[2019] UKFTT 574 (TC)

TC07368

INCOME TAX – failure to file PAYE real time information forms on time – penalties for late filing – properly imposed – no reasonable excuse – no special circumstances - penalties proportionate – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/02699

BETWEEN

ESSK DESIGN CONSULTANTS LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE NIGEL POPPLEWELL

Sitting in public at Cardiff on 28 August 2019

The Appellant did not appear and was not represented

Mr Robert Bunce, Officer of HM Revenue & Customs, for the Respondents

DECISION

INTRODUCTION

1. This is an appeal against penalties of £300 (the "**penalties**") imposed by the respondents (or "**HMRC**") under paragraph 6C of Schedule 55 to the Finance Act 2009 ("**Schedule 55**") for the failure to file Pay as You Earn ("**PAYE**") real time information ("**RTI**") returns ("**RTI returns**") under regulation 67B of the Income Tax (Pay as You Earn) Regulations 2003 ("**PAYE Regulations**") on time for three periods, namely 6 October 2018 to 5 November 2018, 6 November 2018 to 5 December 2018 and 6 December 2018 to 5 January 2019 (the "**periods under appeal**").

2. The appellant is an RTI employer and was thus required to make RTI returns on or before making a relevant payment to an employee.

3. HMRC allege that the appellant failed to deliver an RTI return on or before making relevant payments to one employee for each of the periods under appeal.

4. For reasons which I give later in this decision, I find that HMRC is correct and that the appellant did fail to deliver returns on or before making such payments. I do not think that the appellant has a reasonable excuse. There are no special circumstances and the penalties are proportionate. And so I dismiss this appeal.

Absence of the appellant

5. This appeal was scheduled to be heard at 2pm on the hearing date. Another appeal was scheduled to be heard at that time. I took the other appeal first. So this appeal did not come on until 3.45 pm. At that time no one was in attendance for the appellant. It is clear that it had been notified of the time and place of the hearing, in good time. I had a due regard to Rules 2 and 33 of the First-tier Tribunal Rules and decided that it was in the interests of justice to proceed with the hearing in the absence of the appellant.

Evidence and findings of fact

6. From the papers before me I find the following facts:

(1) The appellant is an RTI employer within the meaning of regulation 2A and 2B of the PAYE Regulations and as such was obliged to deliver to HMRC an RTI return in the appropriate form on or before it made a relevant payment to an employee.

(2) On 30 October 2018, 30 November 2018 and 30 December 2018 the appellant made relevant payments to 3 different employees. RTI returns in respect of those payments were received by HMRC on, respectively, 5 November 2018, 7 December 2018 and 6 January 2019.

(3) On 8 February 2019 HMRC sent the appellant a penalty notification of the penalties. This was based on the fact that the appellant has between 10 and 49 employees. It was notification of penalties of £300.

(4) The appellant has previously been assessed to penalties for late delivery of RTI returns for periods between June 2017 and April 2018. In each case the appellant appealed against the assessments. HMRC accepted those appeals and cancelled those penalties.

(5) HMRC's letter to the appellant dated 22 March 2018 (the "**Education letter**") includes the following statement:

> "**Important Information**
>
> PAYE information must be reported to us on or before a payment is made to an employee or we may charge you a penalty".

(6) This statement appears on three separate occasions in the Education letter.

(7) The appellant appealed the penalties to HMRC on 29 March 2019. HMRC rejected the appeal and notified the appellant of that rejection in their letter of 12 April 2019.

(8) The appellant notified its appeal to the tribunal on 29 April 2019.

The Law

Legislation

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

Obligation to file a return and penalties

(1) An RTI employer must deliver to HMRC specified information in electronic form on or before making a relevant payment to an employee (Regulation 67B).

(2) Failure to file an RTI return on time engages the penalty regime in Schedule 55 (and references below to paragraphs are to paragraphs in that Schedule).

(3) The amount of the penalty depends on the number of employees of the RTI employer. Where an employer has at least 10 but no more than 49 employees the penalty is £200 (Regulation 67I).

(4) If HMRC think it is right because of special circumstances they must reduce the penalty (paragraph 16).

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

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

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

(8) If I do decide to substitute my decision for another decision that HMRC had power to make, then I can consider special circumstances to a different extent to HMRC in respect of their original decision, but only if their decision in respect of special circumstances was flawed in the judicial review sense (paragraph 22).

