



TC06799

Appeal number: TC/2018/06275

**INCOME TAX - late filing penalties - individual returns - whether reasonable
excuse -no – appeal dismissed.**

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL TREACY

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER TRIGGER

The Tribunal determined the appeal on 22 August 2018 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 19 November 2014 (with enclosures), and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 15 April 2018.

DECISION

Introduction

1. This is an appeal against penalties that the respondents, (“ HMRC”) have imposed under Schedule 55 of the Finance Act 2009, (“Schedule 55”), for a failure to submit the annual self-assessment return, (the “Return”) for the tax year 2012/13.

2. The penalties that have been charged can be summarised as follows:

(a) a penalty, (the “penalty”), of £100.00 imposed under paragraph 3 of Schedule 55 for the late filing of the Return, of Michael Treacy, (the “appellant”), for the tax year ending 5 April 2013;

(b) daily penalties, (the “daily penalties”), for late filing of the Return for the same financial year imposed under paragraph 4 of Schedule 55 in the sum of £900.00 being 90 days at £10.00 per day;

(c) a 6 month late filing penalty, (the “6 month penalty”), of £300.00 for the late filing of the Return for the same financial year imposed under paragraph 5 of Schedule 55.

3. The appeal was delayed pending the decision in *Donaldson v The Commissioners for Her Majesty’s Revenue and Customs* [2016] EWCA Civ 761, (the “Donaldson Case”), and, further, so that the detailed information relied on in this judgment could be collated.

4. The appellant paid the penalty of £100.00 in November 2014 and accordingly this judgment is solely concerned with the penalties in (b) and (c) above.

5. Summary judgment was given by the Tribunal. The Decision was released on and on 04 September 2018. On 13 September 2018 the appellant made a request for a full statement of reasons.

Background facts

6. At all times material the appellant was resident in Grand Cayman and not in the UK and accordingly the appellant’s agent namely Gerald Hill Taxation Limited, (the “agent”), had dealt with all matters relating to this appeal on his behalf.

7. For the purposes of this judgment the facts have been taken from the appellant’s notices of appeal to HMRC and to the Tribunal dated respectively 05 September 2014 and 19 November 2014; subsequent documentation and correspondence emanating from the agent and the statement of case prepared HMRC which was amended pursuant to Directions given by Judge Kempster and received by the Tribunal on 07 March 2018.

8. The filing date for the year ending 05 April 2013 was 31 October 2013 for a non-electronic return and 31 January 2014 for an electronic return. The filing date is determined by section 8(1D) of the Taxes Management Act 1970.

9. A late filing penalty is chargeable where an individual tax return is filed out of time. Furthermore, if after a period of three months beginning with the penalty date the return remains outstanding daily penalties of £10.00 per day up to a period of 90 days are payable. Furthermore, if after a period six months, beginning with the penalty date the return remains outstanding a further penalty is payable being either the greater of 5% of any liability to tax or £300.00.

10. A penalty does not arise in relation to a failure to make a return if the taxpayer satisfies the Tribunal that that person had a reasonable excuse for the failure and that the failure was put right without unreasonable delay after the excuse had ended. It is for the taxpayer to discharge the burden of proof to the civil standard under paragraph 23 of Schedule 55.

11. Notice to file was issued to the appellant on 06 April 2013. It was issued to the address held on record by HMRC at that time, namely Zero House, 1A Colney Heath Lane, AL4 0SY. The appellant's electronic Return for that year was received on 04 September 2014. As the Return had not been received by the filing date HMRC issued, to the same address, notice of penalty assessment on or around February 2014.

12. As the Return had still not been received three months after the penalty date HMRC issued a notice of daily penalty assessment on or around 18 August 2014 to the same address in the sum of £900.00 and on the same occasion, it being six months or more after the penalty date, they issued, to the same address, a 6 month notice of penalty assessment. All these notices were issued to the appellant at the address which had been notified by him to the HMRC as his address and at that stage neither the appellant nor the agent had notified HMRC of any different address for the appellant.

Appellant's case

13. In the notices of appeal the following grounds are given:-

- (a) that the appellant did not receive a notice to file a return for 2012/13 as he was not in UK;
- (b) that for the same reason the appellant did not receive any notice of the issue of penalties;
- (c) that the appellant was not liable to any UK tax for the tax year 2012-2013;
- (d) that the agent attempted unsuccessfully to file the Return online on 12 February 2014.

HMRC's case

14. The appellant has been required to complete a self-assessment tax return since the 2010-2011 tax year as a non-resident landlord from 26 May 2010 and, accordingly, ought to be aware of his obligation under the self-assessment regime.

15. The notice to file referred to above and the penalty notices were issued by HMRC to the appellant at the address held on record for him at that time by HMRC. None of those notices were returned undelivered by Royal Mail to HMRC, in

accordance with the service provided by Royal Mail to HMRC, and are accordingly deemed to have been served within the ordinary course of postal delivery in accordance with section 7 of the Interpretation Act 1978.

