[2019] UKFTT 0550 (TC)

TC07344

Appeal number: TC/2019/02036

INCOME TAX - individual tax return - penalties for late filing - whether properly imposed - no – no evidence that a valid notice to file under section 8(1) TMA 1970 had been given to the taxpayer – application to appeal out of time – application granted – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MARK GOODMAN **Appellant**

- and -

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

TRIBUNAL: JUDGE NIGEL POPPLEWELL

The Tribunal determined the appeal on 15 August 2019 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 to the Tribunal dated 4 April 2019 and HMRC's Statement of Case (with enclosures) prepared by the respondents on 25 April 2019 and various correspondence between the parties.

DECISION

Background

1. This is an appeal against the following penalties (the "**penalties**") visited on the appellant by the respondents (or "**HMRC**") under Schedule 55 Finance Act 2009 for the late filing of an individual tax return for the tax years 2014-2015 and 2015-2016.

(1) For 2014-2015, a 12-month late filing penalty of £300.

(2) For 2015-2016, a late filing penalty of £100.

The Facts

2. From the documents I find the following:

(1) HMRC claim that a notice to file a tax return for 2014-2015 was sent to the appellant on or about 6 April 2015 to an address in Thailand which was the address held on record at that time.

(2) They also claim that a notice to file for the year 2015-2016 was sent to the appellant at that address on 6 April 2016.

(3) The appellant submitted his paper returns for both years with a letter dated 16 January 2017. The address at the top of that letter is 56 Cumberland Rd, Sale.

(4) What had prompted submission of these paper returns appears to be a telephone conversation with HMRC which took place on 6 July 2016 and the subsequent telephone conversation, following attempts by the appellant to register for self-assessment online, which took place on 24 November 2016. In that letter the appellant gave his correspondence address as 34 Broadlake Willaston.

(5) On 10 January 2017 HMRC's debt management and banking unit wrote to the appellant at his address at Willaston in connection with his self-assessment debt of £1312.54.

(6) The paper returns for both years were processed by HMRC on 17 February 2017.

(7) HMRC issued a notice of penalty assessment for the 12 month late filing penalty of £300 for the tax year 2014-2015 on or around 27 February 2017. The notice of penalty assessment for the £100 penalty for 2015-2016 was issued on or around 17 February 2017. It is not clear to which address HMRC say they sent these notices.

(8) HMRC's print out of their computer records of the appellant's correspondence address in Thailand indicates that the start date was 4 March 2015 and the end date, 18 April 2017.

(9) HMRC's self-assessment notes indicate that it was on 6 July 2016, in a telephone call with HMRC, that the appellant gave HMRC his "correspondence

address". I think it is more likely than not that the address that the appellant gave was the same as that which he gave to HMRC in his letter of 24th November 26, namely 34 Broadlake Willaston.

(10) On 28 March 2019 HMRC sent two letters to the appellant one in respect of the penalty for 2014-2015 and one for the penalty for 2015-2016. Both letters were addressed to his Willaston address. This is notwithstanding that HMRC had written to him at his Cumberland Road address on 20 February 2017, the address from which the appellant's letter of 16 January 2017 had been sent.

(11) HMRC then claim to have sent notices of penalty assessments for daily, six month and 12 month penalties for 2014-2015 to the appellant.

(12) The late filing penalty, the daily penalties and the six month late filing penalty for 2014-2015 were all cancelled on or around 17 February 2017. Notification of that cancellation was given to the appellant by HMRC in their letter of 20 February 2017.

Legislation

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

(1) Under Section 8 of the 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 Finance Act 2009 ("**Schedule 55**") and reference to paragraphs below are to paragraphs in that Schedule.

(3) Penalties are calculated on the following basis:

(a) failure to file on time- £100 (paragraph 3).

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

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

(5) 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).

(6) 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).

Late appeal

4. The notice of appeal includes an application for this appeal to be made out of time. HMRC oppose that application. I have jurisdiction and discretion to grant the appellant that permission. The principles I should adopt when considering the exercise of that discretion are set out in the Upper Tribunal decision in *Martland v HMRC* [2018] UKUT 178. In that case 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.
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> > (2) The reason (or reasons) why the default occurred should be established.
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> > (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.
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> 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.
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> 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. In *Hysaj*, Moore-Bick LJ said this at [46]:
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> > "If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties' incurring substantial costs. In most cases the merits of the appeal will have little to do with

> whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them."

