month 1, which ended with 5 May 2010.

49. This fed through to differences between the parties as to how payments should be allocated and so as to which amounts were late. That in turn led to a difference between the parties as to the number of defaults there had been. The number of defaults affected what percentage penalty should be applied. HMRC said there were eight late payments and so seven defaults. That number would attract a 3% penalty under paragraph 6(6) of Schedule 56. The appellant said there were only six late payments and so only five defaults. That would attract a 2% penalty under paragraph 6(5) of Schedule 56.

50. Mrs Stewart had prepared a schedule based on the P35 (letter 10 November 2011, pages C3 and C4). The schedule showed amounts paid to employees (“relevant payments”) in each month from month 2 onwards and the amounts due to HMRC on those amounts. Mrs Stewart invited us to work from that schedule for month 2 onwards. HMRC agreed to that and had already based its decision on the schedule.

51. However, that schedule did not show how much the appellant had paid in wages on 7 April 2010. There appeared to be no other document evidencing that either. The parties seemed agreed that, if we rejected the appellant’s allocation argument, we could take the £10,969.53 as the amount owed to HMRC in respect of relevant payments made for month 1. We are however giving liberty to apply as to the amount of relevant payments made on 7 April 2010 for month 1 (see paragraphs 82 to 86 below).

Appellant’s submissions and evidence: what was due and allocation

52. Mrs Stewart said she was not saying she had paid no wages in the period 6 April to 5 May 2010 (“wages” and “salary” were used interchangeably at the hearing to refer to “relevant payments”). She said she had paid wages on 7 April 2010 in respect of a period ended 6 April 2010. (Her submissions occasionally referred to payments made on 6 April and the 6th of subsequent months. But she also said she calculated pay up to the 6th of each month and paid it on the 7th. It is immaterial whether she paid it on the 6th or on the 7th; either way, it was still paid within the tax month beginning with the 6th of the month.)

53. Mrs Stewart said however that no amount was due to HMRC for month 1. She said this was because she had in the previous year’s P35 allocated the liability for payments made to staff on 7 April 2010 to month 12 of the previous tax year, rather than to month 1 of the present tax year. She said she had asked HMRC by telephone after receiving the penalty notice of 27 September 2011 to allocate the payments differently from how HMRC had allocated them. She had later put her arguments in writing (see “Background” above).

54. Mrs Stewart’s letter of 10 November 2011 (page C3) explained why she had allocated to month 12 of the previous tax year the liability for wages paid on 7 April 2010—

5 “Our contracts of employment state that pay date is the 7th of the month and we calculate pay up to the 6th of the month. We do this because we are a small business dependent on our debtors paying on time; therefore paying on 7th of the month gives us time to get in money from our debtors, who, typically, pay us at month end. Therefore, if my understanding is correct, PAYE for pay to, say, 6th June, is due 22nd July, if paid electronically. However I do, perhaps erroneously, include pay up to April 6th in to [sic] tax year end April 5th for ease of accounting; therefore month 1 is included in the previous year’s P35; I apologise for the confusion this may cause.”.

10 55. Mrs Stewart said that, because she had allocated the liability for the 7 April 2010 wages payments to month 12 of the previous tax year, the £10,969.53 she paid on 18 May 2010 was not a payment in respect of month 1, but was in fact an advance payment. But she said it was not an advance payment for any particular month. She said she had arrived at £10,969.53 by estimating in advance. Although she was saying it was an advance payment, she said “I can’t say it was an
15 advance payment for 19/22 June. I was just topping up the bucket”. It was pointed out to her that she had an obligation to check how much she owed. Mrs Stewart accepted that but said “I never sat down and worked out how much I owed HMRC. Perhaps I should have done”.

20 56. The appellant submitted that, because of her submission that there was no liability for month 1, the £10,969.53 paid on 18 May must therefore be allocated to month 2. She submitted that payments after that fell to be allocated to month 2 until the full liability for month 2 was paid, and then to month 3 until the full liability for month 3 was paid, and so on.

