



TC07133

Appeal number: TC/2018/07219

INCOME TAX – penalties for late delivery of tax return – whether appellant knew that he had been registered for self-assessment – held no, it had been done without his knowledge while he was abroad by the agency who had arranged a temporary teaching job and formed a personal service company for him - whether reasonable excuse – yes for initial penalty as he had no reason to have his post from HMRC monitored – whether when reasonable excuse ceased after discussions with HMRC failure to file return was remedied with a reasonable time – held no, but daily and 6 month penalties cancelled on other grounds – appeals allowed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RYAN SOLOMON

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE RICHARD THOMAS

The Tribunal determined the appeal on 14 February 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 dated 13 November 2018 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 18 December 2018 and further submissions from HMRC dated 25 February 2019 and 12 April 2019.

DECISION

1. This is an appeal by Mr Ryan Solomon (“the appellant”) against penalties of £1,300 assessed on him for his failure to deliver an income tax return for the tax year 2016-17 by the deadline.

Facts

2. I set out below what the papers in the bundle I had show. I find as fact that that is what the documents say. I draw inferences from what is said and what the records show later.

The penalties and the appeals

3. The appellant was, HMRC’s records indicate, issued with a notice to file an income tax return for the tax year 2016-17 on 21 April 2017. That notice required the appellant to deliver the return by 31 October 2017 if filed in paper form or by 31 January 2018 if filed electronically (“the due date”).

4. HMRC’s records indicate that on 13 February 2018 they issued a notice informing the appellant that a penalty of £100 had been assessed for failure to file the return by the due date.

5. HMRC’s records indicate that on 2 August 2018 they issued a notice informing the appellant that a penalty of £900 had been assessed for failure to file the return by a date 3 months after the due date.

6. HMRC’s records indicate that on 14 August 2018 they issued a notice informing the appellant that a penalty of £300 had been assessed for failure to file the return by a date 6 months after the due date.

7. The return was filed electronically on 23 August 2018.

8. On 13 August 2018 the appellant notified an appeal to HMRC against all the penalties.

9. On 4 October 2018 HMRC wrote to the appellant rejecting the appeals as being out of time and would not be treated as given. They informed him that he could request permission from the Tribunal to make a late appeal.

10. On 13 November 2018 the appellant sent a notice of appeal to the Tribunal, including an application to notify a late appeal to HMRC.

Contact between the appellant and HMRC

11. The appellant’s self-assessment record was created on 7 March 2017 as HMRC say that the appellant registered for self-assessment on 6 March 2017 when he submitted the form SA1 “Registering for Self-Assessment and getting a tax return” digitally to HMRC. They enclosed a copy of a “proforma” SA1, ie not the actual one submitted nor a computer record of the actual entries.

12. The appellant, HMRC say, had declared on the SA1 that he was a company director as of 31 October 2016. HMRC say that they enclosed an extract from their computer records showing when he registered and the reason why. This was an edited extract from the SA Notes that HMRC keep and it said:

“8 07/03/2017 KANA SA1 received & processed on 06/03/2017. SA Record created automatically by CESA – Company Director – start date 31/10/2016.”

At the far right of this entry under what is in a full set of SA Notes there is indicated as the maker of the note the abbreviation “AUTO”. There is no Pay Identification number of any officer.

13. HMRC refer to other contacts from and on behalf of the appellant:

(1) A redacted SA Note made on 21 March 2018 says:

“tp mother tel in but no authority to speak. She adv son wont be home until 2 week in April so adv to call then. Works at sea with Royal Caribbean.”

(2) A redacted SA Note made on 6 April 2018 says:

“Telin t/p re filing the return took t/p through to register PTA and GG t/p now waiting for the activation code, t/p to file return and is now off shore worker, advised can call when come to complete non-residence page for help.”

(3) HMRC say their records show that on 6 April 2018 the appellant registered to receive HMRC correspondence to his secure inbox “within” his self-assessment online account, and that this had been verified by their Digital Communications specialist team. They exhibited a screenshot called “Paperless Admin” with a “User Summary” which gives the appellant’s NINO and SA UTR and that he opted into “paperless generic terms and conditions” on 6 April 2018 at 11:28:02. He gave an email address which was verified on 19 April 2018.