Hysaj was in fact three cases, all concerned with compliance with time limits laid down by rules of the court in the context of existing proceedings. It was therefore different in an important respect from the present appeal, which concerns an application for permission to notify an appeal out of time – permission which, if granted, founds the very jurisdiction of the FTT to consider the appeal (see [18] above). It is clear that if an applicant's appeal is hopeless in any event, then it would not be in the interests of justice for permission to be granted so that the FTT's time is then wasted on an appeal which is doomed to fail. However, that is rarely the case. More often, the appeal will have some merit. Where that is the case, it is important that the FTT at least considers in outline the arguments which the applicant wishes to put forward and the respondents' reply to them. This is not so that it can carry out a detailed evaluation of the case, but so that it can form a general impression of its strength or weakness to weigh in the balance. To that limited extent, an applicant should be afforded the opportunity to persuade the FTT that the merits of the appeal are on the face of it overwhelmingly in his/her favour and the respondents the corresponding opportunity to point out the weakness of the applicant's case. In considering this point, the FTT should be very wary of taking into account evidence which is in dispute and should not do so unless there are exceptional circumstances.

47. Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT's consideration of the reasonableness of the applicant's explanation of the delay: see the comments of Moore- Bick LJ in *Hysaj* referred to at [15(2)] above. Nor should the fact that the applicant is self-represented – Moore-Bick LJ went on to say (at [44]) that "being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules"; HMRC's appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person."

Decision on late appeal

5. The appeal papers show that the appellant has made an application for permission to appeal out of time. However HMRC oppose the application. The penalty notices for the 12 month penalty for 2014-2015 and the £100 fixed penalty for 2015-2016 were, according to HMRC, sent to the appellant on 21 January 2017. The last day to appeal against those notices was 22 March 2017 and the appeal was not actually received by HMRC until 29 January 2019.

6. As regards the £100 penalty, daily penalties and six month penalty for 2014 -

2015, which HMRC say were notified and assessed on the appellant in February 2016 and August 2016, HMRC have accepted that the appellant made an in time appeal against these on 16 January 2017. It is these penalties that have since been cancelled. Obviously the appellant could not appeal against the 12 month penalty for 2014-2015 in that letter, since the notice of assessment of that penalty had not been issued by that date. It was not issued until around 21 February 2017.

7. Clearly the delay in appealing against the penalties which are the subject of this appeal is serious and substantial. It is a delay of nearly 2 years and HMRC are entitled to expect that after that time, the appellant would not appeal against the penalties.

8. The appellant has provided a number of reasons why his appeal has been made late, one such reason being that he did not receive the penalty notices. What appears to have put the appellant on notice that he needed to do something, following his telephone conversations with HMRC during 2016, was the letter from the debt management and banking unit, sent to his Willaston address, on 10 January 2017. Less than a week later, on 16 January 2017, the appellant wrote to HMRC with his paper returns, which letter has been treated by HMRC as an appeal against the penalties for 2014-2015 mentioned above. His letter was sent from his Cumberland Road address, which address was then used by HMRC's PAYE and self-assessment unit when they wrote to him on 20 February 2017**.**

9. It is also instructive that HMRC's record of the appellant's correspondence address seems to suggest that it was not until 18 April 2017 that they realised that he was no longer living in Thailand. So notwithstanding the correspondence from a UK address in 2016 and 2017, and recognition that the appellant's address had changed to a UK one, that does not appear to have been reflected in the address which HMRC had on file if indeed the end date of 18 April 2017 indicates that the Thailand address was the one they recognised as the correspondence address for the appellant until that date.

10. I think is more likely than not that the penalty notices purportedly sent by HMRC to the appellant on 17 February 2017 were sent to his Williston address and were never received by the appellant. It is my view that in light of his exchange of correspondence with the PAYE unit, in January/February 2017, if the appellant had received further notices of assessment and penalties in that period, he would have responded to them. He was engaged in a dialogue, at that time, with HMRC. His failure to do so is sufficient evidence for me to accept that he never received the penalty notices in question.

11. And so I accept that a reason for the failure to appeal in time was the fact that the appellant never received the notices of assessment. Whether or not he is the author of his own misfortune by having failed to formally advise HMRC of his change of address is, in my mind, not relevant to this point. In any case HMRC were on notice, by virtue of his letter of 16 January 2017, that the appellant was no longer living at Willaston. What matters is whether the appellant actually received the notice of assessment, and I find that he did not. This is a good reason for not appealing against the penalties set out in such an assessment.

