[2019] UKFTT 0614 (TC)

TC07398

Keywords: Appeal against penalty imposed under s98 Taxes Management Act 1970 for failure of a specified employment intermediary to file return under PAYE Regulations 84E and 84F-whether Appellant was a specified employment intermediary – No – whether there would have been a reasonable excuse- Yes, whether HMRC complied with formalities –No – appeal allowed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2017/05974

BETWEEN

ANGELA SALAZAR **Appellant**

-and-

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

TRIBUNAL: JUDGE GETHING

The Tribunal determined the appeal on 20 September 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 26 June 2017 (with enclosures), HMRC's Amended Statement of Case dated 6 June 2018 acknowledged by the Tribunal on 2 July 2018 and the Appellant's Reply to the Statement of Case dated 5 June 2018 and various correspondence between the parties.

DECISION

The Tribunal decided that the appeal be allowed and the penalty be reduced to zero having regard to the facts and reasons set out below.

The issue

1. The case concerns the imposition of a penalty under section 98(1)(b) of the TMA (referred to below as, respectively, "**the TMA**" and "**section 98**") for failure to upload a return relating to workers which was required by Regulations 84F and 84G of the Income Tax (Pay As You Earn) Regulations 2003, as amended (referred to below as, respectively, "**Regulation 84E**", "**Regulation 84F**" and "**the PAYE Regulations**".

2. As explained in HMRC guidance, the relevant legislation "[made] *certain intermediaries provide* [to HMRC] *details of the workers they supply and of payments to those workers*".

3. The maximum penalty prescribed by section 98 for defaults in complying with Regulation 84E and Regulation 84F of this kind is £3,000 – see section 98 (1)(b)(i) Column 2 of the Table and section 98 (4F) - but HMRC have publicly issued guidance, to the effect that the penalty for a first "offence" will be £250, and, as the delay in uploading the required return was the first default in complying with Regulation 84F, the penalty claimed by HMRC is the lower amount.

4. Regulation 84F requires such returns to be uploaded by the date which is the end of the tax month following the end of each tax quarter, which date was in this case 5 August 2016, but it is common ground that the return was not uploaded until 5 October 2016.

5. Liability for penalties does not arise if the person charged with the penalty had a "reasonable excuse" for not doing the thing that the tax legislation required to be done – see section 118(2) of the TMA. In the case of section 98 penalties of the kind in issue here, the meaning of the term "reasonable excuse" is not limited by any statutory wording although there is some authority and guidance in case law, which is dealt with under Discussion below.

Jurisdiction of the Tribunal

6. The Tribunal may, under section 100B(2)(b) of the TMA, among other things, set HMRC's determination of the penalty aside or, if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the Tribunal considers appropriate.

The assessment

7. The "tax quarter" (see the PAYE Regulations, Regulation 2(1)) for which the penalty has been charged is 6 April 2016 to 5 July 2016 (referred to below as the "**relevant period**").

8. The penalty imposed is a single penalty of £250.

Summary findings of fact

9. In the Respondent's Amended Statement of Case as at 6 June 2018 ("**the Amended SoC**"), there is at paragraph [33] a succinct and helpful statement of the general factual background. Paragraph [33] reads as follows:

> "*The Appellant (Angela Maria Salazar Lavalle, referred to below as **Ms Salazar)** has a website, http:www.spanishandcoffee.co.uk, where the Appellant, supported by other workers, markets the business which is a café where customers call knowing they can be taught Spanish"*

10. There is no evidence in the case bundle ("**the Bundle**") that Ms Salazar has challenged this statement and so the Tribunal will regard it as proved.

11. It appears that the language teaching/café business referred to in paragraph 33 of the Amended SoC (and referred to below as "**the Business**") is the business in relation to which the claim for penalties has arisen and was carried on by Spanish and Coffee Limited (company number 9406143 referred to below as "**S&C Limited**") with the help of Ms Salazar and others.

12. Electronic records of HMRC, the Report and Accounts of S&C Limited and Companies House records relating to S&C Limited were provided to the Tribunal, from which the Tribunal infers that S&C Limited was carrying on a language teaching (or language teaching and café) business ("**the Business**") at that time and that the description in S&C Limited's Report and Accounts for the period ended 31 January 2019 indicate that S&C Limited's principal activities for the period ended 31 January 2016 was "consulting services" is due to a misunderstanding or changes over time in S&C Limited's activities.

13. The sole director of S&C Limited between 5 August and 5 October 2016 ("***the material time***") was Ms Salazar.

14. HMRC's electronic records shows that on 9 November 2016 HMRC (having apparently concluded that returns were required in relation to the Business under Regulation 84E and Regulation 84F from 6 April 2016) issued a document, apparently a notice under section 100(3) of the TMA, in respect of penalties for failure to upload returns for the period 6 April to 5 July 2016. No copy of section 100(3) was provided to the Tribunal. Its text is as follows:

"*Notice of a determination of a penalty under [section100 TMA] shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against it may be made.*"

15. The issue of some sort of document by HMRC on 9 November 2016 is evidenced by the computer printout and is corroborated by a letter from Ms Salazar, on the letter head of S&C Limited (giving the address 94 West Hill Putney) and marked "*Sent Nov 16*", in which Ms Salazar wrote:

"*I recently received a £250 penalty in the post for submitting my first Employment Intermediary report late.*"

16. In the absence of a copy or other evidence of the content of the November 2016 document, the Tribunal cannot form a view on whether HMRC in fact complied with section 100(3) of the TMA. However, in accordance with the presumption of regularity and in the absence of an allegation by Ms Salazar of non-compliance by HMRC with section 100(3), the Tribunal finds on the balance of probabilities that a notice complying with section 100(3) was given by HMRC in relation to the penalty under appeal on or about 10 November 2016. (It is not however clear from any material in the Bundle upon whom the notice was served. The computer printout mentions S&C Limited, but Ms Salazar as sole director of S&C Limited would have access to its postal mail in any event. These matters are examined further in Discussion below.

