Neutral Citation: [2024] UKFTT 786 (TC)

Case Number: TC09276

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2024/01255

INCOME TAX - individual tax return - penalties for late filing – whether properly imposed - yes- whether reasonable excuse – no - whether special circumstances - no - appeal dismissed – application to bring a late appeal – application refused

Heard on: 12 August 2024
Judgment date: 2 September 2024

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MRS REBECCA NEWNS

Between

MATTHEW ATKIN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: The appellant did not attend and was not represented

For the Respondents: Miss Nicola Shardlow litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This is an appeal against late filing penalties visited on the appellant under Schedule 55 Finance Act 2009 ("**Schedule 55**") for the late filing of an individual tax return for the tax year 2021-2022.The penalties amount to £1,300 ("**the penalties**").

2. The appeal was notified out of time. So as well as dealing with the substantive appeal against the penalties, we must consider whether we should exercise our discretion and allow the appeal to be brought out of time.

NON-ATTENDANCE BY THE APPELLANT

3. The appellant had not signed into the video hearing at 2 pm when it was scheduled to start. We were sent copies of the original notification sent by the tribunal to the appellant on 10 July 2024 which makes it clear that the hearing was scheduled to take place at 2pm on 12 August 2024. The appellant was also notified, by an email dated 9 August 2024, of a change to the platform from the tribunal's platform to the cloud video platform.

4. We contacted the tribunal service. A member of staff telephoned the appellant. It was answered by the appellant's wife. She notified that member of staff of another number on which the appellant could be contacted. A phone call was made to that number which defaulted to voicemail and a message was left telling the appellant that the hearing had started and asking him to attend. When, 15 minutes later, the appellant had not contacted the tribunal service, nor signed into the video hearing, we considered whether it was in the interests of justice, in accordance with Rule 33 of the First-tier Tribunal Rules to proceed with the hearing.

5. Miss Shardlow considered that it was in the interests of justice to so proceed. We agreed. The appellant had clearly been given notice of the hearing. He had provided grounds of appeal for both the substantive issue and his application to appeal out of time. Evidence of service of the relevant notices and the appellant's contact with HMRC can be seen from the documents provided in the bundle. We felt that there was little that the appellant could add, orally, if he attended and gave evidence in person. We proceeded to hear both his application to bring his appeal out of time and the appeal against the penalties itself.

THE LAW

The substantive appeal

Legislation

6. A summary of the relevant legislation is set out below:

Obligation to file a return and late filing penalties

(1) Under Section 8 Taxes Management Act 1970 ("**TMA 1970**"**),** a taxpayer, chargeable to income tax and capital gains tax for a year of assessment, who is required by an officer of the Board to submit a tax return, must submit that return to that officer by 31 October immediately following the year of assessment (if filed by paper) and 31 January immediately following the year of assessment (if filed on line).

(2) Failure to file the return on time engages the penalty regime in Schedule 55.

(3) Penalties are calculated on the following basis:

(a) failure to file on time (i.e. the late filing penalty) - £100 (paragraph 3).

(b) failure to file for three months (i.e. the daily penalty) - £10 per day for the next 90 days (paragraph 4).

(c) failure to file for 6 months (i.e. the 6 month penalty) - 5% of payment due, or £300 (whichever is the greater) (paragraph 5).

(d) failure to file for 12 months (i.e. the 12 month penalty) - 5% of payment due or £300 (whichever is the greater) (paragraph 6).

(4) In order to visit a penalty on a taxpayer pursuant to paragraph 4, HMRC must decide if such a penalty is due and notify the taxpayer, specifying the date from which the penalty is payable (paragraph 4).

(5) If HMRC considers a taxpayer is liable to a penalty, it must assess the penalty and notify it to the taxpayer (paragraph 18).

(6) A taxpayer can appeal against any decision of HMRC that a penalty is payable, and against any such decision as to the amount of the penalty (paragraph 20).

(7) On an appeal, this tribunal can either affirm HMRC's decision or substitute for it another decision that HMRC had the power to make (paragraph 22).

Special circumstances

(8) If HMRC think it is right to reduce a penalty because of special circumstances, they can do so. Special circumstances do not include (amongst other things) an ability to pay (paragraph 16).

(9) On an appeal to me under paragraph 20, we can either give effect to the same percentage reduction as HMRC have given for special circumstances. We can only change that reduction if we think HMRC's original percentage reduction was flawed in the judicial review sense (paragraph 22(3) and (4)).

