



TC05795

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Appeal number: TC/2013/05130

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

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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DAVID MACK

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 12 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 27 July 2013 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 2 February 2017.

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DECISION

5 Introduction

1. This is an appeal against a Late Filing Penalty (the “Penalty”), Daily Penalties (the Penalties”) and the 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 2012.

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, David Mack’s appeal was listed for determination.

3. On 12 April 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

4. For the year ending 5 April 2012 David Mack (the “Appellant”) was required to file a return either electronically by 31 January 2013 or non-electronically by 31 October 2012. The Appellant chose to file non- electronically. The return was received by HMRC on 31 July 2013 and processed on the 21 August 2013.

5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 12 February 2013 in the amount of £100.00, the Penalty.

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 14 August 2013 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

7. As the return had still not been received 6 months after the penalty date HMRC issued a notice of penalty assessment on or around 27 August 2013 in the amount of £300.00, the 6 Month Penalty.

8. The Appellant appealed against the Penalty, the Penalties and the 6 Month Penalty to HMRC which rejected the appeal by letter dated 8 May 2013 and at the same time told the Appellant to file the return if it had not already been filed.

9. By Notice of Appeal dated 27 July 2013 the Appellant appealed the Penalty, the Penalties and the 6 Month Penalty to HM Courts & Tribunals Service.

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

Findings of Fact.

11. That the Appellant had filed the return late.
12. That HMRC had correctly calculated the Penalty, the Penalties and the 6 Month Penalty.
- 5 13. That the Appellant had failed to establish a reasonable excuse.
14. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties.
15. 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.
- 10 16. 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.
- 15 17. That the Penalty, 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.")
18. That the Penalty, the Penalties and the 6 Month Penalty were not disproportionate and the penalty regime was proportionate in its aim.
19. That there were no special circumstance which would support a Special Reduction under Paragraph 16 of Schedule 55 FA 2009.
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The Legislation

20. Taxes Management Act 1970 section 8.
21. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22 and 23.

Reasons for the Decision

- 25 22. The return was filed non-electronically on 31 July 2013 when the correct date for non-electronic submission was 31 October 2012.
23. 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.
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24. The Appellant claimed as a reasonable excuse. Following receipt of the letter from HMRC dated 8 May 2013 rejecting his appeal the Appellant replied to HMRC on 25 June 2013 in the following terms-

25. "I received it (the return) from the tax office in May 2011 and filled it in and sent it to the tax office on 6/9/2011. When you contacted me regarding this I informed the tax office that, I had sent tax return off and would need a new tax form as you had not received it. When I received my second tax return I also filled it in and sent it to tax office..."

26. The Appellant had been in the self-assessment since 2005 and would be aware of his obligations under self-assessment. It was his responsibility to complete the tax return and send to HMRC so that it was received by the due date. The Appellant had told HMRC in his first letter of appeal, dated 6 April 2013, that his tax return was sent to HMRC on 17 November 2012. This was after the filing date for non-electronic returns and would have attracted the Penalty. The Tribunal did not consider that the Appellant had acted as a prudent and responsible taxpayer would have acted and that his failure to file by the due date was not a reasonable excuse because, if his statement to HMRC in his letter of 6 April 2013 was correct, he submitted the return after 31 October 2012 without giving any reason for the late submission.

27. There was no evidence that the Appellant had posted the return and the Tribunal considered that it was reasonable to have some evidence of actual postage provided by the Appellant.

28. Furthermore, the Tribunal noted that, when the penalty notice was issued on or around 12 February 2013, the Appellant no made enquires to ascertain from HMRC the reason for sending the notice. The Tribunal concluded that this failure to act undermined the credibility of the Appellant's claim that he sent had the return to HMRC on 17 November 2012. Even when HMRC sent a reminder letter to the Appellant on 8 May 2013 he did not file the return until 31 July 2013.

29. 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 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, 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.

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.

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

34. 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

5 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**

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RELEASE DATE: 19 APRIL 2017