



TC05780

Appeal number: TC/2013/03052

***TAX RETURN- LATE FILING PENALTIES- TAX RETURN LATE –
WHETHER LONG TERM ILLNESS A REASONABLE EXCUSE OR
SPECIAL CIRCUMSTANCE – NO – APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KATHERINE MANSFIELD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE IAN HYDE

The Tribunal determined the appeal on 7 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 Appeal dated 24 April 2013 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 3 February 2017.

DECISION

1. This is an appeal against penalty notices issued to the appellant under schedule
5 55 Finance Act 2009 for the late filing of the tax return for the year ending 5 April 2011.

2. This appeal was stood over pending the decision of the Upper Tribunal in *Donaldson v Revenue and Customs Commissioners* which having been decided ([2014] UKUT 536 (TCC)) was then appealed to the Court of Appeal. The decision of
10 the Court of Appeal has now been released ([2016] EWCA Civ 761) and permission to appeal by the taxpayer to the Supreme Court refused and so this appeal was set down for determination.

Facts

3. On 6 April 2011 a tax return for the year ending 5 April 2011 was issued by
15 HMRC to the appellant.

4. The filing date for paper tax returns was 31 October 2011 and for electronic returns 31 January 2012.

5. On 14 February 2012, the return not having been filed by the filing date, HMRC issued a notice of penalty assessment for £100.

20 6. On 7 August 2012 HMRC issued two notices of assessments being

(1) A 3 months late filing penalty of £900 being a daily penalty of £10 a day for 90 days.

(2) A 6 months late filing penalty of £300

7. On 19 February 2013 HMRC issued a 12 months late filing penalty assessment
25 of £300.

8. On 22 August 2012 the appellant appealed to HMRC against the late filing penalties.

9. On 16 January 2013 HMRC issued a decision to the appellant rejecting her appeal and offering a review.

30 10. On 13 February 2013 the appellant requested a review.

11. On 27 March 2013 HMRC notified the appellant of the outcome of the review upholding the penalties.

12. On 27 March 2013 further medical evidence was submitted to HMRC.

13. On 9 April 2013 HMRC confirmed the original review decision.

14. On 24 April 2013 the appellant appealed to the Tribunal against the penalties.

15. The appellant had not by 1 February 2017 filed any return for the year 2010-11.

16. The appellant is a practising barrister. I find as a fact that, as shown by the medical evidence provided by her GP, her psychotherapist, the appellant has suffered
5 for a number of years with the very debilitating illness of endometriosis causing the appellant constant pain, triggering depression, anxiety and panic attacks.

17. In January 2012 the appellant was admitted to hospital with acute abdominal pain. She was then referred to surgery which was performed on 25 May 2012. In December 2012 she was treated in hospital and required more analgesia for the pain.

10 18. I also find as a fact that the appellant's illness has significantly affected her ability to practice her profession. Mr Ian Payn, the director of her chambers gave evidence in a letter that the appellant joined the chambers in mid-2011 and has since then been dogged by ill-health an extent that her practice has deteriorated considerably. In 2012 she had continuous period of three months off sick and overall
15 she has been off work more than she has been on. Mr Payn estimated that the appellant income in 2012 was less than a third of what he estimated it would have been.

The appellant's arguments

19. The appellant's argues that the illness has prevented her from addressing her tax
20 affairs. Whilst she has been able to work from time to time, she has not, as argued by HMRC, been able to work normally.

HMRC's arguments

20. HMRC sympathise with the appellants illness but argue that in order to be a
25 reasonable excuse not only must the illness be so serious that it prevented the appellant from controlling her personal and business affairs from immediately before the filing date to the time the return is received by HMRC but also that the condition must begin in a timeframe where it would be unreasonable to expect alternative arrangements or processes to be put in place to meet the taxpayer's filing obligation. HMRC argue that the appellant has had sufficient time to make provision to meet her
30 tax obligations.

Decision

21. I note as a preliminary point that, whilst this appeal was stood over pending the appeal in *Donaldson*, the appellant is not challenging the penalties on the grounds argued in *Donaldson*, that is to say HMRC's procedure for issuing automatic late
35 filing penalties did not satisfy the conditions imposed by Schedule 55. In any event I note that the taxpayer's arguments were dismissed by the Court of Appeal in *Donaldson* and that decision is binding on me.

22. In order for the appellant's arguments on penalties to succeed they must amount to a "reasonable excuse" within paragraph 23 or "special circumstances" within paragraph 16 of schedule 55. Neither term is defined.

5 23. The standard to be applied in determining whether a taxpayer has a reasonable excuse is that of a taxpayer with a responsible attitude to his duties as a taxpayer.

24. The appellant is suffering from a long term ill-health and ill-health can amount to a reasonable excuse. However, if the illness is long-term a reasonable taxpayer, conscious of his responsibilities, is expected to make arrangements for someone to act on his behalf.

10 25. The appellant has previously used accountants and there has been no explanation as to why the appellant no longer does so. Inability to pay has not been argued. Further, whilst I accept that the appellant has been unable to return to work fully, she has nevertheless been able to work. In my view she would therefore be able to instruct tax advisers to sort her tax affairs on her behalf.

15 26. I find therefore that the appellant did not have a reasonable excuse.

27. Finally I must consider whether HMRC should have made a special reduction because of special circumstances within paragraph 16. The Tribunal's jurisdiction in this context are limited by paragraph 22 of Schedule 55 to circumstances where it considers HMRC's decision in respect of the application of paragraph 16 was flawed when considered in the light of the principles applicable in judicial review proceedings. HMRC have considered whether to apply a special reduction and have found nothing that is exceptional, abnormal or unusual to justify such a reduction. Applying the judicial review standards I see no reason to overturn HMRC's decision.

28. I therefore dismiss the appellant's appeal.

25 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 "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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**IAN HYDE
TRIBUNAL JUDGE**

RELEASE DATE: 12 APRIL 2017