THE CHARTERED INSTITUTE OF TAXATION

LOW INCOMES TAX REFORM GROUP

RESPONSE TO HMRC CONDOC 'MEETING THE OBLIGATIONS TO FILE RETURNS AND PAY TAX ON TIME: CONSULTATION RESPONSES AND REFINED MODELS'

Executive summary

1.1 We are pleased to respond to HMRC's consultative document *Meeting the obligations to file returns and pay tax on time: consultation responses and refined models*.

1.2 Much of the external research carried out by Ipsos Mori accords with our own experience of low-income tax debtors. We welcome the continued work on improving support for taxpayers, and recommend that progress should be monitored and findings published periodically.

1.3 In general, subject to the amounts and percentages of the penalties, we agree with much of what is said in this consultative paper, and are broadly content with the models proposed. Nevertheless, we recommend that the legislation should provide for total penalties to be capped where the taxpayer becomes liable to more than one penalty in respect of the same tax liability, otherwise the bill for penalties could become disproportionate where one 'offence' leads inexorably to another.

1.4 We welcome the proposal in para 4.5 to suspend late payment penalties when a time to pay arrangement is in force, and recommend that for the provision to be fully effective there should be a right of appeal against the refusal of suspension, and against the conditions imposed for suspension.

1.5 Otherwise, we are pleased to see there is to be a right of appeal against all penalties imposed by HMRC. However, we recommend that ability to pay should not be excluded from the scope of the special reduction, as provided for in the draft legislation. We would also be concerned if the proposed guidance were to be concentrated on the internet without paper equivalent as that would effectively disenfranchise the 17 million adults said to be 'digitally excluded', particularly those whose inability to access the internet is related to a disability or other special needs.

1.6 We think the guidance on reasonable excuse in Annex D reflects the subjective nature of the concept reasonably well. However, our comments pick out areas where the draft is perhaps more categorical than is appropriate

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in view of the case law, and where it conflicts with existing guidance in HMRC's Self Assessment Manual.

1.7 With regard to the models, subject to the amounts of penalties and penalty percentages that are yet to be announced, we are broadly content that they meet the design principles. However:

1.7.1 On the late filing model, we oppose the complete removal of capping without any protection for the low-income late filer. We would recommend capping be retained for people whose gross income is below a certain figure; for those in receipt of a tax return sent to them in error or inappropriately; and for paper filers who both file and pay all tax due by the 31 January Income Tax Self Assessment deadline.

1.7.2 We are content with the safeguards proposed in respect of daily penalties, provided the proposed warning notice adequately describes what the taxpayer must do to avoid daily penalties, and a reasonable period of notice is prescribed by the legislation. Also, any minimum sum must be as small an amount as is consistent with the means of taxpayers on the lowest incomes.

1.7.3 We repeat our recommendation in our response to the June 2008 consultative document that a time to file arrangement would be a desirable additional safeguard.

1.7.4 We were pleased to note from our discussions that people who through ignorance or fear tend to ignore official communications will not be subject to the higher tax-geared penalties for deliberate withholding of information, but will instead be offered support.

1.7.5 The modifications to the late filing penalty model to reflect frequent obligations seem reasonable, though we think that with monthly returns two slippages should be allowed before charging penalties. This would reflect the increased compliance burden, particularly for smaller businesses.

1.7.6 In general we are content with the late payment model, and are pleased that the immediate fixed sum penalty has been abandoned, though we question whether a tax-geared penalty within only one month of the filing date is appropriate. We oppose a minimum penalty as that could impose a wholly disproportionate burden on people with low tax bills.

1.7.7 We generally welcome the idea of extended P35 returns, on the basis that it is likely to be the least burdensome route that would materially assist HMRC in tightening up PAYE payments. We do, though, think that there needs to be a system that excludes from such obligations the 'accidental' employers such as people who use direct payments, or individual budgets, to 'employ' carers. We also believe that tolerances will be appropriate for small errors, for where payments have to be estimated, for where paper systems are used, or for quarterly payers who move above and below the quarterly payment thresholds.