17. On 13 January 2017 Mr Weaver of HMRC wrote a letter addressed to S&C Limited at Flat 38 Mayfield Mansions 94 West Hill Putney containing a decision that "you (apparently Ms Salazar) did not have a reasonable excuse for the delay in uploading the report".

18. On 24 March 2017, Ms Salazar requested a review of HMRC's decision to impose a penalty, giving S&C Limited's address as 38 Mayfield Mansions 94 West Hill Putney.

19. On 31 May 2017 Mr Boyd of HMRC, the Review Officer, wrote a letter addressed to S&C Limited at 94 West Hill Putney, maintaining HMRC's decision to charge the penalty

20. On or about 30 June 2017, Ms Salazar wrote a handwritten letter to HMRC saying that she "wished to appeal to Tribunal".

21. The Bundle contains a document prepared by the First-tier Tribunal (Tax Chamber) ("**the FTT**") which is marked "Generated 3 August 2017" and which purports to be a notice of appeal against a late submission penalty with respect to an employment intermediary return. It specifies the "Taxpayer Details" as Angela Salazar, 38 Mayfield Mansions 94 West Hill Putney. The copy in the bundle is not a copy of the original. It is not signed by Ms Salazar nor anyone else and does not conform whether the original was duly signed.

22. On 22 August 2017 the FTT wrote to Ms Salazar at 94 West Hill Putney to acknowledge receipt of a notice of appeal dated 3 August 2017.

23. Over the period 20 October 2017 to 6 December 2018 postal and email correspondence took place between Ms Salazar, Mr M Khan (described as a "litigator") and the FTT. The correspondence relates chiefly to minor procedural matters in connection with the appeal of no continuing significance. The only noteworthy point is that the Appellant is, without exception, described as Angela Salazar, and postal correspondence is addressed to her at 38 Mayfield Mansions West Hill, Putney.

24. On 7 December 2018 Judge Mosedale directed that among other things, the appeal was to be determined on the papers.

25. Further factual issues on the specific issue of "reasonable excuse" are set out in the section below headed Reasonable Excuse.

The legislation

26. Regulations 84E and 84F of the PAYE Regulations, referred to below as "**Regulation 84E**" and "**Regulation 84F**" respectively, were introduced by the Income Tax (Pay As You Earn (Amendment) (No 2) Regulations 2015, statutory instrument 2015/171, made by HMRC and referred to below as "**the amending Regulations**". The primary legislation under which the amending Regulations were made was specified in the preamble to the amending Regulations as "section 113(1) of the Taxes Management Act 1970 , section 136 of the Finance Act 2002 and section 716B of ITEPA". It is well established, as a principle of statutory construction, that Parliament, in conferring power to make delegated legislation does so with the intention that the powers should be exercised proportionately and fairly, not arbitrarily or oppressively.

27. Section 716B(1), (2), (3) and (4) of the Income Tax (Earnings and Pensions) Act 2003 ("**ITEPA**") provide so far as material as follows:

> *"(1)For purposes connected with ...(treatment of workers supplied by agencies) ... the Commissioners of Her majesty's Revenue &Customs may by regulations make provision for or in connection with, requiring a specified employment intermediary –*
>
> *(a)…*
>
> *(b) to provide Her Majesty's Revenue & Customs with specified information, records or documents within a specified period or at specified times.*
>
> *(2) An "employment intermediary" is a person who makes arrangements under or in consequence of which-*
>
> *(a) an individual works, or is to work, for a third person, or*
>
> *(b) an individual is or is to be, remunerated for work done for a third person.*
>
> *(3) For the purposes of subsection (2), an individual works for a person if-*
>
> *(a) the individual performs any duties of an employment for that person (whether or not the individual is employed by that person) or*
>
> *(b) the individual provides or is involved in the provision, of a service to that person.*".
>
> *(4) In subsection (1) "**specified**" means specified or described in regulations made under this section."*

28. The amending Regulations provide the definition of specified employment intermediary by inserting into the PAYE regulations a new Regulation 84E, which it is unnecessary to set out at length. It is to be noted that a "*specified employment intermediary*" is a kind of employment intermediary as defined, i.e. a person cannot be a specified employment intermediary unless they are an "*employment intermediary*" as defined).

29. Regulations 84E and 84F require specified employment intermediaries to provide to HMRC the information specified in Regulation 84G about certain workers – individuals providing services.

> Section 98A of the TMA is an enabling section which empowers HMRC to make "*PAYE regulations or regulations under section 70(1)(a) of 71 of the Finance Act 2004*". Section 98A(1) indicates that the provisions of the Finance Act 2004 that are relevant are those concerned with subcontractors. Furthermore the penalty claimed by HMRC in this case is a single penalty whereas section 98A provides for monthly

penalties. These indications lead the Tribunal to conclude that section 98A of the TMA is not relevant to this case).

30. The amending Regulations were made on 9 February 2015, and took effect in relation to tax quarters beginning on or after 6 April 2015. The version of the amending Regulations that appears on the Office of Public Sector Information's website is accompanied by an Explanatory Note, which indicates that *"A Tax Information and Impact Note"* was published on 10th December 2014 and attaches a link. Unfortunately, the Tax Information and Impact Note to which this link leads is not concerned with Regulation 84E or Regulation 84F but instead with provisions of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") and the then Finance Bill 2004, so it has not been possible for the Tribunal to derive any assistance from the Tax Information and Impact Note referred to in the Explanatory Note). The amending Regulations, which introduced Regulation 84E and Regulation 84F, were made under (among other provisions) section 716B(1) of ITEPA, and were mentioned as such in the table below section 98 Table ("the section 98 Table"), as it stood in the tax year 2015/16.

31. There are tax penalties for non-compliance with requirements to provide information in accordance with any of a long list of provisions set out in Column 2 of the section 98 Table, as amended and the Tribunal assumes that HMRC are relying on section 98 of the TMA to levy a penalty in this case.