(4) On 19 April 2018 HMRC say that the appellant filed his 2017-18 return electronically and they exhibit a “return summary” for that year to that effect. No details are given about what that return showed.

(5) HMRC say that their Debt Management team issued outstanding debt letters (IDMS99) regarding the late filing penalty of £100 for 2016-17 on 8 May and 22 May 2018. These letters contained a warning of penalties he could incur of up to £1,600.

(6) They also say that on 7 June 2018 a 30 day reminder about daily penalties was sent digitally to the appellant and include the evidence for this. This is apparently dated 6 July 2018, but from the detail it appears that HMRC are, for some reason, using an American date format, as the “issueDate” field shows: “2018-06-07”.

(7) A 60 day reminder was also sent on 5 July 2018 and the evidence exhibited

(8) The daily and 6 month penalty notices were sent digitally to the appellant and there were no “bounces” (as to which they also show a screenshot to that effect).

The law in brief

14. The law imposing these penalties is in Schedule 55 Finance Act 2009 and in particular paragraph 3 (initial penalty of £100), paragraph 4 (daily penalties) and paragraph 5 (fixed or tax geared penalty after 6 months). The penalties may only be cancelled, assuming they are procedurally correct, if the appellant had a reasonable

excuse for the failure to file the return on the due date, or if HMRC's decision as to whether there are special circumstances was flawed.

Grounds for seeking permission to make a late appeal

15. The reason given by the appellant for the lateness of the notification of the appeal to HMRC was that from November 2016 he had been working abroad for the Royal Caribbean cruise line and had not been at home to receive any documents. He returned home in May 2018 where he saw the late penalty notice and was confused as the penalty was for the tax year 2016-17 when he was a university student.

Grounds of appeal

16. The reasons given by the appellant for his appeal were:

(1) he was under the impression that because he was a university student he did not have to complete a self-assessment, and that after graduating in November he went abroad to work for Royal Caribbean.

(2) when he returned from that high pressure job he was unaware that he had to fill out a self assessment for the one month when he worked at a primary school via an agency in October 2016.

(3) he appealed as soon as he saw the letter, and after returning home for the final time on 10 November 2018 he saw that his appeal had been turned down and the latest he can appeal is 3 November. He understood that it is possible to check online but being based out at sea made that nearly impossible.

he said he may be at fault due to pure lack of knowledge but the minimum outcome he would like is for the penalty to be reduced to the original amount (£100).

HMRC's position

Permission to make a late appeal

17. HMRC were informed by the tribunal that the notice of appeal included an application for permission to make a late appeal to HMRC and they were asked to indicate if they objected. They did not do so, and do not mention the issue in the statement of case. Given this and the appellant's explanation for the delay I grant permission for him to bring an appeal against the £100 initial penalty to HMRC and waive any formalities to get the appeal before the Tribunal. Despite what HMRC said in their letter of 4 October 2018 (see §9) the appeals against the daily penalty and the 6 month penalty were not late.

The appeals

18. As to the appeals, HMRC say:

(1) As the appellant registered for self-assessment on the basis that he was a director of a company and was issued with a notice to file a return for 2016-17, he was under an obligation to do so.

(2) The appellant was wrong to say that because he was working abroad on a cruise ship he did not have to make a self-assessment, because he had registered for self-assessment as a director after he had left the UK.

- (3) The notice to file was not returned and is deemed served by s 7 Interpretation Act 1978.
- (4) The appellant did not file the return until 23 August 2018.
- (5) Two reminders about accruing daily penalties and the 6 month penalty were sent to the appellant in his secure mailbox and he was sent emails to his personal email address to tell him about the arrival of a communication from HMRC. They were not bounced.
- (6) The appellant had contacted HMRC on 6 April 2018 and so would have been made aware of the accruing penalties, which he could have avoided by filing electronically at that time.
- (7) HMRC considered whether the appellant may have mistakenly submitted his 2017-18 return on 19 April 2018 intending to have submitted his 2016-17 return. They discount this idea because the late filing penalty notice issued on 13 February 2018 was clearly marked as for 2016-17, and because the 2017-18 return submitted showed nil income, whereas the 2016-17 return when submitted showed employment income details which match HMRC's records.
- (8) Lack of knowledge which the appellant admitted to is not a reasonable excuse. As he had registered for self-assessment he would know that he would receive a notice to file a return and should have made arrangements to have his post monitored while he was away.
- (9) His actions were not those of a prudent person, exercising reasonable foresight and due diligence, and having proper regard for his responsibilities under the Tax Acts, and he has not provided any reasonable excuse.
- (10) As to the question of special circumstances HMRC have considered two things; that he was working abroad for Royal Caribbean and was under the impression he did not have to make a return for his one month agency teaching income; and that he may be at some fault. These were not special circumstances.