Introduction

2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credit and associated welfare systems for the benefit of all those on low incomes.

2.2 The CIOT is a charity and the leading professional body in the UK concerned solely with taxation. The CIOT's primary purpose is to promote education and the study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient tax system for all affected by it – taxpayers, advisers and the authorities.

2.3 We welcome the opportunity to respond to this consultation, both in writing and in discussion. In composing this response we have tried to assess the proposals from the perspective of individual taxpayers on low or modest incomes. Therefore, as with our response to the June 2008 consultation, our answers and observations focus mainly on Income Tax Self Assessment (ITSA), and to a lesser extent on the PAYE obligations of small and very small businesses below the VAT threshold, including 'accidental employers'.

2.4 We deal below with the questions in the consultative document, and separately with the draft legislation (Annex 1) and the draft guidance on reasonable excuse in Annex D of the consultative document (Annex 2).

The consultation questions

Q1. *Do you agree with the findings of the internal and external research presented [in Chapter 2]? Is there any other analysis or evidence that you could share with HMRC regarding penalties or tax debts?*

3.1.1 We cannot say whether or not we agree with the research by Ipsos Mori when we do not have access to the data on which it was based. However, we were interested to note:

- the perception that tax debt was different from other debt, the one-way nature of the relationship with HMRC, and the difficulty experienced by some debtors in getting advice and guidance from HMRC when needed;
- the pre-eminence of cash flow problems as a cause of tax debt, and the positive reaction to time-to-pay arrangements, or payment by instalments;
- the fact that most debtors do not seek to avoid paying their tax or meeting their obligations, and that incentives and easier processes are more effective than interest, penalties and other deterrent measures.

3.1.2 All this accords with our own experience of low-income tax debtors and that of TaxHelp for Older People, as we set out in our response to the earlier consultative document on late filing and paying.

3.1.3 In para 4.2 of the consultative document, it is stated that 'HMRC is continuing to work on improving support'. This is welcome, as better support will improve compliance and obviate the need for penalties after the event. We would like to understand how HMRC intends to improve support, so that we

can evaluate how successful the chosen methods will be; we therefore recommend that progress should be monitored and findings published periodically.

Q2 *Is the proposal outlined [in 4.5] that penalties should be suspended where a taxpayer has entered into a time to pay arrangement with HMRC an appropriate way of supporting taxpayers who have difficulties in meeting their payment obligations?*

3.2.1 We very much welcome the proposal in 4.5 that if someone comes forward to HMRC at any time seeking time to pay and an arrangement is agreed, all late payment penalties from that point onwards for that tax debt would be suspended, and subsequently cancelled unless the taxpayer defaults on the arrangement. It mirrors the current practice (albeit not always followed by HMRC) whereby surcharges are cancelled if a time to pay agreement is adhered to.

3.2.2 We have two comments on the current proposal.

3.2.3 First, simply defaulting on a time to pay arrangement is one thing. But if the taxpayer, having kept to their time to pay arrangement initially, experiences financial difficulty and seeks a variation, we would not expect that alone to re-activate any suspended penalties (unless of course the taxpayer subsequently defaulted on the rescheduled arrangement).

3.2.4 Secondly, we understood from our discussions that refusal of suspension, or the conditions imposed, would be subject to a right of appeal as with suspended penalties for careless inaccuracy, but a right of appeal does not appear to be provided for within the legislation.

3.2.5 Paragraph 4.4 refers to the consultation on proposed new payment instalment schemes to help taxpayers budget for tax liabilities. We are not yet satisfied that the payment instalment schemes, as described in the consultative document *Payments, repayments and debt: the next stage,* are sufficiently flexible to assist taxpayers with cash-flow problems in a period of economic uncertainty. We explain why in our response to that document. But subject to that, we welcome the principle that taxpayers should be able to pay their tax by instalments.

