[2018] UKFTT 0013 (TC)

# TC06292

**Appeal number: TC/2013/07432**

***INCOME TAX – late filing daily penalty – HMRC witness statement provided in the course of the hearing – generic evidence – whether to admit witness statement into evidence – whether HMRC met the burden of proof – appeal allowed***

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**RACHID HALFAOUI** **Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE REDSTON**
**MR TOBY SIMON**

**Sitting in public at Taylor House, 88 Rosebery Avenue on 13 December 2017**

**The Appellant did not attend and was not represented**

**Ms Fariha Hanif, litigator for HM Revenue and Customs, for the Respondents**

## DECISION

1. Mr Halfaoui had appealed against daily penalties of £620 imposed by HM Revenue & Customs ("HMRC") under Finance Act 2009, Schedule 55 ("Sch 55"), para 4, for late filing of his 2011-12 self-assessment ("SA") return.

2. His appeal is **ALLOWED** and the penalties cancelled.

### The Rules for Basic cases

3. Mr Halfaoui's appeal was allocated as a "Basic" case under Rule 23 of the Tribunal (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules"). Rule 23(2)(b) says that Basic cases "will usually be disposed of after a hearing, with minimal exchange of documents before the hearing". Rule 24(2) states that there is no requirement in Basic cases for HMRC to produce a "Statement of Case" and that the case will normally proceed directly to a hearing. However, that general statement is subject to "any direction given by the Tribunal".

4. On 11 November 2017, the Tribunal directed that HMRC:

> "produce a bundle of documents and authorities comprising the decision notice, the notice of appeal, all relevant correspondence between the parties, any other documents relating to this appeal in your possession and any legislation or case law on which you rely."

5. The Tribunal further directed that a copy of the Bundle be sent to Mr Halfaoui so that it reached him 14 days before the hearing. Ms Hanif said that HMRC had not been able to comply with that direction, because there was too little time between its issuance and the date of the hearing.

### Mr Halfaoui's failure to attend

6. The hearing was listed to begin at 10.30, but Mr Halfaoui had not arrived. The Tribunal clerk called him using the number provided on his Notice of Appeal.

7. Mr Halfaoui said he did not recall having made an appeal to the Tribunal. The clerk referred to the appeal date of 28 October 2013 and the £620 penalty. Mr Halfaoui disconnected the call.

8. We considered Rules 2 and 33 of the Tribunal Rules. Rule 33 reads:

> **"Hearings in a party's absence**
>
> If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal–
>
> (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
>
> (b) considers that it is in the interests of justice to proceed with the hearing."

9. It was clear from the papers provided to the Tribunal that reasonable steps had been taken to notify Mr Halfaoui of the hearing. We considered whether it was in the interests of justice to proceed. Rule 2(2) says:

> "Dealing with a case fairly and justly includes–
>
> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
>
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
>
> (d) using any special expertise of the Tribunal effectively; and
>
> (e) avoiding delay, so far as compatible with proper consideration of the issues."

10. The relevant factors here are (a), (c) and (e).

(1) In relation to (a), the appeal relates to a late filing penalty appeal, which is a straightforward issue. HMRC had also sent a representative to this hearing and incurred the related costs.

(2) In relation to (c), Mr Halfaoui's failure to attend means he could not put forward his evidence or submissions orally. But we had his Notice of Appeal and letters written on his behalf by Mr Rahim, his accountant. Moreover, the appeal concerned a penalty imposed in August 2013, over four years ago. Mr Halfaoui had told the Tribunal clerk that he did not remember making the appeal, so it was reasonable to assume that he was also unlikely to be able to add to the evidence or submissions previously provided to the Tribunal.

(3) In relation to (e), the Bundle includes HMRC's SA Notes and related documents; printouts from the HMRC system, and the correspondence between the parties and between the parties and the Tribunal. Ms Hanif had prepared a submission for the hearing, and Mr Halfaoui's case was set out in his Notice of Appeal and in the letters from his accountant. In our judgment, we had sufficient information properly to consider the issues. Furthermore, Mr Halfaoui's appeal has already been significantly delayed. It was stayed behind *Morgan and Donaldson v HMRC* [2013] UKFTT 317 (TC), because that case also concerned daily penalties. The stay was not lifted until after 21 December 2016, when the Supreme Court refused permission to appeal the Court of Appeal's judgment in *Donaldson v HMRC* [2016] EWCA Civ 761.

