



TC06027

Appeal number: TC/2015/04274

Income Tax - Individual Tax Return - Late Filing - Late Filing Penalty - Late Filing Daily Penalty - Late Filing 6 Month Penalty - Reasonable Excuse - No - Appeal Dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MS SU LIE WEE

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

The Tribunal determined the appeal on 22 May 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 29 June 2015 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 21 March 2017.

The Decision of the Tribunal was released on 30 May 2017. A written request for full written statement of findings and reasons was made on 16 June 2017 and received by the Tribunal on 16 June 2017. As this was within 28 days of the release of the Decision the request was accepted by the Tribunal.

Decision

Introduction

1. This was an appeal against a late filing penalty (the “Penalty”) imposed under Paragraph 3 of Schedule 55 of the Finance Act 2009 (the “FA”), a daily penalty (the “Penalties”) imposed under Paragraph 4 of Schedule 55 of the FA and a 6 month penalty (the “6 Month Penalty”) imposed under Paragraph 5 of Schedule 55 of the FA for the late filing of an Individual Tax Return (the “ Return “) for the tax year ending 5 April 2013.
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 Ms Su Lie Wee’s appeal was listed for determination.
3. On 22 May 2017 the Tribunal decided that the appeal was unsuccessful.

Background facts

4. For the year ending 5 April 2013, Ms Su Lie Wee, (the “Appellant “) was required to file a return either electronically by 31 January 2014 or non-electronically by 31 October 2013. The Appellant chose to file electronically. The Return was received by HMRC on 10 October 2014.
5. As the Return was not received by the filing date HMRC issued a notice of penalty assessment on or around 18 February 2014 in the amount of £100.00 (the “Penalty”).
6. 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 the 18 August 2014 in the amount of £900.00, calculated at £10.00 per day, (the “Penalties”).
7. As the Return had still not been received six months after the penalty date HMRC issued a further notice of penalty assessment on or around 18 August 2014 in the amount of £300.00, (the “ 6 Month Penalty”).
8. On 28 January 2015 the Appellant appealed against the Penalty, the Penalties and the 6 Month Penalty to HMRC. The appeal was rejected by HMRC by letter dated 27 March 2015 because the appeal was out of time.
9. By Notice of Appeal dated 12 July 2015 the Appellant appealed the Penalty, the Penalties and the 6 Month Penalty to H M Courts & Tribunals Service. The Appellant accepted that the Return had been filed late but claimed that there was a reasonable excuse.

The Appellant's Case

10. The Appellant owned a 25% share of a property, Apt 3901 Strata, Walworth Road, London, (the "Property"), together with Dr Lam Shu Lin who owned 25% of the Property and her aunt Dr Ho Siew Lan who owned the remaining 50%.

11 The tax affairs, relating to the Property were handled, by the Appellant's aunt Gillian, who became seriously ill and sadly died on 17 September 2013. It was not clear from the appeal bundle whether aunt Gillian was also Dr Lam Shu Lin, referred to at Folio 8 B, as one of the joint owners of the Property. After the death of aunt Gillian, it was discovered that she had not filed the Appellant's tax return, the Return.

12. To rectify matters, Dr Ho Siew Lan wrote to HMRC, on behalf of the Appellant, on 4 February 2014. She provided details of the income and the expenditure which revealed a negative balance with no tax due.

13. The Appellant maintained that she had effectively declared her income and tax liability on 4 February 2014, so that when she filed the Return electronically it was after the due date but by only four days.

14. The Appellant maintained also that she did not receive any correspondence from HMRC "on tax matters".

The Respondents Case

15. The Appellant applied to HMRC in November 2012 to become part of the Non Resident Landlord Scheme in order to receive rental income gross of tax. This was approved on 13 November 2012. The acceptance letter informed the Appellant that a self- assessment tax return must be completed annually to declare this income.

16. The Appellant's aunt, Dr Ho Siew Lan rang HMRC on 4 February 2014. As she was not authorised to act on behalf of the Appellant she was advised by HMRC that they were unable to discuss the Appellant's tax affairs. HMRC told Dr Ho Siew Lan to ask the Appellant to contact HMRC.

17. The Appellant did not contact HMRC, instead HMRC received a letter completed by Dr Ho Siew Lan on behalf of the Appellant dated 4 February 2014 exhibited at Folios 8 B and 8 C of the appeal bundle.

18. HMRC wrote to the Appellant on 4 March 2014 to acknowledge the letter of 4 February 2014. This document was exhibited at Folio 8A of the appeal bundle. In that letter the Appellant was told she must submit the Return for tax year 2012-2013 and for each year thereafter and that a Notice to File the Return had been sent to her at 33, Liang Seah Street, 05-01, 189054, Singapore and that the Penalty had been charged, in the sum of £100.00.

19. The Notice to File was sent by HMRC on 6 April 2013 it had not been returned to HMRC under the Returned Mail Service provided by the Royal Mail.