Q3: *Are the safeguards proposed appropriate? Is the draft guidance appropriate? What modifications, if any, are required?*

3.3.1 *Safeguards*. We are mostly content with the safeguards proposed, the most important being a right of appeal against all penalties imposed by HMRC. To that we would add a right of appeal against a refusal to suspend penalties under para 21 of Schedule 2, or against the conditions imposed for suspension (see above).

3.3.2 We welcome the steps mentioned in paras 4.9 and 4.10 to improve those services within HMRC that are not Disability Discrimination Act compliant, and to increase the awareness of HMRC staff about the needs of disabled customers through a training package. We are aware of these developments and look forward to seeing just what they will entail in terms of policy towards customers with disabilities or special needs who file or pay late, particularly where the reason for late filing or payment is related to their disability or special need.

3.3.3 We welcome the special reduction provision as set out in Schedule 1, para 20 of the draft legislation, except to the extent that 'ability to pay' is excluded from being a special circumstance warranting a discount on the penalty. We comment further on this in dealing with para 20 in Annex 1.

3.3.4 *Guidance*. In para 4.11, while we welcome the steps taken to improve guidance, we would be concerned if it were to be concentrated online without paper equivalents. Given that some 17 million adults in the UK are said to be 'digitally excluded'[1], internet-only guidance would disenfranchise a very considerable proportion of the taxpaying population. Guidance is little use if it is inaccessible to those who need it.

3.3.5 That said, the importance of clear and timely communications to taxpayers about the consequences of their actions (or inactions) cannot be overstated. Without clear, accessible guidance, ignorance or misunderstanding can cause taxpayers (especially the unrepresented) to fall into an extensive penalty spiral. While taxpayers must take their responsibilities seriously (and most do), there is at least an equal obligation on HMRC to make sure that those responsibilities are properly explained and communicated at the right time.

3.3.6 We have reviewed the draft guidance on reasonable excuse in Annex D, and our comments are set out in Annex 2 to this response. In general, we wholly concur with the statement in para 4.2 that:

> 'what constitutes a reasonable excuse for one taxpayer may be different to another. HMRC officers must be free to consider each case on its merits.'

The case law on reasonable excuse shows that there are no hard and fast rules, and any generalisations about the scope of reasonable excuse (even if contained in legislation) are subject to qualification in particular circumstances. We think the guidance in Annex D puts this across reasonably well, although our comments pick out areas where the draft is perhaps more categorical than is appropriate in view of the case law, and where it conflicts with existing guidance in the Self Assessment Manual. It would be useful to supplement the example at para 27 with others taken from decided cases.

Q4. *Late filing: does the model presented for late filing meet the design principles – fairness, effectiveness, and influences behaviour*?

3.4.1 In general we are content with the proposed structure, and welcome the decision to remove the second fixed penalty for late filing. Nevertheless there are particular areas where the design principles are not met, or where we seek clarification of the safeguards proposed.

3.4.2 One of those is *capping* (para 5.4, 5.5). We note that the proposed fixed sum penalty does not allow for capping where the tax is paid by the due date. In our view, even if no longer of general application, capping in some form should be retained in at least the following circumstances:

[1] Ref. Delivering Digital Inclusion: An Action Plan for Consultation (Department of Communities and Local Government, October 2008).

- as noted during our discussions, as a general protection for taxpayers on low incomes, capping could apply where the taxpayer's gross income is under a certain amount – for example £20,000 per annum;
- where a self-assessment return is issued in error or inappropriately – for example, to a foster carer whose foster care receipts are within the tax-free limit, and who has no other taxable income;
- where a paper filer misses the 31 October deadline, but both files on paper and pays the tax due by 31 January.

3.4.3 We recognise the need to keep the obligations to file and to pay separate. Nevertheless, if capping were removed altogether, injustice could result in particular situations. For example, the foster carer referred to above could be charged a fixed penalty for not filing a return issued in error, when there was no tax to pay. Or the paper filer who both pays and files by 31 January fulfils both sets of obligations in that by the due date for payment of tax, HMRC has both the tax due and the return to support it. In neither case does the Exchequer lose a penny.

