



**TC06079**

**Appeal number: TC/2013/04179**

*INCOME TAX – penalty for delay in filing return – delay by taxpayer in filing appeal to HMRC against penalty – HMRC refuse to admit appeal out of time – application to Tribunal under Section 49 Taxes Management Act 1970 for appeal to HMRC to be admitted out of time*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MADONNA HALLEY'S HOTEL**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JANE BAILEY**

**The Tribunal determined the application on 27 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 17 June 2013 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 3 February 2017 and the Appellant's Reply dated 23 February 2017.**

## DECISION

### Introduction

1. This Notice of Appeal, filed by Mr T Florides, as the representative partner of  
5 Madonna Halley's Hotel, is stated to contain an appeal to the Tribunal against  
HMRC's imposition of late filing penalties in respect of the partnership's delay in  
filing its tax returns for the tax years 2008/09, 2009/10 and 2010/11.

2. However, for the reasons which I explain below, I have concluded that the  
Notice of Appeal in fact contains an application under Section 49 of the Taxes  
10 Management Act 1970 ("TMA 1970") for Madonna Halley's Hotel's appeal to  
HMRC to be admitted out of time. Unfortunately, when Madonna Halley's Hotel's  
agent, Mr Frank, filed the partnership's Notice of Appeal with this Tribunal on 17  
June 2013, the partnership's Section 49 TMA 1970 application was not identified as  
being an application. As the penalties imposed upon Madonna Halley's Hotel include  
15 daily penalties, the partnership's application was stayed pending resolution of the  
*Donaldson* appeal.

### The *Donaldson* appeal

3. By 17 June 2013, when Madonna Halley's Hotel's Notice of Appeal was filed,  
the First-tier Tribunal had released its decision in *Donaldson v HMRC* [2013] UKFTT  
20 317 (TC). *Donaldson* raised a number of questions about whether daily penalties  
imposed by HMRC had been imposed correctly and whether there were procedural  
irregularities which would invalidate them. The First-tier Tribunal found in favour of  
Mr Donaldson and HMRC had appealed to the Upper Tribunal. As the outcome of  
that appeal could affect a number of other cases where daily penalties had been  
25 imposed, those other cases were put on hold until the *Donaldson* appeal was finally  
resolved.

4. The *Donaldson* appeal was heard by the Upper Tribunal, which released a  
decision on 2 December 2014 (reported at [2014] UKUT 536 (TCC)) in favour of  
HMRC. Mr Donaldson appeal to the Court of Appeal, which released its judgment on  
30 18 July 2016 (reported at [2016] EWCA Civ 761), also in favour of HMRC. On 21  
December 2016, the Supreme Court refused to give Mr Donaldson permission to  
appeal further, resulting in the Court of Appeal Judgment becoming final.

5. As a result of the Court of Appeal Judgment in *Donaldson* becoming final, all  
the appeals which had been put on hold (including the present proceedings) were  
35 released to be individually heard.

6. On 1 February 2017, HMRC sent the Tribunal and Madonna Halley's Hotel  
their Statements of Case in respect of this appeal. A copy was also sent to Mr Frank.  
I assume that the Statements of Case were sent by second-class post and so they  
would be presumed to be received by the partnership and Mr Frank four postal  
40 delivery days later, i.e. by 6 February 2017. On 3 February 2017, the Tribunal  
notified Mr Frank that if the partnership wished to send a Reply to HMRC's

Statements of Case, or any further documents, it/they should be received by the Tribunal no less than 30 days after receipt of the Statement of Case. I calculate that date to be 8 March 2017. By letter dated 23 February 2017, Mr Frank confirmed that the partnership wished to continue with the appeal but no further documents were provided. I proceed to hear this application on the basis of the documents specified above.