12. I now move onto the balancing exercise. I am entitled to consider any obvious strengths and weaknesses in the case. As can be seen from the following paragraphs in this appeal, I think the appellant has a very strong case based on the failure by HMRC

to provide adequate evidence to support their assertion that they served valid notices to file on the appellant. In these circumstances the balance of prejudice comes down heavily in favour of allowing the appellant to appeal out of time. And I allow him to do so. I do so recognizing that in conducting this balancing exercise I must give particular importance to the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders. In my view that principle is outweighed in this case by the strength of the appellant's case and the prejudice he will suffer if I deny him permission to appeal out of time.

Law and principles of evidence

13. The law and the evidential principles which are relevant to the validity of the assessment and notification of the penalties is as follows:

(1) The burden of establishing that the appellant is prima facie liable to the penalties which must be assessed and notified in accordance with the law lies with HMRC. It is for them to prove each and every factual matter said to justify the imposition of the penalties on this particular taxpayer.

(2) The standard of proof is the civil standard of proof namely the balance of probabilities or more likely than not.

(3) The penalties in this case have been assessed and notified on and to the appellant under Schedule 55.

(4) To come within the Schedule 55 penalty regime, a taxpayer must have failed to make or deliver a return, or to deliver any other document, specified in the "Table below" on or before the relevant filing date (paragraph 1(1) of Schedule 55).

(5) The item in the "Table below" which is relevant in this case is item 1 which relates to income tax. The relevant return is a "Return under section 8(1) (a) of TMA 1970.

(6) Section 8(1)(a) TMA 1970 states as follows:

> "(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for that year, he may be required by a notice given to him by an officer of the Board –
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> > (a) to make and deliver to the officer, a return containing such information as may reasonably be required in pursuance of the notice.....".

(7) When considering the validity of a penalty assessment and notification I need to consider whether a notice to file under section 8(1)(a) TMA 1970 has been lawfully given to the appellant by an officer of the Board.

(8) If no valid notice to file has been lawfully given then there can be no failure to make or deliver a return etc "under" section 8(1)(a) of TMA 1970 as is required

by Schedule 55.

(9) If no return has been given under section 8(1)(a) TMA 1970 in accordance with its terms, the provisions of section 1 TMA 1970, and sections 5 and 9 of the Commissioners for Revenue and Customs Act 2005 cannot save the invalid notice.

Discussion

14. In this case HMRC have provided the following evidence that a valid notices to file were issued to the appellant on 6 April 2015 and 6 April 2016.

(1) An extract from HMRC's computer records entitled "Return Summary" which purports to indicate that a notice to file for the tax year 2014-2015 was issued to the appellant on 6 April 2015, and that a notice to file for 2015-2016 was issued on 6 April 2016.

(2) A photocopy of page 1 of form SA 100 (i.e. an individual tax return) for each of the tax years 2014 -2015 and 2015-2016.

(3) A computer records showing that the correspondence address which HMRC had on file was his address in Thailand, the start date being for March 25 the end date 18 April 2017.

15. From these documents which HMRC I believe are suggesting are matters of primary fact, I am implicitly (HMRC have not explicitly asked me to do so in their Statement of Case) being asked to infer that (or make a secondary finding of fact that) a section 8(1)(a) notice, i.e. a notice to file, was given to this particular appellant by an officer of the Board. In order to make that inference, it is my view that I must decide whether it was more likely than not that such a notice was so given.

16. Remarkably similar issues to those presented in this case recently arose in *Platt v HMRC* [2019] UKFTT 0303 (TC). I agree with the approach taken by Judge Geraint Jones QC in that case and I gratefully adopt his reasoning:

"[2] As this appeal is in respect of penalties, the jurisprudence of the European Court of Human Rights in Jussila v Finland [2006] ECHR 996 makes it clear that article 6 of the European Convention on Human Rights (right to a fair trial) applies to the instant appellate process.

[3] The right to a fair trial plainly requires that the hearing is before an independent Court of Tribunal which acts procedurally fairly which, in the context of this appeal, includes the following:

(1) Noting that because this appeal involves penalties, the respondents bear the onus of proving the several facts and matters said to justify the imposition of penalties.

(2) The Tribunal making its findings of fact based upon admissible evidence; not based upon unsubstantiated assertions made by the respondents in their Paper Hearing Submission.