3.4.4 Another possibility mentioned in our discussions was to extend the scope of the special reduction (Schedule 1, para 20 of the draft legislation) which would give HMRC officers a discretion to mitigate penalties in appropriate circumstances. On reflection, unless the scope of the discretion is very clearly defined and well policed within HMRC so as to avoid inconsistent application, we prefer a legislative solution. That is not to say that the special reduction is not a useful vehicle for mitigating penalties where to do so would be fair and just; but legislation is a better route for ensuring that all taxpayers have access to the same treatment in similar circumstances.

3.4.5 *Daily penalties*. We note that the need for pre-authorisation of daily penalties will be removed, but comprehensive appeal rights against their imposition may be a more effective safeguard. However, it is essential that any taxpayer faced with daily penalties is given clear warning and told in good time what to do to avoid them; we agreed in discussion that one month's warning would suffice, and in our view that safeguard should be written into the legislation. At present the draft legislation only provides that the warning should be given, not how long the period of notice should be.

3.4.6 If the amount of a daily penalty is to be fixed by statute, it must be as small an amount as is consistent with the means of taxpayers on the lowest incomes.

3.4.7 *Time to file arrangements*. In our response to the June 2008 consultative document, we advocated offering a 'time to file' agreement to people who were struggling to file by the due date (see para 4.4.7 of that response[2]). We remain of the view that such a facility could be a useful mechanism where taxpayers are not yet in full possession of all the facts about their income, gains or liability; that it could reduce the administrative burden in imposing penalties and handling appeals; and that it could serve to develop a more co-operative relationship between HMRC and taxpayer.

3.4.8 *Deliberate failure (para 5.12)*. The points we make on para 6(2) of Schedule 1 of the draft legislation (see Annex 1) are relevant here.

[2] See http://www.litrg.org.uk/reports/submissions.cfm?id=591.

Q5. *Are the modifications to the late filing penalty model, to reflect the frequency of the obligations, appropriate*?

3.5.1 This model seems reasonable, subject to the amounts of the penalties and percentages. There is a case, though, for allowing for more slippage on monthly returns than quarterly to recognise the extra pressures of compliance, particularly for small businesses. We think that two slippages in a 12 month period for a small business would be fair, the third slippage triggering penalties.

Q6. *Does the model presented for late payment penalties meet the design principles – fairness, effectiveness and influences behaviour*?

3.6.1 In general we are unconvinced of any need for penalties for late payment in addition to interest, though we can accept the need for modest tax-geared penalties for deliberate very late payment. We welcome the decision to abandon the idea of an immediate fixed penalty for late payment. In the context of the model, subject to the amount of the percentage, we are content that tax-geared penalties should be imposed for delayed payment after 7 and 12 months, though the one-month penalty does seem unnecessarily close to the due date if the intention is to deter the determined late payer.

3.6.2 There is one respect, however, in which the principle of fairness is likely to be compromised. We do not see the need for a minimum late payment penalty (para 5.34), and are concerned that it could impact harshly and unjustly on taxpayers on low incomes. For example, if someone's tax bill is £50, and the minimum penalty for late payment is £100, that represents a tax-geared penalty of 200% when even deliberate and concealed fraud merits only 100%. That strikes us as imposing a disproportionate burden of penalties on those with low incomes and small tax bills as compared with those who have large amounts of tax outstanding. It can also result in a heavier penalty being imposed on the disorganised or those with cash flow problems than on the deliberately fraudulent, which goes against the spirit of the rest of this consultation.

3.6.3 We are also very concerned with the way that the penalty percentage at 7 and 12 months is framed, ie in terms of the tax due. The implication seems to be that this is the 'gross' amount on the tax return. That, for ITSA, would imply no allowance for payments on account already made. That, in our view, cannot be justified.

3.6.4 Where extra tax becomes due as a result of later amendment (particularly in inheritance tax cases), we were assured in discussions that where the taxpayer had their best shot at an initial return but needed to amend it later, HMRC would not seek retrospective penalties back to the original due date.