32. As the amending Regulations, which introduced Regulation 84E and Regulation 84F, were made under (among other provisions) section 716B(1) of ITEPA, they were mentioned as such in the section 98 Table, as it stood in the tax year 2016/17.

The Appellant's grounds

33. The summary below (which omits the Appellant's complaints about HMRC's behaviour, in relation to which the Tribunal has no jurisdiction) is taken from the Notice of Appeal. The Grounds are almost entirely based on "reasonable excuse":

34. Ground A. The Quarterly Employment Intermediary Report is a relatively new requirement for relevant companies…it only formally came into effect in mid 2016.

35. Ms Salazar missed the deadline for the very first quarter that this new legislation came into effect.

36. Ground B. Ms Salazar never received any communication from HMRC informing her of this new legislation.

37. Ground C. Ms Salazar wrote in 2016 that she arrived in the UK 8 years before and could not speak a word of English. Today the Appellant's English is much better but it is still far from fluent.

38. Ground D. As a result of Ms Salazar's poor English she relied, and relies, heavily on her accountant to handle all her HMRC obligations.

39. Ground E. Ms Salazar's accountant at the time [August – October 2016] gave birth to a child. Ms Salazar stated that the child had a life threatening heart condition unbeknownst to the Ms Salazar. It was the Salazar's belief that through the stress and distraction of the child's heart condition, both pre and post the child's open heart surgery, Ms Salazar's accountant failed to notify her of, or submit to her the Employment Intermediary Report. These facts have not been challenged and the Tribunal considers them proved. In relation to HMRC's suggestion that the Ms Salazar should not have waited for 17 months before dismissing the person who was her accountant for the August-October 2016 period, to Ms Salazar this was utterly abhorrent as it suggested that…accountants should be dismissed by their clients when they have a baby, or worse when their baby is suffering poor health. The natural human reaction, Ms Salazar said,

when you hear someone you work with has had a baby, or more so a baby with poor health, is to be more patient and tolerant as I was, Ms Salazar continued "*I knew my little company's bookkeeping paled [into] insignificance to my accountant's child with a life threatening hole in her heart. Equally [Ms Salazar] and all her other clients firing her because of it would be incredibly inhumane, and only add more stress to what [Ms Salazar] could only imagine was an unbearable situation".*

HMRC's grounds

40. It is evident that HMRC rejected the appeal. HMRC's grounds for rejecting the Appeal are set out in paragraphs [16] – [27] and [29] –[34] of the Amended SoC, where HMRC is referred to as "the Respondent".

41. In short, HMRC rejected the appeal on the following grounds:

> (a) Businesses had a whole year to become accustomed to reporting and it was only from April 2016 that HMRC began charging penalties.
>
> (b) There was no obligation upon HMRC to inform the Appellant personally of a reporting requirement. HMRC informed Trade Bodies of this process. Employers and other affected parties by way of general publicity like the HMRC website with specific explanations as to the introduction and requirements of this Additional Reporting procedure.
>
> (c) The Appellant is a business woman who has admitted that she failed to become informed of her statutory obligations and as a consequence failed to meet these requirements; ignorance of the law and a failure to become informed are not accepted [by HMRC] as a reasonable excuse for a failure to do something.
>
> (d) The Appellant mentions that she relied on her accountant to complete her returns, and mentions that the accountant was looking after a newly born child with a heart condition. The obligation to file a tax return is on the Appellant and it is evident that the Appellant has failed to meet this responsibility; the Appellant cannot transfer that obligation to her accountant despite the circumstances. If the Appellant relies on an accountant to prepare and file a tax return on her behalf then the Appellant will be responsible if errors in the tax return are due to negligence by the accountant acting on her behalf (compare Smith v HMRC [2010] UK FTT 92 (TC) at [25] – [29] and [107]; Employee v HMRC [2008] STC (SCD 688 SpC 673).
>
> (e) HMRC assert that if there has been negligence on the part of an accountant, it may be that the taxpayer may have some recourse against the accountant. However that does not normally affect the liability of the taxpayer to a penalty for failing to file a return at the proper time.
>
> (f) It was apparent at the birth of the accountant's child that there were health issues which the mother and accountant and family needed to manage.
>
> (g) Additionally there was a professional responsibility to clients and a failure to meet statutory obligations without any notification of extenuating circumstances can result in the imposition of a penalty.
>
> (h) HMRC therefore assert that the Appellant's reason for reliance on her accountant does not meet the criteria of a reasonable excuse.
>
> (i) The Appellant states that English is not her first language and has informed HMRC that she is of British nationality with an occupation of Psychologist. The

Appellant stated that she arrived in the UK eight years ago. The Appellant was appointed Director of Spanish and Coffee Limited on 26 January 2015. The Appellant has a website, http//www.spanishandcoffee.co.uk where the Appellant, supported by other workers, markets the business which is a café where customers call knowing they will be taught Spanish. HMRC submit that in order to successfully facilitate this business, the Appellant requires a certain level of understanding of the English language and the fact that English is a second language is not accepted as a reasonable excuse for failing to come to know about or meet statutory requirements.

(j) Under common law the onus of proof rests with the person making the assertion. HMRC accept that the onus is on them to show that there is a failure. Where the Tribunal is satisfied that the Appellant has failed to submit the Returns at the proper time, the onus is then on the Appellant to satisfy the Tribunal that the Appellant had a reasonable excuse throughout all, some or none of the period of default; it is for the Tribunal to consider all the relevant factors and determine whether ether the penalty notified remains due. The standard of proof is the ordinary Civil Standard of the balance of probabilities.

Discussion

42. The first matter for the Tribunal to determine is against whom (Ms Salazar or S& C Limited) HMRC are claiming the penalty. In this connection it is necessary to bear in mind the well-established principle of English company law that, in law, a company incorporated, under the Companies Act 2006 (as S&C Limited is) is a person distinct from its shareholders and from its directors. Accordingly S&C Limited is, in law – and it is law that counts in applying provisions of the UK Taxes Acts – a person distinct from Ms Salazar. Naturally, the satisfactory conduct of S&C's business requires the doing of physical acts which only a natural person can perform. Those activities are no doubt physically performed by Ms Salazar and her colleagues, but in the performance of such activities in the business, Ms Salazar and her colleagues act as agents for S&C Limited and not as principals. The relevant legal principles are, the Tribunal emphasises, well established.

