



TC05775

Appeal number: TC/2013/03425

***TAX RETURN- LATE FILING PENALTIES- TAX RETURN LATE –
WHETHER DIFFICULTIES IN REGISTERING WITH HMRC A
REASONABLE EXCUSE OR SPECIAL CIRCUMSTANCE – NO –
APPEAL DISMISSED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NEAL PATRICK MCGUIGAN

Appellant

- and -

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

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 13 May 2013 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 2 February 2017.

DECISION

5 1. This is an appeal against penalty notices issued to the appellant under schedule 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 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

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

25 7. On 8 January 2013 HMRC issued a 12 months late filing penalty assessment of £300.

8. On 6 September 2012 the appellant appealed to HMRC against the late filing penalties.

9. On 14 December 2012 a paper tax return for the year ending 5 April 2011 was filed by the appellant and received by HMRC.

30 10. On 31 January 2013 HMRC issued a decision to the appellant rejecting his appeal and offering a review.

11. On 25 February 2013 the appellant requested a review.

12. On 12 April 2013 HMRC notified the appellant of the outcome of the review upholding the penalties.

35 13. On 13 May 2013 the appellant appealed to the Tribunal against the penalties.

The appellant's arguments

14. In his notice of appeal and his request for review the appellant argues that he has made every effort to register online. He first contacted HMRC in April 2012 and was unable to do so despite numerous letters and telephone calls. In the end he had to resort lodging a paper tax return. The appellant should not suffer because of the failures of the system.

HMRC's arguments

15. HMRC argue that the appellant has been registered as self-employed from October 2010 the commencement date of 31 May 2010. The appellant was issued with a notice to file a return on 6 April 2011 and that notice contained details of the relevant deadline for filing the return being 31 October 2011 for paper returns and 31 January 2012 for online returns.

16. The amount payable under the return is irrelevant to the liability to file on time. HMRC did not think it reasonable that the appellant waited until April 2012 to contact HMRC regarding online filing being three months after the deadline for an online tax return filing. The appellant has been registered for online filing since 20 May 2011 but he did not request a password until the start of 2013. Notwithstanding reminders, penalty notices and two further letters the return remained outstanding until a paper return was received on 14 December 2012 more than a year after the deadline date of 31 October 2011.

Decision

17. 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 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.

18. 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.

19. 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.

20. The appellant's argument centres on his difficulties in registering after April 2012. The appellant was aware at the latest from April 2011 notification of his obligation to file a return and that he had 6 months to file a paper tax return and 9 months to file an electronic return. However, it was the appellant's choice to wait until after the due filing date for both paper and electronic returns to start the process. A reasonable taxpayer, conscious of his responsibilities would have started the process earlier.

21. Further, there may well have been difficulties in filing electronically but it was always possible to file, as he did, paper returns.

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

23. Finally I must consider whether HMRC should have made a special reduction because of special circumstances within paragraph 16. A special circumstance is generally taken to mean something exceptional or abnormal or unusual. The Tribunal's jurisdiction in this context is 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.

24. I therefore dismiss the appellant's appeal.

25. 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.

**IAN HYDE
TRIBUNAL JUDGE**

RELEASE DATE: 11 APRIL 2017