



TC05749

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Appeal number: TC/2016/02978

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

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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JASON CARTER

Appellant

- and -

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

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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 Appeal dated 26 May 2016 (with enclosure), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 22 February 2017 and the Appellant's Reply acknowledged by the Tribunal on 15 March 2017.

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DECISION

Introduction

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1. This is an appeal against a Late Filing Penalty (the "Penalty"), Daily Penalties (the "Penalties") and a 6 Month Penalty (the "6 Month Penalty") imposed under Paragraph 3, Paragraph 4 and Paragraph 5 of Schedule 55 Finance Act (the "FA") 2009 for the late filing of an Individual Tax Return, for the year ending 5 April 2013.

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

Background Facts

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4. For the year ending 5 April 2013 Mr Jason Carter (the "Appellant"), was required to file a return either electronically by 31 January 2014 or non-electronically by 31 October 2013. The Appellant chose to file electronically in the first instance, followed by a non-electronic return. The return was received by HMRC on 26 June 2014 and processed the same day.

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5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 18 February 2014 in the amount of £100.00, the Penalty.

6. A reminder letter was issued to the Appellant on 3 June 2014 advising that the Penalties were accruing.

7. A further reminder was issued on 1 July 2014 to the Appellant.

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8. 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 18 August 2014 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

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9. As the return had still not been received by HMRC 6 months after the penalty date, HMRC issued a notice of penalty assessment on or around 18 August 2014 in the amount of £300.00, the 6 Month Penalty.

10. The Appellant appealed against both the Penalty, the Penalties and the 6 Month Penalty to HMRC which rejected the appeal by letter dated 21 March 2014 but, in the same letter, offered a review.

11. The Appellant requested a review which was carried out by HMRC and notified to the Appellant by letter dated 5 November 2014. The conclusion of the review was that the decision of HMRC to impose the Penalty and the Penalties was confirmed.

5 12. By Notice of Appeal dated 27 May 2016 the Appellant appealed the Penalty, the Penalties and the 6 Month Penalty to HM Courts & Tribunals Service.

13. The Appellant' Case

14. The Appellant had posted a first return online which was lost. He then filed a second paper return which was accepted by HMRC.

15. The 2012-2013 was a zero return and the Appellant owed HMRC no tax.

10 16. The Appellant was not responsible for HMRC not logging post, nor for HMRC's staff shortages.

17. The Appellant owed £200,000.00 and had "zero" assets with which to pay the penalties which could result in him being made bankrupt.

15 18. The error was accidental, a one off and the penalties should be suspended because he had taken reasonable care.

19. The Appellant had been forced to move to various addresses and as such he may not have received all correspondence.

Findings of Fact.

20. That the Appellant had filed the return late.

20 21. That HMRC had correctly calculated the Penalty, the Penalties and the 6 Month Penalty.

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

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

25 24. 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.

30 25. 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.

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

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

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

The Legislation

29. Taxes Management Act 1970 section 8.

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

Reasons for the Decision

10 31. The Appellant claimed a reasonable excuse in that he filed the first return electronically before the due date. According to the Appellant that return had been lost by HMRC and he had then filed a paper second return which was after the due date.

15 32. The Appellant gave no details as to when the electronic return was filed or by whom or the circumstances in which it was filed. HMRC had sent reminders to the Appellant on 3 June 2014 and 1 July 2014. In the view of the Tribunal, this should have prompted the Appellant to contact HMRC but the Appellant had not done so. He had failed to act as reasonable tax payer would have acted, when faced with a reminder, from HMRC, about a return that was, according to the Appellant, filed before the due date. This did not amount to a reasonable excuse.

20 33. The Appellant was a director of a limited company and liable to complete a self-assessment return. He had enrolled for online services with HMRC on 6 January 2012 but HMRC have no record of any attempt to file a self- assessment online. The Tribunal decided that if the Appellant had filed the first return online HMRC would have had a record. At Folio 3 in the appeal bundle there was a record of all contact with the Appellant. On the balance of probabilities, if the Appellant had filed an electronic return by the due date, the Tribunal concluded that it would have been recorded by HMRC. As no record existed it was highly unlikely that first return was filed on time or at all. There was no reasonable excuse shown on the facts.

30 34. An insufficiency of funds cannot amount to a reasonable unless attributable to factors outside the taxpayer's control. Paragraph 23 of Schedule 55 FA 2009. The fact that the Appellant had substantial debts and could be declared bankrupt did not in the opinion of the Tribunal amount to a reasonable excuse. He had a responsibility to submit the Return on time as a prudent taxpayer would have done and he failed to do so. The Appellant had taken no action when sent reminders by HMRC and had therefore caused the accumulation of the penalties.

35 35. HMRC had repaid the Appellant overpaid tax with interest in respect of tax year 2006-2007. No further repayment was due.

40 36. As the return was late the 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 90 days late. The 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00.

37. Interest is charged automatically on all tax paid late, including penalties, whatever the reason for the delay. As the interest charge is not a penalty there is no right of appeal. An interest charge is intended as a measure of fairness so that those taxpayers who pay late do not gain an advantage over those who pay on time. The
5 Tribunal had no power to discharge or adjust a fixed penalty which is properly due and was bound by the decision in *Hok Ltd v Revenue and Customs* in this respect.

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

39. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalty, 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.

15 40. 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.

41. There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction. Furthermore under Paragraph 16 (2) of Schedule 55 FA 2009 does not include as
20 Special Reduction an inability to pay.

42. As far as the Tribunal could ascertain despite the fact that the Appellant had changed his address on a number occasions no post had been returned to HMRC. The Tribunal deemed that the Appellant had been duly served.

31 For the reasons given the appeal was not successful. The Appellant must pay to
25 HMRC the sum of £1300.00.

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
30 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.

35 **JENNIFER A TRIGGER**
TRIBUNAL JUDGE

RELEASE DATE: 5 APRIL 2017