



TC06137

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Appeal number: TC/2015/04401

Income Tax - Individual Tax Return - Daily Penalties for the late submission of Return - jurisdiction of First-tier Tribunal - whether includes ability to discharge Daily Penalties on grounds of unfairness - no - whether finding that HMRC'S failure to send prompt reminder was unfair -no - whether Daily Penalties payable - yes- whether Reasonable Excuse - no - Appeal dismissed

15 **FIRST-TIER TRIBUNAL
TAX CHAMBER**

MISS GEMMA HILDITCH

Appellant

- and -

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

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TRIBUNAL: JUDGE JENNIFER A TRIGGER

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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 20 July 2015 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 17 March 2017.

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DECISION

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Introduction

1. This was an appeal against daily penalties (the "Penalties") imposed under Paragraph 4 of Schedule 55 of the Finance Act (the "FA") 2009 for the late filing of an Individual Tax Return, (the "Return"), for the 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, the Appellant'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 Miss Gemma Hilditch (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 and the Return was received by HMRC on 9 July 2014 and processed on 9 July 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 the penalty charged was £100.00.

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 on or around 15 July 2014 in the sum of £550.00, the Penalties, calculated at the daily rate of £10.00 for 55 days.

7 On 20 March 2015 the Appellant appealed the Penalties to HMRC. The grounds of the appeal were that the Appellant was not aware that a daily charge, the Penalties, had been applied.

8 The Appellant stated that she became aware that the Penalties had accrued only when she received the Self-Assessment Debt letter, dated 13 March 2015, on 20 March 2015. The Appellant accepted that she had received a letter in March 2014 from HMRC and a penalty of £100.00 had been imposed which related to "a six week period during February 2013 of which (sic.)I was self-employed." Although the Appellant had employed an accountant she was not aware of any late tax return. She paid the £100.00 by bank transfer but she had no knowledge that the Penalties were payable and that the amount of those Penalties had been increasing.

9 HMRC rejected the appeal by letter, dated 10 July 2015, because it was late but offered the Appellant an opportunity to provide a reasonable excuse for the late appeal. The Appellant chose not to respond to HMRC.

10 Thereafter, by Notice of Appeal dated 20 July 2015, the Appellant appealed the Penalties to HM Courts & Tribunals Service.

The Appellant's Case

5 11 The Appellant accepted that she had received a late filing penalty which she had paid. Her appeal to HMRC had been late because she was unaware of the Penalties and the time in which to appeal until March 2015. She agreed to pay the further late filing penalty of £26.50 despite the fact that she was not informed that the penalty was due, but she would not pay the Penalties.

HMRC's Case

10 12 The appeal was not concerned with obscure or specialised areas of tax law. It concerned the ordinary every day responsibilities of the Appellant to ensure that her 2012-2013 tax return was filed on time and payment made.

15 13 The Appellant registered for self-assessment on the commencement of self-employment as a cleaner on 1 February 2013. She was issued with a notice to file a 2012-2013 self-assessment return form on 25 April 2013. The completed form was filed online on 9 July 2014. This date was five months after the filing deadline of 31 January 2014.

14 The Appellant accepted the £100.00 penalty for late filing but did not accept that the Penalties were due.

20 15 The Appellant maintained that she had not been told by HMRC that the Penalties could accrue. HMRC dispute that because the notice to file the 2012-2013 Return, issued to the Appellant on 25 April 2013, advised the Appellant that if the Return was not received by HMRC by the deadline given a penalty of £100.00 would be imposed. The notice to file advised that the Penalties would be payable if there was 25 a further three month delay in filing the Return and that if the Return were still outstanding six month after the filing deadline or twelve months after the filing deadline a six month penalty would be imposed and a twelve month penalty as well.

30 16 As the Appellant had not filed the Return by the due date the Penalties were charged at £10.00 per day subject to a maximum of 90 days. As the Return was filed during the 90 days the Penalties were charged up to and including the date that the Return was filed.

17 The ultimate responsibility to ensure that tax obligations are met is that of the taxpayer, in this appeal the responsibility was the Appellant's. The Appellant could not transfer that responsibility to a third party.

35 18 There was no legal requirement for HMRC to issue reminders to taxpayers but an automatic reminder was issued in August/September each year to all taxpayers who were expected to file a paper return to remind them of the filing deadline. If by December in any one year a return had not been received by HMRC a second reminder was issued to alert the taxpayer to their obligation to file a return by 40 January.

19 The Appellant's filing date was extended to 15 February 2014 to allow her to register, enrol and active her online Self-Assessment account. The Appellant registered her account on 20 March 2013 and enrolled for online services on 25 January 2014 and activated her account on 29 January 2014. HMRC contend that the
5 Appellant had not explained the reason that she did not file the Return when she activated her account.

20 HMRC sent the Appellant a reminder on 17 June 2014 that the Penalties had accrued for 30 days on that date.

21 Furthermore, on 7 May 2014 the Appellant contacted HMRC by telephone.
10 HMRC confirmed to the Appellant that the Return had not been filed. The Appellant was advised to contact her accountant to ascertain the reason for the delay in submitting the Return. Despite that fact, the Return was not filed until 9 July 2014.