16. Neither the appellant nor the agent supplied HMRC with a different address for the appellant until 05 September 2014.

17. There is an obligation on a taxpayer to notify HMRC of any material change of circumstances which includes a new address.

18. The agent who attempted unsuccessfully to file the Return on 12 February 2014 had submitted three years tax returns on line for the appellant prior thereto and, accordingly, it would be reasonable to assume that he would be aware of how to successfully file a return on line.

19. The obligation to file a return remains on the appellant even though no tax was due as HMRC are entitled to satisfy themselves that that is the correct position. If the appellant had delegated to the agent responsibility for the correct and timely filing of his tax return for the relevant year then it was incumbent on the appellant to ensure that that was done in a timely manner. There is simply no evidence that the appellant made sufficient enquiries of the agent to that effect.

Discussion

20. It was not disputed that the Return was filed late. The Tribunal considered that HMRC established that the daily penalties and the 6 month penalty were properly issued and properly calculated. The question therefore is whether the appellant has a reasonable excuse for the failure to file the Return on time.

21. There is no statutory definition of reasonable excuse; it is an objective test to be considered in the circumstances of the particular case. The test is what a reasonable and prudent taxpayer intending to comply with their tax obligations, in the position of the appellant, would have done in the same circumstances.

22. The appellant's case is that he did not receive the notice to file or the notices of penalty assessment; he did not believe that he was liable to tax in the tax year 2012/13 and he agent had tried unsuccessfully to file on line in February 2014.

23. Unfortunately, it is well- established that reliance on a third party in these circumstances does not amount to a reasonable excuse for a late filing of a return.

24. The appellant had failed to notify HMRC of his change of address. He had a responsibility to notify HMRC of that change. No evidence was submitted to the Tribunal to explain why the appellant failed to notify HMRC. In those circumstances the Tribunal concluded that the appellant had not acted as a prudent taxpayer. This failure on the part of the appellant could not amount to a reasonable excuse.

25. A taxpayer becomes liable to penalties of this kind for no other reason than his continuing failure to file a return; no proof of qualitative misconduct is required. The penalty, the daily penalties and the 6 month penalty were simply a means of securing the production of timely returns.

26. In all the circumstances neither the appellant nor the agent discharged the burden of satisfying the Tribunal even to the civil standard, on the balance of probabilities, that there was a reasonable excuse for the failure to file a return.

27. As the Donaldson Case is relevant to the appellant's appeal against the daily penalties the Tribunal considered the impact of that case on this appeal. Three issues before the Court of Appeal in the Donaldson case were;

(a) whether HMRC had made a decision required by paragraph 4 (1) of Schedule 55 to charge daily penalties;

(b) whether HMRC had given notice required under paragraph 4(1)(c) of Schedule 55 specifying the date from which the daily penalties were payable;

(c) whether HMRC had specified the period in respect of which the daily penalties were assessed in the notice of assessment required under paragraph 18 of Schedule 55.

23 The Tribunal found that HMRC had satisfied the provisions of paragraphs 4(1) and 4(1) (c) of Schedule 55 recorded above.

24 The Tribunal further found that HMRC had failed to specify the period in respect of which the daily penalties were assessed in the notice of assessment in compliance with paragraph 18 of Schedule 55 referred to above. Nevertheless, the Tribunal decided that that omission does not affect the validity of the notice. The appellant was not misled nor could it be said that he was confused by this omission because the period of assessment could be worked out without difficulty.

25 So far as a special reduction is concerned the Tribunal can only substitute its decision for that of the HMRC if the Tribunal concludes that the decision of HMRC was flawed when considered in the light of the principles applicable in proceedings for judicial review. The Tribunal considered carefully whether the decision of HMRC was flawed and came to the conclusion that it was not flawed because the issue in this appeal is simple. The appellant had failed to notify HMRC of his change of address. This was a question of fact. HMRC had sent the Return and all other documents to the address as notified to them by the appellant or by the agent. It was an omission which had financial consequences for the appellant. There were no circumstances that were unusual or extraordinary that were particular to the appellant, nor was there anything beyond the appellant's control which prevented him from notifying HMRC of his change of address nor which prevented him from instructing his agent to undertake this duty. When the agent did notify HMRC of the appellant's change of address it was too late. The failure to file had occurred and the penalties had been incurred. The decision of HMRC was not flawed in the opinion of the Tribunal.

Decision

27. The appeal in relation to the imposition of the daily penalties and the 6 month penalty are dismissed and the appellant remains liable for those penalties in the total sum of £1,200.00.

28. This document contains full findings of fact and reasons for the decision. A 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. This application must be received by the Tribunal no later than 56 days after the 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 TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 14 NOVEMBER 2018

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