Q7. *Are the modifications to the late payment penalty model, to reflect the frequency of the obligations, appropriate*?

3.7.1 The framework for late payment of quarterly obligations seems reasonable, in that one late payment is allowed without penalty. Whether the overall framework is fair will much depend on what the penalty percentages will be.

Q8. *Is the overall package of penalties suggested for late filing and late payment likely to be effective, fair and to influence behaviour*?

3.8.1 In general, subject to the points we make in this response and in the annexes, we agree with much of what is said in this consultative paper, and are broadly content with the models proposed.

3.8.2 *Interaction of penalties*. Nevertheless, with so many different regimes now in place, each prescribing penalties for different types of failure, there are bound to be cases where one failure leads inexorably to another, or others, and it seems disproportionate that where there is only one 'root' failure the taxpayer should be subject to the rigours of two or more penalty regimes. An example might be where ignorance (whether culpable or not) that there is a liability to tax leads to a failure to file a return, which in its turn leads to failure to pay the tax due. Without some limitation on the total penalties that can be charged in relation to what is in substance the same offence, the size of the bill can easily become disproportionate. We suggest that the legislation should provide for total penalties to be capped where the taxpayer becomes liable to more than one penalty in respect of the same tax liability (see FA 2008, Sch 41 for a precedent).

3.8.3 *Will HMRC's systems cope*? Another drawback of having so many different penalty regimes is the strain that it is likely to place on HMRC's not very robust systems.

3.8.4 *Amounts of penalties*. Much of what we say in answer to questions 5, 6 and 7 also has to be dependent on the size of the proposed penalties. The occasions on which a penalty can arise are numerous, so we see no need for the penalties themselves to be large; the proposed regime is already tougher than the existing rules for ITSA. There is a balance to be struck between imposing a penalty sufficient to be an effective deterrent, and one that is so large in proportion with the taxpayer's means that the chances of HMRC ever recovering it are small or even negligible. We would not expect to see any larger amounts for fixed penalties than at present, or larger percentages for tax-geared penalties than are currently applicable to surcharges, and in the case of daily penalties we would hope to see a very much smaller amount, particularly if there is to be a statutory minimum.

Q9. *Will the proposal for penalties for late payment of in-year PAYE meet the design principles: be fair, effective and influence behaviour*?

3.9.1 We have seen the CIOT's draft response which generally supports the idea of extended P35 returns as described here, and the penalty model shown at para 6.9. We are content to endorse the CIOT's views though would make some further points in a low income context.

3.9.2 Fluctuations in an employer's monthly figures would not necessarily be indicative of manipulation or error. We trust, therefore, that HMRC will not simply impose a penalty and put the onus on the employer to prove that the returns are accurate. We would expect HMRC to investigate carefully and only impose a penalty when satisfied that manipulation or error had taken place.

3.9.3 We noted from our discussions that although the consultative document refers to 'late paid' PAYE, HMRC will also look at underpayments – and overpayments – when reviewing the 12 monthly analysis against payments made.

3.9.4 We also noted that work is continuing on 'accidental' employers such as people who use direct payments, or individual budgets, to 'employ' carers, and we understood that a consultative document with draft legislation would be issued in due course. Needless to say, we remain willing to assist in any way possible in developing proposals that will ease the burden for this group of 'employers', and help to further the Government's broader policy aims on Independent Living.

3.9.5 Finally, we look forward to further proposals on tolerances to be operated for small errors, for where payments have to be estimated, and for where paper systems are used. We also understand more work is being done on quarterly payers who move above and below the quarterly payment thresholds.

Q10. *Do you have any information or evidence that you can provide about the likely administrative burden of providing an aggregate monthly breakdown at the end of the year*?

3.10.1 We have no qualitative evidence, but our view is that comparatively little extra administrative effort would be required, apart from those who are eligible to pay PAYE and NIC quarterly. It would help greatly if any free commercial software were to include a monthly calculation and we have asked providers to do so.

