



**TC05862**

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**Appeal number: TC/2013/07378**

*Income Tax - Individual Tax Return – Late Filing Penalty - Daily Penalties  
- Reasonable Excuse - No- Appeal dismissed*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

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**MR KENNETH ROE**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JENNIFER A TRIGGER**

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25    **The Tribunal determined the appeal on 24 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 25 October 2013 ( with enclosures) and HMRC's Statement of  
Case (with enclosures) acknowledged by the Tribunal on 15 February 2017.**

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## DECISION

### 5 Introduction

1. This is an appeal against a Late Filing Penalty ( the “Penalty”) and Daily Penalties (the ”Penalties”) imposed under Paragraphs 3 and 4 of Schedule 55 Finance Act ( the “FA”) 2009 for the late filing of an Individual Tax Return for the tax year  
10 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 24 April 2017 the Tribunal decided that the appeal was unsuccessful.

### Background Facts

4. For the year ending 5 April 2011 Mr Kenneth Roe (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 electronically. The return was received by HMRC on 21 June 2013.

5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 21 February 2012 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 14 August 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

30 7. The Appellant appealed to HMRC against the Penalty and Penalties to HMRC. The appeal was rejected by letter dated 13 March 2013 because the 2010-2011 return had not been filed.

8. On 17 July 2013 HMRC offered a review, which was accepted by the Appellant. The review concluded that the decision of HMRC was upheld. The  
35 Appellant was notified by letter dated 23 September 2013.

9. On 25 October 2013 the Appellant lodged a Notice of Appeal to HM Courts and Tribunal Service.

### The Appellant’s Case

10. The Appellant claimed that the return for tax year 2010-2011 was not filed late or in the alternative that, if the return was found to have been filed late, there was a reasonable excuse.

#### Findings of Fact.

- 5 11. That the Appellant had filed the return late.
12. That HMRC had correctly calculated the Penalty and the Penalties.
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.
- 10 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.
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  
15 assessed in the notice of assessment, the validity on the notice was not affected.
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 and the Penalties were not disproportionate and the penalty regime was proportionate in its aim.
- 20 19. That there were no special circumstance which would support a Special Reduction under Paragraph 16 of Schedule 55 FA 2009.

#### 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

- 25 22. The return was filed electronically on 21 June 2013 when the correct date for electronic submission was 31 January 2012.
23. 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  
30 under Paragraph 4 of Schedule 55 FA 2009 at £900.00. This was assessed at £10.00 per day and the return was filed 90 days late.
24. In a letter dated 30 July 2012 the Appellant claimed that the 2011-2012 electronic return had been filed in June 2011. It was accepted by HMRC and the

Tribunal that the date referred was a typographical error and that the correct date was June 2012.

5 The Appellant had tried to log on to file the return but his user ID and his password were not accepted. Enquiries with HMRC were made on 9 January 2012 and the Appellant was advised to request a new ID and Password. This was done and a user ID was received on 20 January 2012.

25. As no new password had been received by 31 January 2012 further enquiries were made with HMRC. At that time the Appellant was told that a request for a new password had to be made separately from the request for a new ID.

10 26. A new password was issued in February 2012. At that time the Appellant had no internet access as he was in the process of moving. It was not until April 2012 that internet was installed at the Appellant's new accommodation.

15 27. On 25 April 2012 the Appellant believed that he had submitted the 2010-2011 tax return online because a submission receipt was received in return bearing the number DGZ4PZRVJXCWV2TIXEAQFO7YSES73A7A ( the "Reference").

20 28. The Tribunal did not accept that the Appellant had filed the electronic return on 25 April 2012. The Reference had been checked by HMRC's Digital Service which confirmed that the reference did not relate to the filing of the 2010-2011 return. Therefore, in the opinion of the Tribunal, the return for 2010-2011 was filed late on 21 June 2013.

25 29. The Appellant could have accessed alternative internet facilities in the interim pending the installation of the internet at his new accommodation or he could have filed a paper return. His failure to take any action to mitigate the loss of his internet during the move to new accommodation could not be a reasonable excuse. The facts as pleaded did not reveal any unusual or exceptional circumstances nor any unforeseen event. With planning and foresight the Appellant could have avoided the delay, particularly when the notice to file was issued to the Appellant on 6 April 2011. He had, therefore, 9 months to complete and file the 2010-2011 return by the filing deadline.

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

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

40 32. The Penalty and 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.

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.

37 For the reasons given the Appellant must to HMRC £1000.00.

5 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  
10 “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**

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**RELEASE DATE: 11 MAY 2017**