



TC05884

Appeal number: TC/2013/05248

Income tax - fixed and daily penalties for late filing of self-assessment return - Donaldson considered - Appellant suffering from ME - claimed that condition and having to care for another individual prevented him from filing return on time - whether reasonable excuse - no - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

BRUCE BAIRNSFATHER

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 6 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 Bruce Bairnsfather ('the Appellant') against penalties totalling £1,300 imposed by the Respondents ('HMRC') under Paragraphs 3,4 and 5 of Schedule 55 Finance Act 2009 for the late filing by the Appellant of his self-assessment ('SA') tax return for the tax year ending 5 April 2011.

2. The penalties for late filing of a return can be summarised as follows:

10 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.

15 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.

20 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.

3. Penalties of £100, £900 and £300 were imposed, (i), (ii) and (iii) above.

4. The Appellant's appeal is against all the penalties.

25 5. 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 6. 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.

7. The three issues before the Court of Appeal in respect of daily penalties were:

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.
8. Although only issue (b) was before the Upper Tribunal, Mr. Donaldson was given permission to raise the two further points (a and c).
9. 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

10. 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 11. Under s 8(1D) TMA 1970 et seq. which states that for the year ended 5 April 2011 a non-electronic return must be filed by 31 October 2011 and an electronic return by 31 January 2012. The 'penalty date' is defined at Paragraph 1(4) Schedule 55 FA 2009 and is the date after the filing date.
12. A late filing penalty is chargeable where a taxpayer is late in filing their Individual Tax return.

Reasonable excuse

- 10 13. 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.
14. The law specifies two situations that are not reasonable excuse:
- 15 (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.
- 20 15. 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).
- 25 16. HMRC's view is that the actions of the taxpayer should be considered from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the Tax Acts. The decision depends upon the particular circumstances in which the failure occurred and the particular circumstances and abilities of the person who failed to file their return on time. The test is to determine what a reasonable taxpayer, in the position of the taxpayer, would have done in those circumstances and by reference to that test to determine whether the conduct
- 30 of the taxpayer can be regarded as conforming to that standard.
17. If there is a reasonable excuse it must exist throughout the failure period.

The background facts

18. The notice to file for the year ending 5 April 2011 was issued to the Appellant on 6 April 2011.
- 35 19. The filing date was 31 October 2011 for a non-electronic return or 31 January 2012 for an electronic return.

20. As the return was not received by the filing date, HMRC issued a notice of penalty assessment on or around 14 February 2012 in the amount of £100.
21. As the return had still not been received 3 months after the penalty date, HMRC issued a notice of daily penalty assessment on or around 7 August 2012 in the amount of £900, calculated at £10 per day for 90 days.
22. As the return had still not been received 6 months after the penalty date, HMRC also issued a notice of penalty assessment on or around 7 August 2012 in the amount of £300.
23. The Appellant's electronic return for the year 2010-11 was received on 6 January 2013. 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.
24. On 11 May 2013 the Appellant appealed against the penalty on the grounds that:
- “My failure to lodge the 2010/11 tax return on time is entirely due to my continuing severe ill health arising from suspected neurological problems/nervous system disorder which causes both physical and mental difficulties. These problems have been ongoing since the late 1990s and I have been under continuous investigation from 2000/01 onwards by various medical specialists. In addition to the foregoing a close elderly uncle became incapable of looking after himself and I shared responsibility for his care duties from 2010/11 until his death in April 2012”.
25. On 5 June 2013, HMRC sent the Appellant a letter rejecting his appeal as it had been submitted after the deadline.
26. On 27 June 2013 the Appellant requested a review of HMRC's decision, saying:
- “By and large I have been medically unfit for work since 2000 and I take this opportunity of enclosing a copy of a letter from Murrayfield Medical Practice dated 27 April 2010 which confirms that I have been diagnosed as a ME sufferer since 2003.
- Both the daily penalty notice (£900) and the 6 month penalty notice (£300) would presumably have been sent to my business address and I can confirm that because of my hip and neurological problems I was very rarely at my business address in the last 6 months of 2012.
- My reasons for not filing my 2010/11 tax return by 31 January 2012 are —
- a. Severe ill health arising from neurological problems/nervous system disorder which causes both physical and mental difficulties which condition continues until this day.

b. For the 9 month period up to April 2012 I had shared responsibility for the care duties of a close elderly uncle until his death.

