TC06644

Appeal number: TC/2018/01168

PENALTIES – fixed and daily penalties for failing to file a self-assessment return on time – whether the Respondents have established that the relevant penalty notices were delivered and complied with the requirements of Schedule 55 Finance Act 2009 – not in all cases – whether, in relation to the remaining penalties, a genuine belief that the return had been filed on time and ignorance of the existence of the penalties amounts to a reasonable excuse or special circumstances – no –- appeal allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

SUSAN PEARCE **Appellant**

- and -

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

TRIBUNAL: JUDGE TONY BEARE

The Tribunal determined the appeal on 10 July 2018 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the notice of appeal dated 29 January 2018 (with attachments) and the Respondents' statement of case (with enclosures) acknowledged by the Tribunal on 16 April 2018

DECISION

Background

1. This is an appeal against three penalties imposed under Schedule 55 of the Finance Act 2009 ("Schedule 55") in respect of the tax year of assessment ending 5 April 2016. The penalties in question have been imposed:

(a) under paragraph 3 of Schedule 55 – a fixed penalty of £100 for the failure to file a self-assessment return in respect of the relevant tax year before the date when it was required to be filed (the "filing date");

(b) under paragraph 4 of Schedule 55 – a daily penalty of £10 for each day for a period of ninety days after the date falling three months and one day after the filing date that the return remained unfiled; and

(c) under paragraph 5 of Schedule 55 – a penalty of £300 for the failure to file the self-assessment return before the date falling six months and one day after the filing date.

2. In this case, the first of those penalties amounts to £100, the second of those penalties amounts to £900 and the third of those penalties amounts to £300.

The facts

3. The circumstances which have led to the present appeal may briefly be described as follows:

(a) the Respondents allege that, on 6 April 2016, they issued to the Appellant's online account a notice requiring the Appellant to file a self-assessment return in respect of the tax year of assessment ending 5 April 2016;

(b) the Respondents allege that, on 16 February 2017, they issued to the Appellant's online account a penalty notice to the Appellant, imposing the fixed penalty under paragraph 3 of Schedule 55;

(c) the Respondents allege that, on each of 8 June 2017 and 6 July 2017, they issued to the Appellant's online account penalty reminders;

(d) the Respondents allege that, on 15 August 2017, they issued to the Appellant's online account a penalty notice to the Appellant imposing the daily penalty of £900 under paragraph 4 of Schedule 55 and a penalty notice to the Appellant imposing the £300 penalty under paragraph 5 of Schedule 55;

(e) the Appellant appealed against those penalties on 16 October 2017, which was the same day that the relevant return was filed;

(f) the Respondents rejected her appeal on 22 November 2017 and, following a request by the Appellant for a review of that decision on 27

November 2017, that rejection was upheld in a review conclusion letter of 10 January 2018; and

(g) the Appellant notified this Tribunal of her appeal on 29 January 2018.

Preliminary matter

4. It can be seen from the timetable set out above that, whilst the Appellant notified her appeal to this Tribunal within the period of 30 days from the date of the review conclusion letter of 10 January 2018 which is set out in Section 49G Taxes Management Act 1970 (the "TMA 1970"), her original appeal to the Respondents was made after the expiry of the 30 day period for making the relevant appeal as set out in Section 49 TMA 1970. However, Section 49(2) TMA 1970 allows for an appeal to the Respondents to be made outside the relevant time limit if the Respondents agree or this Tribunal gives permission. In this case, although the Respondents have not expressly agreed to the late appeal, they have in my view done so implicitly by not raising an objection to the appeal on that ground. In any event, I am willing to give permission for the late appeal.

The law

5. The penalty legislation provides that a taxpayer may be relieved from penalties if he or she can show that there was a "reasonable excuse" for the default. Curiously, there are two "reasonable excuse" provisions which are potentially applicable in this case, and those provisions are not identical. The reason why there are two potentially applicable provisions is that the obligation to file self-assessment returns is set out in Section 8 TMA 1970, and that Act contains a relief in cases of reasonable excuse at Section 118(2) TMA 1970, whilst the penalty legislation is set out in Schedule 55 and that schedule contains a relief in cases of reasonable excuse at paragraph 23 of Schedule 55.