11. We also took into account HMRC's failure to comply with the Tribunal's direction to serve the Bundle on Mr Halfaoui in advance of the hearing. However, the Bundle contained little which had not already been exchanged between the parties. The only exception was HMRC's SA related documents and other printouts from the HMRC system.

12. Having considered all relevant factors, the Tribunal decided it was in the interests of justice to proceed with the hearing.

**The legislation**

13. Sch 55 charges penalties for failures to file on time. Paragraph 4 provides for daily penalties, and reads:

> "(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)."

**The daily penalties and the burden of proof**

14. As set out above, Sch 55, para 4(1)(c) provides that HMRC must "give notice to [the taxpayer] specifying the date from which the penalty is payable". In *Donaldson* HMRC provided evidence to the Tribunal that Mr Donaldson had received two documents. The Court of Appeal subsequently held that each of these documents was a Notice complying with Sch 55, para 4(1)(c). The first document was an "SA Reminder" sent out after the deadline for submitting a paper return had expired. It included the words:

> "If we still haven't received your online tax return by 30 April (31 January if you're filing a paper one) a £10 daily penalty will be charged every day it remains outstanding. Daily penalties can be charged for a maximum of 90 days, starting from 1 February for paper tax returns or 1 May for online tax returns."

15. The second was an "SA 326D notice" issued in February 2012, which informed Mr Donaldson of the £100 fixed penalty. It included the following text:

> "If you still haven't sent us your tax return please do so now to avoid further penalties.
>
> If your tax return is more than three months late we will charge you a penalty of £10 for each day it remains outstanding.
>
> Daily penalties can be charged for a maximum of 90 days starting from 1 February for paper returns or 1 May for online returns."

16. By informing Mr Donaldson that "daily penalties can be charged for a maximum of 90 days, starting from 1 February for paper tax returns or 1 May for online tax returns", HMRC had given him notice "specifying the date from which the penalty is payable".

## The facts

17. This part of the decision sets out the facts which not in dispute. We make further findings of fact later in our decision.

18. On 6 April 2012, Mr Halfaoui was issued with a Notice to File an SA Return for the 2011-12 tax year. He did not file his return by the due date of 31 January 2013.

19. On 8 May 2013, Mr Halfaoui received a letter from HMRC headed "overdue tax, tax return and penalties £100" which read:

> "You now have a £100 penalty because you did not file your 2011-12 return on time. Please file your tax return online at hmr.gov.uk/payinghmrc. If you have recently filed your tax return and paid what is due, thank you. If you don't think you need to complete a tax return for this year, you can go to hmrc.gov.uk/yourtaxreturn to check. If you do not file your tax return or contact us, you could end up paying at least £1,600 in penalties, so please act now".

20. On 4 June 2013, HMRC's SA Notes state that Mr Halfaoui was sent a "30 day penalty reminder letter", and we find that this was issued.

21. Mr Halfaoui's SA return was filed on 2 July 2013. It showed that his income was £7,293, below the personal allowance for the year of £7,475. On the same day, 2 July 2013, HMRC issued late filing daily penalties of £620 being £10 per day from 1 May 2013 to 1 July 2013.

22. Mr Halfaoui instructed an accountant, Mr Rahim, who wrote to HMRC on 9 July 2017 asking for the £620 penalty to be waived. Mr Rahim said that Mr Halfaoui had not "received the 'welcome pack' which indicates the new additional penalty regime" and pointed out that his income was below the personal allowance.

23. The appeal was refused on the basis that Mr Halfaoui did not have a reasonable excuse. The HMRC Officer, Mr Garrett, stated that "flyers and reminders" had been issued about the new penalty regime.

