



TC05788

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Appeal number: TC/2013/04083

Income Tax - Individual Tax Return - Late filing Penalty and Daily Penalties - Reasonable Excuse - Yes- Appeal upheld

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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GEORGE JAMIESON

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

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The Tribunal determined the appeal on 7 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 12 June 2013 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 3 February 2017.

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DECISION

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Introduction

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

3. On 7 April 2017 the Tribunal decided that the appeal was successful.

Background Facts

4. For the year ending 5 April 2012 George Jamieson (the “Appellant”), was required to file a return either electronically by 31 January 2013 or non-electronically by 31 October 2012. The Appellant chose to file non-electronically. HMRC claimed that the return was received by HMRC on 6 March 2013 and processed on 11 April 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 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 12 March 2013 in the sum of £340.00, the Penalties, calculated at the daily rate of £10.00 for 34 days.

7. The Appellant appealed against both the Penalty and the Penalties to HMRC which rejected the appeal by letter dated 9 April 2013 but, in the same letter, offered a review.

8. The Appellant requested a review which was carried out by HMRC and notified to the Appellant by letter dated 22 May 2013. The conclusion of the review was that the decision of HMRC to impose the Penalty and the Penalties was confirmed.

9. By Notice of Appeal dated 12 June 2013 the Appellant appealed the Penalty and the Penalties to HM Courts & Tribunals Service. The Appellant accepted that the return had been filed late but claimed that there was a reasonable excuse.

Findings of Fact.

10. That the Appellant had filed the return late.
11. That HMRC had correctly calculated the Penalty and the Penalties.
12. That the Appellant had established 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.

Reasons for the Decision

21. The return was filed non-electronically on 6 March 2013 when the correct date for electronic submission was 31 January 2013.
- 25 22. 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 78 days late.
- 30 23. The Appellant claimed as a reasonable excuse that he was unable to file the 2010 -2011 return online because he had been given the incorrect code by HMRC. HMRC accepted that the incorrect code had been issued and the return was accepted without a penalty being imposed.
- 35 24. The Appellant experienced the same problem in submitting the return for the tax year 2011-2012. As the Appellant had been given the incorrect code by HMRC he had of necessity to file his return non- electronically after the due date.

25. The reminder letter from HMRC dated 13 December 2012 contained highlighted information which led the Appellant to believe that a penalty would be imposed if the return was received by HMRC after 31 January 2013. It was not sufficiently clear on the face of the reminder letter that the paper deadline was 31
5 October 2012. The lack of clarity was compounded by the fact that the reminder letter was dated after the date of the paper return deadline. The Tribunal concluded that it was reasonable for the Appellant to assume that the return deadline was 31 January 2013 for a non- electronic return.

26. The Appellant disputed that his return was incomplete, as alleged by HMRC, because both the SA 103 and the SA 100 were put by him in the same envelope and delivered by hand to HMRC. On the balance of probabilities the Tribunal decided that it was more likely than not that the Appellant had delivered a complete return to HMRC. This was because the Tribunal formed the view that the Appellant would pay particular attention to the documents that he sent to HMRC, whereas HMRC had the
15 greater possibility of making a mistake as it dealt with thousands of paper returns.

27. The Tribunal was bound to follow the decision in the Donaldson case in respect of the decision of HMRC to impose the Penalty and the Penalties and the giving of notice in respect of the latter and similarly relied on the Donaldson case on the issue of HMRC's omission to specify the relevant period.

28. 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.

29. The Penalties were neither harsh nor plainly unfair. The Tribunal relied on
25 *International Roth GmbH v SSHD [2002] EWCA Civ. 158* in reaching this decision.

30. There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction. The Appellant had merely delegated his tax affairs and his general financial matters to his wife and his accountants.

31 For the reasons given the appeal was not successful. The Appellant was successful in his appeal.

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.

40 **JENNIFER A TRIGGER**
TRIBUNAL JUDGE

RELEASE DATE: 18 APRIL 2017