6. As both of the above provisions appear to be applicable, I have concluded that the Appellant can rely on either of them. If she can establish that she has a reasonable excuse for the purposes of Section 118(2) TMA 1970, then the return will be deemed not to be late (and so liability to the penalties will not arise). If she can establish that she has a reasonable excuse for the purposes of paragraph 23 of Schedule 55, then, although the return will remain late, the penalties will be required to be discharged. The end result is the same in either case.

7. The only differences between the two provisions is that paragraph 23 of Schedule 55 specifically refers to the extent to which an insufficiency of funds or reliance on a third party can amount to a reasonable excuse, whereas Section 118(2) TMA 1970 makes no such reference.

8. Section 118(2) TMA 1970 provides as follows:

"For the purposes of this act, the person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the board or the tribunal or officer concerned may have allowed; and where a person had a

reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased…"

9. Paragraph 23(1) of Schedule 55 provides as follows:

> "(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if [the taxpayer] satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.
>
> (2) for the purposes of sub-paragraph (1) -
>
> (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
>
> (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
>
> (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased."

10. The penalty legislation also provides, in paragraph 23 of Schedule 55, that, if the Respondents think it right because of "special circumstances", they may reduce any penalty under the Schedule, the exercise of which discretion by the Respondents is open to challenge at the Tribunal if the decision is "flawed" in the light of the principles applicable in proceedings for judicial review (see paragraph 22 of Schedule 55). I will elaborate on what this means when I discuss the potential application of this provision further below.

The parties' submissions

11. The Appellant has raised a number of arguments as grounds for her appeal and these may be summarised as follows:

(a) the Appellant relies on Mr Pearce to act as her agent in all matters in relation to her tax affairs;

(b) Mr Pearce believed that he had submitted the relevant return by the deadline of 31 January 2017. However, he was suffering from health problems at the relevant time and he believes that this may well have led him to some muddled thinking. Mr Pearce concedes that, at the time when he came to file the relevant return, he did have some difficulty in submitting the return because of an overload on the Respondents' system at that time. This led him to print out a full calculation page for the return and make a screen shot. However, he now thinks that it was doing this that led him subsequently to believe that he had successfully submitted the

return and that belief meant that he ignored the email reminder from the Respondents to the effect that the return had not yet been submitted;

(c) the fact that Mr Pearce had printed out the relevant calculation page before the deadline and that Mr Pearce and the Appellant are generally compliant taxpayers demonstrates how he "was not thinking straight" at the relevant time;

(d) Mr Pearce alleges that, following the email reminder referred to in paragraph 11(b) above, all subsequent communications from the Respondents prior to his receiving a hard copy letter from the Respondents on 18 October 2017 advising him of all the penalties that had become due took the form of a notification from the Respondents that there was "a new message to my online account", without any attempt by the Respondents to include the details of the relevant message. He said in the notice of appeal dated 16 October 2017 that "[this] is not a satisfactory method of communication for me. I have a large number of unsolicited emails and tend to ignore them. I may have elected for paperless but not information-less";

(e) whether or not it was the result of the approach described by Mr Pearce in paragraph 11(d) above, Mr Pearce did not read the penalty notice which the Respondents allege that they sent to him on 16 February 2017 by email. He became aware of that notice only on 18 October 2017, when he received the hard copy letter from the Respondents referred to in paragraph 11(d) above; and

(f) the fact that Mr Pearce was unaware of the existence of the first penalty notice until 18 October 2017 meant that he was not in a position to take steps to prevent the accumulation of further penalties.

12. In response, the Respondents argue that:

(a) it should have been clear to Mr Pearce when he was working on submitting the return that getting to the stage of the calculation page did not mean that the relevant return had been submitted because, on that page, a copy of which was attached at folio 33 of the attachments to the Respondents' statement of case, it clearly states that the process of submitting the return is not yet completed;

(b) as the Appellant had elected to receive communications from them on her online account, with accompanying notification to that effect, the Respondents were perfectly justified in sending all communications to the Appellant in that manner. The Respondents cannot be held responsible for a default if, after they have notified the Appellant of the existence of a communication to her online account, the Appellant's agent, Mr Pearce, chooses not to look at the communication;

(c) whilst they accept that the Appellant and Mr Pearce are generally compliant taxpayers and that Mr Pearce may have genuinely believed that he had submitted the return on time, penalties are in place to promote the efficient operation of the tax system and, in this case, the return was not

filed on time and the penalties are due unless the Appellant has a reasonable excuse or there are special circumstances; and

(d) the facts of this case are such that neither of the above is the case.

