



5

TC05759

Appeal number: TC/2013/03962

*Income Tax - Individual Tax Return - Late filing Penalty, Daily Penalties
and 6 Month Penalty - Reasonable Excuse - No- Appeal dismissed*

10

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

15

MS YIN SHAN WAN

Appellant

- and -

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

20

TRIBUNAL: JUDGE JENNIFER A TRIGGER

25

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 acknowledged by the Tribunal on 10 June 2013 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 3 February 2017.

30

DECISION

5 Introduction

1. This is an appeal against a Late Filing Penalty (the “Penalty”), Daily Penalties (the ”Penalties”) and a 6 Month Penalty (the “6 Month Penalty”) imposed under Paragraph 3, Paragraph 4 and Paragraph 5 of Schedule 55 Finance Act (the “FA”) 10 2009 for the late filing of an Individual Tax Return, for the year ending 5 April 2011.

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 15 the Donaldson case and accordingly, the Appellant’s appeal was listed for determination.

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

Background Facts

4. For the year ending 5 April 2011 Ms Yin Shan Wan (the “Appellant”), was 20 required to file a return either electronically by 31 January 2012 or non-electronically by 31 October 2011. The Appellant chose to file non – electronically and the return was received by HMRC on 20 November 2012 and processed on 20 December 2012.

5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 14 February 2014 in the amount of £100.00, the 25 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 7 August 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

30 7. As the return had still not been received by HMRC 6 months after the penalty date, HMRC issued a notice of penalty assessment on or around 7 August 2012 in the amount of £300.00, the 6 Month Penalty.

8. By Notice of Appeal dated 5 June 2013 the Appellant appealed the Penalty, the Penalties and the 6 Month Penalty to HM Courts & Tribunals Service.

35 9. The Appellant’ Case

10. The Appellant had been caring for her sick mother in Hong Kong during the following periods:-

18 December 2011 to February 2012

July 2012 to 10 September 2012

11 The Appellant was in Bristol for 2 days in September 2012 following her return from Hong Kong and then went to Edinburgh, to look after her mother in law. She returned to Bristol in early November 2012.

5 12 In November 2012 the Appellant sought help with her financial affairs from the Citizens Advice Centre for the purpose of claiming Tax Credits. Then, she went to the Bristol Enquiry Centre where, on 20 November 2012, she was advised that the tax return for 2010-2011 was outstanding. The return was completed that day and delivered by hand to the Bristol Tax Enquiry Centre. The Appellant maintained that
10 HMRC did not receive that letter.

13 The Appellant had not responded to the penalty letters sent by HMRC because she had not received them, in her view, either because the notices had been lost in the post or her husband had mislaid them. The Appellant believed that HMRC had the name of Y S Fong in their records which may have been confused by HMRC with her full
15 name.

Findings of Fact.

11. That the Appellant had filed the return late.

12. That HMRC had correctly calculated the Penalty, the Penalties and the 6 Month Penalty.

20 13. That the Appellant had failed to establish a reasonable excuse.

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

15. 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.

25 16. 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.

30 17. 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.”)

18. That the Penalty, the Penalties and the 6 Month Penalty were not disproportionate and the penalty regime was proportionate in its aim.

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

35

The Legislation

20. Taxes Management Act 1970 section 8.

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

Reasons for the Decision

5 22. The Appellant had filed tax returns since 2006-2007 when she became self-employed. It was reasonable to assume that the Appellant was aware of her obligations to file returns on time and the deadline by which a tax return must be filed.

10 23. The 2010-2011 notice clearly bore the filing deadline and explained the penalties if the return was filed late. As the Appellant had been charged filing penalties in 2006-2007 she would be aware, in the opinion of the Tribunal, of the implications of filing a late return. The Appellant failed to act as a prudent tax payer and her omission to file could not amount to a reasonable excuse in those circumstances.

15 24. The Appellant claimed that she first left the UK for Hong Kong on 18 December 2011. She had been sent a notice to file on 6 April 2011 and therefore had adequate time to file a paper return by 31 October 2011 but did not do so and gave no reason to explain her failure. This state of affairs could not, in the considered view of the Tribunal, amount to a reasonable excuse.

20 25. During the periods that the Appellant was in Hong Kong and Edinburgh she made no attempt to contact HMRC about her tax affairs, so far as the Tribunal could ascertain. She could have sought advice from HMRC to enable her to complete the return before the deadline and thus avoid the penalties but did not do. It was her failure to act without any reasonable excuse that caused the penalties to be levied.

25 26. Any letters addressed to the Appellant from HMRC would bear the address of HMRC for return in the event that the letters were not delivered to the Appellant. No letters are recorded as being returned to HMRC. The Tribunal deemed, therefore, that the notices had been served on the Appellant. If any notices had been mislaid by the Appellant's husband that did not constitute a reasonable excuse and was a matter
30 between the Appellant and her husband. The Appellant was solely responsible for the filing of her tax returns on time and that duty was not removed from the Appellant by poor housekeeping by her husband, if that be the case or carelessness on his part.

35 27. The Tribunal noted the Appellant's claim that papers may have been sent to the wrong address but placed no weight on that piece of evidence. The Appellant gave no explanation as to how this could have occurred nor why she considered that that might be the case.

28. 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 90

days late. The 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00.

29. Interest is charged automatically on all tax paid late, including penalties, whatever the reason for the delay. As the interest charge is not a penalty there is no right of appeal. An interest charge is intended as a measure of fairness so that those taxpayers who pay late do not gain an advantage over those who pay on time. The Tribunal had no power to discharge or adjust a fixed penalty which is properly due and was bound by the decision in *Hok Ltd v Revenue and Customs* in this respect.

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

31. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalty, the Penalties and the 6 Month Penalty were simply a means of securing the production of timely returns. So Article 6 of the ECHR did not apply.

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

33. There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction. Furthermore under Paragraph 16 (2) of Schedule 55 FA 2009 does not include as Special Reduction an inability to pay.

34. As far as the Tribunal could ascertain despite the fact that the Appellant had changed his address on a number occasions no post had been returned to HMRC. The Tribunal deemed that the Appellant had been duly served.

31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1300.00.

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.

JENNIFER A TRIGGER
TRIBUNAL JUDGE

RELEASE DATE: 7 APRIL 2017