



**TC06026**

**Appeal number: TC/2017/00775**

*Income tax - fixed and daily penalties for late filing of self-assessment return - Donaldson considered - Appellant suffering from after effects of illness - Appellant had ceased self-employment - unaware of obligation to file nil return - whether reasonable excuse - no - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ANTHONY AL-DAWAF**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL CONNELL**

**The Tribunal determined the appeal on 21 June 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 8 January 2017 and HMRC's Statement of Case received by the Tribunal on 10 February 2017 with enclosures. The Tribunal wrote to the Appellant on 7 March 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

1. This is an appeal by Anthony Al-Dawaf ('the Appellant') against penalties totalling £1,600 imposed by the Respondents ('HMRC') under Paragraphs 3,4,5 and 6 of Schedule 55 Finance Act 2009 for the late filing by the Appellant of his self-assessment ('SA') tax return for the tax year ending 5 April 2012.
2. The Appellant's return, if filed electronically, was due no later than 31 January 2013, but was filed on 23 June 2014.
3. 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.
  - 15 ii. If after a period of 3 months beginning with the penalty date the return remains outstanding, daily penalties of £10 per day up to a total of £900 are imposed under Paragraph 4 of Schedule 55 FA 2009.
  - iii. If after a period of 6 months beginning with the penalty date the return remains outstanding, a penalty of £300 is imposed under Paragraph 5 of Schedule 55 FA 2009.
  - 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.
4. Penalties of £100, £900 £300 and £300 were imposed, (i), (ii) (iii) and (iv) above.
5. The Appellant's appeal is against all the penalties.
- 25 6. 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 7. 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.
8. 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.

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

10. 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 court's 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**

11. 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**

12. 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.

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

## **Reasonable excuse**

14. 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.

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

(a) An insufficiency of funds, unless attributable to events outside the Appellant’s control and

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

16. 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).

17. 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 of the taxpayer can be regarded as conforming to that standard.

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

## **The background facts**

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

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

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

22. 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 14 August 2013 in the amount of £900, calculated at £10 per day for 90 days.

23. 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 14 August 2012 in the amount of £300.

24. As the return had still not been received 12 months after the penalty date, HMRC also issued a notice of penalty assessment on or around 25 February 2014 in the amount of £300.

25. The Appellant's electronic return for the year 2011-12 was received on 25 June 2014. 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.

26. On 18 December 2014 the Appellant (via his agent) appealed against the penalty on the grounds that:

“Mr Al-Dawaf suffered multiple pulmonary embolisms, being admitted to hospital on 28th May 2011 (discharged on 3rd June 2011), although returning to work on 18th June 2011. He worked only sporadically until 2014. Also the Appellant was aware that he had no tax liability. Mr Al-Dawaf's personal circumstances caused the late submission of the 2011/2012 return.”

27. On 24 February 2015 HMRC sent the Appellant a letter rejecting his appeal and offering a review of the decision.

28. On 4 March 2015 the Appellant (via his agent) requested a review, saying:

“In his original appeal Mr Al-Dawaf reported his ill-health which affected his earnings. The Appellant was aware that his tax liability was nil. As a result he did not prioritise his tax return. The fines levied seem disproportionate and unfair in the circumstances. As a result he would like the decision to turn down his appeal reviewed in the hope that a reasonable and fair outcome will result.”

29. HMRC carried out a further review and issued their decision to the Appellant on 3 July 2015, upholding their original decision.

30. On 11 December 2015, the Appellant's agent wrote to HMRC requesting a reply to his letter dated 22 August 2015. HMRC had not received the letter and the agent therefore provided a copy:

“Having read your detailed response to my Client's appeal I cannot see anything amiss with the facts as stated. However my Client has already

5 had a late filing penalty for 2013 set aside--based on his SA370 appeal. In this appeal he stated his assumption that he did not have to submit a return given that there was no tax to pay. It appears that this was considered a reasonable excuse for 2013. Is it fair to assume that the same reasonable excuse should apply for 2012?

Whilst writing I would reiterate the point that the 2012 fine is out of all proportion to the amount of tax payable. This does not seem in any way equitable.”

10 31. HMRC wrote to the Appellant on 21 December 2016, advising that a customer is only entitled to have their appeal decision reviewed once, giving details of how to appeal to HM Courts and Tribunals Service.

