



**TC05737**

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**Appeal number: TC/2013/00446**

*Income Tax - Individual Tax Return - Late Payment Penalty - Late Filing  
Penalty - Daily Penalties - Reasonable Excuse - No- Appeal dismissed*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

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**ALEKSANDAR KRUNIC**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JENNIFER A TRIGGER**

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25 **The Tribunal determined the appeal on 21 March 2017 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 (with enclosures) dated 8 January 2013 and HMRC's Statement of Case  
(with enclosures) acknowledged by the Tribunal on 30 January 2017.**

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## Decision

### Introduction

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1. This was an appeal against a Late Payment Penalty (the "Penalty") imposed under Paragraph 3(2) of Schedule 56 Finance Act ( the "FA") 2009, a Late Filing Penalty (the "Filing Penalty") imposed under Paragraph 3 of Schedule 55 FA 2009 and Daily Penalties (the "Penalties") imposed under Paragraph 4 of Schedule 55 FA 2009 for the late payment of tax due and the late filing of an Individual Tax Return and the accrual of Daily Penalties for the year ending 5 April 2011.

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2. The First-tier Tribunal directed that the appeal should be stood over until the decision of the Court of Appeal in the case of *Donaldson v Commissioners for Her Majesty's Revenue and Customs* [ 2016 ] EWCA Civ. 761 ( the "Donaldson case") was finalised. Thereafter, the Supreme Court refused to permit any further appeal in the Donaldson case and accordingly, the Appellant's appeal was listed for determination.

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3. On 21 March 2017 the Tribunal decided that the appeal was unsuccessful.

### Background Facts

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4. For the year ending 5 April 2011 Mr Aleksandar Kronic (the "Appellant") was required to file a return either electronically by 31 January 2012 or non-electronically by 31 October 2011. The Appellant chose to file electronically. The return was received by HMRC on 4 May 2012 and processed the same day.

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5. The Appellant's tax liability for the tax year was £35,747.00 which was due to be paid on or before 31 January 2012. As the Appellant chose to calculate his tax liability he would have known how much must be paid to HMRC and when that payment must be made.

6. Five months after the penalty date, of 30 June 2012, £10,707.00 of the tax liability remained unpaid. The tax liability was paid in full on 16 October 2012.

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7. HMRC issued a notice of penalty assessment on or around 15 May 2012 in the amount of £1,787.00.

8. The Appellant claimed there a reasonable excuse for the late payment of the tax due.

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9. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 14 February 2012 in the amount of £100.00, the Filing Penalty.

10. As the return had still not been received by HMRC three months after the penalty date, HMTC issued a notice of daily penalty assessment on or around 17 July

2012 in the sum of £40.00, the Penalties, calculated at the daily rate of £10.00 for 4 days.

11. The Appellant appealed against both the Penalty, the Filing Penalty and the Penalties to HMRC. He claimed a reasonable excuse also for the Filing Penalty and the Penalties as well as for the Penalty. HMRC rejected the appeal by letter dated 6 September 2012 but, in the same letter, offered a review.

12. The Appellant requested a review which was carried out by HMRC and notified to the Appellant by letter dated 3 January 2013. The conclusion of the review was that the decision of HMRC to impose the Penalty, the Filing Penalty and the Penalties was confirmed.

13. By Notice of Appeal dated 12 January 2013 the Appellant appealed the Penalty, the Filing Penalty and the Penalties to HM Courts & Tribunals Service. The Appellant accepted that the return had been filed late but claimed that there was a reasonable excuse.

#### 15 Findings of Fact.

14. That the Appellant had filed the return late and paid the tax due late.

15. That HMRC had correctly calculated the Penalty, the Filing Penalty and the Penalties.

16. That the Appellant had failed to establish a reasonable excuse.

17. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties.

18. That HMRC had given notice required under Paragraph 4 (1) (c) of Schedule 55 FA 2009 specifying the date from which the Penalties were payable.

19. That HMRC had failed to specify the period in respect of which the Penalties were assessed in the notice of assessment as required under Paragraph 18 of Schedule 55 FA 2009. Despite that omission of the correct period, for which the Penalties had been assessed in the notice of assessment, the validity on the notice was not affected.