### **Facts found**

7. On the basis of the documents before me I find the following facts:
- a) Madonna Halley's Hotel is a partnership between Mr T Florides and his son, Mr C Florides. Mr T Florides is the representative member of the partnership.
  - b) In August 2007, Mr T Florides and his wife began divorce proceedings. During the course of these divorce proceedings, the partnership was ordered to deliver up the partnership accounts for the period 1 May 2004 to 30 April 2007, to be audited by independent auditors.
  - c) On 6 April 2009, HMRC issued Madonna Halley's Hotel with a partnership tax return to file for the tax year 2008/09. The deadline for this return to be filed was 31 October 2009 if filed as a paper return or 31 January 2010 if filed electronically. On 16 February 2010, as the 2008/09 tax return had not been received by the electronic filing deadline, HMRC issued a late filing penalty in the sum of £100 to the partnership under Section 93A TMA 1970.
  - d) On 6 April 2010, HMRC issued Madonna Halley's Hotel with a partnership tax return to file for the tax year 2009/10. The deadline for this return to be filed was 31 October 2010 if filed as a paper return or 31 January 2010 if filed electronically.
  - e) On 3 August 2010, HMRC issued a six months delay late filing penalty in the sum of £100 to the partnership in respect of its continued late filing of its tax return for 2008/09. On 15 February 2011, as the 2009/10 tax return had not been received by the electronic filing deadline, HMRC issued a late filing penalty in the sum of £100 to the partnership. Both of these penalties were issued under Section 93A TMA 1970.
  - f) In February 2011, the final hearing in Mr T Florides' divorce proceedings took place, and the divorce proceedings concluded. Mr T Florides entered into a dispute with his solicitors regarding payment of legal fees.
  - g) On 6 April 2011, HMRC issued Madonna Halley's Hotel with a partnership tax return to file for the tax year 2010/11. The deadline for this return to be filed was 31 October 2011 if filed as a paper return or 31 January 2010 if filed electronically.

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- h) On 15 July 2011, HMRC received Madonna Halley’s Hotel’s paper tax return for 2008/09 and its paper tax return for 2009/10.
  - i) On 14 February 2012, as the 2010/11 tax return had not been received by the electronic filing deadline, HMRC issued a late filing penalty in the sum of £100 to the partnership. This penalty was imposed under Paragraph 3 of Schedule 55 to the Finance Act 2009 (“FA 2009”).
  - j) In February or March 2012, Mr T Florides concluded his dispute over fees with his solicitors. In the summer of 2012, Mr T Florides received the records being held by his solicitors, including the partnership accounts for 2004-2007.
  - k) On 7 August 2012, HMRC issued the partnership with daily penalties, totalling £900, and a six months delay late filing penalty in the sum of £300 in respect of its continuing delay in filing its tax return for 2010/11. These penalties were imposed under Paragraphs 4 and 5 respectively of Schedule 55 to FA 2009.
  - l) On 28 November 2012, HMRC received Madonna Halley’s Hotel’s paper tax return for 2010/11.
  - m) On 15 January 2013, HMRC issued the partnership with a 12 months delay late filing penalty in the sum of £300 in respect of the 2010/11 return. This penalty was imposed under paragraph 6 of Schedule 55 to FA 2009. (In respect of this penalty there is no allegation by HMRC that the partnership had deliberately withheld information.)
  - n) By letter dated 18 March 2013, Mr Frank wrote on behalf of Madonna Halley’s Hotel to appeal against all the late filing penalties imposed in relation to the 2008/09, 2009/10 and 2001/11 tax years. On 12 April 2013, HMRC refused to admit these appeals as they were made outside the 30 day time limit for appealing against the imposition of penalties.
  - o) By letter dated 13 May 2013, Mr Frank sought a review. On 3 June 2013 HMRC reiterated the refusal to admit Madonna Halley’s Hotel’s appeal to them out of time. In that letter it was stated:

I still cannot accept your appeal. If you do not agree that you made your appeal too late for us to consider then you can ask for HMRC Courts & Tribunal Service to review our decision.
  - p) By a Notice of Appeal dated 17 April 2013, Madonna Halley’s Hotel appealed to this Tribunal. Although the Notice of Appeal dated 17 April 2013 is expressed to be an appeal against the imposition of the penalties, I conclude that it is an application under Section 49 TMA 1970 for the partnership’s appeal to HMRC to be admitted out of time. I reach this conclusion on the basis that, in their letters of 12 April and 3 June 2013, HMRC were clear that they would not admit Madonna Halley’s Hotel’s

appeal. Therefore, as the appeals have not been admitted, no decision can have been taken by HMRC with regard to whether Madonna Halley's Hotel has provided a reasonable excuse for its delay in filing its tax returns.