Reasonable excuse

(10) A taxpayer is not liable to pay a penalty if he can satisfy HMRC, or this Tribunal (on appeal) that he has a reasonable excuse for the failure to make the return (paragraph 23(1)).

(11) However, an insufficiency of funds, or reliance on another, are statutorily prohibited from being a reasonable excuse. Furthermore, where a person has a reasonable excuse, but the excuse has ceased, the taxpayer is still deemed to have that excuse if the failure is remedied without unreasonable delay after the excuse has ceased (paragraph 23(2)).

Service of documents

7. Under Section 115 TMA 1970:

> "Any notice or other document to be given, sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any

person by HMRC may be so served addressed to that person..... at his usual or last known place of residence, or his place of business or employment.....".

8. Under Section 7 of the Interpretation Act 1978 ("**IA**"):

> "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is to be deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

9. Section 103 Finance Act 2020 essentially provides that anything capable of being done by an officer of HMRC may be done by HMRC (including by means of a computer). It essentially codified the Upper Tribunal decision in *Rogers and Shaw* (see below).

10. Regulation 6 of the Income and Corporation Taxes (Electronic Communications) Regulations 2003 ("**Regulation 6**") provides, essentially, that a certificate provided by an officer of the Board that a printed-out version of information was sent electronically to a taxpayer, is evidence that it was so sent unless the contrary is proved.

Case law

11. A summary of the relevant case law is set out below.

Evidence of service

12. The Upper Tribunal in the cases of *HMRC v Nigel Rogers and Craig Shaw* [2019] UKUT 0406 ("***Rogers and Shaw***"), and in *Barry Edwards v HMRC* [2019] UKUT 131 ("***Edwards***") have provided helpful guidance regarding the evidence required when considering a dispute between HMRC and a taxpayer as to whether HMRC have given a taxpayer a document (in both cases that document was a notice to file a return under Section 8 TMA 1970).

13. In *Rogers and Shaw* the Upper Tribunal said:

> "48. … Conscious that the FTT determines large numbers of "default paper" penalty appeals, we give the following guidance to the FTT on how to address any future concerns that it has on the validity of s8 notices.
>
> 49. Paragraph [101] of *Goldsmith* records HMRC's acceptance (which in our view is correct) that, in order to impose a penalty for late filing of a tax return under Schedule 55, HMRC must prove that a notice under s8 was in fact served. Before us, HMRC seemed less ready to accept this point, but we consider it follows from the following passage of the judgment of the Upper Tribunal (Judges Herrington and Poole) in *Christine Perrin v HMRC* [2018] UKUT 156 (TC):
>
> > 69. Before any question of reasonable excuse comes into play, it is important to remember that the initial burden lies on HMRC to establish that events have occurred as a result of which a penalty is, prima facie, due. A mere assertion of the occurrence of the relevant events in a statement of case is not sufficient. Evidence is required and unless sufficient evidence is provided to prove the relevant facts on

a balance of probabilities, the penalty must be cancelled without any question of "reasonable excuse" becoming relevant.

50. It follows that, if HMRC fail to provide any evidence at all to the effect that a s8 notice was served, they will have failed to demonstrate a crucial fact on which their entitlement to a penalty hinges and the FTT will necessarily set aside the penalties charged for alleged failure to comply with that notice. Where HMRC have given some evidence that a s8 notice was served, it will then be a matter for the FTT to determine whether that evidence is sufficiently strong to discharge HMRC's burden of proof. The FTT's assessment of the evidence should take into account the extent to which the taxpayer is disputing receiving a s8 notice. Evidence to the effect that HMRC's systems record a s8 notice as having been sent is, on its own, relatively weak evidence (since it does not itself demonstrate that a s8 notice was actually sent and may not itself demonstrate the address to which it was sent). However, the FTT may nevertheless regard such evidence as sufficient if the taxpayer is not disputing having received a notice to file. By contrast, as the Upper Tribunal (Nugee J and Judge Herrington) identified at [56] of *Barry Edwards v HMRC* [2019] UKUT 131 (TCC) if the taxpayer is disputing having received a notice, the Tribunal is unlikely to accept weak evidence consisting only of a record that HMRC's systems record a s8 notice as having been sent to an unspecified address. In such a case, the Tribunal may look for further corroborating evidence: for example evidence that a s8 notice was actually sent to the taxpayer at the correct address or evidence that the taxpayer set about trying to submit a tax return before the deadline, from which it might be inferred that the taxpayer had received a notice requiring him or her to do so".