Discussion

13. Before turning to the two sets of relieving provisions that are described in paragraphs 5 to 10 above, it is necessary for me to address the logically anterior questions of whether the Respondents have discharged the burden of establishing that:

(a) they were authorised to communicate with the Appellant in paperless form by sending communications to her online account, accompanied by an email to the Appellant's agent, Mr Pearce, notifying him of that fact; and

(b) if so, they did send to the Appellant's online account the communications which they allege to have sent and those communications, as regards each of the penalties, either complied with the requirements of Schedule 55 as regards the relevant penalty or departed from those requirements as regards the relevant penalty in sufficiently minor respects such that the penalty remains valid pursuant to the saving language in Section 114(1) TMA 1970.

14. Section 114(1) TMA 1970 provides that "an assessment, warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding".

15. I should note at this stage that the first of the questions set out at paragraph 13(b) above is a different question from whether, assuming that the communications in question were sent to the Appellant's online account, the Appellant (or, more accurately, Mr Pearce on her behalf) did in fact read those communications and whether any failure to do so might amount to a reasonable excuse or might constitute special circumstances. I deal with those questions below.

16. I would answer the question set out at paragraph 13(a) above by saying that the Respondents have satisfied me that, on the balance of probabilities, they were authorised to communicate with the Appellant in paperless form by sending communications to her online account, accompanied by an email to the Appellant's agent, Mr Pearce, notifying him of that fact. I say this because, although the Respondents are alleged to have sent the Appellant a hard copy letter on 18 October 2017, it is clear from the submissions made by both parties and, in particular, by Mr Pearce on behalf of the Appellant, that the Appellant had made an election to that effect. Indeed, in the notice of appeal of 16 October 2017, Mr Pearce, on behalf of the Appellant, conceded that an election for paperless communication had been made, albeit complaining that the emails which were sent to him to alert him to the fact that

a communication had been posted to the Appellant's online account contained insufficient information in themselves and so were ignored by him.

17. I am also satisfied that, on the balance of probabilities, the Respondents did send communications to the Appellant's online account on 16 February 2017, 8 June 2017, 6 July 2017 and 15 August 2107, as they claim to have done and as is evidenced in the Appellant's records at the Respondents – see folios 5 and 32 of the attachments to the Respondents' statement of case.

18. The Respondents' statement of case does not include copies of the actual communications in question but merely includes copies of pro formas of those communications. I have no difficulty in accepting pro formas as evidence of the form of communications that were sent to the Appellant because it is not practicable for the Respondents to retain copies of every communication that they despatch. But I am necessarily reliant on the pro formas in determining precisely what was contained in the actual communications and, hence, I need to be satisfied from the pro formas that the communications that were actually sent to the Appellant both notified her of her liability to each penalty that is being claimed and either complied with the requirements of Schedule 55 as regards the relevant penalty or departed from those requirements as regards the relevant penalty in sufficiently minor respects such that it remained valid pursuant to the saving language in Section 114(1) TMA 1970.

19. The question of the appropriate form for notices under Schedule 55 was at issue in the decision of the Court of Appeal in *Donaldson v The Commissioners for Her Majesty's Revenue and Customs* [2016] STC 2511 ("*Donaldson*"). Following that decision, I need to ask myself whether:

> (a) in relation to the penalty imposed under paragraph 4 of Schedule 55, the requirement in paragraph 4(1)(c) of Schedule 55 – the obligation to specify the date from which the daily penalty was payable – has been met; and
>
> (b) in relation to all three penalties – ie each of the penalty imposed under paragraph 3 of Schedule 55, the penalty imposed under paragraph 4 of Schedule 55 and the penalty imposed under paragraph 5 of Schedule 55 –the requirements in paragraph 18(1)(b) and (c) of Schedule 55 – the obligation to notify the taxpayer of the penalty and state in the notice the period in respect of which the penalty is assessed - have been met and, if a notice to the taxpayer does not meet the requirements in paragraph 18(1)(c) of Schedule 55, whether the failure to meet those requirements is a matter of form and not substance such that the relevant penalty notice remains valid by virtue of the saving language in Section 114(1) TMA 1970.