5 **Late appeal to HMRC and Section 49 TMA 1970**

8. Section 49 TMA 1970 provides as follows:

**49 Late notice of appeal**

(1) This section applies in a case where-

- (a) notice of appeal may be given to HMRC, but
- 10 (b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if-

- (a) HMRC agree, or
- (b) where HMRC do not agree, the tribunal gives permission.

15 (3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.

(4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.

(5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.

20 (6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.

(7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.

25 (8) In this section "relevant time limit", in relation to notice of appeal, means the time before which the notice is to be given (but for this section).

9. In this case, as I have set out above, HMRC do not agree to extend time. Therefore, if I do not give permission for Madonna Halley's Hotel to appeal late to HMRC, then that will be the end of Madonna Halley Hotel's attempt to appeal and the penalties imposed will become final.

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**Madonna Halley's Hotel's explanation for its delay**

10. In the Notice of Appeal filed with this Tribunal, Madonna Halley's Hotel refers to earlier correspondence to explain the basis of the partnership application.

11. In his letters of 18 March and 13 May 2013, Mr Frank explained that in August 2007 divorce proceedings had commenced between Mr T Florides and his wife. These divorce proceedings had been very acrimonious, and had lasted for five years

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with the final hearing in February 2011. Mr C Florides (the son of Mr T Florides and the other partner in Madonna Halley's Hotel) had also been drawn into the divorce proceedings. At some point during those proceedings, the court had ordered the partnership accounts for the period 1 May 2004 to 30 April 2007 to be audited by independent auditors. Following that audit, the partnership accounts had been passed to Mr T Florides' solicitors. At the conclusion of the divorce proceedings, Mr T Florides had been unable to pay his solicitors and so they had refused to release the partnership books and records. Mr Frank noted that a fee arrangement for payment of the fees had not concluded until February or March of 2012, and Mr T Florides only regained the books and records in the summer of 2012.

12. Mr Frank concluded:

You will appreciate that we could not produce accounts or complete tax returns. No tax was lost by the Revenue as none was due. We feel it could have been a grey area had any tax been due.

### 15 **Discussion and decision**

13. In considering an application for an extension of time to meet a deadline, I have regard to the principles set out in *Data Select v HMRC* [2012] UKUT 187 (TCC). In applying those principles, I consider the reason for the deadline, the extent of the delay, the reason for the delay and the prejudice which would be caused to each side if I allowed, or refused, the partnership's application.

14. In considering this application I bear in mind that I am considering whether there is a reasonable excuse for the partnership's delay in making its appeals to HMRC against the penalties imposed, not whether the partnership has a reasonable excuse for the late filing of its tax returns. The onus of proof is upon Madonna Halley's Hotel, and the standard of proof is the civil standard of the balance of probabilities.

15. The penalties in dispute were issued on:

- 16 February 2010
- 3 August 2010
- 15 February 2011
- 14 February 2012
- 7 August 2012
- 15 January 2013

16. The partnership's appeal was made by letter dated 18 March 2013, just over three years after the earliest penalty and two months after the latest penalty. The deadline for making an appeal is 30 days after the date on which the penalty was imposed. This 30 day deadline is there to give certainty to HMRC and taxpayers, and to enable good administration.

17. The partnership's explanation for its lack of an in-time appeal relies heavily on its lack of access to its accounts and other records for 2004-2007. However, the period covered by the seized records predates the period covered by the three tax returns which were filed late (2008/09 – 2010/11) and there is no suggestion that any records for this later period were audited or held by Mr T Florides' solicitors. Indeed, the partnership filed its tax returns for 2008/09 and 2009/10 in July 2011, twelve months before the seized records were released. Therefore the fact that earlier records were held cannot have affected the completion of tax returns for 2008/09 or 2009/10. Even if there was some point or issue in the 2004-2007 records which had an impact on the partnership's tax return for 2010/11, the fact that earlier records were held does not explain why the partnership was unable to make an appeal to HMRC when it received each of the penalty notifications.

