



**TC06276**

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**Appeal number: TC/2017/06015**

*INCOME TAX – Whether reasonable excuse for late submission of 2011-2012 return - No. Daily penalties of £710 confirmed.*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

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**CAROL ANN MOFFATT**

**Appellant**

**- and -**

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

**TRIBUNAL: PRESIDING MEMBER  
PETER R. SHEPPARD FCIS FCIB CTA  
AIIT**

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**The Tribunal determined the appeal on 28 November 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 4 August 2017, and HMRC's Statement of Case received by the Tribunal on 7 September 2017 with enclosures. The Tribunal wrote to the appellant on 14 September 2017 indicating that if she wished to reply to HMRC's Statement of Case she should do so within 30 days. A reply dated 4 October 2017 was received and considered by the Tribunal.**

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## DECISION

### 1. Introduction

5 This considers an appeal against penalties totalling £710 imposed by the respondents (HMRC) under Schedule 55 Finance Act 2009 for the late filing by the appellant of her 2011-2012 Individual Self-Assessment Tax return.

### 2. Legislation

Finance Act 2009 Schedule 55  
Taxes Management Act 1970, in particular Section 8 (1D)

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### 3. Case law

Keith Donaldson v HMRC [2016] EWCA Civ 761  
International Transport Roth GmbH v SSHD [2002] EWCA Civ 158  
Crabtree v Hinchliffe [1971] 3 All ER 967  
15 Clark's of Hove Ltd. v Bakers' Union [1979] 1 All ER 152  
David Collis [2011] UKFTT 588 (TC)  
Rowland v HMRC (2006) STC (SCD) 536  
HMRC v Hok Ltd. [2012]UKUT 363 (TCC)  
The Clean Car Company Ltd v Customs and Excise [1991] VATTR 234

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### 4. Facts

HMRC sent the appellant a Notice to file a self-assessment tax return on 6 April 2012. The filing date was 31 October 2012 for a non-electronic return or 31 January 2013 for an electronic return. The appellant's return was filed electronically on 10 July 25 2013.

5. Schedule 55 of the Finance Act 2009 ("the Schedule") makes provision for the imposition by Her Majesty's Revenue and Customs ("HMRC") of penalties on taxpayers for the late filing of tax returns.

30 If a person fails to file an income tax return by the "penalty date" (the day after the "filing date" i.e. the date by which a return is required to be made or delivered to HMRC), paragraph 3 of the Schedule provides that the person is liable to a penalty of £100.

Paragraph 4 of the Schedule provides:

35 "(1) A person is liable to a penalty under this paragraph if (and only if)–

(a) The failure continues after the end of the period of 3 months beginning with the penalty date,

(b) HMRC decide that such a penalty should be payable, and

40 (c) HMRC give notice to the person specifying the date from which the penalty is payable."

(2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

5 6. In this case the penalties totalling £810 which were levied by HMRC. The penalties are made up of a late filing penalty of £100 under paragraph 3 of Schedule 55 Finance Act 2009 notified to the appellant on 21 March 2013 and daily penalties of £710 under paragraph 4 of Schedule 55 Finance Act 2009 notified to the appellant on 22 August 2013. It is the daily penalties of £710 which are the subject of this appeal. The appellant has not challenged the imposition of the £100 late filing penalty.

10 7. The appellant appointed her husband Mr. Peter Moffatt as her agent. Together they ran a property letting business.

#### 8. **Appellants submissions**

In a letter to HMRC dated 15 May 2017 the appellant wrote

15 “I have suffered for a number of years from a serious progressive long term illness with both my knees. This condition was complicated by a cardiological condition for which I have received medication since 1990.

20 During 2012 (and earlier) and up to 28 April 2013 (when my Tax Return was submitted by my husband, who had himself been ill) I was in pain in both my knees whether sedentary or mobile and had some difficulty concentrating. As a result of that I was precluded from arranging the timely completion of my 2011-12 Return.

The medical evidence supplied by the appellant is in the form of a letter dated 3 August 2017 written by Dr.L.Fox of the Millfield Surgery, Easingwold, York. It states

25 “I write as Mrs Moffatt’s General Practitioner to confirm Mrs Moffatt suffered from severe pain in both her knees for a number of years, this has troubled her since 2007 at which time she was prescribed medication.

30 Mrs Moffatt’s condition unfortunately deteriorated to the extent that the GP made an MSK/Orthopaedic referral on 17<sup>th</sup> August 2012, resulting in two knee replacement operations, the first taking place in September 2014 on her right knee (after a previous cancellation in September 2013) and the second taking place in January 2016 on her left knee.”