Directions for further information

19. There were some points made by HMRC in response to the appellant's grounds of appeal and other statements made by him which puzzled me. HMRC exhibited the appellant's tax calculation for 2016-17 which showed "Pay from all employments" of £3,240 as his only income and hence no tax payable. They also showed the entries on that return from the employment pages, boxes 1 to 5. There were two employments.
20. One showed the employer as J D Wetherspoon plc and the pay as £1,765 with no tax deducted. I infer that the appellant was working in a pub for a short period in the year, but no dates are given.
21. The other showed the employer as Ryan Solomon 7136 Ltd and the pay as £1,475 with tax "taken off" of £78. Again no dates are given, but the tax deduction suggests that the period for the payment was about a month.
22. "Ryan Solomon" is of course the appellant's name. According to HMRC he registered for self-assessment in April 2017 and said he was a director from 31 October 2016. The appellant though says he worked as an agency teacher in October 2016 and graduated in November after which he worked for Royal Caribbean outside the UK until his return in 2018, including the date when he is said to have registered for self-assessment.

23. Because of these discrepancies and because the SA Note at §12, created by “AUTO” and which referred to things being done “automatically”, I directed that HMRC should answer a number of questions, and below I state the questions and HMRC’s answers (in italics):

Q1: What does the acronym KANA stand for and what is it?

A1: KANA is not an acronym. It is the name give to the email system created to process the external emails HMRC receive from customers. Customers and their agents can email HMRC to inform (sic) changes in their circumstances.

Q2: What does the acronym CESA stand for and what is it?

A2: The acronym CESA stands for Computerised Environment Self-Assessment. It is HMRC’s computer system holding all the individual customer’s Self Assessment records. The system was created in 1996.

Q3: What is meant by “SA Record created *automatically* by CESA”? In what other non-automatic ways can an SA record be created?

A3: When a customer registers for Self Assessment by submitting the form SA1 online using KANA, their Self-Assessment record is created, or reactivated, automatically by CESA without manual intervention (there may be exceptions but these will be flagged to a worklist for manual intervention).

If the Self Assessment registration is received from a customer in paper form, a Self Assessment record will be created, or reactivated, manually (non-automatically). Similarly, a customer may notify HMRC of the need for a self-assessment record by telephone contact, upon which a Self Assessment (sic) would be created, or reactivated, manually.

In day to day work, HMRC may recognise a customer needs to complete a Self Assessment return based on information already held on a customer’s record, or when new information is received digitally, for example, from the customer’s employer. Again, a Self Assessment record is created, or reactivated, manually.

What were the entries on the appellant’s SA1?

HMRC’s records show Mr Solomon completed the SA1 registration form online, using KANA. Unfortunately, HMRC have not been able to access the digital form to be able to provide the Tribunal with details of the specific entries made.

The exhibit folio 19 in HMRC’s Statement of Case is a copy of the automatic note created by CESA on Mr Solomon’s Self Assessment record, when the SA form was automatically processed. It confirms two of the entries made on the SA1 to be Mr Solomon was a Company Director commencing on 31 October 2016.

What evidence does HMRC have that it was the appellant who completed the SA1 online and transmitted it to HMRC? Is there any way HMRC have for checking whether the person transmitting it is either the person whose details are given or is authorised to give them?

An automatic acknowledgement is sent to a customer as soon as their email is received in the KANA system.

