



TC05741

Appeal number: TC/2013/01460

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*Income Tax - Individual Tax Return - Late filing Daily Penalties -
Reasonable Excuse - No- Appeal dismissed*

10 **FIRST-TIER TRIBUNAL
TAX CHAMBER**

JASON HAGUE

Appellant

- and -

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

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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 22 February 2013 and HMRC's Statement of
Case (with enclosures) acknowledged by the Tribunal on 31 January 2017.**

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Decision

5 Introduction

1. This is an appeal against Late Filing Daily Penalties (the "Penalties") imposed under Paragraph 4 of Schedule 55 Finance Act (the "FA") 2009 and a 6 month Late Filing Penalty (the "6 month Penalty") imposed under Paragraph 5 of Schedule 55
10 FA 2009 following the late filing of an Individual Tax Return for the year ending 5 April 2011.

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")
15 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.

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

Background Facts

20 4. For the year ending 5 April 2011 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 October 2012 and processed on 5 October 2012.

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

6. As the return had still not been received by HMRC three months after the penalty date, HMRC issued a notice of daily penalty assessment on or around 7 August 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days. A further 6 months elapsed after the penalty date. HMRC then
30 issued a notice on or around 7 August 2012 in the sum of £300.00, the 6 month Penalty.

7. The Appellant's agent, JLL Accountants Ltd, (the "Agent") appealed against both the Penalties and the 6 month Penalty to HMRC on 19 August 2012. This appeal was rejected by HMRC by letter dated 22 November 2012 but, in the same letter,
35 HMRC offered a review.

8. The Agent requested a review which was carried out by HMRC and notified to the Appellant and the Agent by letter dated 25 January 2013. The conclusion of the review was that the decision of HMRC to impose the Penalties and the 6 month
Penalty was confirmed.

9. By Notice of Appeal dated 22 February 2013 the Agent appealed the Penalties and the 6 month Penalty to HM Courts & Tribunals Service. The Appellant accepted that the return had been filed late but claimed that there was a reasonable excuse for the accrual of the Penalties and the 6 month Penalty

5 Findings of Fact.

10. That the Appellant had filed the return late.

11. That HMRC had correctly calculated the Penalties and the 6 month Penalty.

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

10 13. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties and the 6 month Penalty.

14. That HMRC had given notice required under Paragraph 4 (1) (c) of Schedule 55 FA 2009 specifying the date from which the Penalties and the 6 month Penalty were payable.

15 15. That HMRC had failed to specify the period in respect of which the Penalties and the 6 month Penalty were assessed in the notice of assessment as required under Paragraph 18 of Schedule 55 FA 2009. Despite the omission of the correct period, for which the Penalties and the 6 month Penalty had been assessed in the notice of assessment, the validity on the notice was not affected.

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

17. That the Penalties and the 6 month Penalty were not disproportionate and the penalty regime was proportionate in its aim.

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

The Legislation

19. Taxes Management Act 1970 section 8.

20. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22 and 23.

Reasons for the Decision

30 21. The return was filed electronically on 4 October 2012 when the correct date for electronic submission was 31 January 2012.

22. As the return was late the Penalty was calculated under Paragraph 3 of Schedule 55 FA 2009 which specified the amount as £100.00 which was not disputed. The Penalties were calculated under Paragraph 4 of Schedule 55 FA 2009 at £10.00 per

day. The return was filed 90 days late. The 6 month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00.

23. The Appellant claimed as a reasonable excuse that he had never been told by HMRC that the Penalties and the 6 month Penalty would be levied because he was late in filing the return for the tax year ending 5 April 2011.

24. There was no evidence that the return had not been delivered to the Appellant. The address held by HMRC for the Appellant for the period 23 September 2010 to 1 March 2012 was 6 Moss Lane. At the date of issue to the Appellant of the return, namely, 6 April 2011, the Appellant was resident at that address. The return was not subsequently returned to HMRC.

25. The return for 20010-2011 contained the due date for filing and explained that penalties would be charged if the return was filed late. A flyer was contained with the return which explained the changes to the penalty regime. There was information available to the Appellant on HMRC's web site to which he could refer.

26. On 14 November 2011 the Appellant rang HMRC to request duplicate tax returns for tax years 2009-2010 and 2010-2011. The returns were issued on 14 November 2011. There was no reason to suggest that the returns were not received by the Appellant.

27. The filing dates would be known to the Appellant on receipt of these tax returns and he would have been able, at that time, to avoid incurring all late filing penalties.

28. Furthermore, HMRC send reminders to all taxpayers who are expected to file a paper return in August/ September in any given year and a further reminder in December were a return has not been received by 31 October to alert the taxpayer that the next filing date is 31 January and that by that date the return must be filed electronically.

29. The responsibility to meet the filing deadlines rested with the Appellant and he received sufficient information to make him of the penalty regime and the statutory power to impose the Penalties and the 6 month Penalty.

30. 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 6 month Penalty and the giving of notice in respect of both and similarly the Tribunal relied on the Donaldson case on the issue of HMRC's omission to specify the relevant period.

31. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalties and the 6 month Penalty were simply a means of securing the production of timely returns. So Article 6 of the ECHR did not apply.

32. The Penalties and the 6 month Penalty were neither harsh nor plainly unfair. The Tribunal relied on *International Roth GmbH v SSHD* [2002] EWCA Civ. 158 in reaching this decision.

27 There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction.

28 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £880.00

5 29 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
10 “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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