20. Looking at those pro formas, I am satisfied that the pro forma attached at folios 6 and 7 of the attachments to the Respondents' statement of case satisfied the requirement in paragraph 4(1)(c) of Schedule 55 in relation to the penalty which the Respondents are seeking to impose under paragraph 4 of Schedule 55 because it informed the Appellant that, if her self-assessment return was more than 3 months

late, the Appellant would have to pay £10 for every day until the self-assessment return was received, from 1 February for paper returns and from 1 May for on-line returns, subject to a maximum of 90 days. This is precisely the language that, in *Donaldson*, was held to mean that the Respondents had complied with the requirement in paragraph 4(1)(c) of Schedule 55 in relation to a penalty under paragraph 4 of Schedule 55. So, even though notice of the date from which the penalty under paragraph 4 of Schedule 55 was payable was contained in the penalty notice of 16 February 2016, which related to the penalty under paragraph 3 of Schedule 55, and was therefore prospective so far as the penalty under paragraph 4 of Schedule 55 was concerned, I am satisfied that the Respondents have fulfilled the requirement in paragraph 4(1)(c) in relation to the penalty under paragraph 4 of Schedule 55.

21. Turning then to the requirements in paragraphs 18(1)(b) and (c) of Schedule 55, the communication in the form of the pro forma attached at folios 6 and 7 of the attachments to the Respondents' statement of case clearly notifies the Appellant of the penalty under paragraph 3 of Schedule 55 so that the requirement in paragraph 18(1)(b) is met in relation to that penalty. Moreover, the Court of Appeal in *Donaldson* made it clear that, in relation to a fixed penalty such as the ones under paragraphs 3 and 5 of Schedule 55, the relevant notice complies with the requirement in paragraph 18(1)(c) of Schedule 55 as long as it states the tax year of assessment to which the relevant fixed penalty relates and the pro forma attached at folios 6 and 7 of the attachments clearly does this. So I consider that the procedural requirements in relation to the penalty under paragraph 3 of Schedule 55 are satisfied in this case.

22. In my view, the same is not true in relation to the penalty under paragraph 4 of Schedule 55. I can see nothing in the pro formas attached at folios 6 to 9 or folios 34 and 35 of the attachments to the Respondents' statement of case to suggest that the Appellant was at any stage formally notified that she had been assessed to a penalty of £900 under paragraph 4 of Schedule 55. The communication in the form of the pro forma attached at folios 6 and 7 of the attachments notified the Appellant that she would be liable to a daily penalty of £10 a day for a 90 day period under paragraph 4 of Schedule 55 if her default continued after a specified future date but the communication in the form of the pro forma attached at folios 8 and 9 of the attachments did not notify her that the penalty of £900 under paragraph 4 of Schedule 55 had been imposed. Similarly, the communications in the form of the pro formas attached at folios 34 and 35 of the attachments to the Respondents' statement of case reminded the Appellant that daily penalties were accruing but, at that stage, the daily penalties had not reached £900. Even if any of those communications could somehow be construed as a prospective notification of the penalty of £900, the Court of Appeal in *Donaldson* held that, in relation to a daily penalty under paragraph 4 of Schedule 55, paragraph 18(1)(c) of Schedule 55 requires there to be a notice referring to the period over which the daily penalty has accrued. The communications in the form of the pro formas which were attached at folios 6 to 9 and folios 34 and 35 do not do this.

23. As for the penalty under paragraph 5 of Schedule 55, the communication in the form of the pro forma attached at folios 8 and 9 of the attachments to the

Respondents' statement of case notified the Appellant of the penalty under that paragraph and stated the tax year of assessment to which the relevant default related. Thus, apart from the minor error described in the next paragraph, it too complied with the requirements in paragraphs 18(1)(b) and 18(1)(c) of Schedule 55, as interpreted by the Court of Appeal in *Donaldson*.

24. However, that pro forma does include a minor defect in that, in relation to the penalty under paragraph 5 of Schedule 55, it starts off the relevant section by saying:

"now you have filed your tax return you have a further penalty to pay…"

25. This suggests that the relevant pro forma is directed at a case where the penalty notice in question post-dates the filing of the return to which it relates and, in this case, it is quite clear that, as at 15 August 2017, when the relevant notice was sent to the Appellant's online account, the Appellant had not yet filed her return in respect of the relevant tax year of assessment.