25 57. It was not clear whether, in her letter of 10 November 2011, Mrs Stewart had meant that the liability for a period ending on the 5th of a month was due by the 22nd of the following month, contrary to HMRC’s submission that it was due by the 22nd of the same month. At the hearing, however, Mrs Stewart accepted that the liability for month 2 (ended 5 June 2010) was due by 22 June, and not by 22 July, and so on for the following months.

30 58. Mrs Stewart told us “When I pay it [payments to HMRC], I never ask them to allocate it to a particular month”. She told us this was so even for the first payment of £10,969.53. In oral evidence, she said that she did ask HMRC in a telephone call to allocate the payments differently, but that that was after receiving the penalty notice of 27 September 2011. Apart from one payment of £10,000 which
35 HMRC agreed to allocate to the underpayment for the previous year, HMRC had not agreed to her allocation request.

59. Mrs Stewart did not suggest that there was any difference in approach between The Income Tax (Pay As You Earn) Regulations 2003 and the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

40 Practical effect of appellant’s submissions

60. The practical effect of the appellant’s submission that nothing was due for month 1 is set out in the table at Annex A to this decision.

5 61. Unlike the equivalent table for HMRC in Annex B, the table in Annex A does not show the payment of £948.22 received by HMRC on 15 July or the payment of £10,000 received by HMRC on 27 August. Mrs Stewart had included them as payments for 2010-11 in her letter and schedule of 10 November 2011 (pages C3 and C5). But she later asked HMRC to allocate those payments to the previous tax year (her letter 6 July 2012, handed in at the hearing). She said therefore that HMRC had wrongly allocated those payments to 2010-11 when they should have allocated them to the previous tax year.

10 62. If we accepted the appellant's submissions (shown in Annex A) as to which payments should be taken into account for 2010-11, as to what was due for month 1 and as to allocation for months 1 to 11, the result would be as follows—

<u>Appellant's contended result</u>			
	Amount paid late	Late payment number	Default number to count towards penalty
Month 2	£1,784.16	1	0 Does not count as default
Month 7	£2,202.75	2	1
Month 8	£5,579.14	3	2
Month 9	£7,664.40	4	3
Month 10	£10,757.95	5	4
Month 11	£4,301.89 (rather than £14,759.18 due to reasonable excuse argument for 23 March 2011 payment)	6	5

15 63. On the appellant's contended for result in the above table, the penalty would be only 2% of the amount of tax comprised in the defaults (paragraph 6(5) of Schedule 56) instead of the 3% which would apply for seven defaults under paragraph 6(6) of Schedule 56. The total amount of tax paid late would also be less than that contended for by HMRC, resulting in a further reduction of the penalty.

HMRC's submissions: what was due and allocation

64. HMRC did not agree with the appellant in relation to month 1. They submitted that the £10,969.53 paid on 18 May was due for month 1 and so must be allocated to month 1, for the following reasons.

5 65. HMRC submitted that month 1 could not under the regulations have nothing due. This was they said because of Mrs Stewart's acceptance that she had paid wages to staff as usual on 7 April (which Mrs Stewart said had been calculated up to and including 6 April).

10 66. Mrs Ratnett explained how HMRC say the legislation led to this. Regulation 68(1) and (2) of The Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) determine how much an employer must pay for a "tax period". Regulation 68(2) provides that, if A exceeds B, the employer must pay the excess to HMRC. Regulation 68(4) defines "A" as a combination of the total amount of tax the employer was liable to deduct from relevant payments made by the employer in the tax period plus the total amount of tax for which the employer was liable to account in respect of notional payments made by the employer in that tax period. Regulation 68(4) defines "B" as the total amount which the employer was liable to repay in the tax period. Regulation 4 defines a "relevant payment" as a payment of, or on account of, net PAYE income.