32. On 8 January 2017 the Appellant’s agent lodged an out of time appeal with the Tribunal. The grounds of appeal were

15 “There was no tax to pay for 2011/12 and as a result the Appellant did not prioritise submitting the return. The Appellant suffered a period of quite serious ill-health which affected his ability to work during the tax year — reducing his earnings.

The Appellant assumed that with no tax to pay that he would not have to submit a return. He is now aware that this is not the case.

20 The Appellant did not submit his 2012/13 return on time — again thinking that having no tax liability meant that he need not submit a return. This excuse was accepted for 2012/13 but not for 2011/12. The ruling for 2011/12 seems inconsistent in comparison to 2012/13 which has caused the Appellant to query the penalty imposed for 2011/12.

25 Given that the Appellant has no tax liability to pay the penalty of £1,600.00 seems by comparison out of all proportion and unfair.”

33. The Tribunal’s decision in Donaldson 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).

30 34. 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.

**Relevant statutory provisions**

35 **Taxes Management Act 1970**

35. 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-

- 5
- a) to make and deliver to the officer, on or before the day mentioned in subsection (1A) below, a return containing such information as may, reasonably be required in pursuance of the notice, and
  - b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

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

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

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

- 15
- (a) the amounts in which a person is chargeable to income tax and capital gains tax are net amounts, that is to say, amounts which take into account any relief or allowance a claim for which is included in the return; and
  - (b) the amount payable by a person by way of income tax is the difference between the amount in which he is chargeable to income tax and the aggregate amount of any income tax deducted at source and any tax credits to which [section 397(1) [or [397A(1)] of ITTOIA 2005] applies.]
- 20

(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.

35 (1F) Exception 1 is that if a notice in respect of Year 1 is given after 31st July in Year 2 (but on or before 31st October), a return must be delivered-

- (a) during the period of 3 months beginning with the date of the notice (for a non-electronic return), or

(b) on or before 31st January (for an electronic return).

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

5 (1H) The Commissioners—

(a) shall prescribe what constitutes an electronic return, and

(b) may make different provision for different cases or circumstances.

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

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

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

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

20 (4B) The notice may require a return of the person's income to include particulars of any general earnings (see section 7(3) of ITEPA 2003) paid to the person.

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

**Schedule 55 Finance Act 2009:**

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

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

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

30 39. 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,

35 (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.

5 (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).

10 (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).

40. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

15 (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.

20 (2) The penalty under this paragraph is the greater of-  
(a) 5% of any liability to tax which would have been shown in the return in question, and  
(b) £300.

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

25 (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.

30 (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  
35 remedied without unreasonable delay after the excuse ceased.

42. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of "special circumstances" as follows:

40 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include-  
(a) ability to pay, or  
45 (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.  
(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to-  
(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

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

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

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

#### 25 **HMRC's Case**

45. HMRC do not oppose the late appeal.

46. Late filing penalties for the year ended 5 April 2012 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.

30 47. 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.

35 48. 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 2011-12 tax return was filed by the legislative date and payment made on time.

40 49. 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.

50. The Appellant has been making Self-Assessment tax returns for a number of years. Therefore, HMRC consider him to be experienced with the Self-Assessment system including the due dates for paper and online returns.
51. The Appellant's agent states that the Appellant suffered multiple pulmonary embolisms that resulted in him being admitted to hospital on 28 May 2011 and discharged on 3 June 2011. The Appellant was able to return to work on 18 June 2011.
52. HMRC did not issue his 2011-12 self-assessment notice to file until 6 April 2012, nearly 10 months after he had returned to work. The Appellant then had until 31 January 2013 to complete and submit his return to HMRC - this was more than 19 months after he returned to work.
53. Whilst the Appellant's illness was serious and potentially life threatening, from the information provided by his agent regarding the period of illness, it would not have prevented the Appellant from filing his tax return on time.
54. 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 was received.
55. 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.
56. A notice to file was issued to the Appellant for the 2010-11 tax year which also included a flyer to explain the changes to the penalty regime and to encourage customers to file their return on time and make payment. The information regarding penalties is also available on the HMRC Gov.UK website.
57. Although the Appellant's tax liability for the 2011-12 tax year was nil, he was a director of a limited company during that tax year. Directors of limited companies are required to complete a self-assessment tax return whether or not they have any tax liability.
58. The Appellant's completed self-assessment tax return for 2011-12 clearly indicates that he was a company director.
59. HMRC issued to the Appellant a late filing fixed penalty notice on 12 February 2013 informing him that he had been fined because his tax return had not been received and to submit his tax return to prevent further penalties being charged.
60. On 4 June 2013 HMRC issued a 30 day daily penalty reminder letter to the Appellant; this informed him that his tax return was still outstanding and to send it to HMRC to prevent further penalties. HMRC wrote to him again on 2 July 2013 with a 60 day daily penalty reminder letter informing him that more penalties had been applied and that if he did not submit his tax return, there would be further penalties.

