



**TC02450**

*Appeal number: TC/2012/06863*

*INCOME TAX - Late filing penalty – partnership – five messages indicated returns not filed – no reasonable excuse - appeal dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DOJO PARTNERSHIP (BEVERLEY & RICHARD  
PRENDERGAST) Appellant**

**- and -**

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

**TRIBUNAL: JUDGE DR K KHAN**

**The Tribunal determined this Appeal on 30 November 2012 without a hearing and under the provisions of Rule 26 of the Tribunal Procedure First-tier Tribunal (Tax Chamber) Rules 2009 (default paper cases) after first having read the Notice of Appeal of 5 July 2012 and the HMRC Statement of Case of 15 August 2012**

## DECISION

### Appeal

- 5 1. This is an appeal by Mrs B Prendergast on behalf of the Dojo Partnership  
against a late filing fixed penalty imposed under paragraph 3 of Schedule 55 Finance  
Act 2009 for the late filing of the partnership tax return for the year ending 5 April  
2011. In accordance with paragraph 25(2) Schedule 55 Finance Act 2009 a penalty is  
payable by every relevant partner. Mrs B Prendergast is the represented partner  
10 therefore in accordance with Paragraph 25(4) Schedule 55 Finance Act 2009, HMRC  
have treated this as a composite appeal against the determination of penalties of all the  
partners' Self-Assessment records.

### Relevant Facts

- 15 2. A Notice to File a tax return for the year ending 5 April 2011 was issued on 6  
April 2011.
3. The filing dates are 31 October 2011 for a paper return or 31 January 2012 for  
an online return. The paper return received was filed on 6 March 2012.
4. A Notice of Penalty Assessment was issued to both partners on or after 14  
February 2012.
- 20 5. Beverley and Richard Prendergast completed self assessment forms on 19  
January 2012 and paid the relevant tax. They completed partnership tax returns on  
the same day which were submitted but appeared not to have been captured by the  
online server. They claimed to have received no notification of this and on 6 March  
on receipt of notification that their partnership return had not been filed, they  
25 resubmitted the returns.

### Relevant Legislation

- 30 6. Section 12 AA(2) TEMA 1970 provides that where a partnership is sent a  
return, the representative partner is required to complete it and to send it back by the  
filing date. The obligation is therefore to make and deliver a return containing such  
information as may reasonably be required to assess the amount of tax required to be  
paid by a partner. Where the represented partner submits a late return a £100 penalty  
arises on each partner. The liability to pay the penalty does not arise where there is a  
reasonable excuse for the failure to submit the return on time. There is no definition  
of reasonable excuse in law and each case is decided on its own merits.

### Appellant's Submissions

- 35 7. On 4 May 2012 the Commissioners issued a decision letter upholding the  
penalty and offering a review. On 4 May 2012 the Appellant requested a review and  
stated that the partnership had been in business for the last six years, and including

this filing they were two online filings. They did not realise that the return had not been captured on the computer until they received the late demand from the Commissioners.

5 8. They explained that they had never avoided paying tax and it seems very harsh to penalise a small business that cannot afford £100 fine where there is a genuine mistake.

9. They appealed to the Tribunal on 5 July 2012. The main point is that they were not aware that the filing had not been captured by the online service.

### **HMRC Submissions**

10 10. The Commissioners explained the position with regard to partnership returns and late filing. They said the penalty regime was well known and there is a legal requirement to submit all returns on time.

15 11. In this particular case the Appellant had purchased Legatio Technologies, third party software, which allows partnership returns to be filed using the Commissioners' online service. Where the partnership uses third party software to submit a return the submission must be authenticated before it can be accepted by the Commissioners. The authentication is completed by providing the user ID and password issued by the Commissioners for the purposes of online filing. The Commissioners records show that the Appellant enrolled to file online on 18 January 2012. However an error message showing there was a failure which arose because the customer had not used the correct password was shown. The Appellant may have completed the forms using their own particular software on 18 January 2012 but the submission was not received as the incorrect password was keyed in during the authentication process. HMRC's records show that an error message was given on 18 January 2012 on five different occasions informing the Appellant that the incorrect password was being used when submitting the return.

20 12. HMRC say that if the process had been completed and the return filed successfully an immediate electronic acknowledgement would have been issued as was the successful submission on 6 March 2012. If an email address was provided an email confirmation would have been generated. The records indicate that no acknowledgement or email confirmation was issued 18 January 2012.

### **Conclusion**

13. This appeal would be dismissed for the following reasons.

35 14. The Appellant received notification on five separate occasions that there was a failure to submit the return. It is possible that the software used did not allow for an error message to be received by the Appellant.

15. If the Appellant had filed and received an error message then the Tribunal would have accepted as a reasonable excuse that there had been a filing and perhaps a

computer glitch prevented the filing being captured. Such a case is different to where there is no filing and messages informing the taxpayer of the error were not received.

16. The Appellant honestly and genuinely believed they had made a successful filing online and ordinarily this would amount to a reasonable excuse. However  
5 where they were given notification (on five occasions) by the Commissioners that their filing was not successful then that excuse will not be available. The circumstances of this particular case suggests that, either the third party software prevented error messaging, an email address was not provided or an incorrect user  
10 password was used which resulted in the error message not being received by the Appellant.

17. It is unfortunate since that the Appellant did everything required to make the filing and thought that they had properly filed a return on time. However the Commissioners have discharged the burden placed upon them by showing that five separate failure messages were provided to the Appellant on 18 January 2012.

15 18. This does raise some questions on third party software which although authenticated by the Commissioners, did not appear to have the facility to provide error messaging which would have informed the taxpayer of non-compliance.

19. The Appeal is accordingly dismissed.

20. This document contains full findings of fact and reasons for the decision. Any  
20 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  
25 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**DR K KHAN**  
**TRIBUNAL JUDGE**

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**RELEASE DATE: 8 December 2012**