26. The deficiencies described above mean that, in relation to each of the penalties under paragraphs 4 and 5 of Schedule 55, I need to consider whether the communications in the form of the pro formas attached at folios 6 to 9 and folios 34 and 35 of the attachments to the Respondents' statement of case demonstrate that, in each case, the Appellant was notified of the relevant penalty and provided with sufficient information for her to work out, without difficulty, the period in respect of which she had been assessed such that the validity of the penalty was preserved by the saving language in Section 114(1) TMA 1970.

27. In that regard, I do not think that the deficiency described above in relation to the penalty under paragraph 5 of Schedule 55 would have prevented the Appellant from understanding, had she read the relevant communication, that she had a liability to a penalty of £300 under paragraph 5 of Schedule 55 because she had not filed her return before the day falling six months and one day after the filing date. On that basis, I believe that the procedural requirements in relation to the penalty under paragraph 5 of Schedule 55 should be regarded as having been fulfilled in this case by virtue of the saving language in Section 114(1) TMA 1970.

28. However, in relation to the penalty under paragraph 4 of Schedule 55, the Respondents have not satisfied me that the Appellant has been notified of that penalty and that the notification contained sufficient information for the Appellant to work out, without difficulty, the period in respect of which she had been assessed such that the validity of the penalty was preserved by the saving language in Section 114(1) TMA 1970. The only information which was provided to the Appellant in respect of that penalty was the statement in the penalty notice of 16 February 2017 – in the form of the pro forma attached at folios 6 and 7 of the attachments to the Respondents' statement of case - that daily penalties would accrue from a specified date if the default continued and the subsequent reminders of 8 June 2017 and 6 July 2017 – in the form of the pro formas attached at folios 34 and 35 of the attachments to the Respondents' statement of case - to the effect that the daily penalty was accruing and had reached £300 and then £600. The penalty notice of 15 August 2017 in the form of

the pro forma attached at folios 8 and 9 of the attachments to the Respondents statement of case did not inform the Appellant that a penalty of £900 under paragraph 4 of Schedule 55 had been assessed or set out the period in respect of which it had been assessed.

29. It is possible that the response from the Respondents to the above observations may simply be that there has been an administrative error in preparing the statement of case and that the wrong pro formas have been attached, but, in the absence of either the actual penalty notice in question or the correct pro forma, I do not believe that I can proceed to uphold the penalty under paragraph 4 of Schedule 55 in the amount of £900. On that basis, I hereby allow the Appellant's appeal against that penalty.

30. Turning then to the two reasonable excuse provisions set out above, I should start by saying that there is no meaningful difference between them in the context of this appeal. The Appellant is not seeking to rely on the fact that she has a reasonable excuse by reason of an insufficiency of funds. In addition, the Appellant is not seeking to rely on the fact that she has a reasonable excuse by reason of having relied on a third party - namely, her husband, Mr Pearce, who was acting as her agent in respect of her tax affairs throughout the period in question - to take care of her tax affairs. Instead, she seeks to rely on the fact that there is a reasonable excuse for the actions taken or, more accurately, not taken, by Mr Pearce on her behalf. As a result, to all intents and purposes, there is no difference in this context between the application of the two reasonable excuse provisions.

31. Under both provisions, I need to consider whether the Appellant had a reasonable excuse for her failure to file the return between the filing date of 31 January 2016 and shortly before the date when she actually filed her return, on 16 October 2017. This is because, under both provisions, the taxpayer in question needs to show that, in order to have a reasonable excuse, where the circumstances that constitute the reasonable excuse cease to exist, the taxpayer needs to remedy the relevant failure without unreasonable delay after that is the case.

32. It is clear from the decided cases in relation to what constitutes a reasonable excuse, such as *The Clean Car Company Ltd v The Commissioners of Customs & Excise* [1991] VATTR 234 ("*Clean Car*"), that the test to be applied in determining whether or not an excuse is reasonable is an objective one. One must ask oneself whether what the taxpayer did was a reasonable thing for a responsible person, conscious of, and intending to comply with, his/her obligations under the tax legislation but having the experience and other relevant attributes of the taxpayer and placed in the situation in which the taxpayer found himself/herself at the relevant time, to do.