[4] Thus the present situation is that in the absence of an admission by the appellant of a fact which the respondents must prove to justify the imposition of a penalty, it is for HMRC to prove that factual prerequisite. That is so regardless of whether HMRC is on notice that the appellant expressly asserts that she did not receive a Notice to File because a litigant in person cannot be expected to know that (proof of) service of a Notice to File is a prerequisite to the respondents being able successfully to resist the appeal…

[7] Whatever form the admissible evidence takes, adequate evidence is a necessity; not a luxury…

[10] HMRC has chosen not to adduce any witness evidence.

[11] In respect of serving a Notice to File [to] HMRC for the fiscal year ended 5 April 2017, HMRC has simply produced a document, presumably printed from some computer held record, headed "Return Summary" which bears the appellant's name, tax reference number and national insurance number. There is then a column which contains the words "Return Issued Date" alongside which appears "06/04/17". HMRC contends that I can be satisfied that a Notice to File was sent to the appellant's correct address because it would have been sent to the address for the appellant which the respondents hold on file by way of another computer record headed "Individual Designatory Details".

[12] In my judgment the "Return Summary" falls well short of being sufficient evidence to prove, even to the civil standard, that a Notice to File was actually sent to the appellant. That is because:

> (1) Where the document shows a "Return Issue Date" of "6/04/16" I can be reasonably certain that that is a fiction, because those with experience in this Tribunal well know that, absent special circumstances, that is the date which appears alongside every person's Return Summary alongside the words "Return Issued Date". It is equally well known that the reality is that HMRC sends out Notices to File on a staggered basis because, logistically, it simply could not hand over to the Royal Mail the huge volume of letters which it would need to send if every relevant taxpayer was sent a Notice to File on the same day of each year. Nonetheless, that would have to be the factual situation for that record to be a true and reliable record. The record is therefore inherently improbable and unreliable. It may well be that HMRC sends out some Notices to File on 6 April in each year, but there is, literally, no reliable evidence to show that that happened in the case of this appellant on 6 April 2017 or indeed on any other date. Accordingly, the Return Summary probably contains false information and it would require cogent evidence from HMRC for me to find as a fact that a Notice to File was sent to this appellant on 6 April 2017.
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> (2) Even if HMRC could show that a Notice to File was intended to be sent to this appellant on 6 April 2017, there is no evidence to show that any such Notices to File were actually sent. That is because even if the date shown in the Return Summary, whether inserted by a person or a computer, is accurate, it falls far short of evidencing and proving actual dispatch of any

particular document.

(3) I acknowledge that in large organisations, where many processes may be automated, a single individual may not be able to give witness evidence that he/she physically placed a notice to file into an envelope (on a specific date), correctly addressed it to a given appellant's address held on file and then sealed it in a postage pre-paid envelope before committing it to the tender care of the Royal Mail. That is why Courts and Tribunals admit evidence of system which, if sufficiently detailed and cogent, may well be sufficient to discharge the burden of proving that such a notice was sent in the ordinary course of the way in which a particular business or organisation operates its systems for the dispatch of such material. There is no such evidence in this case.

[13] Accordingly in circumstances where HMRC has failed to prove a prerequisite to issuing the penalties in dispute in this appeal, the appeal must be allowed in full in respect of the fiscal years ended 5 April 2017.

17. Furthermore, in *Griffiths v HMRC* [2019] UKFTT 424, Judge Austen said the following when coming to his decision in that case:

"32. Like Judge Jones in Platt at [12], I derive little or no assistance from the document marked "Return Summary" included in my bundle. In particular, I have no confidence that the stated "Return Issued Date" of 6 April 2017 for the Notice to File is accurate. In fact, for the reasons given by Judge Jones, it seems more likely than not that this date is a "fiction", rendering the printout "inherently improbable and unreliable" and I find accordingly. I am unable to tell from the Return Summary alone whether or not a Notice to File was issued to the appellant and, if it was, on what date it was sent. The evidence offered, such as it is, is not sufficiently detailed and cogent to discharge the evidential burden on HMRC. There is no other evidence before me, including evidence of HMRC's internal systems and processes, which could assist in resolving these questions in HMRC's favour.

33. The Return Summary is not apt to support the required inference that on the balance of probabilities a valid Notice to File was sent to the appellant. In my view, I could only properly draw that inference from evidence of HMRC's systems and processes – but that evidence is not before me. The inference of fact is therefore two steps removed from the evidence actually presented, ie I would have to infer from the Return Summary that: (1) HMRC's systems and processes would probably have meant that a Notice to File was validly prepared; and, from that inference, (2) that those systems and processes meant that such a notice was probably sent to the appellant. The first of those inferences alone would not suffice and it is a stretch too far to draw an inference from an inference in my view. I should have reached this decision on either the test as set out in Qureshi and approved in Edwards or the modified version proposed by Mr Gordon in Taxation.