LITRG
10 February 2009

ANNEX 1

POINTS ON THE DRAFT LEGISLATION

As a general observation, where the penalties (monetary and percentages) are coded out by letters, we would expect the actual amounts to appear in the primary legislation rather than being incorporated by reference from secondary legislation.

Schedule 1

Para 4(3). We agreed in discussions that in most cases HMRC would give a month's warning before imposing daily penalties. We would like para (a) to specify the exceptional cases in which notice would be served after penalties started to accrue (perhaps by reference to the table in para 1) and para (b) to be amended so as to provide for a gap of one month between service of the notice and commencement of the daily penalty.

Para 6(2): deliberate withholding of information. During our discussions we raised our concern about people who through ignorance or fear tend to ignore official communications, putting them behind the proverbial clock on the mantelpiece. Such people do not intend to gain an unfair advantage, or to deprive or cheat the Exchequer. Although ignoring, or hiding away, a request to complete and file a return is strictly speaking a 'deliberate' act, you reassured us that because it did not constitute 'deliberate withholding of information' within the meaning of this paragraph, it would not attract the 100% or 70% tax-geared penalty. We are concerned that people in this situation should not be penalised, but rather should be helped and supported as envisaged by para 4.2 of the consultative document.

Para 20. We do not think it wise for HMRC to fetter its power to reduce a penalty by ruling out any reduction on the grounds of ability to pay (para 20(2)(a)). An inability to pay a penalty might be a very good reason for reducing it to a level which the taxpayer can afford; after all, for a person to pay a lower penalty and remain solvent is preferable to their being bankrupted for the sake of a higher penalty which HMRC will probably not recover in full. At the very least, the ability to pay ought to be a factor which any tribunal may take into account when assessing the fairness of a penalty imposed by HMRC, and para 24(3) and (4) may need to be re-drafted accordingly.

Para 28. Where a taxpayer is unaware that he/she has a liability, and therefore fails either to file a return or to pay the tax due on time, it may be unduly harsh to impose two sets of penalties for what is, in essence, one default. (Indeed the taxpayer may not even be at fault unless his/her ignorance is culpable.) We would like to see a provision excluding double jeopardy in such cases.

Schedule 2

Para 21. We would like to see provision for (a) a time to pay agreement to be re-negotiated without the suspended penalties being activated, provided the taxpayer keeps to the terms of the renegotiated agreement; and (b) a right of appeal against refusal of suspension, or against the conditions of suspension, matching FA 2007, Sch 24, para 15(3), (4).

Also, we are not satisfied that the drafting of para 21 provides for the suspended penalty to be cancelled if P fully complies with the terms of the agreement and ultimately pays all tax due.

Para 28. See our comment on para 28 of Schedule 1.

ANNEX 2

COMMENTS ON REASONABLE EXCUSE DRAFT GUIDANCE IN ANNEX D OF THE CONSULTATIVE DOCUMENT

Para 5. This will include ascertaining the taxpayer's individual circumstances and capacity, including his or her ability to deal with tax and financial affairs, numeracy, literacy, any language barrier, disability, etc. In *The Clean Car Co Ltd* [1991] BVC 568, the tribunal said that there should be taken into account 'the situation that the taxpayer found himself in at the relevant time . . . [the taxpayer's] age and experience, his health, or the incidence of some particular difficulty or misfortune . . .'

Para 7. 'Unforeseen' is preferable to 'unforeseeable'. In the example of Davina (para 26ff), the collapse of the bank was unforeseen though probably not unforeseeable given the current economic situation.

Para 8. To these examples should be added loss of records in the circumstances envisaged by the Self Assessment Manual SAM10090:

> 'You should normally agree as a reasonable excuse loss of records through fire, flood or theft, although you should be satisfied that the information for

completion of the return could not be replaced in time for the taxpayer to complete the return by the due date.'