20 67. Crucially, Mrs Ratnett submitted, the tax due under regulation 68 is calculated by reference to what payments were made "in the tax period". Regulation 2(1) defines a "tax period" as a "tax month". Regulation 2(1) defines a "tax month" as "the period beginning on the 6th day of a calendar month and ending on the 5th day of the following calendar month". A payment made to an employee by the employer on 6 or 7 April was made in the tax month 6 April to 5 May. It was therefore, said HMRC, made in the tax period 6 April to 5 May. For a payment made in that tax period, regulation 69(1) provides that tax must be paid, if electronically, within 17 days of the end of the tax period in question, so 17 days after 5 May, which is 22 May. Or if payment is not electronic, regulation 69(1) provides that the tax must be paid within 14 days of the end of the tax period in question, so 14 days after 5 May, which is 19 May.

35 68. It was common ground that the appellant had made relevant payments to its employees on 7 April 2010. There was no suggestion that the appellant was, for the period 6 April to 5 May, in a situation where B exceeded A, or where A was exactly the same as B. Mrs Ratnett submitted that there must therefore be a liability under regulation 68(1) and (2) to pay tax for that period, and to pay it by 19 or 22 May depending on whether the payment was electronic or not. It was common ground that, because payments were electronic in this case, the deadline for all the months covered by the appeal was the 22nd rather than the 19th of the month.

40 69. HMRC submitted that the appellant had agreed that the liability for the 7 April 2010 wages payments was the £10,969.53. If that liability was not to be allocated

to month 12 of the previous tax year, then it must, said HMRC, be allocated to month 1.

5 70. HMRC submitted that the same requirements were imposed in relation to earnings-related national insurance contributions by regulation 67 of, and Schedule 4 to, the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

71. In addition, it was common ground that the parties had on 16 June 2010 concluded a time to pay agreement covering 2009-10. HMRC told us that HMRC would not in any event have allocated the £10,969.53 to month 12 of 2009-10 because of that time to pay agreement.

10 Practical effect of HMRC’s submissions

15 72. HMRC had accepted the appellant’s figures (letter 10 November 2011, page C4) for what was due for each month from month 2 onwards. But, as we have said, they contended that £10,969.53 was due for month 1. Subsequent payments would then, said HMRC, go to pay off the balance of the amount due for a particular month, with the remainder of the payment being allocated to the amount due for the following month. This would give the result shown at Annex B, which HMRC supplied to us. (The table in Annex B shows the payments of £948.22 and £10,000 which HMRC refused to remove from the list of 2010-11 payments.)

20 73. HMRC’s mode of allocation of the payments led, they submitted, to the following schedule of defaults, resulting in the £1,564.01 penalty—

<u>HMRC’s contended result</u>					
Month	Tax period ended	Amount not paid on time	Failure to pay on time counts towards default penalty	Late payment number	Default number to count towards penalty
1	5 May 10	£0.00	No, not late		
2	5 June 10	£12,753.69	No	1	0 Does not count as default
3	5 July 10	£4,127.51	Yes	2	1
4	5 Aug 10	£6,936.36	Yes	3	2
5	5 Sept 10	£0.00	No, not late		
6	5 Oct 10	£0.00	No, not late		

<u>HMRC's contended result (continued)</u>					
Month	Tax period ended	Amount not paid on time	Failure to pay on time counts towards default penalty	Late payment number	Default number to count towards penalty
7	5 Nov 10	£2,224.06	Yes	4	3
8	5 Dec 10	£5,600.45	Yes	5	4
9	5 Jan 11	£7,685.71	Yes	6	5
10	5 Feb 11	£10,779.26	Yes	7	6
11	5 March 11	£14,780.49	Yes	8	7
Total		£52,133.84 x 3% = £1,564.01 penalty			

Findings and reasons: allocation

Allocation of initial £10,969.53

74. We accept HMRC's contended mode of allocation, for the following reasons.

5 75. There are two questions. First, could the appellant now choose to allocate to month 2 the payment made on 18 May 2010 and to allocate subsequent payments to subsequent months as set out in her submissions? Second, could the appellant allocate to month 12 of the previous tax year the liability arising on payments made to employees in month 1?

