



TC05833

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Appeal number: TC/2013/09188

*Income Tax - Individual Tax Return - Late filing Penalty - Daily Penalties -
Reasonable Excuse - No- Appeal Dismissed*

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MARK HUNSTONE

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

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25 **The Tribunal determined the appeal on 18 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 November 2013 (with enclosure) and HMRC's Statement of
Case (with enclosures) acknowledged by the Tribunal on 16 February 2017.**

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DECISION

5 Introduction

1. This was an appeal against a Late Filing Penalty (the “Penalty”) and Daily Penalties (the ”Penalties”), imposed under Paragraph 3 and Paragraph 4, of Schedule 55 Finance Act (the “FA”) 2009 for the late filing of an Individual Tax Return, for
10 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
15 the Donaldson case and accordingly, the Appellant’s appeal was listed for determination.

3. On 18 April 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

4. For the year ending 5 April 2012 Mark Hunstone (the “Appellant”), was
20 required to file a return either electronically by 31 January 2013 or non-electronically by 31 October 2012. The Appellant chose to file electronically, the return was received by HMRC on 19 June 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
25 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 25 June 2013 in the sum of £500.00.00, the Penalties, calculated at the daily rate of £10.00 for 50 days.

7. The Appellant’s agent, North West Business Centre, (the “Agent”), appealed
30 against the Penalty on 5 July 2013, HMRC rejected the appeal by letter dated 22 July 2013 but offered a review. The Appellant requested a review the result of which was sent to the Appellant by letter dated 2 October 2013. The outcome of the review was that HMRC’s decision was upheld.

8. Thereafter, the Appellant appealed the Penalty and the Penalties to H M Courts
35 and Tribunals Service by Notice of Appeal dated 26 November 2013.

9. The Appellant accepted that the return for the tax year 2011-2012 was filed late but maintained that there was a reasonable excuse.

Findings of Fact.

10. That the Appellant had filed the return for the tax year 2011 2012 late.
11. That HMRC had correctly calculated the Penalty and the Penalties.
12. That the Appellant had failed to establish a reasonable excuse.
- 5 13. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties.
14. 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 15. 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.
16. 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.”)
- 15 17. That the Penalty and the Penalties, were not disproportionate and the penalty regime was proportionate in its aim.
18. That there were no special circumstance which would support a Special Reduction under Paragraph 16 of Schedule 55 FA 2009.

The Legislation

- 20 19. Taxes Management Act 1970 section 8.
20. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22 and 23.
21. Interpretation Act 1978 section 7

Reasons for the Decision

- 25 22. The Appellant claimed as a reasonable excuse that he had informed HMRC in early 2012 of a change of address and that he had received no information, from HMRC, that he would be charged the Penalty and the Penalties. The Appellant was of the opinion, also, that the Penalty and the Penalties were disproportionate to the amount of tax due.
- 30 23. The Appellant had been registered for Self- Assessment since 21 July 2003 and was, in the view of the Tribunal, highly likely to be aware of his obligations to ensure his tax return was filed by the due date.
24. A flyer had been enclosed with all 2010-2011 tax returns and notices to file issued in April 2011. The flyer informed all tax payers about the changes to the

penalty regime and encouraged tax payers to file their returns on time to avoid penalties. It was highly likely that the Appellant had received such a flyer.

25. HMRC had no record of a change of address for the Appellant. The Penalty notice and the Penalties notice were sent to the address held by HMRC for the Appellant. None of the notices were returned to HMRC. In those circumstances the Tribunal decided that service had been effected and relied on section 7 Interpretation Act 1978. The notices were deemed to have been delivered by the Tribunal because HMRC had in place an arrangement with the Royal Mail whereby letters are returned to HMRC where they could not be delivered.

26. The Appellant claimed that his agent had notified HMRC of his change of address. Reliance on another cannot amount to a reasonable excuse unless it can be demonstrated that reasonable care was exercised to prevent failure by that individual. There was no evidence from the Appellant to that effect.

27. Furthermore, the imposition of Penalty and the Penalties were not related to the amount of tax due. Their purpose was to encourage a tax payer to file the tax return on time.

28. 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 50 days late.

29. The 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.

30. 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 omission to specify the relevant period.

31. 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.

32. 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.

33. 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 Special Reduction an inability to pay.

31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £530.00.

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: 27 APRIL 2017

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