The letter from Peter Moffatt dated 4 August 2017 to the Tribunal includes “The facts of the matter are that she could not instruct another party and it was only when I became sufficiently recovered that I could deal with her affairs including the preparation and filing of the 2011/12 Return.”

#### 35 9. **HMRC’s submissions**

HMRC say that the appeal is not concerned with specialist or obscure areas of tax law. It is concerned with the ordinary every day responsibilities of Mrs. Moffatt to ensure her 2011-12 tax return was filed by the legislative due date.

5 10. HMRC say there is no statutory definition of reasonable excuse. They say whether or not a person had a reasonable excuse is an objective test and “is a matter to be considered in the light of all the circumstances of the particular case” and they refer to the decision in the case of Rowland v HMRC. In their statement of case HMRC state that they expect an individual with a long term illness to make arrangements for completing and submitting the tax return on time. HMRC say they have received no  
10 evidence that the appellant was hospitalised during the default period so that she would have been prevented from submitting the return on time or from making arrangements for its submission.

11. HMRC state that “for illness to be considered a reasonable excuse it must be so serious that it prevented Mrs. Moffatt from controlling her business and private affairs  
15 immediately before the deadline to the date she sent the tax return in.....Where illness is an ongoing condition she would be expected to make arrangements for completing and sending the tax return in on time.

12. In respect of the letter from the appellant’s General Practitioner HMRC state “The medical letter does not show any specific dates that Mrs. Moffatt suffered from her  
20 long term illness, or if it covered the period of default 31 January 2013 to 10 July 2013. The medical letter shows Mrs. Moffatt’s knee replacement surgery took place after the period of default. The letter does not evidence the severity of the illness, or if the illness prevented her carrying out her personal duties. As the medical letter states, Mrs Moffatt has been troubled with pain in her knees since 2007. HMRC’s view is  
25 that, if the illness is long term a reasonable taxpayer, conscious of her responsibilities, is expected to make arrangements for someone to act on her behalf.

13. HMRC submit the penalties are not disproportionate and they are neither harsh nor plainly unfair. HMRC refer to International Transport Roth GmbH v SSHD.

14. HMRC say there is no obvious reason as to why he appellant could not have  
30 instructed a third party to complete her return in order to meet the deadlines.

15. In respect of the late filing penalties HMRC has considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009.) They refer to the cases of Crabtree v Hinchcliffe; Clark’s of Hove v Bakers Union; and David Collis. HMRC say that in considering whether there are special circumstances they have considered:

- 35 • The appellant had been suffering from a long term illness.
- There was reasonable excuse for her husband’s 2011-2012 late filing penalties
- 40 • The appellant is not pleading reliance on a third party

- That the appellant was not able to complete the return herself

5 They concluded that these were not special circumstances which were uncommon or exceptional that would merit a reduction in the penalty.

## 16. Tribunal's Observations

10 The appellant has requested that the Tribunal itself is not constituted of current or former employees of HMRC or the wider civil service or advisers in any capacity to HMRC, so that it can operate fully independently and can be seen to do so. It is not for the appellant to dictate who should constitute the Tribunal. All Tribunal Members strive to be impartial whether or not they have had any past connection with HMRC as an employee or adviser. However if it gives comfort to the appellant or her agent I can confirm that I have never been employed by, or acted as an adviser to, HMRC.

15 17. The appellant has not challenged the first late filing penalty of £100. This indicates that the appellant accepts that the return was submitted after the due date of 31 January 2013 and that there was no reasonable excuse for that.

20 18. The appellant's agent in his letter of appeal to the Tribunal dated 4 August 2017 states "Please note Mrs Moffatt is not pleading Reliance on a Third Party as the reason for the delay with the return in question (which would not in any event constitute Reasonable Excuse under the legislation)."

The appeal is therefore concerned with whether or not the appellant had reasonable excuse for not submitting her return during the period from 1 February 2013 to 10 July 2013.

25 19. In appeals against the imposition of penalties such as in this case a precise chronology of events is of considerable assistance to the Tribunal especially in cases where the parties have agreed that there should be no hearing.

30 The appellant suggests that her husband submitted a return on 28 April 2013 but HMRC say they have no record of receiving a return at that time and the appellant has not provided any evidence to support her assertion. There is no indication of whether that return was submitted on paper or online.

35 Unfortunately in this case there are a number of conflicting dates. The cancelled operation is said by the appellant to have been scheduled for June 2013 whereas the medical report states September 2013. Although it is of no relevance in determining the appeal the date of the appellant's second knee operation is said by her husband to have been in January 2015 but the medical report states January 2016.