*Several security checks are completed before any amendments are accepted
Five security questions must be passed for a customer
If either of the first two mandatory questions fail (name and date of birth) then verification automatically fails and no further checks are needed*

If sufficient security checks pass (sic), a response is sent to the customer (or agent) confirming the details have been accepted.

If the security checks fail, a response is sent to the customer (or agent) asking them to provide information by telephone or letter.

Mr Solomon's SA1 was accepted through KANA therefore he passed the relevant security checks. The SA1 was not submitted by an agent acting on Mr Solomon's behalf as there was no authorisation held for any agent on Mr Solomon's records with HMRC.

What significance does HMRC attach to the fact that company employing the appellant was called "Ryan Solomon 7136 Ltd" ("RS7136")?

The exhibit at folio 34 in HMRC's Statement of Case was provided as part of the evidence to show the employment details Mr Solomon declared on his 2016-17 return matched those held on his individual PAYE record. This in turn was confirmation that Mr Solomon had not mistakenly submitted his 2016-17 income details on a 2017-18 electronic return (as referred to in point 32 of the Statement of Case).

The company name "Ryan Solomon 7136 Ltd" would suggest the appellant Ryan Solomon had involvement with the company as a Director. However, Mr Solomon did not tick the box on the 2016-17 employment page to state he was a Director of the company.

The attached folio 1 is a printout from the Companies House website. It shows the company Ryan Solomon 7136 Ltd was incorporated on 31 October 2016. Folio 2 shows Ryan Jamal James Solomon, date of birth February 1993, was appointed a Director of the company on 31 October 2016.

The exhibit at folio 19 in HMRC's Statement of Case shows the online form SA1 was completed with a start date for Directorship of 31 October 2016.

What communications has HMRC had from RS7136 (a) as an employer and (b) as a potential corporation tax taxpayer? If there are any, who were they from – give name, email address or physical address.

HMRC's records show the company RS7136 submitted Real Time Information (RTI) digitally to HMRC in respect of Mr Solomon's PAYE income details for the year 2016-17. The attached folios 3 & 4 are extracts from HMRC computer records for Mr Solomon, showing the 20 RTI submissions received from the company in respect of Mr Solomon's 2016-17 PAYE details. The submissions were received through the employer's online account.

The exhibit at folio 5 is a printout from the Companies House website. It shows the company RS7136 submitted an application to Companies House on 17 October 2017

to strike the company off the register. On 24 October 2017, Companies House advertised the application for any objections. On 9 January 2018, Companies House confirmed the company dissolved.

In terms of corporation tax, no corporation tax returns were required from the company as the application to strike off as received within a year of incorporation.

24. I was not satisfied with some of these answers and as a result I issued further directions to HMRC and below I state the questions and HMRC's answers (in italics).

25. In question 5 of my directions of 18 February 2019 I had asked:

“What evidence does HMRC have that it was the appellant who completed the SA1 online and transmitted it to HMRC? Is there any way HMRC have for checking whether the person transmitting it is either the person whose details are given or is authorised to give them?”

26. I noted that HMRC had explained in their response that there were security checks which had to be completed before any *amendments* were accepted. That did not answer my questions, so I therefore rephrased them as follows:

(1) On the first occasion when an SA1 is sent in online, what checks, if any, are carried out to determine whether the person submitting it is the person whose name and other details are on the form?

(2) On that first occasion are the security checks that are mentioned in the response carried out? If so, are they simply an internal validation process to compare the details with known information on HMRC's systems or do they require there to have been previous input by the person concerned, eg to provide a password, memorable personal details etc.

(3) Is it possible for a person other than Ryan Solomon and who is not an authorised agent but who is in possession of the information needed to be entered on the SA1 to successfully submit the form?

(4) What evidence does HMRC have that it was the appellant, Ryan Solomon, who completed the SA1 online, transmitted it to HMRC and passed any security checks?

With regard to the nature of checks undertaken on receipt of an SA1 I have been unable within the time frame given to establish what is undertaken or evidence held.

I think however that it is worth highlighting that the details provided were correct at that time, and that on registration a welcome to SA letter (SA250 example attached) was sent to Mr Solomon at the address that was registered.