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

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

Case law

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

Reasonable excuse

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

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

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

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

> "The test of reasonable excuse involves the application of an impersonal, and objective, legal standard to a particular set of facts and circumstances. The test is to determine what a reasonable taxpayer in the position of the taxpayer would have done in those circumstances, and by reference to that test to determine whether the conduct of the taxpayer can be regarded as conforming to that standard."

(4) The approach that I adopt when considering a reasonable excuse defence is that set out in the Upper Tribunal Decision in *Christine Perrin v HMRC* [2018] UKUT 156.

(5) In *Perrin*, the Upper Tribunal made the following comments:

> "69. Before any question of reasonable excuse comes into play, it is important to remember that the initial burden lies on HMRC to establish that events have occurred as a result of which a penalty is, prima facie, due. A mere assertion of the occurrence of the relevant events in a statement of case is not sufficient. Evidence is required and unless sufficient evidence is provided to prove the relevant facts on a balance of probabilities, the penalty must be cancelled without any question of "reasonable excuse" becoming relevant.
>
> 70. Assuming that hurdle to have been overcome by HMRC, the task facing the FTT when considering a reasonable excuse defence is to determine whether facts exist which, when judged objectively, amount to a reasonable excuse for the default and accordingly give rise to a valid defence. The burden of establishing the existence of those facts, on a balance of probabilities, lies on the taxpayer. In

making its determination, the tribunal is making a value judgment which, assuming it has (a) found facts capable of being supported by the evidence, (b) applied the correct legal test and (c) come to a conclusion which is within the range of reasonable conclusions, no appellate tribunal or court can interfere with.

71. In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in The Clean Car Co and Coales).

72. Where the facts upon which the taxpayer relies include assertions as to some individual's state of mind (e.g. "I thought I had filed the required return", or "I did not believe it was necessary to file a return in these circumstances"), the question of whether that state of mind actually existed must be decided by the FTT just as much as any other facts relied on. In doing so, the FTT, as the primary fact-finding tribunal, is entitled to make an assessment of the credibility of the relevant witness using all the usual tools available to it, and one of those tools is the inherent probability (or otherwise) that the belief which is being asserted was in fact held; as Lord Hoffman said in In re B (Children) [2008] UKHL 35, [2009] 1AC 11 at [15]:

> "There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities."

73. Once it has made its findings of all the relevant facts, then the FTT must assess whether those facts (including, where relevant, the state of mind of any relevant witness) are sufficient to amount to a reasonable excuse, judged objectively.

74. Where a taxpayer's belief is in issue, it is often put forward as either the sole or main fact which is being relied on – e.g. "I did not think it was necessary to file a return", or "I genuinely and honestly believed that I had submitted a return". In such cases, the FTT may accept that the taxpayer did indeed genuinely and honestly hold the belief that he/she asserts; however that fact on its own is not enough. The FTT must still reach a decision as to whether that belief, in all the circumstances, was enough to amount to a reasonable excuse. So a taxpayer who was well used to filing annual self-assessment returns but was told by a friend one year in the pub that the annual filing requirement had been abolished might persuade a tribunal that he honestly and genuinely believed he was not required to file a return, but he would be unlikely to persuade it that the belief was objectively a reasonable one which could give rise to a reasonable excuse.

……..

82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been

given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. The Clean Car Co itself provides an example of such a situation."

Special circumstances

9. In the case of *Barry Edwards v HMRC* [2019] UKUT 131, the Upper Tribunal said this:

> "68. There are many appeals in the FTT where the question as to whether there are special circumstances justifying a reduction in the amount of a penalty has been considered. Accordingly, from time to time the FTT has made general observations about what might constitute special circumstances. In many of those decisions, reference is made to *Crabtree v Hinchcliffe (Inspector of Taxes)* [1972] AC 707 20 where Viscount Dilhorne (in a rather different context to that with which we are concerned) suggested at page 739E that:
>
> > "For circumstances to be special [they] must be exceptional, abnormal or unusual..."
>
> 69. In *Warren v HMRC* [2012] UKFTT 57, the FTT put a gloss on the meaning of "special". It said at [54] that:
>
> > "The adjective "special" requires simply that the circumstances be peculiar or distinctive. But that does not necessarily mean that the circumstances which affect most taxpayers could not be special: an ultra vires assertion by HMRC that for a period penalties would be halved might well be special circumstances; but generally special circumstances will be those confined to particular taxpayers or possibly classes of taxpayers. They must encompass the situation in which it would be significantly unfair to the taxpayer to bear the whole penalty."
>
> 70. In *Welland v HMRC* [2017] UKFTT 0870 the FTT likewise did not confine the meaning to circumstances which did not affect many taxpayers. After referring to the passage in Warren cited above, the FTT said at [125]:
>
> > "What was said in Warren seems right, if very general. … In summary, it seems to me that the alleged special circumstances must be an unusual event or situation which does not amount to a reasonable excuse but which renders the penalty in whole or part significantly unfair and contrary to what Parliament must have intended when enacting the provisions."
>
> 71. By contrast, in *Collis v HMRC* [2011] UKFTT 588 the FTT said at [40] that:
>
> > "to be a special circumstance the circumstance in question must operate on the particular individual, and not be a mere general circumstance that applies to many taxpayers by virtue of the scheme of the provisions themselves."
>
> 72. In our view, as the FTT said in *Advanced Scaffolding (Bristol) Limited v HMRC* [2018] UKFTT 0744 (TC) at [99], there is no reason for the FTT to seek to