18. I accept that acrimonious divorce proceedings, and then a fee dispute with solicitors would be emotionally draining for Mr T Florides and (to a lesser extent) Mr C Florides. However, the final divorce hearing was in February 2011. Given that the partnership was able to file two tax returns in July 2011, I do not consider that from (at least) July 2011 onwards the divorce or related fee dispute could have been so disruptive to the partnership's affairs that it could not file a letter of appeal to HMRC against the imposition of penalties. It follows that I do not consider the partnership has provided a reasonable excuse for its delay in making its appeals.

19. I am conscious that the consequence of refusing the partnership's application is that it will not have a substantive appeal, and so the penalties will become final. The penalties in dispute total £1,900 for the three years. On the other hand, if I allow the partnership's application for an extension of time in which to appeal then, although HMRC have already prepared their Statement of Case for the paper hearing, there would be some additional work for HMRC as an officer would have to consider the partnership's out of time appeal and consider whether the partnership had a reasonable excuse for the delay in filing its tax returns.

20. In weighing the relevant factors I bear in mind that it is in the interests of justice that deadlines should be respected, and that extensions of time should be given as the exception and not as the rule. Although the prejudice to HMRC would not be great if I granted an extension of time to the partnership, I have concluded that the partnership does not have a reasonable excuse for its delay in appealing to HMRC against the late filing penalties imposed. The delay in appealing is significant for most of the penalties; even the shortest period of delay is twice the period that Parliament considered sufficient to enable an appeal to be made.

21. Therefore, I have decided to refuse the partnership's application under Section 49 TMA 1970 for an extension of time to appeal to HMRC against the six late filing penalties imposed in respect of the tax returns filed for 2008/09, 2009/10 and 2010/11.

## **Conclusion**

22. For the reasons set out above, the partnership's application is dismissed.

23. A summary of this decision was released to the parties on 4 May 2017. This summary included the advice that any party wishing to appeal against this decision must apply within 28 days of the date of release of the decision for full written findings and reasons.

5 **Request for full written findings and reasons**

24. By a letter received by the Tribunal on 9 June 2017, Mr T Florides made a late request for full written findings and reasons for the decision. Mr Florides' explanation for his delay in making this request was that he had moved house in April 2017. Although the Tribunal had correctly issued the decision to the partnership's agent, the change in Mr T Florides' home address had resulted in the decision not being passed on to Mr T Florides until 7 June 2017.

25. HMRC were asked to comment upon Mr Florides' request for an extension of time to seek full written findings and reasons but (as at 22 August 2017) no response had been received by the Tribunal. I treat such absence of response as an absence of objection to the extension of time sought.

26. In considering this application, I weigh up the relevant factors mentioned above and as detailed in *Data Select*.

27. The deadline of 28 days for seeking full written facts and reasons is imposed to provide the parties, including the Tribunal, with certainty and to enable the orderly administration of justice. Once the deadline has passed the parties are able to move on, putting away their papers and (if relevant) collecting any monies which have become due. The delay on this occasion is eight days.

28. The explanation provided by Mr Florides is relatively weak: both partners were aware that the paper hearing would take place after submission of their Reply (on 23 February 2017) to HMRC's Statement of Case, and so would have been expected to keep in contact with their agent. It is unclear whether Mr T Florides provided the agent with his new postal address. There is no suggestion that Mr C Florides had also moved house so there is (apparently) no reason why he should not have received the decision within time and then communicated with Mr T Florides. Given that the penalties in dispute arose from delay, both partners would have been expected to have been aware of the need to act promptly in relation to this matter.

29. However, despite the weakness of the explanation for the delay, I bear in mind that the delay was only eight days and that HMRC do not object to an extension being granted. Although extensions of time should not routinely be given, on this occasion I have concluded that the partnership should be granted an extension of time to request full findings of fact and reasons for the decision.

30. 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.

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**JANE BAILEY  
TRIBUNAL JUDGE**

**RELEASE DATE: 29 August 2017**

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