My reason for not appealing against the daily penalty notice (£900) and the 6 months penalty notice (£300) timeously are that —

5 a. These notices were presumably sent to my business address when I was off work due to ill health.

b. My mental and physical health problems left me unfit to deal with matters of this nature during the 30 day period allowed for an appeal and for a considerable period beyond.”

10 27. HMRC issued a further letter to the Appellant on 10 July 2013 to uphold their original decision.

28. On 6 August 2013 the Appellant lodged an appeal with the Tribunal. The grounds of appeal were

15 “HM Revenue and Customs failed to offer any form of review of their initial decision which was made on 5 June 2012, failed to engage in any dialogue regarding my mental and physical problems, failed to carry out an adequate review of the very reasonable excuses I put forward for making a late appeal and crucially failed to explain their reasoning for rejecting those excuses which in my view is a clear demonstration on HMRC's part of a "let's get it
20 off my desk quickly attitude and to hell with the inconvenience caused to the taxpayer

Mental and physical illness is not something which HM Revenue and Customs can be allowed to ignore just because it suits their particular agenda. They are debilitating ailments which render me unfit for any form of mental
25 or physical activity for long periods of time.

Natural justice dictates that my late appeal against the penalties levied for the late submission of my 2010/11 tax return should be accepted.”

29. On 11 September 2013 the First-tier Tribunal directed that the appeal should be stood over until the *Donaldson* case was finalised.

30 30. 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).

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

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

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(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

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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:

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

30 33. Paragraph 1 (4) states that the ‘penalty date’ is the date after the ‘filing date’

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

35. 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).

36. 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.

37. 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

38. 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.

39. 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.

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

HMRC's Case

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41. HMRC do not oppose the late appeal.

42. Late filing penalties for the year ended 5 April 2011 are due in accordance with Schedule 55 Finance Act 2009, even if a customer has no tax to pay, has already paid all the tax due or is due a refund.

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43. 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 2010-11 notice to file issued to the Appellant on 6 April 2012.

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44. 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 his 2010-11 tax return was filed by the legislative date and payment made on time.

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

46. The Appellant has been making Self-Assessment tax returns for many years. Therefore, HMRC consider him to be experienced with the Self-Assessment system including the due dates for paper and online returns.
- 5 47. HMRC consider that for illness to be a reasonable excuse for late filing of a tax return it must have been so serious that it prevented the taxpayer from controlling his business and private affairs immediately before the deadline for filing the tax return and from that date to the time the return is received. HMRC agree that coma, major heart attack, stroke or any other life threatening illness as a reasonable excuse.
- 10 48. However where the illness is ongoing or involves a lengthy stay in hospital or convalescence, HMRC expect the taxpayer to make arrangements for completing and sending in their tax return(s) in time. It is HMRC's view that the Appellant's illness had been ongoing for a considerable number of years prior to 2010-11. HMRC's opinion is that the Appellant should, during this time, have made provision for support and assistance with the completion of his annual tax returns by the filing dates.
- 15 49. HMRC also contend that the Appellant's Self-Assessment returns show he was able to continue with his self-employment during 2010-11 and maintain his level of earnings from this. The amounts of his income from self-employment as recorded in his tax return for this tax year was included in the evidence to the Tribunal. Also as a comparison, details of the Appellant's earnings for 2009-10, 2011-12 and 2012-13 from his tax returns for these years were also included.
- 20 50. The Appellant said he was unable to file his return for 2010-11 by 31 January 2012 as he had shared responsibility for an elderly relative up to April 2012. HMRC do not consider this a reasonable excuse as the Appellant's care duties ended in April 2012, but he did not file his return for 2010-11 until 16 January 2013.
- 25 51. The Appellant has not shown that he was incapable of handling his business and private affairs from the filing date to the date he filed his 2010-11 return.
- 30 52. HMRC consider that if the Appellant was able to care for an elderly relative and maintain his level of self-employment income for 2010-11 and beyond, he was capable of filing his own Self-Assessment tax return before the deadline of 31 January 2012.
- 35 53. HMRC contends that the penalty notices were issued to the Appellant at the address notified on their computer system for him. HMRC issued the notices for 2010-11 to the Appellant in the tax years 2011-12 (on 14 February 2012) and 2012-13 (on 7 August 2012).
- 40 54. The Appellant's tax returns for both these years show a considerable level of self-employment income. HMRC contend that the Appellant would have had to visit his business premises frequently during the tax years to have earned

the income stated. The Appellant would therefore have had access to the penalty notices from HMRC.