10 Allocation of payments

76. As to allocating the 18 May payment and subsequent payments to month 2 onwards, we find that the appellant cannot now seek to do that, for the following reasons.

15 77. We find, accepting Mrs Stewart's own evidence, that she did not when making payments ask HMRC to allocate any of them to any particular month. In particular, we find that she did not ask HMRC to allocate either to the previous tax year or to month 2 the payment of £10,969.53.

78. We also find, again accepting Mrs Stewart's own evidence, that she made no request to allocate payments to certain months until after receiving the penalty notice dated 27 September 2011. So she did not make the request until some 16 months after the first payment was made on 18 May 2010. It was too late by then.
5 The payments were already late and the penalty had already arisen.

Allocation of month 1 liability to month 12 of previous tax year

79. As to allocating the month 1 liability to month 12 of the previous tax year, we find that the appellant cannot do that. We have no choice but to find that the legislation works as HMRC say it works, for the reasons advanced by HMRC. It
10 was simply not open to the appellant, within the legislation, to choose to allocate to month 12 of the previous tax year the liability for the 7 April 2010 salary payments. Given that Mrs Stewart accepted that she had made payments to employees on 7 April 2010, we find that a liability arose under regulation 68 of The Income Tax (Pay As You Earn) Regulations 2003 and regulation 67 of the
15 Social Security (Contributions) Regulations 2001 in relation to those payments. That liability had to be discharged by 22 May 2010.

80. In view of the parties' agreement mentioned at paragraph 51 above, we provisionally find that that liability was £10,969.53.

81. It follows therefore that we agree with HMRC that the £10,969.53 was due for month 1. This means we accept that payments subsequent to that one should be
20 allocated as contended for by HMRC, resulting in the late payments which HMRC argued for.

Liberty to apply

82. We do however give liberty to apply for us to revise the £10,969.53 figure for month 1. But the liberty to apply applies only if the parties agree between
25 themselves a different amount due for month 1 based on actual payments made to staff on 7 April 2010 (or 6 April 2010 if that was the date they were made). So we would expect the appellant to provide to HMRC a draft schedule of payments made to employees on 7 April 2010 (or 6 April 2010). The parties should then talk
30 to each other to agree the schedule and to agree the amount due to HMRC for month 1 based on the schedule.

83. If on the application of the parties we revise the amount due for month 1, the amounts allocated to subsequent months will change as a result. So, if the parties take advantage of this liberty to apply, they must also provide us with an agreed
35 schedule of amounts allocated to each month, amounts late, number of defaults and final amount of the penalty. In other words, a schedule similar to the one at Annex B to this decision (and not the one at Annex A), but starting with a revised amount due for month 1. In view of our decision on the other aspects of the appeal, the agreed schedule must show the payments of £948.22 and £10,000 that the
40 appellant wanted excluded but which HMRC had included, and must show as late the payment of £10,457.29 received on 23 March 2011.

84. The appellant should note that this is not an opportunity to attempt negotiation of other matters. Our decision has decided all other matters. This is merely an opportunity to correct the amount due to HMRC on payments made to staff on 7 April 2010 (or 6 April 2010 if that was the date they were made).

5 85. The period in which the parties will have liberty to apply is three calendar months beginning with the day after the date of issue of this decision to the parties. The application, if made, should be clearly marked for the attention of Judge Rachel Perez and Ms Sonia Gable.

10 86. The time for applying for permission to appeal against this decision will not start running until all issues in the case are finally disposed of. See paragraphs 109 to 111 below.

Allocation of £948.22 and £10,000

15 87. Mrs Stewart told us she wanted allocated to the previous tax year three of the payments shown in HMRC's schedule. The three payments are £948.22 received on 15 July, £10,000 received on 23 July and £10,000 received on 27 August.

20 88. HMRC had originally allocated those three amounts to 2010-11. The appellant's own schedule of payments for 2010-11 with her letter of 10 November 2011 (pages C3 and C5) had included those three payments in her list of payments for 2010-11. She had also included them in her list of 2010-11 payments in the bottom set of figures on page C30, supplied with her letter of 7 December 2011. HMRC subsequently agreed that the first of the £10,000 payments could be allocated to 2009-10. But they did not agree that the other two payments should be so allocated. Those two amounts therefore remain in HMRC's calculations for 2010-11.