43. Surprisingly, it seems that the various HMRC officers who have dealt with this case are divided in their opinions about the person from whom the penalty is being claimed. For the officer who wrote the letter of 23 December 2016, for Mr Weaver (in relation to his letter of 13 January 2017 - his emails are potentially ambiguous on the point and he appeared to claim in his email of 17 February that it was "the business" as distinct from Ms Salazar, S&C Limited or any other person that was liable to penalties) and for Mr Boyd in his letters of 31 and 4 July 2017 the claim is against S&C Limited. For Mr Khan and the FTT officers, it is Ms Salazar against whom the claim is made. The Tribunal notes that, in accordance with elementary principles of justice, a person from whom penalties are claimed by HMRC (whether that person is Ms Salazar or S&C Limited) must know whether HMRC's claim is against her or someone else, and if it is against her, what that case is. It is moreover plain from the First-tier Tribunal Regulations that the statement of case is a key document– because it is the statement of case that informs the Appellant of the case against her so that she can prepare her own case. The various inconsistent suggestions emerging from the correspondence and pleadings in this case about the identity of the person against whom the penalty is claimed, however did not clarify to the Tribunal (nor presumably to the Appellant) the identity of the person against whom the claim is made.

44. As HMRC plainly accept, the burden of proof that a penalty is due lies on them. The parties and the Tribunal have decided that this case should be dealt with as a paper case and so

a decision must be made, without further litigation, as to whether the penalty is being claimed from Ms Salazar or S&C Limited. The notice of appeal describes the Appellant as Ms Salazar. Because of the importance of the amended SoC, in promoting justice and the achievement of the overriding objective, and because the Tribunal rules plainly contemplate that the SoC is to be a considered statement by HMRC of its position, the Tribunal will deal with this case on the basis that the penalties are being claimed against Ms Salazar, as the amended SoC says.

45. A key initial point is whether the Appellant was a "*specified employment intermediary*" as defined in Regulation 84E during the **relevant period** (6 April – 5 August 2016). This could only be the case if she was an "*employment intermediary*" within the meaning of section 761B(2) and (3) of ITEPA. The text of those subsections is quoted above. A person can be an "*employment intermediary*" only if he or she makes "arrangements" of the kind described in paragraphs (a) or (b) of subsection (2) of section 716B of ITEPA, referred to below as "**material arrangements**". The Tribunal infers from the evidence as a whole that the Appellant did in the relevant period physically perform activities in relation to S&C Limited's business and the Tribunal is prepared hypothetically to assume that material arrangements were made on behalf of S&C Limited during the relevant period and that the Appellant's activities in the relevant period included the making of material arrangements as agent for S&C Limited, because she was S&C Limited's sole director. There is however no clear evidence that Ms Salazar did between 6 April and 5 July 2016 carry out the activities of making material arrangements as principal and so the Tribunal declines to find that she did so make material arrangements: rather, to the extent that she made material arrangements, the Tribunal finds that she did so as agent for S&C Limited

46. This conclusion raises a general question of interpretation of section 716B(2) of ITEPA: if material arrangements are made by a person ("A") not as principal but as agent for another person ("P"), is A an "*employment intermediary*" as defined?

47. The Tribunal notes that HMRC have not alleged that the persons with whom material arrangements were made during the relevant period ("**third parties**") were ignorant of the existence of S&C Limited or the Appellant's agency for it, further notes that the registered particulars at Companies House - of which HMRC and the third parties have constructive notice - disclose the existence of S&C Limited and Ms Salazar's sole directorship and finds that the third parties were, or are presumed to have been aware of S&C Limited's existence and that Ms Salazar was its agent (being its sole director).

48. The Tribunal considers that in such a case there are only three possible analyses – (i) that the principal ("**P**") alone is the "*employment intermediary*", (ii) that both P and its agent ("**A**") are employment intermediaries and (iii) that A alone is an employment intermediary.

49. Possible analysis (ii) would involve anomalies and injustice that, the Tribunal considers, Parliament cannot be taken to have intended to be authorised by the regulation-making power conferred by ITEPA section 716B(1). For instance, suppose that both P and A make the required returns but the returns say different things - it would be unclear which return is to be authoritative and whether A or P is to be penalised for errors, and, furthermore, Parliament cannot be taken to have increased the burdens on businesses by requiring the extensive information required by Regulation 84G of the PAYE Regulations to be provided twice over. The Tribunal therefore rejects possibility (ii).

50. Possible analysis (iii) (that A is, alone, the employment intermediary), gives rise to potential injustice because A may not have access to the "*specified information*", see Regulation 84G. The amending Regulations do not confer on an a person who makes material arrangements as agent any right to obtain such information from the person's principal. P may indeed refuse to disclose the information because it is personal and confidential and/or its

disclosure will conduce to identity fraud, and thus in the generality of cases there will be an "information problem" - it will be difficult if not impossible for A to insist on disclosure of the Specified Information to her, so that it would be impossible for A, if she is the "employment intermediary", to comply with her obligations under Regulation 84F. It is true that in the particular case where P is a company and A is its sole director it could be that in practice the Specified Information will be available to A. But that is happenstance, and the fact that in such a "sole director" situation no information problem arises does not justify the inference that Parliament contemplated the making of Regulations that ignore the information problem: rather, the potential difficulty should inform the interpretation of the Regulation and support the conclusion that A is not, alone, the employment intermediary.