24. On 20 August 2013 Mr Rahim wrote again, denying that Mr Halfaoui had received "any fliers or reminders", and requested a statutory review. HMRC's Review Officer, Mrs Doherty, upheld the decision to refuse Mr Halfaoui's appeal. She said:

> "a personalised warning was issued in December in all cases where the online tax return has not yet been submitted. This advises the amount of penalties which will arise if the return is filed late. Please see copy enclosed."

25. Although two copies of this letter were supplied to the Tribunal, one by HMRC in the Bundle and one by Mr Halfaoui with his Notice of Appeal, there is no attachment to either copy. Since neither party provided the "personalised warning" which Mrs Doherty says was attached to her letter, we find on the balance of probabilities that it was not so attached.

26. Mr Halfaoui's grounds of appeal appear to have been drafted by Mr Rahim, and state that:

> "Appellant feels that HMRC has been harsh in imposing daily penalties of £620 because HMRC failed to notify the date from which daily penalties will start for failing to file the tax return.
>
> HMRC also failed to notify the Appellant of daily penalties in their £100 penalty letter dated 8/5/2013 whereas the daily penalty start date was from 1/5/2013. Had HMRC notified the daily penalty start date of 1/5/13 in their letter of 1/5/2013, the penalty amount would have been much lower."

**Whether HMRC met the burden of proof**

27. As this is a penalty appeal, the burden of proof is on HMRC. It is therefore for HMRC to prove that a Notice was provided to Mr Halfaoui specifying the date from which the daily penalty was payable. This would be the case, even had Mr Halfaoui not raised that issue in his grounds of appeal, see *Burgess and Brimheath Limited* v HMRC [2015] UKUT 0578 (TCC) and *Islam v HMRC* [2017] UKFTT 0337 (TC).

28. We therefore asked Ms Hanif how HMRC were proposing to meet their burden. She first sought to rely on the following two letters, copies of which were included in the Bundle:

(1) A template SA326D notice "Self Assessment: Late tax return Notice of penalty assessment". It is addressed to Mr AN Other, Anytown, Anywhere, BD9 1AS. The first sentence, in bold, reads "Your tax return for the year ended 5 April 2011 was not sent in on time". It includes the same wording as the SA326D addressed to Mr Donaldson, namely that "daily penalties can be charged for a maximum of 90 days, starting from 1 February for paper tax returns or 1 May for online tax returns". The date of issue is given as 14 February 2012, and the margin is annotated "Feb 12 HMRC 2/12".

(2) A template SA309E letter entitled "self-assessment tax return and payment reminder". The first paragraph is headed "Your tax return for the year ended 5 April 2012". The next paragraph included the words "if your tax return is more than three months late, you will get daily penalties of £10 per day and could pay up to £1,600 – even if you don't owe any tax".

29. The Tribunal pointed out to Ms Hanif that:

(1) the template SA326D Notice was for the 2010-11 tax year, not the 2011-12 tax year which is in issue here. It therefore did not prove that the same or similar wording had been used in 2011-12;

(2) although the SA Reminder SA309E was for the right year, our understanding was that individuals were normally issued with a SA309A form;

(3) the wording on the SA309E differs from that used in the SA Reminder sent to Mr Donaldson, which had said (emphasis added) "Daily penalties can be charged for a maximum of 90 days, *starting from 1 February for paper tax returns or 1 May for online tax return*". It was the italicised words which satisfied the requirement that HMRC had "give[n] notice to P *specifying the date from which the penalty is payable*". In contrast, the 2011-12 SA309E does not refer to either 1 February or 1 May; and

(4) in any event, the existence of templates did not, of itself, prove that Mr Halfaoui had been issued with, or received, a notice. His own evidence was that he had not received a warning of the new penalties, and HMRC's SA Notes did not record the issuance of either form to Mr Halfaoui (in contrast to the "30 day penalty reminder letter" which was recorded as having been issued on 4 June 2013).