A notice to file was also sent along with other correspondence identified within the SoC. Mr Solomon has had many opportunities to say that he did not register but has not done so.

At no point within the appeal does he make such an assertion either. Simply that he was unaware that a return was due.

27. In question 5 of my directions of 18 February 2019 I had asked:

“What significance does HMRC attach to the fact that company employing the appellant was called “Ryan Solomon 7136 Ltd” (“RS7136”)?”

28. HMRC had explained in response that the name suggested that Ryan Solomon had an involvement as director and indeed that he was a director. They did not comment on why the number 7136 was included in the title of the company or whether Ryan Solomon was a shareholder. Nor did they comment on the business of the company “General secondary education” or the “occupation” given by Mr Solomon (or on his behalf) which is “Teaching Assistant”. I informed HMRC that I have done some further research on the registered office address of the company, which is neither near Hartpury University nor the appellant’s home address. I enclosed with the directions a screenprint of an address search¹ showing the first 50 of 7,803 entries covering companies registered at the same address, those with names starting with “A” to “Aaron”, all of which appeared to be names of individuals with a number.

29. My questions then on this issue were:

(1) Does HMRC consider that the business and occupation shown on the file of RS7136 at Companies House, the presence of so many companies with names constructed like that of Mr Solomon and Mr Solomon’s statement that he worked as an agency teacher in late 2016 suggest that there is some form of umbrella or managed service organisation operating from the address in Warminster and supplying temporary teaching staff?

(2) Is it possible that it was this organisation which submitted the SA1 at a time when the appellant was working on a cruise liner?

Mr Solomon stated on his own self assessment return that his employer was Ryan Solomon 7136 Ltd. This is taken as read in accordance with “process now, check later”. For the purpose of processing Mr Solomon’s return, or for assessing the penalty, it was not necessary to consider whether or not there is an umbrella or managed service organisation operating from the given address.

In his appeal Mr Solomon states that he got work through an agency, so it would seem likely that part of his agreement with the agency was for this structure to be put in place – a managed service which it would appear included the completion of RTI returns on the companies behalf.

As stated, Mr Solomon has not questioned his registration.

30. In question 5 of my directions of 18 February 2019 I had asked:

“What communications has HMRC had from RS7136 (a) as an employer and (b) as a potential corporation tax taxpayer? If there are any who were they from – give name, email address or physical address.”

31. HMRC had supplied the RTI details for Mr Solomon covering 20 weeks in 2016-17. They had explained that these RTI details were submitted through RS7136’s employer account. But further questions arise from this information as follows:

¹ From web address <https://www.companieshousedata.co.uk/a/2766261> accessed on 27 March 2019. [Hyperlink removed]

- (1) Did HMRC receive any communications from anyone before and during the setting up of the employer's account? If so, what information was obtained and how and from whom? If by email supply a copy of the email.
- (2) Does the office with the reference 120/BB52549 have other employer records for "name and number" companies registered at 28a Station Rd, Warminster? What is the significance of the initials "BB" in the reference?
- (3) Why was the appellant's code changed from 1100L to 508L with effect from the payment on 9 December 2016?
- (4) What significance do HMRC attach to the Payroll ID being "DSC007136". In particular what do they consider "DSC" stands for? Could it be "d[something] service company"?

These directions do not address whether the tax payer was correctly registered for SA. They are questions about the employer and other potential entities that are not party to this appeal.

However, in terms of 120/BB52549, this is not a reference to an office that would hold records on other companies. It is in fact the reference number for the PAYE scheme. The reference BB has no significance.

There was no other contact prior to setting up the company, which was done on line. A copy of the contact is attached. OTRS stands for Online Tax Registration Service.

We don't know why the appellant's tax code was changed. 508L does not reflect a code that HMRC issued. A copy of the codes for that year are attached.

HMRC attaches no significance to a code issued by the employer as their reference for an employee, and do not propose to speculate on it.

32. I also directed that HMRC supply the following information:

- (1) All notes of contacts, actions etc made by officers of HMRC or automatically, whether SA Notes or notes made before registration for SA (ie PAYE), relating to the appellant.
- (2) All notes of contacts, actions etc made by officers of HMRC or automatically, relating to RS7136.