34. I have reviewed the appellant's evidence to see whether she has acknowledged receipt of a Notice to File, which would have determined the point

against her (see Burgess and Brimheath at [49] and Platt at [4]). She has not. Because, in my view, the statements in Perrin and Burgess and Brimheath quoted respectively at [19] and [21] above are accurate descriptions of the law in relation to the initial burden of proof on HMRC in penalty appeals, I consider that the appellant's silence in this regard should not be misconstrued as acquiescence of the inference alleged by HMRC; neither does it absolve HMRC from pleading a positive case supported by evidence.

35. As a result, I conclude that it is not possible to make a positive finding of fact – on the balance of probabilities – that a valid Notice to File was issued to the appellant on any given date in respect of the tax year 2016/17. I do not believe it likely that such a Notice was prepared and sent on 6 April 2017 as purported by the Return Summary printout – I believe that date to be a "fiction". Nor can I presume or infer on the balance of probabilities the existence of a valid Notice to File from the evidence actually presented: to do so would be to speculate rather than to draw a proper judicial inference from a primary fact. In particular, the lack of evidence as to HMRC's systems and processes makes it impossible for me to infer that those systems and processes were such as to make it more likely than not that a valid Notice to File was sent to the appellant. HMRC has not satisfied the burden of proof on it. It follows that I am unable to conclude that the appellant had an obligation to file an Individual Tax Return for that year. Her appeal must therefore be allowed in full and the penalties set aside".

18. I am not bound by either of the foregoing decisions. However I find myself in complete agreement with the sentiments expressed by Judge Jones, and I find myself in exactly the same position as Judge Austen. He has provided an eloquent and compelling explanation as to why the evidence in his case, which is to all intents and purposes the same as this one, did not allow him to draw an inference that a valid notice to file had been served on the appellant in that case. For exactly the same reasons, I find myself unable to draw an inference in this case that a valid notice to file has been served on this appellant.

19. I therefore find that no valid notice to file under section 8(1)(a) TMA 1970 was given to the appellant by an officer of the Board.

20. So, since the appellant has not failed to deliver a return under section 8(1) TMA 1970, Schedule 55 is not engaged. The penalties were invalidly assessed.

21. I have however considered (although this was not suggested, let alone argued by HMRC in their statement of case) whether the provisions of section 12D TMA 1970 which was introduced by section 87 Finance Act 2019, which, having received Royal assent on 12 February 2019, deems section 12D to always have been in force, "cures" this defect in the notice to file.

22. Given that this point was not argued before me (I am involved in another case where I am awaiting HMRC's detailed submissions on the application of this new section) the view that I am giving now is one that I give with some hesitation.

23. I am not wholly convinced that section 12D was intended to operate so as to cure defective notices to file. It is arguable that its purpose was to treat wholly voluntary returns (namely those where HMRC had never attempted to give a taxpayer a notice to

file) as if they had been given pursuant to a valid notice to file. And so section 12D would not apply in the case of this appellant where a "defective" notice has been given. But if I am wrong on that, and it applies even to circumstances where HMRC have given a defective notice, I do not think that this assists HMRC by dint of the deeming provision in section 12D(2)(a) TMA 1970.

24. This treats a relevant notice (i.e. a notice under section 8 TMA 1970) as having been given to the appellant on the day the relevant return was delivered to HMRC.

25. So, in the context of this appeal, the section 8 notice to file is deemed to have been given on the day that paper returns were given to HMRC on or around 16 January 2017.

26. In other words although ostensibly HMRC issued notices to file on 6 April 2015 and 2016, the effect of this deeming provision is to defer those dates to the dates on which the returns were actually received.

27. Given that there is then a three month period within which the appellant must file his returns, then he must (self-evidently) have done so within that period. He has submitted the returns on the same date that he was issued the notice to file. And so no penalties under schedule 55 can arise. There is no late filing.

28. In these circumstances there is no need for me to consider reasonable excuse, special circumstances or proportionality.

Decision

29. In light of the above I allow this appeal.

Appeal rights

30. 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 a Company a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

RELEASE DATE: 28 AUGUST 2019