30. In response, Ms Hanif:

(1) said that she did not have a copy of the SA326D notice for 2011-12;

(2) did not know if the wording was the same as that on the 2010-11 template;

(3) agreed that taxpayers who were late in filing their SA returns would be sent the SA309A, not the SA309E. The SA309E was instead issued to taxpayers who were unable to file their return for technical or operational reasons. She accepted that Mr Halfaoui would not have been issued with an SA309E;

(4) could not explain why, if the SA326D and SA309A had been sent to Mr Halfaoui, their issuance had not been recorded in the SA Notes, given that the 30 day reminder was so recorded; and

(5) did not have a copy of the 30 day penalty reminder and was not relying on the wording of that document in the context of this appeal.

31. Ms Hanif then produced a witness statement made by Mr Martin Delnon, an HMRC officer, dated 31 August 2017. Mr Delnon was not present at the hearing. His witness statement is headed "Donaldson Follower Cases v the Commissioners for Her Majesty's Revenue and Customs".

32. Ms Hanif said that Mr Delnon had not seen the papers for Mr Halfaoui's case; his witness statement had been drawn up to assist HMRC litigators in in daily penalty appeals if a Tribunal raised the burden of proof issue. Ms Hanif agreed that the witness statement could fairly be described as "generic".

*Witness evidence*

33. Rule 15 of the Tribunal Rules gives the Tribunal has wide powers over the admission and exclusion of evidence. In particular, Rule 15(2) provides:

"(2) The Tribunal may–

(a) admit evidence whether or not the evidence would be admissible in a civil trial in the United Kingdom; or

(b) exclude evidence that would otherwise be admissible where–

(i) the evidence was not provided within the time allowed by a direction or a practice direction;

(ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or

(iii) it would otherwise be unfair to admit the evidence."

34. In *HMRC v IAC Associates* [2013] EWHC 4382 (Ch), Nugee J considered the Tribunal's powers under Rule 15(2)(b) before saying at [32]:

> "The principles that are applicable in excluding evidence that would otherwise be admissible are, it seems to me, those stated by Mr Justice Lightman in the statement which was approved by Lord Justice Ryder in the Court of Appeal…in paragraph [31] of his judgment in the *Atlantic Electronics* case…: 'The UT adopted the correct approach to the admission of the materials in question. It assessed whether the evidence was relevant and applied the presumption that all relevant evidence should be admitted unless there is a compelling reason to the contrary'."

35. Having considered two other authorities, he summarised the position at [35]:

> "…one starts with asking the question whether the evidence is admissible. It is admissible if it is relevant. It is relevant if it is potentially probative of one of the issues in the case. One then asks, notwithstanding that it is admissible evidence, whether are good reasons why the court (or tribunal in this case) should nevertheless direct that it be excluded."

36. The issue in the *IAC* case was the Tribunal's approach to evidence given by a Mr John Fletcher on behalf of HMRC in an Missing Trader Intra-Community ("MTIC") Fraud appeal. Mr Fletcher had given essentially the same generic evidence in a number of MTIC appeals. HMRC's Counsel explained that this was in part because "it would not be proportionate for Mr Fletcher to give evidence directed to the facts of a particular case in every one of these appeals".

37. Nugee J held at [90], reiterating what he had said earlier at [56]:

> "…in one sense Mr Fletcher's evidence is not central to the appeal but it is, nevertheless, potentially probative and potentially helpful and the fact that it is not directed to the facts of this particular case but is generic background material cannot by itself in my judgment amount to a good reason for excluding it."

38. It is clear from both Rule 15(2) and the guidance given by Nugee J, that the Tribunal cannot refuse to admit Mr Delnon's evidence simply because it is generic. Instead, we must consider (a) whether it is relevant, and if so (b) whether to exercise our discretion to include or exclude that evidence.

*Ms Hanif's submissions on relevance*

39. Ms Hanif submitted that the evidence in Mr Delnon's witness statement was relevant and should be admitted, because it proved that:

(1) all those who had been issued with an SA Notice to File, but had not filed by 31 October after the end of the tax year, had subsequently been sent a self-assessment tax return and payment reminder" which included the relevant wording; and

(2) all those who had not filed their SA returns by 31 January after the end of the tax year had received an SA326D Notice which included the relevant wording.

40. She said that Mr Delnon's witness statement therefore filled any evidential gaps which might otherwise exist in HMRC's documents, and demonstrated that HMRC had met the burden of proof in this appeal.