25 89. The appellant had not in her letter to HMRC of 7 December 2011 asked for those two amounts to be allocated to the previous tax year. But the revised payment schedule for 2010-11 which she handed in at the hearing omitted those two payments (as well as omitting the £10,000 which HMRC had already agreed to omit).

30 90. We see no reason to disturb HMRC's allocation of the £948.22 and £10,000 to 2010-11. Mrs Stewart accepted that she did not, at the time of making those payments, ask HMRC to allocate them to a particular period. Even her own letters of 10 November 2011 and 7 December 2011 still allocated those payments to 2010-11.

35 91. HMRC had, for reasons not apparent in the papers, accepted that one amount of £10,000 should be allocated to the time to pay agreement for the previous tax year. But there was no evidence to suggest that the £948.22 and the other amount of £10,000 should, contrary to HMRC's allocation of those amounts, properly have been allocated to that time to pay agreement.

92. Even if those payments were not allocated to 2010-11, the appellant did not appear to argue that that would make a difference to the 2010-11 penalty. It seemed that there would be one of two results: Either those payments would be removed from the amounts due making no difference, or worse, they would still be shown in the amounts due (because of the appellant's own schedule at page C4) but would not be shown as paid, thereby increasing the penalty.

Ground (4): Reasonable excuse for late payment of 23 March 2011

93. Paragraph 16 of Schedule 56 provides that liability to a penalty under any paragraph of Schedule 56 does not arise in relation to a failure to make a payment if there is a reasonable excuse for the failure.

94. For month 11, Mrs Stewart said that this was the sixth late payment and so the fifth to count towards the penalty. She submitted however that the amount paid late, based on her figures, was only £4,301.89 and not £14,759.18 (£4,301.89 + £10,457.29). This was because, in her submission, the £10,457.29 which she accepted was received by HMRC on 23 March, a day after the due date, should not count as a default because she had a reasonable excuse for the lateness. The excuse was, she said, that HMRC did not use the faster payments system and she had thought the payment would take only one day to get to HMRC. So the only amount late for month 11, in view of the appellant's contended mode of allocation and claimed reasonable excuse, was £4,301.89 according to Mrs Stewart.

95. We do not accept that the appellant's reasons amount to a reasonable excuse for the late payment of 23 March 2011. The appellant should have checked how long the payment would take to reach HMRC. We find that it was unreasonable to assume that the payment would take only one day to arrive.

No reasonable excuse for other payments which appellant accepted were late

96. Mrs Stewart explained that the reason for the lateness, except for the payments received on 10 January and 23 March 2011, was the three days' banking delay as contrasted with faster payments which she said would have arrived the same day. She told us, and we find, that she did not check, before initiating a payment, when HMRC would receive it.

97. Mrs Stewart did not appear to claim that that banking delay was a reasonable excuse for the payments received on 30 June, 26 November, 27 January, 23 February and 28 April. But, in case she was, we find that not realising that the payment would take three days was not a reasonable excuse. This is especially so given that Mrs Stewart did not check with her bank how long each payment would take to arrive.

98. Mrs Stewart said that the reason the payment received on 10 January was 19 days late was because it was the Christmas and New Year break and she just forgot about it. In case she was claiming that as a reasonable excuse in relation to that payment, we find that that excuse was not reasonable for that late payment.

Special circumstances

5 99. HMRC have power under paragraph 9 of Schedule 56 to reduce a penalty "because of special circumstances". The appellant did not expressly argue that there were special circumstances. But we address them in case Mrs Stewart's arguments on unfairness, onerousness and disproportionality could be said to be a request for a reduction for special circumstances.