20. On 22 August 2014 and 26 August 2014 the Appellant rang HMRC. On both occasions she was advised to submit the Return.

21. The Return was finally filed on 10 October 2014.

The Legislation

22. Taxes Management Act 1970 section 8.
23. The Finance Act 2009 Schedule 55 Paragraphs 1, 3, 4, 5, 16, 18, 20, 21, 22 and
24. The Interpretation Act 1978 section 7.

The Findings of Fact

25. The Tribunal found that the Appellant was required to file a self-assessment tax return for the tax year ending 5 April 2013. The filing date for a non-electronic return was 31 October 2013 and for an electronic return 31 January 2014.
26. That the Appellant had filed a self-assessment return, the Return, electronically on 10 October 2014 when the due date for filing electronically was 31 January 2014.
27. That the Penalty, the Penalties and the 6 Month Penalty were fixed by statute and had been correctly calculated by HMRC.
28. That the Tribunal was bound by the decision in *Mr Keith Donaldson v HMRC [2016] EWCA Civ 761* and that the decision of HMRC was in accordance with that decision.
29. That the Appellant had failed to establish a reasonable excuse for the following reasons.
30. The Appellant had applied in November 2012 to HMRC to become part of the Non Resident Landlord Scheme in order to receive rental income gross of tax. That the application was approved by HMRC on 13 November 2012. That the letter of acceptance informed the Appellant that as a landlord she must complete a self-assessment tax return each year to declare the rental income.
31. That the Notice to File the Return was issued to the Appellant at her last known address in Singapore on 6 April 2013. That this correspondence was not returned by the Royal Mail to HMRC under their Returned Mail Service as undelivered. That the Appellant was deemed to have been served with the Notice to File in accordance with section 7 of the Interpretation Act 1978.
32. That on 4 March 2014 the Appellant was told by HMRC, in correspondence, that she must complete the Return.
33. That HMRC received telephone calls from the Appellant on 22 August 2014 and 26 August 2014. That she was told on each occasion that the Return must be filed.
34. That the Appellant had sole responsibility to file the Return. That she had delegated that duty to her aunt. That she remained responsible to file the Return and that she failed to exercise any control or any adequate control to submit the Return by the due date.
35. That the Appellant had not shown a reasonable excuse.

36. That the Appellant had not demonstrated any exceptional or unusual event that prevented her from filing the Return nor was there anything that was beyond the Appellant's control which could have stopped the filing of the Return.

37. That a taxpayer becomes liable to penalties of this kind for no other reason than his or her continuing failure to file a return; no proof of qualitative misconduct is required. That the Penalty, the Penalties and the 6 Month Penalty were simply a means of securing the production of timely returns.

Reasons for the Decision

38. The Appellant accepted that the Return had been filed late on 10 October 2014 when the due date for filing the Return as a paper return was 31 October 2013 or the due date for filing the Return electronically was 31 January 2014.

39. That the Appellant had failed to establish a reasonable excuse for the following reasons.

40. The Appellant had delegated to her aunt Gillian the duty to file the Return by the due date. The Appellant's aunt had not filed the Return because she was unable to do so through illness and subsequent death on 17 September 2013. Paragraph 23 of Schedule 55 of the FA provides that where a reasonable excuse has been shown, liability to a penalty will not arise. For the purposes of sub-paragraph (1) of Paragraph 23, sub-paragraph (2) provides so far as is relevant:-

“(a) ...,

(b) where the person relies on any other person to do anything, that is not a reasonable excuse unless he/she took reasonable care to avoid the failure, and

(c) where the person had a reasonable excuse for the failure but the excuse has ceased, he/she is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.”

41. The Appellant had not demonstrated that she had taken any reasonable care to avoid the failure by her aunt Gillian to file the Return. For instance, the Appellant could have completed and filed the Return or she could have delegated the responsibility to another person. She did neither, in fact, she took no action at all even when she was made aware by both Dr Ho Siew Lan and HMRC that the Return had not been filed.

42. The letter dated 4 February 2014 with the Schedule of Gross Income and Expenses attached, exhibited at folios 8B and 8C, did not constitute the Return and the Appellant was aware of that fact as the letter contains the following “ Please let me know if I need to submit a Return”.

43. The Appellant was informed by HMRC in correspondence on 4 March 2014 and verbally on 22 August 2014 and on 26 August 2014 that the Return must be filed. Despite those facts she did not file the Return until 10 October 2014.

44. Even if the delegation to the Appellant's aunt Gillian could amount to a reasonable excuse, the Appellant had had adequate time after her aunt's death, on 17 September 2013, to file the Return electronically, by the due date. Her failure to file the Return, after her aunt's death, did not constitute a reasonable excuse because there was then an unreasonable delay by the Appellant to file the Return, which was not submitted until 10 October 2014, Paragraph 23 (2) (c) of Schedule 55 of the FA above applied.

45. It follows that the Appellant, having failed to establish a reasonable excuse, must pay to HMRC the sum of £1300.00.

46. 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 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 A TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 26 JULY 2017

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