41. The Tribunal accepted that Mr Delnon's witness statement was "potentially probative of one of the issues in the case" and went on to consider its content.

*Mr Delnon's witness statement*

42. The witness statement begins by setting out Mr Delnon's background and the basis on which he is giving evidence. He said:

> "[1] I have managed the self-assessment Live Services Team from 8 May 2017 and have previously held roles as technical and policy adviser for self-assessment. I make this Witness Statement to explain the process for issuing and charging late filing penalties pursuant to Schedule 55 FA 2009.
>
> [2] Save as otherwise indicated, the facts referred to below are within my own knowledge or derived from my examination of documents relevant to the Appellant's claim or from any other identified source. Where facts are not within my direct knowledge, they are derived from the source which I indicate. In either case, the facts are true to the best of my knowledge and belief…
>
> [4] Due to HMRC's data retention policy, HMRC does not retain copies of individual penalty notices therefore we are unable to retrieve all of the details relevant to individual cases."

43. In relation to tax years 2010-11, 2011-12 and 2012-13, Mr Delnon said:

> "[15] …in December following the year end, if a return had still not been received, one of the following reminders was issued alerting taxpayers of their obligation to file a return and/or pay their liability by the 31 January deadline.
>
> [16] Our system ran a scan to identify relevant customers, and a file with this data was sent to our print provider who then applied the customer data (name, address, taxpayer reference) to the correct form for printing and enveloping. These were collected and delivered in pre-agreed batches to manage the demand on our Contact Centres. The

type of reminder would depend on the specific requirements of the taxpayer.

[17] SA309A – SA Online Tax Return and Payment Reminder where no return had been received for an individual. The SA309A is a personalised warning to individuals about penalties and includes a blank payslip (see appendix A).

[18] SA309B – SA Partnership Tax Return Payment Reminder was issued to the nominated partner where the partnership return had not been received…(see appendix B).

[19] SA309C – SA Payment Reminder where the return had been received but not processed by HMRC…(see appendix C).

[20] SA309E - SA Tax Return and Payment Reminder where no return had been received and the individual was unable to file their return for technical or operational reasons (see appendix D)…."

44. Under the heading "issue of penalty notices" Mr Delnon stated:

"[24] Notice of penalty assessment Form SA326D was issued automatically to all taxpayers identified by the computer system in February who had not filed their tax return by the due date…the notice also informed the taxpayer that further penalties (daily penalties) could be charged for a maximum of 90 days starting from 1 February for paper returns and 1 May for online returns (see appendix G)…

[26] The wording of the SA326D…warning of daily penalties is a standard section of the document, which cannot be changed before issue. The wording is the same as that examined and considered satisfactory in the Donaldson case."

45. Unfortunately, none of the referenced appendices were attached to the witness statement provided to the Tribunal.

*Consideration of Mr Delnon's witness statement*

46. We had a number of concerns about Mr Delnon's witness statement:

(1) Although he had stated that some of the facts were "derived from my examination of documents relevant to the Appellant's claim", that was clearly incorrect: as Ms Hanif had confirmed, Mr Delnon had no knowledge of Mr Halfaoui's appeal. Although the generic nature of Mr Delnon's evidence does not of itself prevent it being admissible (see the citations from Nugee J's judgment in the *ICS* case), his inclusion of an untrue statement affects his credibility.

(2) He only took charge of "the self-assessment Live Services Team" on 8 May 2017; previously he was a "technical and policy adviser". It seemed to us, and Ms Hanif agreed, that a person in that role was unlikely to have first-hand experience of the detailed operational procedures used to send out letters four years previously, despite his evidence on that issue at [16] of his witness statement. Although Mr Delnon also stated that "where facts are not within my

direct knowledge, they are derived from the source which I indicate", no source is given for that evidence.

(3) Similarly, he gave no source for his statement in [23] that "the wording of the SA326D…warning of daily penalties is a standard section of the document, which cannot be changed before issue". That too is unlikely to have been within the direct knowledge of a technical and policy adviser.

(4) Although he referred to (i) the various self-assessment tax return and payment reminders and (ii) the SA326D Notice, the supporting exhibits were not provided to the Tribunal.