I attach the records of contact that I have.

33. The documents included with this submission were:

- (1) A screenshot showing that on 14 November 2016 a "new scheme request" was received by HMRC and a "director memo" issued. The screenshot does not give any identification details for the employer.
- (2) A screenshot showing the employer scheme details for Ryan Solomon 7136 Ltd. This shows that Mr Ryan Solomon is the sole director and as appointed on 31 October 2016.
- (3) An unredacted SA Notes page showing, among other things:
 - (a) The Note at §12 as the first chronological entry.
 - (b) The Note at §18(1) as the next entry.

- (c) The Note at §18(2) as the next entry.
- (d) A Note on 20 April 2018 saying “SA Record closed on 20/4/18 following automatic selection”
- (e) A Note on 24 December 2018 “Record closed following removal request. No returns withdrawn.”

(4) Details of tax code “calculations” for 2016-17 showing that the codes for the appellant’s employment with Ryan Solomon 7136 Ltd were first issued on 20 November 2016 (1100L), then twice on 27 November 2016 (422L for a primary employment and 86T for a secondary). No P2 (Notice of coding) was issued about 1100L, but were for the 2 later ones. Nor was a P6/P9 (Notice to employer) of the 1100L coding issued.

(5) A contact history for Mr Solomon which showed among other things:

- (a) Two FPS (submissions of pay and tax details under RTI by an employer) by JD Witherspoon on 14 and 22 September 2016.
- (b) A “CID Designatory details” input from “Other HMRC” on 30 October 2016.
- (c) Two FPS by Ryan Solomon 7136 Ltd on 20 and 27 November 2016.
- (d) Issue of P2 on 27 November 2016 twice – by document.
- (e) Issue of P9 to “Employer” on 27 November 2016 - electronically.
- (f) A “CID Designatory details” input from “Other HMRC” on 7 March 2017.
- (g) A “CESA Designatory details” input from “Other HMRC” on 8 March 2017.
- (h) Two FPS, one by Ryan Solomon 7136 Ltd on 29 March and one by another employer on 2 April 2017.
- (i) A “CESA SA Start” input from “Other HMRC” on 17 April 2017, noted “Reconciliation Status set to “Reconciled SA”.
- (j) Four RTIEOY (End of year) submissions on 4, 11, 12 and 13 May 2017.

34. In the response to the first directions HMRC had said:

“The attached folios 3 & 4 are extracts from HMRC computer records for Mr Solomon, showing the 20 RTI submissions received from the company in respect of Mr Solomon’s 2016-17 PAYE details. The submissions were received through the employer’s online account.”

35. That attachment showed 20 RTI submissions in 2016-17 whereas the contact history at §33(5) showed three. Of the 20 RTI submissions, the first three had code 1100L and the rest had 508L. 508L is not one of the codes issue to Mr Solomon.

Discussion

36. I start by making further findings of fact.

(1) When in 2016 the appellant worked as a temporary schoolteacher he was required probably by the agency which found him the job, to have a corporate body set up for the purpose of receiving the remuneration from that job.