61. On 14 August 2013 HMRC sent the Appellant a six month late filing penalty notice and the daily penalty notice, again informing him to send in his completed self-assessment tax return to prevent further penalties.

5 62. As HMRC had not received his tax return more than 12 months after the initial deadline, HMRC issued a 12 month late filing penalty notice on 25 February 2014.

63. HMRC records show that the Appellant did not contact HMRC after receiving any of the notices.

64. The Appellant's agent states in the appeal to the Tribunal that:

10 "There was no tax to pay for 2011/12 and as a result the Appellant did not prioritise submitting the return. The Appellant suffered a period of quite serious ill-health which affected his ability to work during the tax year - reducing his earnings."

65. HMRC records show that in fact the Appellant earned more in the 2011-12 tax year than in the previous two years and following year.

Tax year	Earnings from employment
2009-10	4083
2010-11	6417
2011-12	7225
2012-13	5227

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66. The Appellant's 2012-13 self-assessment tax return was due on 31 January 2014, but was not received until 18 December 2014. HMRC cancelled the late filing penalties for this year as the Appellant's completed employment page indicated he was no longer a company director and therefore had no self-assessment criteria. The Appellant had not previously contacted HMRC at any point to advise of this.

67. The Appellant's agent appealed against the late filing penalties for 2012-13, stating that the Appellant became non-resident for that tax year and therefore had no tax liability. Again the Appellant had not contacted HMRC at any point to advise of this.

25 68. 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.

69. 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**

5 70. 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.

10 71. 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).

15 72. HMRC have considered the Appellant’s ill health and the fact that he had no tax liability. These are not special circumstances which would merit a reduction of the penalties below the statutory amount.

20 73. 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’.

25 74. HMRC’s decision not to reduce the penalties under paragraph 16 was not flawed. There are no special circumstances which would require the tribunal to reduce the penalties.

### **Proportionality**

75. HMRC submits that the penalties under appeal are not criminal in nature for the purpose of Article 6 ECHR:

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- 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.
  - the penalties are simply an administrative means of securing the
- 35 production of timely returns. Their aim is to encourage compliance, not punish defaults.

76. 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  
5 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.

77. 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  
10 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  
15 circumstances’ which allow mitigation in appropriate cases.

### **Conclusion**

78. 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  
20 circumstances of the particular case.

79. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond the person’s control, which prevents him or her from complying with an obligation which otherwise they would have complied with.

80. The Appellant had successfully filed previous tax returns online and should  
25 have been aware of the filing dates. Although the Appellant was ill prior to the date the 2011-12 return was due, he has not produced any evidence to show how the condition affected 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.

81. HMRC sent a late filing penalty to the Appellant on 12 February 2013 for £100.  
30 This and the subsequent penalties should have acted as a prompt to him that his return had not been received.

82. I take into account and accept HMRC’s submissions as set out in paragraphs 45  
35 to 77 above, which address the grounds of the Appellant’s appeal, proportionality and special circumstances. The Tribunal Service 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, such as Disability Living Allowance or the Personal Independence Payment, which may have recognised any disabilities he suffered from.

40 83. The Appellant’s 2011-12 return was received by HMRC over a year late. He has been in the self-assessment regime for a number of years and, as HMRC say, would

5 have been fully aware of the filing deadlines. Any reason given for the delay, 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 arrangements for the filing of his tax return.

84. The late filing penalties have been charged in accordance with legislation and no reasonable excuse has been shown for the Appellant's failure to file his tax return on time.

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

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

15 87. 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: 28 JULY 2017**

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