Notification of penalty

14. As can be seen from [6(4)] above, in order to visit a daily £10 penalty on a taxpayer under paragraph 4, HMRC must make a decision that such a penalty should be payable, and give an appropriate notice to the taxpayer.

15. These issues were considered by the Court of Appeal in *Donaldson v HMRC* [2016] EWCA Civ 761 ("***Donaldson***").

16. The Court of Appeal decided that:

(1) The high level policy decision taken by HMRC that all taxpayers who are more than three months late in filing a return will receive daily penalties constituted a valid decision for the purposes of paragraph 4.

(2) A notice given before the deadline (i.e. before the end of the three month period (and so issued prospectively) was a good notice. In Mr Donaldson's case, his self-assessment reminder and the SA326 notice both stated that Mr Donaldson would be liable to a £10 daily penalty if his return was more than three month's late and specified the date from which the penalties were payable. This was in compliance with the statute.

(3) HMRC's notice of assessment did not specify, however, the period for which the daily penalties had been assessed. On this it agreed with Mr Donaldson. However, there is a saving provision in Section 114(1) of the TMA 1970 which the Court of Appeal held applied to the notice. And so, they concluded that the failure to specify the period for which the daily penalties had been assessed did not invalidate the notice.

Reasonable excuse

17. The test we adopt in determining whether the appellant has a reasonable excuse is that set out in *the Clean Car Co Ltd v C&E Commissioners* [1991] VATTR 234, in which Judge Medd QC said:

> "The test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?"

18. Although the Clean Car case was a VAT case, it is generally accepted that the same principles apply to a claim of reasonable excuse in direct tax cases.

19. Indeed, in the First-tier Tribunal case of *Nigel Barrett* [2015] UKFTT0329 (a case on late filing penalties under the CIS) Judge Berner said:

> "The test of reasonable excuse involves the application of an impersonal, and objective, legal standard to a particular set of facts and circumstances. 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".

Special Circumstances

20. While "special circumstances" are not defined, the following extract from the Upper Tribunal decision in *Edwards* sets out the correct test.

> "73. The FTT then said this at [101] and [102]:
>
> > "101. I appreciate that care must be taken in deriving principles based on cases dealing with different legislation. However, I can see nothing in schedule 55 which evidences any intention that the phrase "special circumstances" should be given a narrow meaning.
> >
> > 102. It is clear that, in enacting paragraph 16 of schedule 55, Parliament intended to give HMRC and, if HMRC's decision is flawed, the Tribunal a wide discretion to reduce a penalty where there are circumstances which, in their view, make it right to do so. The only restriction is that the circumstances must be "special". Whether this is interpreted as being out of the ordinary, uncommon, exceptional, abnormal, unusual, peculiar or distinctive does not really take the debate any further. What matters is whether HMRC (or, where appropriate, the Tribunal) consider that the circumstances are sufficiently special that it is right to reduce the amount of the penalty".
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> 74. We respectfully agree. As the FTT went on to say at [105], special circumstances may or may not operate on the person involved but what is key is whether the circumstance is relevant to the issue under consideration".

The late appeal

21. A notice of appeal to HMRC must be made within 30 days after the date on which the relevant notification has been given to the appellant by HMRC. Notice may be given after that date if the tribunal gives permission (see section 49 (2) (b) TMA 1970).

22. When deciding whether to give permission to make a late appeal, the tribunal is exercising judicial discretion, and the principles which should be followed when considering that discretion are set out in *Martland v HMRC* [2018] UKUT 178 (TCC), ("***Martland***") in which the Upper Tribunal considered an appellant's appeal against the FTT's decision to refuse his application to bring a late appeal against an assessment of excise duty and a penalty. The Upper Tribunal said:

> "44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton*:
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> (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being "neither serious nor significant"), then the FTT "is unlikely to need to spend much time on the second and third stages" - though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.
>
> (2) The reason (or reasons) why the default occurred should be established.
>
> (3) The FTT can then move onto its evaluation of "all the circumstances of the case". This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.
>
> 45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT's deliberations artificially by reference to those factors. The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.
>
> 46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice - there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal".