51. The Tribunal considered whether the assessment of penalties in this case could be "rescued" by section 114 of the TMA ("section 114"). The text of the section so far as relevant, is as follows:

> "**14 Want of form or errors not to invalidate assessments, etc**.
>
> *(1) 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.*
>
> *(2) An assessment shall not be impeached or affected—*
>
> *(a) by reason of a mistake therein as to—*
>
> *(i) the name or surname of a person liable, or*
>
> *(ii) the description of any profits or property, or*
>
> *(iii) the amount of the tax charged, or*
>
> *(b) by reason of any variance between the notice and the assessment.*"

52. The Tribunal observes that, as explained at [***] above the "person charged" in this case is not "designated" in the document charging the penalty, the computer printout of HMRC electronic records in the Bundle, "*according to common intent and understanding*" see [***] above. The Tribunal finds that there was no consensus as between the Appellant and HMRC or between S&C Limited and HMRC to the effect that S&C Limited should be regarded as the person assessed. The Tribunal concludes that the computer printout (the only available evidence of a penalty assessment) cannot be corrected so as to substitute "Angela Salazar" for "Spanish and Coffee Limited" as the person charged. The Tribunal's reasoning is that it is clear from the decided cases on section 114 and in particular *Baylis v Gregory* in the Court of Appeal [1987] STC 297, at 322f – 324e, that not all HMRC errors can be corrected under section 114 and a section 114 correction will not be permitted where the taxpayer has been misled. The Tribunal has concluded that the conflicting indications given by HMRC as to whether the penalties were being claimed from the Appellant or S&C Limited would have resulted in the Appellant being misled and therefore section 114 cannot be applied in this case.

53. The Tribunal therefore concludes, in accordance with the basic principle of English law above referred to, that, to the extent that the Appellant Ms Salazar made material arrangements in the relevant period (between 6 April and 5 August 2016), she did so as agent of S&C Limited and not as principal, so that in law the making of arrangements was the act of S&C Limited, not Ms Salazar. The penalty assessment on the Appellant Ms Salazar is therefore fundamentally flawed and must be vacated.

54. For completeness the Tribunal considered two further issues related to the penalty below:

1. whether HMRC complied with procedural requirements of the TMA in charging the penalty; and

2. whether, if the legislation imposed a penalty, Ms Salazar had a "reasonable excuse" within the meaning of section 118 of the TMA.

Procedural Requirements

55. The text of section 100(1) and (3) of the TMA ("**section 100**") are relevant and the text is as follows:

> "*Subject to subsection (2) below and except where proceedings for a penalty have been instituted under section 100D [TMA], an officer of the [HMRC Board] authorised by the Board for the purposes of [section 100], may make a determination imposing a penalty under any provision of the Taxes Acts and setting it at such amount as he considers appropriate."*

56. (Section 100D TMA is concerned with penalty proceedings before a court and is not relevant here. Section 100(2) TMA is concerned with penalties under specific provision unrelated to Regulation 84E or 84F)

57. Section 100(3) provides as follows:

> *"Notice of a determination of a penalty shall be served on the person liable to the penalty and shall state the time when it is issued and the time within which an appeal against the determination may be made".*

58. The Appellant in this case admitted that she (recently) received a £250 penalty by a letter sent November 2016. The Tribunal assumes that this is a reference to the issue by HMRC of an "*EI Late Report Penalty on 9 November 2016*" as shown in a computer printout in the Bundle. There is no evidence of any consideration of the penalty by any individual at HMRC.

59. Because the Tribunal has decided to vacate the penalty assessment on substantive grounds, it is not strictly necessary to consider the two further issues, of compliance by HMRC with section 100 of the TMA, the legislation under which the penalties were assessed, or the issue of "reasonable excuse". However as the second of these issues was canvassed in the correspondence and pleadings, and the first is obviously of public interest, the Tribunal will consider such issues briefly below.

60. The Tribunal considers that it is plain that "*an officer of the board"* in the subsection means a flesh-and-blood individual, not a computer. The only material in the Bundle relating to HMRC's consideration of penalties is a notice of charge, a computer printout on which "*Qu1*" has been written – there is no substantive text. The Tribunal considers that the notice of charge does not amount to, or evidence, "*the making by an officer of the HMRC Board of a determination of a penalty*" within the meaning of section. The Tribunal has carefully considered the decision of the Court of Appeal in *Donaldson* [2016] EWCA Civ 761 but notes that *Donaldson* related to penalties levied under Schedule 55 to the Finance Act 2009 not section 100 of the TMA (as is the case here). The relevant provision in Schedule 55 provided that :

> "*Where the taxpayer is liable for a penalty under any paragraph of this Schedule* ***HMRC must—***
>
> ***(a)*** **assess the penalty,**
>
> *(b) notify P, and*

(c) state in the notice the period in respect of which the penalty is assessed".

[Emphasis added]

61. The Tribunal has also carefully considered the FTT decision in *Donaldson* in the FTT [2013] UKFTT 317 (TC)), where the FTT recorded the submissions made on behalf of HMRC thus:

"*28. In particular, it is HMRC's case that the requirement for 'HMRC' to 'decide' was met. It [HMRC] says this for a number of reasons.*

29. Decision by authorised officer not required: Firstly, it contrasts it with the requirement for any particular officer to make a decision. For instance, certain penalties can only be imposed by an officer of the Board authorised by the Board for the purpose. **The most obvious example is in s 100(1) TMA which provides: "….an officer of the Board authorised by the Board for the purposes of this section may make a determination imposing a penalty under any 30 provision of the Taxes Acts and setting it at such amount as, in his opinion, is correct or appropriate." Subsection (2) contains exceptions to this rule. As s 100C(1) makes clear, any penalty within the exception could only be imposed by an officer of the Board with the permission of this Tribunal.** So penalties under the Taxes Acts require a decision of an authorised officer.

30. We mention that this provision does not apply to Schedule 55 penalties but only because s 103ZA TMA specifically states this."

[Emphasis added].

62. The Tribunal respectfully agrees with this view and considers that determination by a real life officer, not a computer, is required.