restrict the wording of paragraph 16 of Schedule 55 FA 2019 by adding a judicial gloss to the phrase. In support of that approach the FTT referred to the observation made by Lord Reid in *Crabtree v Hinchcliffe* at page 731D-E when considering the scope of "special circumstances" as follows:

> "the respondent argues that this provision has a very limited application… I can see nothing in the phraseology or in the apparent object of this provision to justify so narrow a reading of it".

73. The FTT then said this at [101] and [102]:

> "101. I appreciate that care must be taken in deriving principles based on cases dealing with different legislation. However, I can see nothing in schedule 55 which evidences any intention that the phrase "special circumstances" should be given a narrow meaning. It is clear that, in enacting paragraph 16 of schedule 55, Parliament intended to give HMRC and, if HMRC's decision is flawed, the Tribunal a wide discretion to reduce a penalty where there are circumstances which, in their view, make it right to do so. The only restriction is that the circumstances must be "special". Whether this is interpreted as being out of the ordinary, uncommon, exceptional, abnormal, unusual, peculiar or distinctive does not really take the debate any further. What matters is whether HMRC (or, where appropriate, the Tribunal) consider that the circumstances are sufficiently special that it is right to reduce the amount of the penalty."

74. We respectfully agree. As the FTT went on to say at [105], special circumstances may or may not operate on the person involved but what is key is whether the circumstance is relevant to the issue under consideration." HMRC's failure to consider special circumstances (or to have reached a flawed decision that special circumstances do not apply to a taxpayer) does not mean the decision to impose the penalty, in the first place, is flawed."

10. There are a number of other principles which concern special circumstances:

(1) Special circumstances do not have to be considered before the imposition of the penalty. HMRC can consider whether special circumstances apply at any time up to, and during, the hearing of the appeal before the tribunal.

(2) The tribunal may assess whether a special circumstances decision (if any) is flawed if it is considering an appeal against the amount of a penalty assessed on a taxpayer.

(3) The tribunal should assess any decision (or failure to make one) in light of the principles applicable to judicial review.

(4) Failure to have considered the exercise of its discretion to reduce a penalty by virtue of special circumstances, in the first place, or failure to give reasons as to why, (if HMRC has made a decision), special circumstances do not apply, can render the "decision" flawed.

(5) I can allow the taxpayer's appeal if I find that HMRC's decision is unreasonable unless it is inevitable that HMRC would have come to the same decision on the evidence before him (as per Lord Justice Neill) (*John Dee Limited v Commissioners of Customs and Excise* 1995 STC 941).

"I turn therefore to the second matter raised in the appeal, I can deal with this very shortly.

It was conceded by Mr Engelhart, in my view rightly, that where it is shown that, had the additional material been taken into account, the decision would inevitably have been the same, a Tribunal can dismiss an appeal. In the present case, however, though in the final summary the Tribunal's decision was more emphatic, the crucial words in the Decision were:

> "I find that it is most likely that, if the Commissioners had had regard to paragraph (iii) of the conclusion to Mr Ross' report, their concern for the protection of the revenue would probably have been fortified."

I cannot equate a finding "that it is most likely" with a finding of inevitability.

On this narrow ground I would dismiss the appeal."

(6) In deciding whether HMRC's decision was unreasonable, I should follow the approach summarised by Lord Greene MR in *Associated Provisional Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223:

> "The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it."

(7) As Lady Hale has recently said, in *Braganza v BP Shipping* [2015] UKSC 17 at [24], this test has two limbs:

> "The first limb focuses on the decision-making process - whether the right matters have been taken into account in reaching the decision. The second focusses upon its outcome - whether even though the right things have been taken into account, the result is so outrageous that no reasonable decision-maker could have reached it. The latter is often used as a shorthand for the Wednesbury principle, but without necessarily excluding the former."