33. Moreover, as noted in the decision of Judge Hellier in *Garnmoss Limited trading as Parham Builders v The Commissioners of Customs and Excise* [2012] UKFTT 315 (TC) ("*Garnmoss*") the mere fact that a mistake has been made in good faith and is not blameworthy does not, in and of itself, make that mistake a reasonable excuse. The legislation provides for relief in the case of reasonable excuses and not all mistakes satisfy the test outlined in paragraph 32 above.

34. In that regard, whilst I am sympathetic to the fact that Mr Pearce was suffering from health concerns at the time of the filing date, I do not think that his failure to submit the Appellant's tax return by the due date because he wrongly recalled having filed the return and therefore ignored a reminder from the Respondents to do so, meets the objective standard described in *Clean Car*, as set out above. In saying this, I am not in any way questioning the integrity of the Appellant or Mr Pearce or suggesting that they generally adopt an irresponsible approach to their tax obligations. I believe that a genuine and honest mistake was made. However, I do not think that that mistake amounts to a reasonable excuse, given that Mr Pearce ignored the reminder that was sent to him by the Respondents and that the page setting out the tax calculation made it very clear that the return in question had not been submitted. Even after taking into account the fact that Mr Pearce was concerned about his health at the relevant time, I do not think that that failure on his part meets the objective standard of the hypothetical responsible taxpayer described in *Clean Car*. It is closer to the genuine and honest mistake that was at issue in *Garnmoss*.

35. Similarly, it seems to me that a hypothetical taxpayer who was conscious of, and had the intention of complying with, her tax obligations – which is the objective standard described in *Clean Car* – would not ignore communications from the Respondents, even if those communications simply referred to the fact that something had been posted on the taxpayer's online account and did not contain the details of the document posted. I do not think that it is sufficient for Mr Pearce to say, as he has done, that, because he receives a large number of unsolicited emails, he tends to ignore them. A communication from the Respondents, whether solicited or not, is something to be taken seriously and not simply ignored. So, I do not think that that meets the standard set out in *Clean Car* to amount to a reasonable excuse.

36. In consequence of the above, I do not believe that the Appellant has a reasonable excuse for her failure to file the relevant return by the filing date, whether under Section 118(2) TMA 1970 or under paragraph 23 of Schedule 55.

37. As regards the relieving provision in paragraph 16 of Schedule 55, there is no guidance in the legislation on what may constitute "special circumstances" but it is clear from the terms of paragraphs 16 and 22 of Schedule 55 that the decision as to whether any particular circumstances constitute "special circumstances" is entirely a matter for the Respondents to determine in their own discretion and that their decision can be impugned only if they have acted unreasonably in the sense described in the leading case of *Associated Provincial Picture Houses, Limited v Wednesbury Corporation [1948] 1 K.B. 223* (*Wednesbury*"). In other words, the Tribunal is not permitted to consider the relevant facts de novo and determine whether or not it agrees with the conclusion that the Respondents have reached. Instead, it needs to consider whether, in reaching that conclusion, the Respondents have taken into account matters that they ought not to have taken into account or disregarded matters that they ought to have taken into account or otherwise reached a decision that no reasonable person could have reached upon consideration of the relevant matters. The Respondents' decision cannot be impugned simply because the Tribunal might have reached a different conclusion upon consideration of the relevant matters de novo.

38. For similar reasons to those set out in relation to the reasonable excuse relief, even if it was up to me to determine the issue by myself, de novo, I do not think that the circumstances in this case amount to "special circumstances". As noted above, I am not permitted to reach my own view on that issue in any event. I am merely permitted to determine whether the view reached by the Respondents was unreasonable in the sense set out in the *Wednesbury* case. In that regard, not only do I think that the view reached by the Respondents on this question was not unreasonable in that sense; I agree with it.

39. I therefore uphold the penalty of £100 that has been imposed under paragraph 3 of Schedule 55 and the penalty of £300 that has been imposed under paragraph 5 of Schedule 55.

Conclusion

40. For the reasons set out above, I allow the Appellant's appeal insofar as it relates to the penalty under paragraph 4 of Schedule 55 but dismiss the Appellant's appeal insofar as it relates to the penalties under paragraphs 3 and 5 of Schedule 55.

41. 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.

TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE; 19 July 2018