10 100. HMRC accepted that there is no specific reference to HMRC having considered special circumstances either in their response of 4 July 2012 to the appeal or in their review conclusion letter of 22 March 2012 (pages C1 to C2, C26 to C27 and C33 to C34). HMRC submitted however that, after receipt of this appeal, HMRC did consider whether or not special circumstances had been reported and concluded that a reduction for special circumstances was not appropriate.

15 101. HMRC asked us not to disturb that decision. They submitted that it was not flawed on judicial review principles or that, if it was, it was still the right outcome, for the following reasons.

20 102. They submitted that, in other contexts, "special" has been held to mean "exceptional, abnormal or unusual" (*Crabtree v Hinchcliffe* [1972] AC 707 at 731C and 739E-F) or "something out of the ordinary run of events" (*Clarks of Hove Ltd v Bakers' Union* [1978] 1 WLR 1207 at 1215H).

25 103. HMRC submitted, citing Judge Berner in *David Collis* [2011] UKFTT 588 (TC), that the circumstance must operate on the particular individual and must "not be a mere general circumstance that applies to many taxpayers by virtue of the scheme of the provisions themselves" (paragraph 39 of *David Collis* judgment). HMRC invited us to find therefore that "special circumstances" do not include a lack of awareness of the penalty regime or any failure by HMRC to issue warnings. HMRC also cited another First-tier Tribunal decision in support: *St John Patrick Publishers Ltd* [2012] UKFTT 20 (TC).

30 104. Although we are not bound by other decisions of the First-tier Tribunal, we agree with Judge Berner's reasoning in *David Collis*. For the reasons Judge Berner gave, we find that the circumstance must, in order to be special, operate on the particular taxpayer and must "not be a mere general circumstance that applies to many taxpayers by virtue of the scheme of the provisions themselves".

35 105. In the present case, the scheme of the penalty provisions is that, absent a reasonable excuse, lateness is penalised irrespective of whether a warning was given. That is a general circumstance applying to taxpayers by virtue of the scheme of the provisions of Schedule 56 themselves. It is not a circumstance which operates on this particular appellant.

40 106. In any event, the penalty arises in the present case not because HMRC failed to issue warnings, but because the appellant paid its liabilities late. Although the

5 appellant argues that the reason it paid late was because of a lack of warnings, the lack of warnings was not the cause of the lateness. The appellant knew the due dates. The appellant also knew, except for the payments for which it claimed reasonable excuse due to bank transfer times, that it was paying late. While receipt of a warning would have alerted the appellant and might have caused it to decide not to pay late, that is not the same as saying that the lack of warning caused the appellant to pay late.

10 107. The lack of warning was not therefore a circumstance which operated on the particular taxpayer in our judgment. We find that it is not a special circumstance within the meaning of Schedule 56.

108. We therefore do not reduce the penalty for special circumstances.

Appealing against this decision

109. This document contains full findings of fact and reasons for the decision. The decision will not however become final until either—

15 (a) the period of three months given at paragraph 85 above for liberty to apply has expired without the liberty to apply having been exercised; or

(b) where the parties have made an application in exercise of the liberty to apply, the tribunal has revised this decision in light of the parties' application or the tribunal has refused to revise the decision.

20 110. 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.

111. It is directed as follows—

25 (1) Where the period of three months given at paragraph 85 above for liberty to apply has expired without the liberty to apply having been exercised, any application for permission to appeal must be received by this tribunal not later than 56 days after the expiry of that three-month period.

30 (2) Where the parties have within that three-month period made an application in exercise of the liberty to apply, any application for permission to appeal must be received by this tribunal not later than 56 days after the day on which the revised decision, or the tribunal's refusal to revise the decision, is sent to that party.

35

112. 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.

