



TC05849

5

Appeal number: TC/2013/08197

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

10

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

15

DAWN HUTSON

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

20

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

30

DECISION

Introduction

5

1. This was an appeal against Daily Penalties (the "Penalties") and a 6 Month Penalty (the "6 Month Penalty"), imposed under 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

10

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

15

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

Background Facts

20

4. For the year ending 5 April 2012 Dawn Hutson (the "Appellant"), was required to file a return either electronically by 31 January 2013 or non-electronically by 7 December 2012. The Appellant chose to file non-electronically, the return was received by HMRC on 7 October 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 Appellant did not lodge an appeal against this penalty.

25

6. As the return was not received by HMRC three months after the penalty date, HMRC issued a notice of daily penalty assessment on or around 14 August 2013 in the sum of £900.00.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

30

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 14 August 2013, the 6 Month Penalty, in the amount of £300.00.

35

8. The Appellant appealed against the Penalties and the 6 Month Penalty on 4 October 2013, HMRC rejected the appeal by letter dated 24 October 2013 on the grounds that the deadline for lodging an appeal had passed. The Appellant requested a review, HMRC rejected the Appellant's request on the same grounds, by letter dated 7 November 2013 and advised the Appellant to contact HM Courts & Tribunal Service, (the "HMCTS").

40

9. Thereafter, the Appellant appealed the Penalties and the 6 Month Penalty to HMCTS by Notice of Appeal dated 22 November 2013. The Tribunal accepted the appeal in the interests of justice.

10. 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.

- 5 11. That the Appellant had filed the return for the tax year 2011- 2012 late.
12. That HMRC had correctly calculated the Penalties and the 6 Month Penalty.
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.
- 10 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.
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
- 15 assessed in the notice of assessment, the validity on the notice was not affected.
17. That 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 Penalties and the 6 Month Penalty were not disproportionate and the penalty regime was proportionate in its aim.
- 20 19. That there were no special circumstance which would support a Special Reduction under Paragraph 16 of Schedule 55 FA 2009.

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 Appellant claimed a reasonable excuse on the grounds that she had instructed an accountant who failed to file the return by the due date. 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

30 outside the Appellant’s control.

23. Furthermore, Paragraph 23 of Schedule 55 of the FA 2009 excludes, as a reasonable excuse, reliance on another person to do anything unless the tax payer can show that they took reasonable care to avoid the failure.

24. The Tribunal did not accept that the Appellant had taken reasonable care to avoid the failure. The Appellant had been registered for self-assessment since 20 August 2012 and would, in the opinion of the Tribunal, be aware of her legal obligation to file on time. In fact, the Appellant demonstrated that she was aware of her responsibilities because she appointed an accountant. The fact that the accountant failed to file the return on time did not remove the legal obligation imposed on the Appellant by the taxes legislation.

25. The Appellant's remedy was to seek redress either from the accountant or from the accountant's professional regulatory body.

26. The Appellant was advised by her accountant to pay the £100.00 penalty. This should have alerted the Appellant to the fact that the accountant had not acted in accordance with the Appellant's instructions. There was a wealth of information available to the Appellant published by HMRC on self-assessment, completion of returns, tax payment dates, surcharges and penalties. The Appellant could have contacted HMRC direct on its website or telephone helpline to obtain advice on the late filing of the Appellant's return but the Appellant failed to do so.

27. The Appellant would have been aware of the accrual of the Penalties after she had received a 30 reminder letter on 4 June 2013. It would have been reasonable for her to contact HMRC at this time, to seek clarification, but she did not do so until 12 September 2013 without any apparent reason for this delay. In this respect the Appellant did not act as a prudent tax payer.

28. There was no indication from the Appellant as to what control she exercised in her dealings with her accountant to ensure that her instructions were followed and her tax obligations completed.

29. As the return was late 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.

30. 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.

31. 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.

32. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. 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.

33. 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.

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

35 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1200.00.

5 36 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
10 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

15 **JENNIFER A TRIGGER**
TRIBUNAL JUDGE

RELEASE DATE: 02 MAY 2017