63. It is true that the Court of Appeal decided in *Donaldson* that, in the case of penalties under Schedule 55 to the Finance Act 2009 ("**schedule 55**") a generic, high level decision by HMRC (in the context of Schedule 55 it is HMRC, not a HMRC officer that determines the penalty) coupled with a computer- based charging procedure complied with the legislation. The Tribunal recognises that decisions of the FTT have no precedential effect but respectfully agrees with the decision of Judge Popplewell in *Expion Silverstone v HMRC* [2018] UKFTT 460 (TC)

"The authorised officer [in section 100(1)] is a real officer. It is not a computer. Nor is it HMRC. In this respect HMRC's submissions recorded in the First-tier Tribunal Decision of Donaldson are instructive….

So it seems that HMRC themselves recognise, as per their submissions in Donaldson above, that a real life officer of the Board must make the determination."

64. The Tribunal therefore concludes that a real life officer of HMRC must assess penalties under section 100 of the TMA. As the Tribunal has found on the balance of probabilities that no real life HMRC officer has assessed the penalties in this case, the assessment falls to be vacated on this ground also.

Can the penalty assessment be vacated on the ground of reasonable excuse?

65. The Tribunal has indicated above that in its view:

(a) The Appellant was not liable to upload returns under the Additional Reporting Procedure, because she was not, during the relevant period a specified employment intermediary as defined in Regulation 84E that the claim for penalties

cannot be "rescued" by section 114 of the TMA, and therefore that the claim to penalties is defective; and

(b) HMRC failed to comply with section 100 of the TMA in levying the penalties.

66. Each of these matters on its own would require the penalty assessment to be vacated. For completeness, and because the Appellant obviously feels strongly about the matter, the Tribunal has considered the issue of "reasonable excuse" (within the meaning of section 118(2) of the TMA) and sets out its conclusions below.

67. The Tribunal first recalls the salient factual points and chronology relevant to "reasonable excuse":

Date	Event
26 January 2015	Incorporation of S&C Limited: appointment of accountant
9 February 2015	Amending regulations made
March 2015	Accountant gives birth to daughter
6 April 2015	Amending regulations come into force
5 August 2016	Latest date for uploading report required by the amending regulations. Regulation 84F(1) of the amending regulations [tax quarter from 6 April 2016 to 5 July 2016]
5 October 2016	Report uploaded

68. In view of suggestions which have been made by HMRC in correspondence and in the amended SoC, the Tribunal considers it helpful, first, to set out again the terms of the applicable statute, section 118(2) of the TMA, and secondly to contrast those terms with the terms of section 29(4) of the TMA, which was considered by the FTT in the two decisions referred to the Tribunal and included in the Bundle:

Section 118(2) of the TMA

69. "*For the purposes of [the TMA], a 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 [HMRC Board] or the Commissioners 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.*"

[Emphasis added]

70. There is no explanation in section 118 or elsewhere in the TMA or of the term "reasonable excuse".

71. Section 29(4) of the TMA ("discovery assessments", first condition for an assessment under section 29(1)) provides:

"The first condition is that the situation mentioned in [section 29(1) TMA, under-assessment of tax] is attributable to fraudulent or negligent conduct on the part of the taxpayer or a person acting on his behalf."

72. The Tribunal draws attention to the emphasis in section 29(4) on "*fraudulent or negligent conduct of a person…acting on [the taxpayer's] behalf*", which, on one reading, makes the taxpayer "vicariously liable" for fraudulent or negligent conduct of a person acting on his behalf. Section 118(2) contains no corresponding wording and the Tribunal therefore respectfully considers that it is wrong, where section 118(2) is in issue, to apply any concept of "vicarious liability" in this sense. (For the avoidance of doubt, the Tribunal emphasises that there is no suggestion in this case of any fraudulent conduct on the part of the Appellant or her accountant. However, the drafter of section 29(4) wrapped fraud and negligence together).

73. The Tribunal next refers to the decision of the Upper Tribunal in the case of *Perrin* [2018] UKUT 0156 (TCC) [14 5 2018] ("***Perrin***") where that Tribunal gave guidance, which is binding on this Tribunal, as follows:

> *"81. When considering a 'reasonable excuse' defence, therefore, in our view the FTT can usefully approach matters in the following way:*
>
> *(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).*
>
> *(2) Second, decide which of those facts are proven.*
>
> *(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"*
>
> *(4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.*
>
> *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.*

83. It is regrettably still the case that HMRC sometimes continue to argue that the law requires any reasonable excuse to be based on some 'unforeseeable or inescapable' event, echoing the dissenting remarks of Scott LJ in Commissioners for Customs and Excise v Steptoe [1992] STC 757. It is quite clear that the concept of "reasonable excuse" is far wider than those remarks implied might be the case. In an appropriate case where HMRC base their argument on this unsustainable position, the FTT may well consider it appropriate to exercise their jurisdiction to award costs against HMRC for unreasonable conduct of the appeal. Similar observations apply to the HMRC 'mantra' referred to at [109] of the 2014 Decision, to the effect that an "unexpected or unusual event" is required before there can be a reasonable excuse. The statutory phrase is 'reasonable excuse', and those are the words that are to be applied by HMRC and the FTT, interpreted as set out above; the addition or substitution of other words beyond those used in the statute can very easily obscure rather than clarify the value judgment as to whether or not a taxpayer has a reasonable excuse, and should be avoided."

74. The Tribunal also notes the guidance given by Judge Berner sitting in the FTT in the case of *Barrett* [2015] UK FTT 329 (TC)), paragraphs 154 and 155 and 164, and notes that Judge Berner had the benefit of argument from Counsel on each side. The Tribunal respectfully agrees with Judge Berner's comments, while acknowledging that those remarks are only persuasive authority for this Tribunal:

"154. 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. Whilst other cases in the First-tier Tribunal may give an indication of the approach that has been taken in the particular circumstances at issue, those cases cannot be regarded as providing any universal guidance.