5

**RACHEL PEREZ
TRIBUNAL JUDGE**

RELEASE DATE: 11 June 2015

Annex A
to full decision of First-tier Tribunal TC/2012/05029

Appellant's contended allocation

5

Figures in bold are amounts which appellant says were paid late

Month	Ended	Date wages paid	Date PAYE due	Amount due (£)	Date paid	Late N/Y
1	5 May 10	6 April 10	22 May	0.00	N/A.	N
2	5 June 10	6 May 10	22 June	12,753.69	10,969.53 - 18 May 1,784.16 - 30 June ⁽¹⁾	N Y
3	5 July 10	6 June 10	22 July	12,901.41	10,795.21 - 30 June ⁽¹⁾ 2,106.20 - 2 July ⁽²⁾	N N
4	5 Aug 10	6 July 10	22 Aug	13,136.41	5,893.80 - 2 July ⁽²⁾ 7,242.61 - 26 July ⁽³⁾	N N
5	5 Sept 10	6 Aug 10	22 Sept	12,653.82	3,084.95 - 26 July ⁽³⁾ 9,568.87 - 25 Aug ⁽⁴⁾	N N
6	5 Oct 10	6 Sept 10	22 Oct	12,992.83	563.88 - 25 Aug ⁽⁴⁾ 12,428.95 - 30 Sept ⁽⁵⁾	N N
7	5 Nov 10	6 Oct 10	22 Nov	13,486.99	28.50 - 30 Sept ⁽⁵⁾ 11,255.74 - 21 Oct 2,202.75 - 26 Nov ⁽⁶⁾	N N Y
8	5 Dec 10	6 Nov 10	22 Dec	13,833.60	8,254.46 - 26 Nov ⁽⁶⁾ 5,579.14 - 10 Jan ⁽⁷⁾	N Y
9	5 Jan 11	6 Dec 10	22 Jan	14,393.59	6,729.19 - 10 Jan ⁽⁷⁾ 7,664.40 - 27 Jan ⁽⁸⁾	N Y
10	5 Feb 11	6 Jan 11	22 Feb	14,324.89	3,566.94 - 27 Jan ⁽⁸⁾ 10,757.95 - 23 Feb ⁽⁹⁾	N Y
11	5 Mar 11	6 Feb 11	22 Mar	14,824.64	65.46 - 23 Feb ⁽⁹⁾ 10,457.29 - 23 March ⁽¹⁰⁾ 4,301.89 - 28 April ⁽¹¹⁾	N N Y

Notes:

10

(1) The appellant says the payment of £12,579.37 received by HMRC on 30 June 2010 should be allocated as follows: £1,784.16 to month 2 and £10,795.21 to month 3.

15

(2) The appellant says the payment of £8,000 received by HMRC on 2 July 2010 should be allocated as follows: £2,106.20 to month 3 and £5,893.80 to month 4.

(3) The appellant says the payment of £10,327.56 received by HMRC on 26 July 2010 should be allocated as follows: £7,242.61 to month 4 and £3,084.95 to month 5.

- (4) The appellant says the payment of £10,132.75 received by HMRC on 25 August 2010 should be allocated as follows: £9,568.87 to month 5 and £563.88 to month 6.
- 5 (5) The appellant says the payment of £12,457.45 received by HMRC on 30 September 2010 should be allocated as follows: £12,428.95 to month 6 and £28.50 to month 7.
- (6) The appellant says the payment of £10,457.21 received by HMRC on 26 November 2010 should be allocated as follows: £2,202.75 to month 7 and £8,254.46 to month 8.
- 10 (7) The appellant says the payment of £12,308.33 received by HMRC on 10 January 2011 should be allocated as follows: £5,579.14 to month 8 and £6,729.19 to month 9.
- (8) The appellant says the payment of £11,231.34 received by HMRC on 27 January 2011 should be allocated as follows £7,664.40 to month 9 and 15 £3,566.94 to month 10.
- (9) The appellant says the payment of £10,823.41 received by HMRC on 23 February 2011 should be allocated as follows: £10,757.95 to month 10 and £65.46 to month 11.
- 20 (10) Although the appellant accepted that this payment was received on 23 March, one day late, she said it should not count towards the default for month 11 because she had a reasonable excuse for the lateness. This did not affect the number of defaults the appellant said there were. But it did affect the amount of tax comprised in the defaults and so did affect the amount of penalty the appellant said was due.
- 25 (11) This £4,301.89 is part of the payment of £7,831.66 received by HMRC on 28 April 2011.