Para 9. This provides that the death of a close relative or domestic partner *just* before the time the person should have filed the return or paid the tax is normally a reasonable excuse. It is less favourable than SAM10090, which provides that the death of a close relative or domestic partner *shortly* before the filing date should be treated as a reasonable excuse.

Para 10. If an item is lost in the post for whatever reason, that is an event beyond the control of the taxpayer. We do not accept that loss in the post should be accepted as a reasonable excuse only if the loss is due to fire, flood, industrial action, or other specific reasons.

Para 11. This refers to *sudden serious* illness, whereas SAM10090 refers merely to *serious* illness. We do not agree with imposing an additional requirement that the illness be sudden. SAM10090 also requires an illness to be so serious that it prevents the taxpayer from controlling his business affairs immediately before the deadline; it does not require the illness to have happened, or deteriorated, just before the deadline.

Para 14. Case law also admits the possibility of reasonable excuse where, for example, an appellant is late filing an appeal because they were not aware and could not with reasonable diligence have become aware that there were grounds for an appeal; or where delays are caused by HMRC (*Petition of IR Commrs for judicial review of a decision of the General Commissioners of Income Tax* [2005] Scot CSOH 135).

Para 15. The circumstances representing a reasonable excuse might not just be a single event, but could be a series of events or misfortunes (*Akarimsons Ltd v Chapman* (HMIT) [1997] Sp C 116).

Para 19. This paragraph lists various situations which 'HMRC will not normally accept as a reasonable excuse'. But reference must be made to case law for when such situations have been accepted as a reasonable excuse.

For example, in *Zenith Holdings Ltd* [1991] BVC 1378, the appellant ran a travel agency and came under severe *pressure of work* following the insolvency of another travel agent with a similar name. The tribunal allowed the appeal, holding that the misdeclaration was directly attributable to the unforeseen pressures on the appellant's staff.

Lack of information might be a reasonable excuse if the appellant is relying on a third party, such as a bank, to provide it (*Thorne v General Commissioners for Sevenoaks*; *R v General Commissioners for Sevenoaks, ex parte Thorne* [1989] BTC 243). We can envisage that lack of guidance from HMRC, or lack of accessible guidance (e.g. material published on HMRC's website is not available in hard copy, and the appellant is one of the 17 million digitally excluded adults in the UK), or relying on incorrect guidance, might also be a reasonable excuse.

What constitutes *'basic' law* as opposed to complex law is a matter of debate, the outcome of which may well depend on the capabilities of the individual taxpayer. A reasonable excuse appeal may well succeed where a tribunal has a different view from HMRC about the relative ease or complexity of the law involved – see *KCT Holdings Ltd* [2005] BVC 4015; *Mayariya t/a Oaktree Lane (Selly Oak) Post Office &*

Stores [2005] BVC 4,083. In addition, if the law changes and the taxpayer has not managed to keep abreast of the change, that might be a reasonable excuse in some circumstances.

Finding the form *difficult to complete* might well be a reasonable excuse for someone who is disadvantaged through disability, language difficulty and so forth. It is not enough for HMRC to say blithely that they should have sought help – where would they find such help? They might not be able to afford the fees of professional advisers; the nearest HMRC enquiry centre may be out of reach; getting through to HMRC by phone is not always easy; or they might be among the 17 million digitally excluded adults.

Para 20. *Shortage of funds* will normally not constitute a reasonable excuse, although a tribunal is entitled to look behind the fact of a shortage of funds to the underlying cause of the inability to pay, which might be beyond the taxpayer's control (*TE Davey Photo Service Ltd v Customs & Excise Commissioners* [1997] BTC 5322). Another situation in which a shortage of funds was held to be a reasonable excuse was the late repayment by a tax authority of money owing to the appellant who was relying on the repayment pay the VAT due (*Sellers Legal Services Ltd* [2005] BVC 4,086).

As for *reliance on another person*, the tribunal recognised in *Profile Security Services (South) Ltd & Anor v C & E Commrs* [1996] BTC 5,299 that the dishonest conduct of another person might constitute a reasonable excuse.