40 20. The Tribunal has carefully considered the medical evidence. It is clear that the appellant has suffered from severe pain in her knees since 2007. The condition deteriorated to the extent that knee replacement operations were recommended and subsequently carried out. This is accepted by the Tribunal and by HMRC.

What the Tribunal has had to consider is whether this condition was so severe as to prevent the appellant from either completing the return herself, or from arranging someone to complete it for her.

5 21. The Tribunal notes that the appellant failed to submit her 2006-2007, 2007-2008, 2008-2009, and 2009-2010 returns by the due dates and that penalties were charged on those occasions, This shows to the Tribunal that in respect of 2011-2012 the appellant was well aware that if she failed to submit her return on time penalties would be imposed. HMRC issued a return to the appellant on 6 April 2012. The completed return was required to be submitted well over 9 months later that is by 31 10 January 2013. It was not submitted until submitted electronically on 10 July 2013, and so was over 5 months late.

15 22. HMRC make comment on the fact that the appellant postponed having a knee operation. The Tribunal accepts Mr. Moffatt's observation that it does not follow that a house move necessitates one of the householders actively being engaged in the move, for instance in the moving of furniture, goods and chattels. However the Tribunal notes that the failure to submit a return started on 1 February 2013 over 4 months before both the house move and operation were scheduled. The only submission from the appellant as to why she did not submit her return by the due date of 31 January 2013 or during the period of over 5 months thereafter is her continuing 20 suffering with severely painful knees.

The Medical evidence does not comment that the pain in her knees was so severe that it would have prevented the appellant from either completing her own return or arranging for someone to complete the return for her.

25 23. Mr. Moffatt complains that there is no definition of reasonable excuse. HMRC refer to what they expect a reasonable taxpayer, conscious of their responsibilities to do. This wording reminded the Tribunal of what his Honour Judge Medd OBE QC wrote in *The Clean Car Company Ltd v The Commissioners of Customs and Excise*. He wrote;

30 *"It seems to me that Parliament in passing this legislation must have intended that the question of whether a particular trader had a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered. Thus though such a taxpayer would give a 35 reasonable priority to complying with his duties in regard to tax and would conscientiously seek to ensure that his returns were accurate and made timeously, his age and experience, his health or the incidence of some particular difficulty or misfortune and, doubtless, many other facts, may all have a bearing on whether, in acting as he did, he acted reasonably and so had a reasonable excuse...."*

40 24. In this Tribunal's view the appellant was well aware from previous experience that there are penalties for late submission of tax returns. Although she was suffering a long term illness and in pain no clear evidence has been put forward explaining why

over a period from 6 April 2012 to 10 July 2013, the appellant was unable to either submit her own tax return or failing that arrange for someone to submit her return for her. In the opinion of the Tribunal a taxpayer giving reasonable priority to complying with her duties as to tax and having the health difficulties of the appellant and being  
5 aware of the health difficulties of her husband would have made arrangements for her tax return to be submitted for her by a third party No reason has been given as to why this was not done. Her husband's did not explain the reason why he wrote that "she could not instruct another party". Thus the Tribunal has no alternative but to conclude that the appellant has failed to establish a reasonable excuse for her failure to submit  
10 her individual self-assessment tax return for 2011-2012 by the due date.

25. In respect of the appellant's complaint that the level of the penalties is disproportionate to the offence, and unfair the Tribunal points out that the level of the fines is laid down in legislation and the Tribunal has no power to amend them unless they are incorrectly imposed or they are inaccurately calculated.

15 In HMRC v Hok Ltd the Upper Tribunal at paragraph 36 said "...The statutory provision relevant here, namely TMA S100B, permits the Tribunal to set aside a penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further. In particular neither that provision, nor any other gives the Tribunal discretion to adjust a  
20 penalty of the kind imposed in this case, because of a perception that it is unfair, or for any similar reason. Pausing there, it is plain that the First-tier Tribunal has no *statutory* power to discharge, or adjust, a penalty because of the perception that it is unfair."

25 26. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalties below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalties and have concluded there are none. The Tribunal sees no reason to disagree.

30 27. HMRC has applied the late filing penalties in accordance with legislation. The Appellant has not established a reasonable excuse for the late submission of her Individual Self-assessment Tax return for the period 2011-12. There are no special circumstances to allow reduction of the penalty. The daily penalties totalling £710 are therefore confirmed and the appeal dismissed. The initial late filing penalty of £100 has not been challenged by the appellant.

35 28. 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  
40 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**PETER R. SHEPPARD**

**TRIBUNAL PRESIDING MEMBER**  
**RELEASE DATE: 18 December 2017**

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