23. In *HMRC v BMW Shipping Agents* [2021] UKUT 0091, the Upper Tribunal relevantly said this:

> "52 We will approach the third *Martland* stage by performing, as *Martland* requires, a balancing exercise. In that balancing exercise, the need for litigation to be conducted

efficiently and at proportionate cost and for directions to be complied with must be given particular weight. However, it remains a balancing exercise which invites, among other considerations, a consideration of the nature of the reasons for the breach of direction and the results that would follow if the appeal is, or is not, reinstated".

THE EVIDENCE AND THE FACTS

24. We were provided with a comprehensive bundle of documents from which we find as follows:

(1) For the reasons given at [24-30] below, a notice to file a tax return under section 8 TMA 1970 for the tax year 2021-2022 was issued to the appellant on or around 30 June 2022. That notice specified 31 January 2023 as the due date for filing.

(2) On 11 December 2023, the appellant's electronic tax return for that tax year was received by HMRC.

(3) HMRC issued a penalty notice in paper form to the appellant at his address in Southend for the initial filing penalty of £100 on or around 27 February 2023.

(4) On 13 March 2023 the appellant contacted HMRC via web chat to advise HMRC that he was unable to register online for self-assessment due to identification difficulties. The adviser explained that the appellant needed to file a tax return as he had earned over £100,000. The appellant was advised that he did not need to register for self-assessment as the system had done that in the previous year. He was advised however to file an online return by first creating a personal tax account. He was also told that if he was unable to file a return online, he would need to send the tax return in by post and was given a website from which the form could be downloaded. He was also given a website which he could access to pay the fine that the appellant identified had been charged to him.

(5) On 13 June 2023 the appellant was sent a daily penalty reminder letter telling him that at that time he was already liable to pay a daily penalty of more than £300.

(6) On 2 July 2023 the appellant signed up with HMRC to receive paperless contact.

(7) On 11 July 2023 the appellant was sent a further daily penalty reminder letter telling him that the daily penalties had increased to more than £600.

(8) Notification of the penalties in the total amount of £1,200 was sent electronically by HMRC to the appellant on 15 August 2023. On 31 August 2023 HMRC also issued an email alert to the verified email address provided by the appellant which notified him that he had been sent an electronic communication

(9) Notification of the daily penalty and six-month late filing penalty were issued to the appellant in paper form to the appellant's address on or around 31 August 2023.

(10) The appellant appealed to HMRC against the penalties on 27 December 2023 and notified his appeal to the tribunal on 3 February 2024.

(11) A certificate under Regulation 6 ("**the Regulaton 6 certificate**") was given by officer Daniel Brimer on 10 May 2024.

DISCUSSION

The substantive appeal

25. Strictly speaking we should deal with the appellant's application to bring his appeal out of time before considering the merits of that appeal. But given that the merits were fully argued, and that the third stage of the *Martland* test requires us to consider the respective merits of each side's case when evaluating the prejudice that each might suffer by giving or failing to give permission, we have decided to deal with the substantive appeal first.

Burden and standard of proof

26. The burden of establishing that the appellant is prima facie liable for the penalties which have been properly notified and assessed lies with HMRC. They must also establish that they had served on the appellant a notice under Section 8 TMA 1970 to file a tax return for the relevant year.

27. The burden of establishing that he should not be liable for such penalties because, amongst other reasons, he has a reasonable excuse, or that there are special circumstances lies with the appellant.

28. In each case the standard of proof is the balance of probabilities.

Submissions

29. In his notice of appeal to the tribunal, the appellant submits (in summary) as follows:

(1) In the first instance he was unaware that he had to complete a self-assessment due to passing the threshold.

(2) He attempted to set himself up with an account for self-assessment but his identity documents were out of date and so he was not able to set up electronic self-assessment.

(3) He immediately tried calling HMRC for support, on the helpline but received a recorded message, in 2023, saying that it was only available until September.

(4) He had sent multiple emails to HMRC requesting help and assistance but was given none. Several months later he received the notification that he had been fined £1,200. In response to this he telephoned HMRC and was talked through how he could set up an electronic account.

(5) He is now paying back the outstanding tax and interest at a rate of £360 per month which is causing himself and his family serious financial hardship.

30. In summary Miss Shardlow submitted as follows:

(1) The appellant was in the self-assessment regime prior to the tax year in question and submitted online tax returns for the year ended 5 April 2013 and 5 April 2014. He was therefore aware of the system and of his obligations to file self-assessment returns.

(2) Paper copies of the notice to file and the £100 penalty were sent to the appellant's address on HMRC's system.