(5) The *Donaldson* appeal concerned a penalty issued in 2010-11. Although Mr Delnon's witness statement says at [26] that "the wording of the SA326D…is the same as that examined and considered satisfactory in the *Donaldson* case", it is silent on whether the wording remained the same in each subsequent year. In that context, we note in particular that the 2011-12 template SA Reminder SA309E did not include the reference to the start date of the penalty period, unlike the 2010-11 "SA Reminder" provided to Mr Donaldson.

47. From the above we concluded that Mr Delnon:

(1) had not given relevant evidence as to the operational procedures used by HMRC in relation to 2011-12, because on the balance of probabilities he could not do so from his own knowledge, and he did not indicate his source;

(2) had not given relevant evidence as to the documents in issue in this appeal, namely the SA309A (the "self-assessment tax return and payment reminder") and the SA326D ("Self Assessment: Late tax return Notice of penalty assessment"), because no documents had been appended to his witness statement.

48. Since we have found that Mr Delnon's evidence is not "relevant", it follows that it is not admissible. Even had we decided that it was relevant, we would have exercised our discretionary power to exclude it under Rule 15(2)(b)(ii), because it "was otherwise provided in a manner that did not comply with a direction". HMRC had been directed to provide Mr Halfaoui with a Bundle fourteen days before the hearing, containing *inter alia* "any other documents relating to this appeal in [HMRC's] possession". Although the Tribunal's direction made no explicit reference to witness statements, its wording is broad and was clearly intended to ensure that Mr Halfaoui had seen the documents on which HMRC were intending to rely at the hearing.

49. There is also the question of Mr Halfaoui's rights under the European Convention on Human Rights. Tax penalties are "criminal" for the purpose of the Convention, see for example *Euro Wines v HMRC* [2016] UKUT 359 (TCC) (Birss J and Judge Berner) at [13]-[29] and the authorities there cited. Under Article 6(3)(d) of the Convention, everyone charged with a criminal offence has the right "to examine or have examined witnesses against him". Introducing a witness statement for the first time in the course of the hearing, but not producing the witness, means that the appellant has no prior notice of the witness's evidence, and there is no

possibility of cross-examination. However, as we had no submissions on this point and as we were able to make our decision about the witness statement on other grounds, we did not need to decide whether admitting Mr Delnon's evidence would breach Mr Halfaoui's Article 6(3)(b) rights.

*Further findings*

50. It is clear from the above that HMRC have not met their burden of proving that Mr Halfaoui received either the SA309A or the SA326D. We therefore find as a fact that Mr Halfaoui received neither document.

51. However, it was not in dispute that he had received the letter from HMRC dated 8 May 2013, and we considered whether that satisfied the requirements of Sch 55, para 4(1)(c). It said "if you do not file your tax return or contact us, you could end up paying at least £1,600 in penalties, so please act now". It therefore does not specify the date from which the penalty is payable; instead, it simply totals the penalties which might accrue if Mr Halfaoui did not file his return by 31 January of the following year; the £1,600 includes both daily penalties and fixed penalties. The letter therefore does not satisfy Sch 55, para 4(1)(c).

52. We have not overlooked the fact that on 4 June 2013 HMRC issued Mr Halfaoui with a 30 day penalty reminder. That document is not referred to in the evidence or submissions made by Mr Halfaoui and/or Mr Rahim, so we do not know whether or not he received it. However, we make no finding on this point because (a) HMRC were not relying on that document in the context of this appeal, and (b) no copy of the document was provided to us, so we do not know whether it satisfied the requirements of Sch 55, para 4(1)(c).

**Decision and appeal rights**

53. We find that HMRC have failed to show that a Notice sufficient to satisfy Sch 55, para 4(1)(c) was given to Mr Halfaoui. We allow his appeal and set aside the penalties of £620.

54. This document contains full findings of fact and reasons for the decision. If HMRC is dissatisfied with this decision, they have a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Rules. 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.

**Anne Redston**
**TRIBUNAL JUDGE**

**RELEASE DATE: 8 January 2018**