



**TC05789**

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**Appeal number: TC/2013/04069**

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*Income Tax - Individual Tax Return - Late filing Penalty, Daily Penalties, 6 Month Penalty and 12 Month penalty - Reasonable Excuse - No- Appeal Dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

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**JOHN H ALLAN**

**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 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 dated 13 June 2013 (with enclosure) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 3 February 2017.**

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## DECISION

### Introduction

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1. This was an appeal against a Late Filing Penalty (the “Penalty”), Daily Penalties (the “Penalties”), a 6 Month Penalty ( the “6 Month Penalty”) and a 12 Month Penalty ( the “12 Month Penalty”) imposed under Paragraph 3, Paragraph 4, Paragraph 5 and paragraph 6 of Schedule 55 Finance Act ( the “FA”) 2009 for the late filing of an Individual Tax Return, for the year ending 5 April 2011 and a Late Filing Penalty (the “ 2<sup>nd</sup> Penalty”) imposed under Paragraph 3 of Schedule 55 FA 2009 for the late filing of an Individual Tax return, for the year ending 5 April 2012

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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, John H Allan’s appeal was listed for determination.

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

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### Background Facts

4. For the year ending 5 April 2011 John H Allan (the “Appellant”), was 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, the return was received by HMRC on 24 January 2013 and processed on 5 February 2013.

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5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 14 February 2012 in the amount of £100.00, the Penalty.

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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.

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.

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8. As the return had still not been received 12 months after the penalty date HMRC issued a penalty notice on or around 19 February 2013 in the sum of 300.00, the 12 Month Penalty.

9. The return for the year ending 5 April 2012 was issued to the Appellant on 6 April 2012.

10. The Appellant filed his non-electronic return on 25 January 2013 and it was processed by HMRC on 6 February 2013.

11. As the return was not received by the filing date for a non-electronic return, that being 31 October 2012, HMRC issued a notice of penalty assessment on or around 12 February 2013 in the amount of £100.00 ( the “2<sup>nd</sup> Penalty”).

12. The Appellant appealed against the Penalty, the Penalties, the 6 Month Penalty, the 12 Month Penalty and the 2<sup>nd</sup> Penalty to HMRC, which rejected the appeal by letter dated 16 May 2013 but, in the same letter, offered a review. The Appellant did not request a review.

13. Thereafter, the Appellant appealed to H M Courts and Tribunals Service by Notice of Appeal dated 13 June 2013 in which the Appellant appealed the Penalty, the Penalties, the 6 Month Penalty, the 12 penalty and the 2<sup>nd</sup> Penalty.

14. The Appellant accepted that the returns for the tax years 2010-2011 and 2011-2012 were filed late but maintained that there was a reasonable excuse.

#### Findings of Fact.

15. That the Appellant had filed the returns for the tax years 2010-2011 and 2011-2012 late.

16. That HMRC had correctly calculated the Penalty, the Penalties, the 6 Month Penalty, the 12 Month penalty and the 2<sup>nd</sup> Penalty

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

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

19. 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.

20. 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.

21. 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.”)

22. That the Penalty, the Penalties, the 6 Month Penalty, the 12 Month Penalty and the 2<sup>nd</sup> Penalty were not disproportionate and the penalty regime was proportionate in its aim.

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

#### The Legislation

24. Taxes Management Act 1970 section 8.

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

#### Reasons for the Decision

10 26. The Appellant claimed a reasonable excuse that “I was not in the right state of mind to deal with matters of private or personal affairs. I had suffered two strokes during April – June 2012. Due to low income I had to use payday loan companies which did not help the situation. The tax stated is minimal, it is the interest and charges that have created the problem”.

15 27. The appeal concerned the Appellant’s normal responsibilities to ensure that his 2010-2011 and 2011-2012 tax returns were filed on time. The responsibility to file on time was that of the Appellant alone and there was plenty of tax guidance about filing and payment deadlines, including the HMRC website which he could have accessed.

20 28. Whilst two strokes within a short period of time could amount to a reasonable excuse the Tribunal did not consider that to be the case in the disclosed circumstances of the Appellant’s appeal. Firstly, the severity of those strokes had not been disclosed nor the effect of those strokes on the Appellant’s health and ability to manage his affairs. No medical evidence was before the Tribunal, from which it could reach a determination as to the physical and mental health of the Appellant.

25 29. Secondly, the strokes from which he suffered happened after the due date for the filing of the return electronically or non-electronically for the tax year 2010-2011. The relevant filing dates for that year were 31 October 2011 or 31 January 2012. It was not the Appellant’s case that he was in poor health prior to April 2012 and there was no reason given for the late filing in that tax year. There was, therefore, no reasonable excuse shown.

30 30. In respect of tax year 2011-2012, in the opinion of the Tribunal, the Appellant had adequate time, on the facts as given, to file the return by 31 October 2012, non-electronically, or 31 January 2013, electronically. No reason was apparent to prevent the Appellant from seeking help from a welfare agency or from contacting HMRC to explain the situation.

35 The fact that the Appellant obtained payday loans could not amount to a reasonable excuse in the absence of any suggestion from the Appellant that the need to obtain a payday loan was attributable to events outside his control. Paragraph 23 of Schedule 55 FA 2009.

31. 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

5 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. The 12 Month Penalty was calculated under Paragraph 6 of Schedule 55 FA 2009 at £300.00. The 2<sup>nd</sup> Penalty was calculated under Paragraph 3 of Schedule 55 FA 2009 which specified the amount as £100.00.

10 32. 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.

15 33. 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.

34. 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.

20 35. 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.

25 36. 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.

31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1600.00.

30 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.

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**JENNIFER A TRIGGER  
TRIBUNAL JUDGE**

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**RELEASE DATE: 18 MARCH 2017**