



**TC05751**

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**Appeal number: TC/2013/02811**

*Income Tax - Individual Tax Return – Late Filing - Daily Penalties and 6  
Month Penalty- Reasonable Excuse - No- Appeal dismissed*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

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**MRS ROSE SMIKLE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JENNIFER A TRIGGER**

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**The Tribunal determined the appeal on 4 April 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  
25 Appeal dated 20 December 2012 ( with enclosures) and HMRC's Statement of  
Case (with enclosures) acknowledged by the Tribunal on 2 February 2017.**

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## DECISION

### Introduction

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1. This is an appeal against Daily Penalties (the "Penalties") and a 6 Month Penalty (the "6 Month Penalty") imposed under Paragraph 4 and Paragraph 5 of Schedule 55 Finance Act ( the "FA") 2009 for the late filing of an Individual Tax Return for the tax 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

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determination.

3. On 4 April 2017 the Tribunal decided that the appeal was unsuccessful.

### Background Facts

4. For the year ending 5 April 2011 Mrs Rose Smikle (the "Appellant") was required to file a return either electronically by 31 January 2012 or non-electronically

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by 31 October 2011. The Appellant chose to file non-electronically. The return was received by HMRC on 16 May 2012 and processed on the 14 June 2012.

5. 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 Appellant paid that sum to HMRC and it did not form part of her appeal.

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6. 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 29 May 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

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7. As the return has still not been filed 6 months after the penalty date, HMRC issued a notice of penalty assessment on or around 19 June 2012 in the amount of £300.00, the 6 Month Penalty.

8. The Appellant appealed against the Penalties and the 6 Month Penalty to HMRC on 13 August 2012. The appeal was rejected by letter dated 8 October 2012 because the appeal had been submitted after the specified deadline.

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9. On 14 November 2012 the Appellant requested a review of HMRC's decision. She asked that low turnover be taken into account and stated that the penalties were disproportionate.

10. On 26 November 2012 HMRC again rejected the appeal because it was late and advised the Appellant that she should appeal to the Tax tribunal.

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11. On 20 December 2012 the Appellant lodged a Notice of Appeal to HM Courts and Tribunal Service.

## The Appellant's Case

12. The Appellant accepted that the return had been filed but claimed that there was a reasonable excuse.

### Findings of Fact.

5 13. That the Appellant had filed the return late.

14. That HMRC had correctly calculated the Penalties and the 6 Month Penalty.

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

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

10 17. 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.

15 18. That HMRC had failed to specify the period in respect of which the Penalties were assessed in the notice of assessment 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.

19. That the Penalties and the 6 Month Penalty were not criminal in nature for the purpose of Article 6 of the European Convention on Human Rights (the "ECHR.")

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

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

### The Legislation

22. Taxes Management Act 1970 section 8.

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

### Reasons for the Decision

24. The return was filed non-electronically on 16 May 2012 when the correct date for non-electronic submission was 31 October 2011.

30 25. As the return was late the penalty for late filing was calculated under Paragraph 3 of Schedule 55 FA 2009 which specified the amount as £100.00, which the Appellant accepted. The Penalties were calculated under Paragraph 4 of Schedule 55 FA 2009 at £10.00 per day. The return was filed 90 days late and the 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00

35 26. The Appellant claimed a reasonable excuse in that, she had no tax liability for 2010-2011 and that, she had accepted the £100.00 penalty which she had paid. Furthermore, she was anxious about putting her personal details online after she missed the non-electronic paper assessment deadline.

27. The Tribunal did not accept that these reasons amounted a reasonable excuse. There were no unusual or exceptional circumstances nor was there any unforeseen event. The Appellant had missed the deadline for filing a paper return. It appeared to the Tribunal that she had made no attempt to discuss this with HMRC or sought help elsewhere. If the Appellant had contacted HMRC she could have prevented the accrual of both the Penalties and the 6 Month Penalty.

28. Furthermore, the fact that the Appellant had no tax liability in 2010-2011 was irrelevant because the penalty regime was designed to ensure that a tax return was filed on time. Likewise, the Appellant's concern at filing personal details on line was not relevant. If the Appellant was concerned, as she stated, she could have filed a late paper return as soon as she realised that she was out of time thereby limiting her liability to a £100.00 penalty only.

29. The Tribunal was bound to follow the decision in the Donaldson case in respect of the decision of HMRC to impose the Penalty and 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.

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

31. 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.

32. 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 delegated his tax affairs and his general financial matters to his wife and his accountants.

31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1200.00

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.

**JENNIFER A TRIGGER  
TRIBUNAL JUDGE**

40 **RELEASE DATE: 5 APRIL 2017**