(8) Having undertaken that assessment:

> (i) If the tribunal considers the decision is flawed, it may itself consider whether there are special circumstances which could justify substituting it's decision for that of HMRC unless it considers that HMRC would inevitably have come to the same decision on the evidence before them.
>
> (ii) If the tribunal considers that HMRC have properly exercised its discretion in relation to special circumstances, it cannot substitute its own decision for that of HMRC when considering by what amount, if any, it should reduce a penalty.

Proportionality

11. In relation to the doctrine of proportionality and its application to the issues in this case, I have reviewed the following cases:

(1) *Paraskevas Louloudakis v Elliniko Dimosio* (Case C-262/99) [2001] ECR I-5547 ("*Louloudakis*")

(2) *International Transport Roth GmbH v Secretary of State for the Home Dept* [2003] QB 728 ("*Roth*")

(3) *James v UK* (Application 8793/79) (1986) 8 EHRR 123 ("*James*")

(4) *Wilson v SoS for Trade and Industry* [2003] UKHL 40 [2004] 1AC816 ("*Wilson*")

(5) *R (on the application of Lumsden and others) (Appellants) v Legal Services Board (Respondent)* [2015] UKSC 41 ("*Lumsden"*)

12. A summary of the principles relating to proportionality is set out below:

(1) Proportionality as a general principle of EU law involves a consideration of two questions: first, whether the measure in question is suitable or appropriate to achieve the objective pursued; and secondly, whether the measure is necessary to achieve that objective, or whether it could be attained by a less onerous method (*Lumsden* at [33])

(2) As is the case for other principles of public law, the way in which the principle of proportionality is applied in EU law depends to a significant extent upon the context (*Lumsden* at [23].

(3) In the context of its application to penalties, the principle of proportionality is that:

(a) penalties may not go beyond what is strictly necessary for the objective pursued; and

(b) a penalty must not be so disproportionate to the gravity of the infringement that it becomes an obstacle to the freedoms enshrined in the Treaty (*Louloudakis* at [67]).

(4) In deciding whether the measures or their application is appropriate and not disproportionate, the court must exercise a value judgment by reference to the circumstances prevailing when the issue is to be decided. It is the current effect and impact of the legislation which matters, not the position when the legislation was enacted or came into force (*Wilson* at [62]).

(5) The margin of appreciation given to law makers in implementing social and economic policy should be a wide one and the courts will respect the law makers judgment as to what is in the public interest unless that judgment is manifestly "without reasonable foundation" (*James* at [46]) or "not merely harsh but plainly unfair" (*Roth* at [26]).

Burden and standard of proof

13. The burden of establishing that the appellant is prima facie liable for the penalties which has been properly notified and assessed lies with HMRC.

14. The burden of establishing that it should not be liable for the penalties because, amongst other reasons, it has a reasonable excuse, or that the penalties are disproportionate, lies with the appellant.

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

Discussion and conclusion

Late appeal

16. The appellant has made his appeal to HMRC slightly late. The penalties were notified to the appellant on 8 February 2019 yet the appeal was not made until 29 March 2019. Mr Bunce did not seriously press an application opposing any implied application by the appellant to this tribunal for permission to make its appeal, late. In my view the lateness is not serious or significant even though the appellant has provided no reasons for its lateness, nor do I think, for the reasons given below, that the appellant has much of a case. But I think the balance of prejudice lies with permitting the appellant to make its appeal out of time. I am also able to allow the notification of the late appeal to the tribunal to be done informally and I so allow it.

Service of relevant notices

17. It is incumbent on HMRC to establish that they have acted in accordance with the provisions of paragraph 18 of Schedule 55 as regards the penalty.

18. Under paragraph 18(1) of Schedule 55:

> "(1) Where P is liable for a penalty under any paragraph of this Schedule HMRC must-
>
> i. assess the penalty;
>
> ii. notify P, and;
>
> iii. state in the Notice the period in respect of which the penalty is assessed."

19. As evidence that the penalty has been assessed and notified in accordance with paragraph 18 of Schedule 55, HMRC have provided an extract from their computer records indicating that a notice of penalty assessment designated RTI 511 was issued on 8 February 2019 for £300. They have also provided a pro forma notice of penalty assessment for a quarter ended 5 January which refers to the period for which the penalty is charged and how the penalty has been worked out. As I say this is a pro forma and is not a copy of the actual assessment or notice given to this appellant since HMRC has not kept a copy.

