



TC05826

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Appeal number: TC/2013/05052

*Income Tax - Individual Tax Return – Late Filing - Daily Penalties, 6
Month Penalty and 12 Month Penalty- Reasonable Excuse - No- Appeal
dismissed*

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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RUTA SOQUAR

Appellant

- and -

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

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TRIBUNAL: JUDGE JENNIFER A TRIGGER

25 **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 28 July 2013 (with enclosures) and HMRC’s Statement of Case
30 (with enclosures) acknowledged by the Tribunal on 7 February 2017.**

DECISION

5 Introduction

1. This is an appeal against a Late Filing Penalty (the “Penalty”), Daily Penalties (the “Penalties”) a 6 Month Penalty (the “6 Month Penalty”) and a 12 Month Penalty (the “12 Month Penalty”) imposed under Paragraph 3, Paragraph 4, Paragraph 5 and
10 Paragraph 6 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.

2. This an appeal, also, against a Late Filing Penalty (the “Penalty”) and Daily Penalties (the “Penalties”) imposed under Paragraph 3 and Paragraph 4 of Schedule 55 of the FA 2009 for the tax year ending 5 April 2012

15 3. 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
20 determination.

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

Background Facts

5. For the year ending 5 April 2011 Ruta Soquar (the “Appellant”) was required to file a return either electronically by 31 January 2012 or non-electronically by 31
25 October 2011. The Appellant chose to file non-electronically. The return was received by HMRC on 21 March 2013.

6. 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 Penalty.

30 7. 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 7 August 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

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

9. As the return had still not been filed 12 months after the penalty date, HMRC issued a notice of penalty assessment on or around 19 February 2013 in the amount of £300.00, the 12 Month Penalty.

10. For the year ending 5 April 2012 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 on 21 March 2013.

5 11. 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.

12. As the return had still not been filed three months after the penalty date, HMRC issued a notice of penalty assessment on or around 2 April 2013 in the amount of £490.00, the Penalties, calculated at the daily rate of £10.00 for 49 days.

10 13. On 3 June 2013 the Appellant appealed to HMRC against the Penalty, the Penalties, the 6 Month Penalty and the 12 Month Penalty for the tax year ending 5 April 2011.

14. The Appellant appealed, also, to HMRC the Penalty and the Penalties for the tax year ending 5 April 2012 on 21 March 2013.

15 15. Both of the appeals were rejected by letters dated 12 April 2013 and 2 July 2013 but HMRC offered a review in each appeal.

16. On 28 July 2013 the Appellant lodged a Notice of Appeal to HM Courts and Tribunal Service.

The Appellant's Case

20 17. The Appellant accepted that the returns for the tax years 2010-2011 and 2011-2012, (the "Returns"), had been filed late but claimed that there was a reasonable excuse.

Findings of Fact.

18. That the Appellant had filed the Returns late.

25 19. That HMRC had correctly calculated the Penalty, the Penalties, the 6 Month Penalty and the 12 Month Penalty for the tax year 2010-2011 and the Penalty and the Penalties for the tax year 2011-2012.

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

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

22. 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.

23. 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.

24. That the Penalty, the Penalties, the 6 Month Penalty and the 12 Month Penalty for the tax year 2010-2011 and the Penalty and the Penalties for the tax year 2011-2012 were not criminal in nature for the purpose of Article 6 of the European Convention on Human Rights (the “ ECHR.”)

25. That the Penalty, Penalties the 6 Month penalty and the 12 Month Penalty for tax year 2010-2011 were not disproportionate and nor were the Penalty and the Penalties for tax year 2011-2012 and that the penalty regime was proportionate in its aim.

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

The Legislation

27. Taxes Management Act 1970 section 8.

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

Reasons for the Decision

29. The Returns were filed non-electronically on 21 March 2013, when the correct date for non-electronic submission for tax years 2010-2011 and 2011-2012 was respectively was 31 October 2011 and 31 October 2012.

30. As the Returns were late the Penalty was calculated under Paragraph 3 of Schedule 55 FA 2009 which specified the amount as £100.00, for each return. The Penalties were calculated under Paragraph 4 of Schedule 55 FA 2009 at £10.00 per day. The return for the tax year 2010-2011 was filed 90 days late and 49 days late for tax year 2011-2012. The 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00 and the 12 Month Penalty was calculated under Paragraph 6 at £300.00.

31. The Appellant claimed a reasonable excuse. She was unaware that fines were imposed for late returns this was because she had been absent from the UK for long periods in the tax years 2010-2011 and 2011-2012. The Appellant believed, also, that if there was no tax to be paid it was unjust to impose such a large penalty for not filing the returns. The Appellant recorded in her appeal that “I believe that it is a reasonable excuse not to file by the deadline if one is certain that one has no tax to pay”.

32. The fact that there was no tax to pay was irrelevant. The purpose of the penalty regime was there to ensure that taxpayers filed their tax return on time. It was a fine for failing to submit a return. The amount of the fine increased on a daily basis as long as the return was outstanding. The imposition of a penalty was not in any way related to the tax payable or not as the case maybe.

33. A reasonable excuse must be an event that is unforeseen, unexpected or outside the taxpayers control. The Appellant lived and worked in Dubai. In April 2011 she became pregnant. In September 2011 she found that as an unmarried prospective parent she would not be permitted to give birth in Dubai. She left Dubai and came to the UK in September of that year. She had periods of time when she was absent from the UK following her return for family matters namely from October 2011 to 20 November 2011 and from March 2012 onwards. In January 2012 the Appellant gave birth to a child in the UK.

34. She did not file the Returns until March 2013. The Tribunal considered that there was nothing unexpected which would have prevented the Appellant from filing the Returns by the due dates of 31 October 2011 and 31 October 2012. There was ample time to complete the Returns either whilst the Appellant was in the UK or whilst she was abroad. There was nothing unusual, and nothing beyond the Appellant's control.

35. The Appellant had been in the self-assessment regime since tax year 2004-2005 and would be experienced in completing a tax regime and she should have been aware of her obligations under self-assessment. In addition a flyer was enclosed with the 2010-2011 tax return to inform all taxpayers of the changes to the penalty regime and to encourage taxpayers to file their return on time to avoid a penalty. The Appellant would have received a copy of the flyer in the view of the Tribunal.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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 £2190.00

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
5 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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**JENNIFER A TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 24 APRIL 2017

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