



TC05727

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Appeal number: TC/2013/00377

*Income Tax – Partnership Tax Return - Late filing Penalty - Daily Penalties
and 6 Month Penalty - Reasonable Excuse – Yes - Appeal successful*

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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JOHN ENGLEFIELD T/a ENGLEFIELD CARPENTERS 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 21 March 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 08 January 2013 and HMRC's Statement of Case (with enclosures)
acknowledged by the Tribunal on 30 January 2017.**

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DECISION

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Introduction

1. This is an appeal against a Partnership Tax Return (the “ Return”) Late Filing Penalty (the “Penalty”), Daily Penalties (the ”Penalties”) and a 6 Month Penalty (the”6 Month Penalty”) imposed under Paragraph 3 of Schedule 55 Finance Act (the “FA”) 2009 and Paragraph 4 of Schedule 55 FA 2009 and Paragraph 5 of Schedule 55 FA 2009 for the late filing of the Return, the accrual of Daily Penalties and the 6 Month Penalty 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 21 March 2017 the Tribunal decided that the appeal was successful.

Background Facts

4. For the year ending 5 April 2011 Englefield Carpenters (the “ Partnership”) was required to file a return either electronically by 31 January 2012 or non-electronically by 31 October 2011. The representative partner was Mr Steven Englefield the other partner was Mr John Englefield. The Return was filed non-electronically and was received by HMRC on 11 September 2012 and processed on 19 September 2012.

5. As the Return was not received by the filing date HMRC issued a notice of penalty assessment to Mr Steven Englefield on or around 14 February 2012 in the amount of £100.00, the Penalty. HMRC did not send the first notice of penalty assessment to Mr John Englefield.

6. As the Return had still not been received by HMRC three months after the penalty date, HMRC issued a notice of daily penalty assessment to both Mr Steven Englefield and Mr John Englefield on or around 7 August 2012 and 4 September 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

7. As the Return had still not been received 6 months after the penalty date, HMRC issued a notice of penalty assessment to both Mr Steven Englefield and Mr John Englefield on or around 7 August 2012 and 4 September 2012 in the sum of £300.00.

8. On 15 August 2012 an appeal was sent to HMRC. The appeal was treated by HMRC as an appeal against the determination of all the penalties on all the parties in respect of the failure in accordance with Paragraph 25 (5) of Schedule 55 FA 2009.

The appeal was lodged by Mr John Englefield T/a Englefield Carpenters (the “Appellant”), and was against the Penalty, the Penalties and the 6 Month Penalty. HMRC which rejected the appeal by letter dated 4 October 2012 but, in the same letter, offered a review.

5 9. The Appellant requested a review which was carried out by HMRC and notified to the Appellant by letter dated 14 December 2012. The conclusion of the review was that the decision of HMRC to impose the Penalty, the Penalties and the 6 Month Penalty was confirmed.

10 10. By Notice of Appeal dated 08 January 2013 the Appellant appealed the Penalty, the Penalties and the 6 Month Penalty because the Appellant did not accept that the Return had been filed late.

Findings of Fact.

11. That the Appellant had filed the Return non-electronically by the due date of 31 October 2011.

15 The Legislation

12. Taxes Management Act 1970 section 12AA.

13. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22, 23 and 25

Reasons for the Decision

20 14. The Return was dated 26/10/11 and the Tribunal accepted, on the balance of probabilities, that it had been filed non-electronically before 31 October 2011. A copy of the Return, certified by Parsons and Company, the Appellant’s accountants, and verified by D Parsons as delivered to HMRC on 26/10/11, was before the Tribunal which the Tribunal accepted.

25 15. The Tribunal noted that there had been a dispute between the Appellant and HMRC concerning the late filing of the Return for year ending 5 April 2009 and the year ending 5 April 2010. Copies of the completed Returns, bearing the stamp of Parsons and Company, were produced by the Appellant. The Return for year end 5 April 2009 was completed non-electronically and dated 30/10/09. The Return for the
30 year ending 5 April 2010 was completed non-electronically also and dated 27/10/2010.

16. The Return for each of these earlier years appeared to the Tribunal to have been accepted by HMRC. So far as the Tribunal could ascertain there was no decision before the Tribunal by HMRC in respect of either year and no appeal also.

35 17. The Tribunal decided that it was highly improbable that Parsons and Company would have failed to submit the Return for years ending 5 April 2009, 5 April 2010 and 5 April 2011 particularly when the firm had confirmed to the Appellant that each

Return had been filed by the due date. Furthermore, there was evidence, in the opinion of the Tribunal, that the Appellant had questioned Parsons and Company about the filing of each Return at the relevant time and that that Parsons and Company had sufficient time to file by the due date.

5 18. In addition the Tribunal was not satisfied that HMRC had demonstrated that its procedures for recording receipt of a return were sufficiently robust to prevent an administrative failure in processing the Return for the year end % April 2011

19 For the reasons given the appeal was successful.

20 This document contains full findings of fact and reasons for the decision. Any
10 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
15 “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

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RELEASE DATE: 3 APRIL 2017

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