



TC05842

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Appeal number: TC/2013/09192

*Income Tax – Partnership 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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PETER HICKS AND AMANDA HICKS

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JENNIFER A TRIGGER

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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 27 November 2013 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 17 February 2017.

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DECISION

Decision

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Introduction

1. This was an appeal by the representative partner, Peter Hicks, on behalf of the partnership of Peter Hicks and Amanda Hicks (the “Appellant”), 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 a Partnership Tax Return, for the year ending 5 April 2011

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 determination.

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

Background Facts

4. For the year ending 5 April 2011 the Appellant was required to file a return either electronically by 31 January 2012 or non-electronically by 31 October 2011. The Appellant chose to file electronically, the return was received by HMRC on 1 October 2012.

5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 14 February 2012 to each partner in the amount of £100.00, the Penalty. The Appellant paid the Penalty to HMRC.

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 7 August 2012 to each partner, in the sum of £900.00.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

7. As the return had still not been received by HMRC six months after the penalty date, HMRC issued a notice of penalty assessment on or around 7 August 2012, to each partner, the 6 Month Penalty, in the amount of £300.00.

8. The Appellant through its agent, Horley Green, Chartered Accountants, (the “Agent”), appealed against the Penalty, the Penalties and the 6 Month Penalty on 6 June 2013. HMRC rejected the appeal by letter dated 1 November 2013 but offered a review. The Agent did not request a review but appealed the Penalty, the Penalties and the 6 Month Penalty to HMCTS instead, by Notice of Appeal dated 27 November 2013.

9. The Appellant accepted that the return for the tax year 2010-2011 was filed late but maintained that there was a reasonable excuse.

Findings of Fact.

- 5 10. That the Appellant had filed the return for the tax year 2010- 2011 late.
11. That HMRC had correctly calculated the Penalty, the Penalties and the 6 Month Penalty.
12. That the Appellant had failed to establish a reasonable excuse.
- 10 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.
- 15 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, 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.”)
- 20 17. That the Penalty, the Penalties and the 6 Month Penalty 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

- 25 19. Taxes Management Act 1970 sections 12AA and 115
20. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22, 23 and 25.
21. Interpretation Act 1978 section 7.

Reasons for the Decision

- 30 22. The Appellant claimed a reasonable excuse on the grounds that the partnership had not received a partnership unique tax reference number (the “UTR”) until the statement of “fines” was received in September 2012. Thus the Appellant was unable to file the return for the year ending 5 April 2011 by the due date using the UTR.

23. The partnership had ceased to trade in October 2010. The Appellant submitted the partnership return for tax year 2010-2011 which was completed with the personal unique tax reference of Peter Hicks. HMRC sent a calculation based on that return from which the Appellant assumed the return had been accepted by HMRC even though the UTR was still not available.

24. The penalty notices dated 12 August 2012 in the sum of £1200.00, for each partner, did not bear the UTR which was disclosed, only, on the receipt of the statements dated 9 September 2012.

25. The Appellant considered the “fines” to be harsh in the circumstances, because the Appellant had disclosed to HMRC all the relevant information and the Appellant had taken great care to submit all the necessary forms despite not having the UTR.

26. The Tribunal did not accept that the Appellant had demonstrated a reasonable excuse. There were no exceptional or unusual circumstances shown, nor was there any factor which was outside the Appellant’s control.

27. On 18 February 2011 HMRC set up a partnership record. The Agent had sent the return for 2009-2010 to HMRC on 31 January 2011 when the return should have been submitted by 5 October 2010. The Agent was, therefore, late in notifying HMRC that the partnership had commenced. By return, HMRC sent a letter to the Appellant at the address held by HMRC, which contained the UTR, to acknowledge receipt of the 2009-2010 return. In addition notice to file the 2010-2011 return was sent to the Appellant at the address held by HMRC. This notice showed the UTR as well.

28. Neither the letter from HMRC, referred above, nor the notice to file were returned by the Royal Mail under the Returned Mail Service provided to HMRC. As the correspondence and the notice to file were sent to the last address known to HMRC for the Appellant, the Tribunal deemed that the Appellant had been served under section 7 of the Interpretation Act 1978. It followed that the Appellant was deemed to have the UTR and could have filed the return for 2010-2011 by the due date.

29. The 2009-2010 and the 2010-2011 returns were submitted by the Agent. The Agent did not complete the partnership pages of the returns. As a tax agent the Agent should have been aware that this information was required by HMRC. If the returns had contained the completed partnership pages HMRC would have requested the UTR. The Appellant or the Agent could have contacted HMRC for the UTR if, as they state, it was not received.

30. HMRC records showed that a statement issued to Peter Hicks on 23 February 2012 showed the Penalty for the partnership and contained the UTR as did the statement issued on 23 June 2012 and the statement issued on 5 September 2012. However, the partnership return was not filed until 1 October 2012. Likewise HMRC statements issued to Amanda Hicks on 27 February 2012 and 6 September 2012 had the UTR on the face of each document. The Appellant had, therefore, access to the UTR prior to the Penalty notice dated 7 August 2012.

31. The amount of the Penalty, the Penalties and the 6 Month Penalty was fixed by legislation and was intended to ensure that all tax payers were treated equally. HMRC had no discretion over the amount charged.

5 32. 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 and the 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00.

10 33. 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.

15 34. 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.

35. 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.

20 36. 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.

There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction.

25 31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £2400.00.

30 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 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: 3 MAY 2017

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