(3) Paper and electronic copies of the penalty notices for the daily penalty and six month penalty were sent to the appellant; the former to his notified address, the latter to his personal tax account email address.

(4) There is no evidence that either the paper notices or electronic notices were not received. The paper notices were not returned undelivered. There is no challenge to the Regulation 6 certificate, so the electronic notices are deemed properly served.

(5) The appellant did send emails to HMRC in relation to the difficulties he was facing in signing up to an online account. But these post dated the web chat on 13 March 2023 and thus cannot be a reasonable excuse for having failed to submit his return in response to the notice to file, nor can it be a good reason for failing to make an in time appeal.

(6) The appellant was told by an HMRC agent during the web chat on 13 March 2023, that if he could not file an electronic return he could download and file a paper return. His electronic return was not received until 11 December 2023. No reason has been given by the appellant as to why he did not download a paper return and waited all that time to submit an electronic return. Any reasonable excuse for failing to file his return on time ceased on 13 March 2023.

(7) HMRC have considered whether there are special circumstances which apply to this appellant and have concluded that there are none.

Our view

Service of relevant notices

31. To engage the penalty regime in Schedule 55 HMRC must have given the taxpayer a valid notice to file a tax return. This is the case even if the appellant does not challenge HMRC's assertion that such notices were served on him (as in this case). We are satisfied on the evidence that they have done so. They must also assess the appellant to the penalties and notify him of that assessment. We are also satisfied, on the evidence, that HMRC have done this.

32. As evidence that they have given the taxpayer a notice to file a tax return for the year under appeal, HMRC have provided:

(1) A pro-forma form SA316 notice to file a tax return which tells a taxpayer of its obligations to submit a self-assessment tax return.

(2) A computer printout entitled "Return Summary" which suggests that a return of the type "Notice to File" was issued to the appellant on 30 June 2022.

(3) A computer printout of the appellant's address history.

(4) A document entitled "Evidence of print and dispatch based on the Communisis print service records provided to HMRC" ("**the print service record**"). This reflects a search of the Communisis print service records (the organisation responsible for sending documents to taxpayers on behalf of HMRC). The search was, according to the document, undertaken by Officer Brunton on 25 March 2024. He searched the digital records provided to HMRC by Communisis.

33. Although Officer Brunton did not give evidence as to the search that he carried out, we do not believe that the print service record is a fabrication, and that the officer did not carry out that search as evidenced by that document.

34. We are also conscious that the appellant has not made any submission to the effect that he did not receive the notice to file.

35. When the appellant had a web chat with HMRC on 30 March 2023, he referred to a fine. At that stage he had not been sent the electronic versions (nor indeed the paper versions) of the notification of the daily and six month penalties. The paper notification of the £100 penalty must, therefore, have been received by the appellant before 13 March 2023. Given that this was sent in exactly the same fashion as the notice to file, and the evidence for its sending is largely similar (including the print service record) we think it is more likely than not that the notice to file was also sent and received by the appellant as submitted by HMRC on or around 30 June 2022.

36. We would also note that in an email to HMRC of 20 June 2023, the appellant stated that he was "now I am being fined £300 and counting". This demonstrates that he had received the £300 daily penalty reminder which had been sent to him in paper form on 13 June 2023. If he had received this, we think it is highly likely that it also received the notice to file.

37. This is sufficient evidence to enable us to infer that on the balance of probabilities a notice to file was served on the appellant on or around 30 June 2022.

38. We now turn to the penalty notices.

39. As evidence that they have properly assessed and notified the penalties on this appellant, HMRC have adduced the following as regards the paper notifications:

(1) The pro-forma SA316 notice to file (which also informs a taxpayer of the late filing penalty regime).

(2) Extracts from the appellant's self-assessment notes containing entries indicating that late filing penalty reminder letters were sent to the appellant on certain dates.

(3) Pro-forma's of those reminder letters.

(4) Pro-forma notices of late filing penalties which include provision for inclusion of the period in respect of which the penalty is charged.

(5) A computer record of the appellant's address history.

(6) The print service record.

40. As evidence that the appellant was sent and received electronic versions of the daily and six month penalty notices, HMRC, in addition to the foregoing evidence, have provided the Regulation 6 certificate which certifies hard copies of the electronic communications with the appellant notifying him of the penalties and the emails telling him that he had been notified, electronically, of those penalties.

