



**TC05882**

**Appeal number: TC/2013/05258**

*Income tax - daily penalties for late filing of self-assessment return - Donaldson considered - Appellant thought he had submitted his return on line but had been unsuccessful - only became aware of this on receipt of £100 penalty - further delay before submitting a return - whether reasonable excuse - no - appeal disallowed*

**FIRST-TIER TRIBUNAL**

**TAX**

**NIGEL PATRICK PEEL CROSS**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL CONNELL**

The Tribunal determined the appeal on 25 April 2017 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 5 August 2013, and HMRC's Statement of Case received by the Tribunal on 7 February 2017 with enclosures. The Tribunal wrote to the Appellant on 8 February 2017 stating that if he wished to reply to HMRC's Statement of Case he should do so within 30 days. No reply was received

## DECISION

- 5           1. This is an appeal by Nigel Patrick Peel Cross ('the Appellant') against penalties totalling £760 imposed by the Respondents ('HMRC') under Paragraph 4 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 2012.
- 10           2. 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 for the year ending 5 April 2012.
- ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA 2009 for the year ending 5 April 2012.
- 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 for the year ending 5 April 2012.
- iv. If after a period of 12 months beginning with the penalty date the return remains outstanding, a penalty £300 is imposed under Paragraph 6 of Schedule 55 FA 2009 for the year ending 5 April 2012.
- 25           3. The Appellant's appeal is against the 'daily penalties'. The penalty is calculated at the rate of £10 per day for the period over which the failure to make a return persists, up to a maximum of 90 days.
4. Daily penalties have been the subject of appeal in the case of *Donaldson v Commissioners for Her Majesty's Revenue and Customs* [2016] EWCA Civ. 761 (the "Donaldson case"). Mr Donaldson challenged aspects of HMRC's standard approach to these penalties.
- 30           5. Because the outcome of the *Donaldson* appeal was relevant to the Appellant's appeal against daily penalties, the First-tier Tribunal directed that the appeal should be stood over until the *Donaldson* appeal was determined.
6. The three issues before the Court of Appeal in respect of daily penalties were:
- 35           a) Whether HMRC had made a decision required by paragraph 4(1)(b) of Schedule 55 FA 2009 to charge daily penalties

- b) Whether HMRC had given notice required under paragraph 4(1)(c) of Schedule 55 FA 2009, specifying the date from which the daily penalties were payable
- c) Whether HMRC had specified the period in respect of which the daily penalties were assessed in the notice of assessment, required under paragraph 18 of Schedule 55 FA 2009.
7. Although only issue (b) was before the Upper Tribunal, Mr. Donaldson was given permission to raise the two further points (a and c).
8. The Court of Appeal decided that:
- a. Parliament had not intended that HMRC should only be able to exercise discretion under para 4(1)(b) on an individual taxpayer-by-taxpayer basis. The policy decision taken by HMRC in June 2010 that all taxpayers who were at least three months late in filing their returns would be liable to a daily penalty, satisfied the requirements of para 4(1)(b).
- b. HMRC had given notice under paragraph 4(1)(c) specifying the date from which the penalty was payable in the SA reminder and SA326 Notice. Both notices stated in terms that Mr Donaldson would be liable to a £10 daily penalty if his return was more than three months late and specified the date from which they were payable depending on whether the person filed an electronic or paper return. The notice could be given in advance of any default.
- c. HMRC's notice of assessment under paragraph 18 did not specify the period for which the daily penalties had been assessed. The notice should have specified the period over which the penalty had been incurred and should also have specified the three month period for which the penalty had been charged, or at least state the date when the penalties started. However the court decided the omission fell within the scope of s 114(1) TMA 1970 and thus did not affect the validity of the notice of assessment. The courts view was that Mr. Donaldson was not misled or confused by the omission and the period of assessment could be worked out without difficulty.

*How the Court of Appeal decision affects this appeal*

9. HMRC submit that following the Court of Appeal decision the tribunal should find that in the present appeal, HMRC have satisfied the requirements of paragraph 4(1)(b) and 4(1)(c) and despite the omission of the correct period for which daily penalties had been assessed, in the notice of assessment under paragraph 18, the omission does not affect the validity of the notice.

*Filing date and Penalty date*

5 10. Under s 8(1D) TMA 1970 et seq. for the year ended 5 April 2012, 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.

*Reasonable excuse*

10 11. 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.

12. 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
- 15 (b) Reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

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

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

30 *The background facts*

16. The notice to file for the year ending 5 April 2012 was issued to the Appellant on 6 April 2012.

17. The filing date was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return.

18. As the return had not been received by the filing date, HMRC issued a notice of penalty assessment on or around 12 February 2013, in the amount of £100.

5 19. On 3 March 2013, HMRC sent a self-assessment statement to the Appellant by way of reminder that a £100 penalty had been issued.

20. On 29 April 2013, the Appellant appealed against the penalty. HMRC do not have a copy of the appeal letter and the Appellant did not provide a copy. The Appellant also forwarded a paper copy of his return.

10 21. On 21 May 2013 HMRC returned the Appellant's tax return as it was unsigned and pages were missing. HMRC also sent the Appellant a decision letter rejecting his appeal but offering a review.

15 22. On 21 June 2013 the Appellant forwarded his completed tax return for 2011-12 on-line and asked for the decision to be reconsidered. An extract from HMRC's computer records for the Appellant showing the date the return was received was included with HMRC's bundle of evidence to the Tribunal.

23. As the return had not been received by 1<sup>st</sup> May 2013, being three months after the penalty date (the day after the 'filing date') HMRC issued a notice of daily penalties assessment on or around 25 June 2013 in the amount of £520, calculated at £10 per day for 52 days from 1<sup>st</sup> May to 21 June 2013.

20 24. HMRC carried out a review and issued their review conclusion on 25 July 2013. The outcome of the review was that HMRC's decision should be upheld.

25 25. On 5 August 2013, the Appellant lodged a notice of appeal with the tribunal.

26. On 11 September 2013 the First-tier Tribunal directed that the appeal should be stood over until the decision of the Court of Appeal in the *Donaldson* case was finalised.

30 27. The stay lasted for several years as the Tribunal's decision was appealed to the Upper Tribunal and then to the Court of Appeal. In July 2016 the Court of Appeal released its decision (*Donaldson* [2016] EWCA Civ 761).

28. The Court of Appeal's decision became final when the Supreme Court refused permission for leave to appeal on 21 December 2016. Thereafter, HMRC have been asked to provide statements of case on the many appeals stayed behind *Donaldson* in order that they could be resolved.

35 *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—

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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

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

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

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

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

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(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

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(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.]

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(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.

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(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—

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(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

5 (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—

10 (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.

15 (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.

20 (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.

25 (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 FA 2009.

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

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

35 32. 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).

33. 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.

34. 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

35. 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 para-graph 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.

36. 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:

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(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--

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(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--

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(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.

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(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*

37. The Appellant's grounds of appeal are as set out in his Notice of Appeal to the Tribunal:

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- He was convinced the return had been submitted correctly. He said:

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"Me and my partner received a notice stating we were each being charged a £100 penalty fee. We had both done our returns on the 31 January 2013 on the Gateway internet system and my partner was convinced she had submitted them correctly as we had printed copies of the returns given by the Gateway system. We therefore did not pay heed to the notices, thinking that there was an error in the system and that it would come to light and we would receive a correction in due course. That is also why we did not look for or notice the deadline for an appeal on the notices.....My partner finally worked out how to see the missing return, which she had not been able to figure out the first time we had accessed, and saw that there was one more page AFTER the page that gave us the choice of downloading a copy of the completed returns, which only contained the box to tick, equivalent to a signature on the paper copy, stating that all the information given was correct and true. And only after that was the return finally uploaded into the system hence why it had shown all this time as missing. We of course completed this last step on both returns immediately. I think the decision not to accept the appeal in its own right is wrong because the error that led to the returns not being uploaded was genuine. ...Although we have done this type of entry in preceding years we had both clean forgotten that fact and did not see the 95% complete at the top of the page."

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- The Appellant considers the charges to be grossly unfair and cannot afford to pay them.

5 “I think the additional charges that led the fee to be increased to £520 for  
each of us are grossly unfair, especially in light of the fact that neither of us  
owed any tax for that year, a fact that was of course uppermost in our minds  
all along. My partner’s tax is taken at source through the PAYE system and  
my own income is below the taxable level. The fact that it is only this year  
10 that these charges were made compulsory, even if one does not owe tax,  
needs also to be taken into consideration. I hold both to go against natural  
justice. I cannot afford such charges anyhow on the very modest incomes. I  
would accept to pay the original £100 fee since, technically, the returns were  
not uploaded in time.”

*HMRC’s case*

38. Late filing penalties for the year ended 5 April 2012 are due in accordance  
with Schedule 55 FA 2009 even if a customer has no tax to pay, has already  
paid all the tax due, or is due a refund.

15 39. 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 2011-12 notice to file issued to the Appellant on 6 April  
2012.

20 40. 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 2011-12 tax return was filed by the legislative date and payment  
made on time.

25 41. A taxpayer is expected to arrange his affairs and finances to ensure that his  
tax obligations are met and all relevant returns and payments are made by the  
legislative due dates.

30 42. Self-assessment places a greater degree of responsibility on customers for  
their own tax affairs. This includes ensuring that HMRC get payment of the  
correct amount of tax and National Insurance at the correct time. The tax  
guidance and HMRC website give plenty of warning about filing and payment  
deadlines. It is the customer’s responsibility to make sure they meet the  
deadlines.

35 43. The Appellant would have been able to see the calculation of the tax due  
for 2011-12 at step 6 of the filing process - however this is not the final stage.  
Taxpayers are advised at step 6 to press the ‘Next’ button to save and then  
submit their return. At step 7 (Save Your Return) taxpayers are told to select  
‘Next’ at the bottom of the screen to submit their return.

40 44. HMRC also contend that, following the completion of the return the  
customer is required to check and correct any errors that are highlighted. The  
calculation is then viewed and the following page then has options to view,  
print and save a copy of the return. The text at the top of this page clearly  
states “Before submitting your return you can view, print and save a copy of

your return to your own computer. Select ‘Next’ at the bottom of the screen to go on to submit your return.”

5 45. To submit the return online the customer has to read and agree a statement confirming that the information provided is complete and correct. As an additional security check, customers are asked to re-input their details User ID and password. When the return had been successfully submitted to HMRC there is an onscreen message to confirm receipt and a confirmation email is sent to the email address if provided.

10 46. The Appellant had successfully filed previous year’s tax returns online and HMRC would expect him to have been aware of the online filing procedure. The fact that he did not receive the confirmation messages should have alerted him to the fact that the return had not been successfully submitted to HMRC.

15 47. HMRC sent a late filing penalty notice to the Appellant on 12 February 2013 for £100. This should have acted as a further prompt to the Appellant that his return had not been received. However, he did not send his return to HMRC until 21 June 2013.

20 48. It is the taxpayer’s responsibility to ensure that the tax return is fully completed and submitted on time. HMRC provide guidance to taxpayers to show the progress of completion of the tax return and give instructions on how to submit the return.

49. The Appellant did not file his return online correctly within the deadline specified and/or respond timely to HMRC’s correspondence, including a penalty notice. The penalties accrued as a result of this.

25 50. The daily penalties were only charged to 21 June 2013 when the Appellant’s return was received.

51. 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.

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

### *Special Reduction*

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

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

55. There are no special circumstances which would merit a reduction of the penalties below the statutory amount and the penalties are appropriate in the circumstances

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

57. HMRC submit that its decision not to reduce the penalties under paragraph 16 was not flawed but, in any event there are no special circumstances which would require the tribunal to reduce the penalties.

#### 20 *Conclusion*

58. 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.

59. 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.

60. The Appellant, although accessing his online account on 31 January 2013, failed to file his return on that date. As HMRC say, when a return has been successfully submitted electronically an on-screen message is generated to acknowledge receipt. A confirmation of receipt is also sent to the sender’s email address.

61. Daily penalties fall due when there has been a failure to file a return for three months from the date of the ‘penalty date’, that is the date after the ‘filing date’. HMRC have imposed daily penalties from 1 May 2013 for 52 days that is until 21 June 2013, when the electronic return was received.

62. The Appellant had successfully filed his previous four years tax returns online and should have been aware of the online filing procedures. The fact

that he did not receive the confirmation messages should have alerted him to the fact that the return had not been successfully submitted to HMRC.

5 63. HMRC sent a late filing penalty to the Appellant on 12 February 2013 for £100. This should have acted as a prompt that his return had not been received.

64. The Appellant also received “a statement” on 3 March 2013, reminding him of the £100 penalty, which should have acted as a further prompt to file his return. However it was not until 21 June 2013 that the return was finally filed.

10 65. The reasons put forward by the Appellant for the late submission of his 2011-12 tax return do not amount to a reasonable excuse, as for there to be a reasonable excuse the Appellant must have acted as a conscientious taxpayer aware of his or his obligations to file, and the excuse must have prevailed throughout the whole period of default.

15 66. I therefore find that the daily penalties have been properly charged by HMRC in accordance with legislation, there having been no continuing reasonable excuse for the Appellant’s failure to file his tax return on time.

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

20 68. The late filing penalties have been charged in accordance with legislation and there is no reasonable excuse for the Appellant’s failure to file his tax return on time, nor by the date the penalties arose.

69. The £520 penalty payable for late submission of the Appellant’s tax 2011-12 return is therefore confirmed and the appeal dismissed.

25 70. 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: 17 MAY 2017**

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