22 HMRC had not been notified of a change address. All correspondence was sent to the Appellant's address held by HMRC. No correspondence had been returned by
15 Royal Mail to HMRC under the Returned Mail Service provided to HMRC.

23 There was a wealth of information available to the Appellant in the public domain and on the HMRC website that the Appellant could have accessed to ensure that the Return was filed by the deadline.

Findings of Fact.

20 24 That the Appellant had filed the Return late.

25 That HMRC had correctly calculated the Penalties.

26 That the Appellant had failed to establish a reasonable excuse.

27 That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties.

25 28 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.

29 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 the omission, of the period for which the Penalties had been
30 assessed, in the notice of assessment, the validity on the notice was not affected.

30 That a taxpayer such as the Appellant becomes liable to penalties of this kind for no other reason than her continuing failure to file a return; no proof of qualitative misconduct is required. The Penalties were simply a means of securing the production of timely returns.

35 31 That there were no special circumstance which would support a Special Reduction on under Paragraph 16 of Schedule 55 FA 2009.

32 That the Tribunal was bound by the Upper Tribunal decision, *The Commissioners for Her Majesty's Revenue and Customs - and - Hok Limited* [2012] UKUT 363 (TCC,) (the “ HOK Decision”).

The Statutory Framework

5 33 Taxes Management Act 1970 section 8.

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

35 Interpretation Act 1978 section 7.

Reasons for the Decision

10 36 The Appellant had failed to establish a reasonable excuse. She had relied on her accountant to file the Return. The accountant had failed to file the Return by the due date. The Appellant had been made aware by HMRC on 7 May 2014 that the Return had not been filed and she was advised to contact her accountant. Despite that fact the Appellant had not filed the Return until 9 July 2014. No reason was given by the Appellant for the continued delay in filing the Return.

15 37 Where a taxpayer relied on another person to do anything on their behalf, failure by that other person to do an act cannot amount to a reasonable excuse unless the taxpayer can demonstrate that he or she took reasonable care to avoid the failure by the other person.

20 38 On the particular facts the Appellant was not aware that the Return had not been filed by the accountant until 7 May 2014. If the accountant had filed the Return by the due date the Penalties would not have accrued. The Tribunal concluded from the fact that the Appellant did not know, until 7 May 2014, that the accountant had not filed the Return by the due date, that the Appellant had not exercised control or sufficient control to avoid the failure by the accountant.

25 39 Furthermore, the Appellant then failed to file the Return until 9 July 2014 which, in the opinion of the Tribunal, indicated that she had again not taken any action to avoid the late filing by the accountant.

30 40 The Appellant had been sent by HMRC a notice to file the Return on 25 April 2013. The documents had not been returned to HMRC under the Undelivered Mail Service provided to HMRC by Royal Mail. Therefore, it followed that the provisions of section 7 Interpretation Act 1978 applied and Appellant was deemed to have been served with the notice to file by virtue of Section 7. Likewise, service was deemed of the Penalties reminder letter dated 17 June 2014.

35 41 The Tribunal decided because that the Appellant had been given notice that the Penalties had accrued and were continuing to accrue both because she had been served with the notice to file and with the reminder letter.

42 The Appellant offered no explanation for the delay in filing the Return despite having been made aware of the Penalties. She apparently made no enquiries as to the consequences of failing to file the Return by the due date, so a far as the Tribunal

could ascertain, despite the information contained in the notice to file. Even though she had been put on notice by HMRC on 7 May 2013 and again on 17 June 2014 the Appellant sought no information from HMRC to mitigate her loss by filing the Return without further delay.

5 43 HMRC had not acted unfairly in its dealings with the Appellant in the opinion of the Tribunal. The Appellant had been given notice of the filing deadlines; she had been notified that the Return had not been filed and she had been issued with a penalty reminder, so that the Appellant could be in no doubt that the Penalties had been incurred and would continue to be incurred unless she filed the Return.

10 44 The Tribunal's jurisdiction and powers were governed by Paragraph 22 of Schedule 55 of the FA 2009 which so far as is relevant states:

“ Where the appeal is against HMRC's decision that a penalty is payable the tribunal may affirm or cancel HMRC's decision ;

15 Where the appeal is against the amount of the penalty, the tribunal may affirm HMRC's decision, or substitute for HMRC's decision another decision that HMRC had the power to make.”

20 The Appellant appealed on the ground that the Penalties were not payable because HMRC had acted unfairly to the Appellant in failing to notify her that the Penalties had been imposed and were increasing. The Tribunal had found that HMRC had given adequate notice to the Appellant and had not acted in an unfair manner towards her. The Tribunal was bound by the HOK Decision and had the power only to affirm or cancel the decision of HMRC. For the reasons given above the Tribunal affirmed HMRC's decision.

45 Accordingly, the Appellant must pay to HMRC the sum of £550.00

25 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 to that party. The parties are referred to
30 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

35 **JENNIFER A TRIGGER**
TRIBUNAL JUDGE

RELEASE DATE: 28 SEPTEMBER 2017