41. This evidence is sufficient to demonstrate to us that, on the balance of probabilities, valid paper notifications of the penalties was sent to the appellant on 27 February 2023 (see the print

service record). And that electronic notifications for the daily penalties and six month penalty were sent to the appellant on 31 August 2023.

42. We would note that as per the notice to file, the appellant makes no serious challenge to the assertion that he received the penalty notices. And, as we have said above, it is clear that he had received the £100 penalty notice when he had the web chat with HMRC on 13 March 2023.

43. We would also note that in his email to HMRC of 20 June 2023, the appellant stated that he was "now I am being fined £300 and counting". This demonstrates that he had received the £300 daily penalty reminder which had been sent to him in paper form on 13 June 2023.

44. We are also satisfied that as far as the late filing penalties are concerned HMRC have made a decision of the kind required by paragraph 4(1)(b) of Schedule 55 since the "generic policy" referred to in *Donaldson* applies to all taxpayers including this appellant.

Reasonable excuse

45. The test of whether a taxpayer has a reasonable excuse is set out above. We must consider whether this appellant's failure to submit his return on time was reasonable judged by the light of a reasonable taxpayer who is conscious of and intends to comply with his obligations regarding tax; and in considering this we can take into account the circumstances of this particular taxpayer and his experience with the tax system.

46. We are afraid that judged by these criteria, the appellant has no reasonable excuse.

47. We must focus on the reasons given by the appellant as to why he was not able to submit a tax return, in response to the notice to file, either electronically or in paper form, on or before the due date of 31 January 2023. In truth, the appellant has given no reasons for this failure.

48. He suggests that he was unaware that he had to complete a self-assessment due to passing a threshold. Yet we have found that he was sent a notice to file, which would have made it abundantly clear that he had to file a return, in June 2022.

49. Furthermore, any scrap of ignorance would have vanished following the web chat on 13 March 2023 when he was told that he could file a paper return, yet he failed to do so until some nine months later.

50. His submissions that he was unable to sign up for electronic communications are largely irrelevant. The evidence shows that he did not appear to start this process until well after the filing deadline had passed. The emails we have seen regarding the attempts to sign up to electronic communication postdated not just the filing deadline, but also the penalty notification for the £100 penalty. His failure (which was largely his as he could not provide the correct ID) to sign up to electronic communication cannot possibly be a reasonable excuse for having failed to submit his return on or before 31 January 2023.

51. Whilst we are sympathetic to the appellant that he is suffering financial hardship, shortage of funds cannot be considered to be a reasonable excuse as a matter of law

52. So, we can see no reasonable excuse for the appellant failing to submit his tax return for 2021-2022 on or before the date specified in the notice to file, namely 31 January 2023.

Special circumstances

53. HMRC have considered the situation and have concluded that there are no special circumstances. We agree and do not find that conclusion to be flawed.

The late appeal

54. We have found that the appellant's substantive appeal must fail. So, bluntly, it doesn't really matter whether we grant or reject his application to bring his appeal late. Either way he loses. But because it was fully argued, and because the appellant was absent, we deal with it, albeit briefly, below.

55. We adopt the three stage test set out in *Martland.*

56. The first limb is to consider the length of the delay. The penalty notices were issued in February 2023 and August 2023. Appeals were not notified to HMRC until December 2023. The appeal against the £100 penalty is approximately 270 days late, and the appeals against the daily and six month penalty approximately 90 days late. These are sufficiently serious and significant delays to warrant moving to the second and third limbs of the three stage test.

57. The second limb is to consider the reasons for the delay. The appellant has provided none. His submissions regarding the delay are identical to those in his substantive appeal against the penalties. We can see nothing in them to justify failure to bring his appeals within the 30 day period. We have found that the penalty notices were properly served on him. It is also clear from not just notices themselves and the notes accompanying them but from the reminder letters that the appellant was notified that he had a 30 day period to appeal against the penalties.

58. Turning now to the third limb, namely an evaluation of all of the circumstances, considering the balance of prejudice, taking into account that time limits are to be respected and litigation conducted efficiently.

59. Given the lack of reasons, the fact that the delay is serious and significant, and that the appellant's substantive appeal is unmeritorious, we have no hesitation in rejecting the appellant's application that his appeal against the penalties should be brought out of time.

DECISION

60. We refuse the appellant's application to bring his appeal against the penalties out of time.

61. Even if we had allowed that application, for the reasons given earlier in this decision we would have dismissed, and we do dismiss, his appeal against those penalties.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

62. 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.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 02nd SEPTEMBER 2024