- (2) This body was Ryan Solomon 7136 Ltd and was one of thousands of such companies established at the same registered office address in Warminster.
- (3) After leaving the teaching job, Mr Solomon left the UK to work for Royal Caribbean and was outside the UK at the time he was registered for self assessment.
- (4) All interactions between Ryan Solomon 7136 Ltd and HMRC were carried out by the agency and not by the appellant.
- (5) The SA1 was submitted by the agency without the appellant's knowledge.
37. My reasons for so finding are these.
38. HMRC do not dispute that the appellant was working outside the UK: indeed they are recorded as offering the appellant help with completing the non-resident pages on his return (SA Note 6 April 2018).
39. HMRC have produced no evidence to show that the appellant himself submitted the SA1 and they do not deny that anyone with knowledge of the relevant details could complete the SA1 through the internet. Given that the appellant was required to set up (or have set up for him) a company to get the temporary post and would have had to give the agency a variety of information to get the post and given that in March 2017 he was working for a cruise line in the Caribbean, I find it more likely than not that the SA1 form was created by and sent by the agency, not the appellant.
40. The payments by the company of PAYE to HMRC and the net amount to the appellant did not require his presence in the UK.
41. HMRC have accepted that there was some form of service company involvement (I have called it an "agency" as this is what the appellant called it).
42. I am also minded to think that the company, Ryan Solomon 7136 Ltd, may have been used to pay someone else. There were 20 RTI submissions weekly from November 2016 to March 2017, only the first three of which had the code 1100L, the appropriate one for someone with no other job or income. Mr Solomon's pay from the company was £1,475 which is much more likely three or four weeks' pay as he had said, rather than 20 week's pay. On the other hand the pay from the company does not necessarily follow the dates when the school or whatever paid for his services, so in theory there could have been 20 weekly payments of £73.75 though why that should be done I do not know. I am not making any finding on this point, but the records do suggest that the company was being controlled and managed in all respects by the agency, not by the appellant.
43. Having found these facts I next have to consider whether the notice to file was validly required for the purposes in s 8 TMA. I think it was. The appellant was a director and so it was legitimate for HMRC to require a return.
44. I also have to consider, because HMRC have raised it, whether the notice to file was properly given to him. It was, say HMRC, sent to him by post at the address on record and so by s 7 Interpretation Act 1978 was deemed to have been properly served on him at that address. The appellant says he was unaware of the requirement, because he was out of the country, but he does not seek to say that it was not given to him at his

UK address. I find that it was properly given to him, and he therefore had an obligation to make and deliver a return, whatever the level of his income.

45. I therefore find that he failed to file a properly required return by the due date for filing, 31 January 2018. I should say here that I do not disagree with HMRC that a person who goes abroad should make arrangements to have their mail monitored for notices to file and other correspondence, but I disagree that the appellant should have. A person needs to have their post from HMRC monitored if they have reason to expect any. A person whose only dealings with HMRC has been through PAYE does not have such a need (see my decision in *Anthony Steele v HMRC* [2018] UKFTT 547 (TC)). As I have found that the appellant was unaware he had been set up for self-assessment, he had no reason to arrange for such monitoring.

46. The next question is whether he had a reasonable excuse for his failure to file. I find that he did. Because he was unaware that he had been registered he had no reasons to expect that he would get a notice to file. As a result I cancel the initial penalty of £100.

47. However I do not consider that this excuse continued after he had contacted HMRC on 6 April 2018. He was entitled to a reasonable time thereafter to deliver the return and from the SA Note it seems HMRC gave him information about how to register to file online and enrol for digital communication.

48. He filed a return on 19 April 2018 which is what I would hold was a reasonable time after 6 April, but this was not his 2016-17 return, but that for 2017-18 for which he had only just been issued with a notice to file. HMRC say they considered whether the appellant actually sent his 2016-17 figures in a 2017-18 return by mistake but concluded that he didn't, and for the reasons they gave I agree with them.

49. It may be that the appellant did not appreciate that he still needed to file his 2016-17 return, but as HMRC point out he would have received a penalty notice in February 2018 which said it was for 2016-17 (and could not logically have been for 2017-18). I find then that the appellant did not remedy the failure within a reasonable time.

50. But as to the daily penalty there is no "SA reminder" or "SA 326D" in the papers, so HMRC have not shown that the condition in paragraph 4(1)(c) Schedule 55 FA 2009 has been complied with. (See *Duncan v HMRC* [2017] UKFTT 340 (TC) (Judge Jonathan Richards)). I therefore cancel them.

51. And as to the 6 month penalty I cancel it as it was issued automatically before the return was received without an officer of HMRC considering to the best of their knowledge and belief what the penalty should be (see *Duncan Hansard v HMRC* [2018] UKFTT 292 (TC) (a decision of mine)).

52. In the alternative and for the reasons I set out at [69] to [86] of *Hannah Armstrong v HMRC* [2018] UKFTT 404 (TC) I would have held that despite the appellant's "going digital" from 6 April 2018 he did not consent to receiving penalty notices digitally and I would have cancelled the daily and 6 month penalties.

Decision

53. All the penalties are cancelled.

54. 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.

**RICHARD THOMAS
TRIBUNAL JUDGE**

RELEASE DATE: 9 MAY 2019