20. That the Penalty the Filing Penalty and the Penalties were not criminal in nature for the purpose of Article 6 of the European Convention on Human Rights (the “ECHR.”)

21. That the Penalty, the Filing Penalty and the Penalties were not disproportionate and the penalty regime was proportionate in its aim.

22. That there were no special circumstance which would support a Special Reduction under Paragraph 16 of Schedule 55 FA 2009.

#### 35 The Legislation

23. Taxes Management Act 1970 section 8.
24. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22 and 23.
25. Schedule 56 FA 2009 Paragraph 3(2).

#### Reasons for the Decision

- 5 26. The return was filed electronically on 4 May 2012 when the correct date for electronic submission was 31 January 2012.
- 10 27. As the return was late the Filing Penalty was calculated under Paragraph 3 of Schedule 55 FA 2009 which specified the amount as £100.00. The Penalties were calculated under Paragraph 4 of Schedule 55 FA 2009 at £10.00 per day. The return was filed 4 days late.
- 15 28. As the tax was unpaid after the expiry of 30 days from the due date, 31 January 2012, the sum of £1,787.00, the Penalty, was due from the Appellant. The Penalty was calculated under Paragraph 3(2) of Schedule 56 FA 2009 at 5% of the unpaid tax.
- 20 29. The Appellant claimed a reasonable excuse. His employer lost his P 45 when he changed employment in March 2010. This fact meant that his tax coding was incorrect and that he was taxed at a lower rate than he should have been for a period of 3 months. An accountant was engaged. Difficulties were encountered in obtaining documents from the Appellants former employer which caused a delay in filing the return and paying the tax due.
- 25 30. The Appellant had filed the return electronically. He filed the return on 4 May 2012. He would have known on 4 May 2012 the amount of tax due. The tax was not paid in full until 16 October 2012. The Appellant must have chosen to delay the payment for reasons not apparent to the Tribunal but no reasonable excuse had been established, in the opinion of the Tribunal.
- 30 31. If the delay in paying the tax due was caused by an insufficiency of funds that could not constitute a reasonable excuse.
- 35 32. A failure to have all the documents to complete a self - assessment return is not unprecedented. HMRC issue PAYE codes to employers to tell them how much to take off the tax payers income. The Appellant should have checked the PAYE code. He could have contacted HMRC if he thought that the PAYE code was incorrect.
- 35 33. The Appellant could have given his new employer the Appellant's P45 part 1A, which contained the correct code number so that the correct deduction could have been made. The P45 part A1 contained the pay and tax details of his previous employer, the Appellant could have used the information to submit an estimated return or file a provisional return.
- 35 34. The Notice to File a self -assessment for 2010-2011 issued to the Appellant on 6 April 2011 contained the due dates for filing online or in paper format. The penalties

were explained and the penalty regime. There was a flyer also included in the Notice to File sent to all tax payers including the Appellant to explain the change to the penalty regime. Reminders were issued to tax payers in December 2011 warning about the penalties for failure to file by the due or pay the tax due on time.

5 34. The Tribunal was bound to follow the decision in the Donaldson case in respect of the decision of HMRC to impose the Penalties and the giving of notice in respect of the latter and similarly relied on the Donaldson case on the issue of HMRC's omission to specify the relevant period.

10 35. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalty, the Filing Penalty and the Penalties were simply a means of securing the production of timely returns and the payment of tax due so Article 6 of the ECHR did not apply.

15 36. The Penalty, the Filing Penalty and the Penalties were neither harsh nor plainly unfair. The Tribunal relied on *International Roth GmbH v SSHD [2002] EWCA Civ. 158* in reaching this decision.

20 37. There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction. The Appellant had merely omitted to pay the tax due on time despite the fact that he knew how much tax was due. He had sought to rely on an accountant to put his tax affairs in order but did not appear to exercise any control over that accountant to ensure that his tax return was filed on time. Nor did the Appellant take any steps to lessen the effect of the loss of the P45 by using the information in the P45 part 1A or seeking advice from HMRC.

25 31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1927.00.

30 32 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.

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**JENNIFER A TRIGGER  
TRIBUNAL JUDGE**

**RELEASE DATE: 29 MARCH 2017**

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