20. If the actual penalty notice given to the appellant in respect of the penalties included, accurately, the information set out in the pro forma, then it would satisfy the provisions of paragraph 18 of Schedule 55.

21. The appellant has not suggested that it did not receive a penalty notice either in its appeal to HMRC or in its appeal to the tribunal.

22. I find that, on the balance of probabilities, it is more likely than not that HMRC's assessment and notification of the penalties was in accordance with paragraph 18 of Schedule 55 and the appellant was properly assessed and notified of the penalties.

Appellant's grounds of appeal

23. The appellant appears to put forward only one ground of appeal. In its appeal to HMRC, the grounds for its appeal are that it had "paid the employees on the 30th and submitted the returns on the same day". This was repeated in the appellant's notification of its appeal to the tribunal in which it stated that it had "submitted the PAYE returns for all three employees on the same day as the day I pay. The penalties issued for one employee each Jan 2019, Dec 2018 and Nov 2018. My appeal was rejected. Paid on the day submitted for the end of the month."

Respondents' submissions

24. The respondents submit that the RTI returns were late. Contrary to the assertion by the appellant that it had submitted the returns on the same day that it had paid the employees, the returns were submitted after those payments had been made. In October the payment was made on 30 October 2018 but the return was not received by HMRC until 5 November 2018. The payment to the employee for November was made on 30 November 2018 yet the return was not received by HMRC until 7 December 2018. The payment to the employee for December 2018 was made on 30 December 2018, but the return was not received by HMRC until 6 January 2019. This is borne out by HMRC's electronic records.

25. The appellant has put forward no supporting evidence that it submitted the returns on the same date that it made the payments to its employees. On the other hand, HMRC's electronic records clearly show that the three payments were made before the corresponding RTI returns were received by them.

26. The appellant is obliged to file its returns electronically. Although HMRC have not asserted this, I think it is more likely than not that an electronic submission would be received by HMRC very shortly after it had been sent. The fact that the receipt by HMRC of the returns was several days after the date on which payment was made to the employees strongly suggests to me that the returns were not made or delivered electronically to HMRC until either the day of, or very shortly before the day of, the date on which HMRC record that they received those returns.

27. It is my view, therefore, that the appellant is mistaken and that HMRC's records are correct. Accordingly, as a matter of fact, the RTI returns were made or delivered late.

Reasonable excuse

28. The appellant has no reasonable excuse for failing to submit its RTI returns on time for the periods under appeal. Indeed, given that its only submission was that it had submitted its returns on time, it is hardly surprising that it has made no submission that it has good reasons for them being submitted late It clearly knew that it was required to make RTI returns on or before making a relevant payment to an employee. It had failed to submit timely returns for previous periods and had been assessed and notified of those penalties. They had been cancelled by HMRC, but the appellant was clearly on notice of its filing requirements.

29. The Education letter spelt out the position in words of one syllable:

> "PAYE information must be reported to us on or before a payment is made to an employee or we may charge you a penalty."

30. So why did the appellant fail to report the relevant payments which it made to its three employees on or before the dates that it made them? I do not know. The appellant has provided

no explanation for its failure to do so other than the fact that it submitted them on the same dates as it made those payments, which I have found not to be the case.

31. The appellant has no excuse, let alone a reasonable one, for failing to deliver the RTI returns on time. A reasonable taxpayer in the appellant's position having been previously assessed to penalties for failing to submit RTI returns on time and who had been given the Education letter would have submitted RTI returns on or before making the relevant payments to employees in each of the periods under appeal.

Special circumstances

32. In their statement of case, HMRC state that they have taken into account special circumstances. They say that they have considered the appellant's submission that the PAYE returns were submitted on same day as that on which the employees were paid and consider that this does not amount to special circumstances. I agree. There are no special circumstances which apply to this taxpayer.

Proportionality

33. Although not argued by the appellant, it is my view that the penalties are proportionate. In light of the principles set out at [11] and [12] above, and in view of the justification for the imposition of penalty (namely that it is essential for the proper function of the RTI regime that an RTI employer provides timely and accurate information in relation to payments it makes to its employees), I consider that the penalties do not go beyond what is strictly necessary for the objective pursued. The penalties are very far from being not merely harsh but plainly unfair.

Decision

34. I dismiss this appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

35. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

NIGEL POPPLEWELL

TRIBUNAL JUDGE

RELEASE DATE: 12 SEPTEMBER 2019