155. Tribunals should, in particular, be cautious in making generalised statements concerning perceived categories of case, and equally circumspect about judging what is reasonable as a matter of the legal test by reference to perceived policy. Although the relevant statutory provisions may be subject to a purposive construction, that is not the same as the setting of parameters for the application of a reasonable excuse provision by reference to the tribunal's own perception of underlying policy. In the case of s 118(2) TMA, with which this case is concerned, and which contains no reference to reliance on third parties, it is not in my view possible or permissible to discern any underlying purpose or policy with regard to such reliance from the statutory language…

164. In my judgment, in the circumstances of this case, it was not unreasonable for Mr Barrett to have been unaware of the filing obligations in question, and by appointing an accountant in the way that he did Mr Barrett acted as a reasonable taxpayer, aware of his own limitations in tax and accounting matters, would have done. There was nothing unreasonable in the manner in which Mr Barrett conducted his relationship with Mr Aspros [Mr Barrett's accountant], or in the timely provision of relevant information from which Mr Aspros could reasonably have been expected to identify the relevant filing requirements for a business such as that of Mr Barrett. It was not unreasonable for such a taxpayer to have assumed that Mr Aspros was able to, and would, advise on any relevant tax obligation that was apparent from the information provided to him. Nor was it unreasonable for a taxpayer such as Mr Barrett, having received from Mr Aspros no indication that any filing obligation had been incurred in respect of his use of sub-contractors, not to have raised the question himself whether there might be a filing

obligation of which he was unaware, either with Mr Aspros, or HMRC, or indeed anyone else."

75. The burden of proof that there was an applicable reasonable excuse is borne by the Appellant and the standard of proof is the balance of probabilities.

76. In this instance the Appellant's case is a simple one

"When I started my company [presumably January 2015 when S&C Limited was incorporated but possibly earlier] *I hired a certified accountant to take care of my accounting and related HMRC reporting obligations".*

77. What went wrong is that, instead of reporting the introduction of the Additional Reporting Requirement to the Appellant, or complying with it on the taxpayer's behalf, the accountant did nothing vis a vis the Additional Reporting Requirement, presumably because the accountant had overlooked it. The Tribunal finds that it was a perfectly reasonable course of action for the Appellant to engage a certified accountant to take care of all of her HMRC compliance obligations including those arising after the accountant's appointment. The Appellant has theorised – there is no other evidence on the point - that the accountant "took her eye off the ball" because of health problems of the accountant's young daughter.

78. The basis of HMRC's case is set out in their Amended Statement of Case at para 25:

"if the Appellant relies on an accountant to prepare and file a tax return on his [sic] behalf then the Appellant will be responsible if errors in the tax return are due to negligence by an accountant acting on his [sic] behalf"

The Tribunal observes parenthetically that HMRC are not in this case complaining of errors in a tax return but on the absence of a tax return, but assumes that HMRC meant their comment to extend also to cases of failure to file a return when one is due.

79. The effect of delegation of reporting obligations to an accountant on a taxpayer's liability for penalties was considered by Judge Berner in *Barrett* and he gave guidance as follows

"164. In my judgment, in the circumstances of this case, it was not unreasonable for Mr Barrett to have been unaware of the filing obligations in question, and by appointing an accountant in the way that he did Mr Barrett acted as a reasonable taxpayer, aware of his own limitations in tax and accounting matters, would have done. There was nothing unreasonable in the manner in which Mr Barrett conducted his relationship with Mr Aspros,[the accountant] or in the timely provision of relevant information from which Mr Aspros could reasonably have been expected to identify the relevant filing requirements for a business such as that of Mr Barrett. It was not unreasonable for such a taxpayer to have assumed that Mr Aspros was able to, and would, advise on any relevant tax obligation that was apparent from the information provided to him. Nor was it unreasonable for a taxpayer such as Mr Barrett, having received from Mr Aspros no indication that any filing obligation had been incurred in respect of his use of sub-contractors, not to have raised the question himself whether there might be a filing obligation of which he was unaware, either with Mr Aspros, or HMRC, or indeed anyone else."

80. HMRC rely on the FTT decisions in *Smith v HMRC [2010 STC 00403]* and *Employee v HMRC [2008] SpC 673*. Neither of these cases is a precedent binding on the Tribunal but, even if they were, each is distinguishable from the present case, and should be distinguished from the present case, because each is a section 29(4) TMA case, and the wording of section 29(4) is materially different from that of section 118(2), as mentioned above, and section 29(4) (unlike section 118(2) of the TMA) expressly contemplates "vicarious liability" on the client

by way of an assessment out of time where an accountant, whose engagement had been reasonable, was negligent. The Tribunal finds that what has happened here was an honest oversight on the part of the accountant, which is, in principle, compatible with the Appellant having had a reasonable excuse because it was reasonable for the Appellant to rely on the accountant to comply with all the Appellant's HMRC obligations, preparing the necessary papers and submitting them to the Appellant for signature or uploading where necessary.

81. The Tribunal is however aware of statements being made by FTT judges, sometimes of a sweeping character, which cast doubt on whether delegation to an accountant is a reasonable excuse. The Tribunal emphasises in this connection Judge Berner's guidance with which it respectfully agrees. A number of these cases were reviewed in *Barrett* at [148] – [152]. The Tribunal notes that in *Rowland v Revenue and Customs Commissioners* (SPC00548) [2006] STC (SCD) 536, reliance on an accountant was held to be a reasonable excuse but that in *B&J Shopfitting Services v Revenue and Customs Commissioners* [2010] UKFTT 78 (TC), a case of a late partnership self-assessment return Judge Mosedale opined that:

> *"Reliance on a third party as a matter of policy will not normally be a reasonable excuse because a taxpayer should not be able to avoid his liabilities by passing them on to someone else."*

82. That statement was not necessary for the decision in the *B&J Shopfitting* case. This Tribunal respectfully declines to apply it to section 118(1) of the TMA.