Annex B
to full decision of First-tier Tribunal TC/2012/05029

HMRC's contended allocation

5

Figures in bold are amounts which HMRC say were paid late

Month	Ended	Date wages paid	Date PAYE due	Amount due (£)	Date paid	Late N/Y
1	5 May 10	6 April 10	22 May	10,969.53	18 May	N
2	5 June 10	6 May 10	22 June	12,753.69	12,579.37 – 30 June 174.32 – 2 July ⁽¹⁾	Y Y
3	5 July 10	6 June 10	22 July	12,901.41	7,825.68 – 2 July ⁽¹⁾ 948.22 – 15 July 4,127.51 – 26 July ⁽²⁾	N N Y
4	5 Aug 10	6 July 10	22 Aug	13,136.41	6,200.05 – 26 July ⁽²⁾ 6,936.36 – 25 Aug ⁽³⁾	N Y
5	5 Sept 10	6 Aug 10	22 Sept	12,653.82	3,196.39 – 25 Aug ⁽³⁾ 9,457.43 – 27 Aug ⁽⁴⁾	N N
6	5 Oct 10	6 Sept 10	22 Oct	12,992.83	542.57 – 27 Aug ⁽⁴⁾ 12,450.26 – 30 Sept ⁽⁵⁾	N N
7	5 Nov 10	6 Oct 10	22 Nov	13,486.99	7.19 – 30 Sept ⁽⁵⁾ 11,255.74 – 21 Oct 2,224.06 – 26 Nov ⁽⁶⁾	N N Y
8	5 Dec 10	6 Nov 10	22 Dec	13,833.60	8,233.15 – 26 Nov ⁽⁶⁾ 5,600.45 – 10 Jan ⁽⁷⁾	N Y
9	5 Jan 11	6 Dec 10	22 Jan	14,393.59	6,707.88 – 10 Jan ⁽⁷⁾ 7,685.71 – 27 Jan ⁽⁸⁾	N Y
10	5 Feb 11	6 Jan 11	22 Feb	14,324.89	3,545.63 – 27 Jan ⁽⁸⁾ 10,779.26 – 23 Feb ⁽⁹⁾	N Y
11	5 Mar 11	6 Feb 11	22 Mar	14,824.64	44.15 – 23 Feb ⁽⁹⁾ 10,457.29 – 23 Mar 4,323.20 – 28 April ⁽¹⁰⁾	N Y Y

Notes:

- 10 (1) HMRC allocated the £8,000 received on 2 July as follows: £174.32 to month 2 and £7,825.68 to month 3.
- (2) HMRC allocated the £10,327.56 received on 26 July as follows: £4,127.51 to month 3 and £6,200.05 to month 4.
- (3) HMRC allocated the £10,132.75 received on 25 August as follows: £6,936.36
- 15 to month 4 and £3,196.39 to month 5.

- (4) HMRC allocated the £10,000 received on 27 August as follows: £9,457.43 to month 5 and £542.57 to month 6.
- (5) HMRC allocated the £12,457.45 received on 30 September as follows: £12,450.26 to month 6 and £7.19 to month 7.
- 5 (6) HMRC allocated the £10,457.21 received on 26 November as follows: £2,224.06 to month 7 and £8,233.15 to month 8.
- (7) HMRC allocated the £12,308.33 received on 10 January as follows: £5,600.45 to month 8 and 6,707.88 to month 9.
- (8) HMRC allocated the £11,231.34 received on 27 January as follows: £7,685.71
10 to month 9 and £3,545.63 to month 10.
- (9) HMRC allocated the £10,823.41 received on 23 February as follows: £10,779.26 to month 10 and £44.15 to month 11.
- (10) Of the £7,831.66 received on 28 April, HMRC allocated £4,323.20 to month
15 11. HMRC accepted that the remaining £3,508.46 of that 28 April payment does not fall within the tax year in question by virtue of the case of *Agar*, so it does not appear in this appeal.