5 55. HMRC's records do not show that any mail was returned as 'undelivered'. If the Appellant had been absent from his business for any length of time, HMRC would not have been aware of this.

10 56. 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. 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

57. The Appellant does not have a good compliance history, with late filing penalties being charged in previous years along with late payment penalties and interest.

15 58. 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

20 59. 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.

25 60. 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).

30 61. HMRC have considered the Appellant's ill health and caring duties and submit that there are no special circumstances which would merit a reduction of the penalties below the statutory amount and that the penalties are appropriate in the circumstances.

35 62. 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'.

- 5 63. HMRC submit that its decision not to reduce the penalties under paragraph 16 was not flawed but, if the tribunal disagrees, HMRC further submit that there are no special circumstances which would require the tribunal to reduce the penalties.

Proportionality

- 10 64. HMRC submits that the penalties under appeal are not criminal in nature for the purpose of Article 6 ECHR:
- 10 • the "offence" is merely administrative (i.e. the failure to file a return on time).
 - the nature of the offence requires no proof of qualitative misconduct. All that is required is for a return to be filed after the proper filing date.
 - 15 • the penalties are simply an administrative means of securing the production of timely returns. Their aim is to encourage compliance, not punish defaults.

20 65. In any event, even though HMRC do not accept that Article 6 rights are engaged in respect of these penalties HMRC contend that it has fully complied with the requirements of Article 6, in particular the Appellant was told what he had done wrong and the statutory basis for the allegation against him. There could not therefore be any reasonable doubt about the "nature and cause of the accusation" against the person. Likewise, the person was made fully aware of their right to a statutory review or to appeal to an independent tribunal.

25 66. HMRC also submit that the penalties are not disproportionate and the penalty regime is proportionate to its aim. In order for a national measure to be considered disproportionate, it must be "not merely harsh but plainly unfair" (see *International Transport Roth GmbH v SSHD* [2002] EWCA Civ 158). HMRC contend that the penalties imposed here are not 'plainly unfair' and fall within the wide margin of appreciation in framing and implementing taxation policies (*Bysermaw* at para.71). Moreover, the regime includes provisions for 'reasonable excuse' and 'special circumstances' which allow mitigation in appropriate cases.

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Conclusion

67. 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.
- 5 68. 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.
- 10 69. The Appellant had successfully filed previous tax returns online and should have been aware of the online filing procedures. Although he has produced a letter from his GP confirming a diagnosis of ME, he has not produced any further evidence to show how the condition affects him and why in particular he could not have appointed an agent or put in place measures to ensure the timely submission of his year-end tax return.
- 15 70. HMRC sent a late filing penalty to the Appellant on 12 February 2012 for £100. This should have acted as a prompt to him that his return had not been received.
- 20 71. Although for part of the period of delay the Appellant was incapacitated, that excuse did not subsist throughout the entire period of delay and therefore that does not amount to a reasonable excuse.
- 25 72. I take into account HMRC's submissions as set out in paragraphs 47 to 49 above. The tribunal invited the Appellant to respond to HMRC's statement of case (from which the submissions have been extracted), but nothing further was received from the Appellant. He does not state for example whether he is, or has been in receipt of benefits which may recognise his disabilities, such as Disability Living Allowance or the Personal Independence Payment.
73. I do not accept that sharing responsibility for the care of another individual whether as a care worker or otherwise prevents a taxpayer from filing his tax return on time.
- 30 74. The Appellant's 2010-11 return was received by HMRC almost a year late. He has been in the self-assessment regime since at least 1996 and as HMRC say would have been fully aware of the deadlines. Any reason given for the delay and put forward as a reasonable excuse must subsist for the entirety of the period of delay. The Appellant has not produced any evidence to show that between the date his return fell due for filing and its actual submission to HMRC, he was either mentally or physically unable to file or make
- 35 arrangements for the filing of his tax return.
75. I find that there are no special circumstances which would allow the penalty to be reduced under Special Reduction regulations

76. 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.

77. The appeal is therefore dismissed and the late filing penalties confirmed

5 78. 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
10 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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