83. The Tribunal notes in the correspondence in particular an email chain, the last message of which was from Ms Salazar to John Weaver of HMRC of 5 March 2017, certain echoes of an HMRC view that a reasonable excuse must be some circumstance which is both "*unforeseen and beyond the control of the taxpayer".* The Tribunal respectfully agrees with the comments of Judge Berner in *Barrett* (cited above) at [153] on this formulation :

> *"HMRC's own published guidance … is, as this tribunal has pointed out in a number of cases, notably in Electrical Installation Solutions Ltd v Revenue and Customs Commissioners [2013] UKFTT 419 (TC), wrongly places reliance on the dissenting judgment of Scott LJ in Steptoe v Customs and Excise Commissioners [1992] STC 757. It is inappropriate for HMRC to seek to rely on that formulation as representing the state of the law on reasonable excuse."*

84. The Upper Tribunal in *Perrin* was even more forthright about Steptoe as mentioned above.

85. The Tribunal will now set out the four elements of "reasonable excuse" propounded by the Upper Tribunal in Perrin, and apply them to the facts of Ms Salazar's case:

> *First what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).*

86. Ms Salazar asserts that she appointed an accountant and "*put all [her] faith into her accountant to inform her of such things*" [as the amending Regulations] – per a letter from Ms Salazar to HMRC sent November 2016,.

> *Second, [the FTT is to] decide which of those facts are proven.*

87. Ms Salazar's assertions above have not been challenged by HMRC and the Tribunal regards them as proven.

Thirdly, [the FTT is to] decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances" .

88. The Tribunal finds that, viewed objectively, the proven facts amounted to an objectively reasonable excuse for the default, i.e. that it was objectively reasonable for Ms Salazar not to do by 5 August 2016 what she omitted to do at that time. The Tribunal has also carefully considered whether, and if so when, prior to 5 October 2016, it ceased to be reasonable for Ms Salazar to rely fully on her accountant to inform her of any new regulations. Ms Salazar points out that if she had been aware of the reporting obligation, she would have complied with it (see her letter of November 2016. Ms Salazar has speculated (there is no evidence on the point) that the accountant "*took her eye off the ball*" following the birth of the accountant's child, and the child's health problems in March 2015 (see email from Ms Salazar of 21 February 2017. No doubt in an ideal world and with the benefit of hindsight, Ms Salazar would have obtained the services of another adviser at some time between March 2015 and 5 August 2016 when the return fell due. However, the Tribunal is concerned with what is reasonable, not what would ideally have happened. The Tribunal notes in this context that Ms Salazar's second ground of appeal contains her explanation for the delay between the birth of the accountant's child and 6 October 2016, (above and beyond her lack of awareness of the amending Regulations). Ms Salazar states her view that accountants should not be dismissed by their clients when they have a baby that is suffering poor health. Ms Salazar further comments that:

"the natural human reaction when you hear someone you work with has a baby, or more so a baby with poor health, is it be more patient and tolerant…me and all [the accountant's] clients firing her because of [the baby's health problems] would be incredibly inhumane and only add more stress."

89. The Tribunal does not accept HMRC's blanket assertion that "*ignorance of the law is no excuse*". The Tribunal considers the true position to be as explained by the Upper Tribunal in Perrin, viz:

"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." (emphasis added)*

90. In the judgment of this Tribunal it was objectively reasonable for Ms Salazar, in the circumstances of this case not to have been aware of the requirements of Regulation 84E and Regulation 84F between 5 August 2016 and 5 October 2016 .

91. The fourth issue identified in *Perrin* does not, on the Tribunal's finding, arise.

92. It follows, and the Tribunal finds, that Ms Salazar had a reasonable excuse for non-compliance with those requirements (within the meaning of section 118 of the TMA) between 5 August 2016 and 5 October 2016.

93. As noted above, the Tribunal considers that it was reasonable for the Appellant to rely on her accountant to attend to compliance matters on her behalf. In view of the Appellant's supposition that the health problems of the accountant's daughter (born in March 2015) caused the accountant to take her eve off the ball and overlook the need to comply with the additional

reporting requirement, can it be said that there was not, after all a reasonable excuse inasmuch as when the Appellant became aware of the child's health problems, she should have replaced the accountant well before the turn became due (August 2016) ? The Tribunal considers that, absent death or incapacitating illness of an accountant, it is reasonable to continue the appointment of an accountant. The Appellant's case is that she refrained from replacing the accountant prior to 5 August 2016 when the return was required partly for humanitarian reasons but also because by reason of the accountant's failure to perform her services, the Appellant (who has a business to run) was unaware of the requirement. On the latter point, HMRC must accept that if, as the Tribunal considers to be the case, delegation is reasonable, honest mistakes of the delegate cannot be laid at the client's (in this case the Appellant's) door. To conclude otherwise is to suggest that a taxpayer who pays an accountant for his tax affairs to be looked after must nevertheless closely supervise the accountant's performance to prevent mistakes, and if he does not, is liable to penalties. The Tribunal rejects any such view which it considers not to reflect the realities of business life in relation to tax compliance by small businesses, even if HMRC's assertion that "*ignorance of the law is no excuse*" can properly be applied in this case (which the Tribunal doubts).

Disposition

94. The Tribunal therefore decides that the appeal should be allowed, and the penalties wholly vacated, for the following alternative reasons:

(1) The penalty has been imposed on Angela Salazar, the appellant, not "S&C Limited" and Angela Salazar was not at the relevant time (6 April to 5 July 2016) an "employment intermediary" (as defined by Section 716B(2) of the Income Tax (Earnings and Pensions Act 2003, as amended in relation to S&C Limited's business and cannot therefore have been a "*specified employment intermediary*" as defined in Regulation 84E of the Income Tax (Pay as you Earn) Regulations 2003 (SI 2003 2682), as amended and so had no obligation to upload a report as HMRC claim.

(2) HMRC did not, in purporting to levy the penalty, comply with the procedural requirements of the TMA 1970, as amended.

(3) The Appellant's claim that she had a reasonable excuse within the meaning of section 118(2) of the Taxes Management Act 1970 (as amended).

95. 6. 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.

HEATHER GETHING
TRIBUNAL JUDGE
Release date: