

Penalties for failure to file returns on time – the Construction Industry Scheme (CIS)

This factsheet contains information about the penalty or penalties we will charge if you do not file your monthly CIS returns on time. The penalty rules in this factsheet apply to CIS returns with a filing date of 19 November 2011 or later. The earliest CIS return they apply to is the return for the period 6 October 2011 to 5 November 2011.

This factsheet is one of a series. For the full list of factsheets in our compliance checks series, go to www.hmrc.gov.uk/compliance/factsheets.htm

The penalties when CIS returns are late

If any of your CIS returns are 1 day late, we will charge an initial fixed penalty of £100.

If we have still not received that return:

- 2 months after the date it was due, we will charge a second fixed penalty of £200
- 6 months after the date it was due, we will charge a further penalty of £300 or 5% of any liability to make payments that should have been shown in the return
- 12 months after the date it was due, we will charge a second further penalty – the amount of this penalty will depend on why your return was late

The amount we will charge will be either £300 or 5% of any liability to make payments, or a 'higher' penalty of:

- up to 100% of any liability to make payments
- a minimum penalty of £1,500 or £3,000

We will charge a 'higher' penalty if we find out that you deliberately withheld information from us. There is more information about this and about how we work out the second further penalty later in this factsheet. 'Liability to make payments' is the amount of any CIS deductions that a contractor should have deducted from payments to subcontractors and shown on their monthly CIS return. When a contractor first files a CIS return, if earlier CIS returns are also late, we may 'cap' the total amount of the £100 and £200 fixed penalties at a maximum of £3,000 for some returns. For more information about capping see page 2 of this factsheet.

Where a CIS return only relates to subcontractors registered for gross payments, there is no liability to make payments shown on the return. We therefore charge a penalty of £300 when the return is 6 months late. When the return is 12 months late we charge £300 or £1,500 or £3,000 depending on why your return was late.

What happens if you have a reasonable excuse

We will not charge you any penalties for filing a return late if you had a reasonable excuse for doing so – as long as you filed the return without any unreasonable delay after the excuse had ended.

A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond your control. What is or is not a reasonable excuse depends on the individual's abilities and circumstances. Those abilities and circumstances may mean that what is a reasonable excuse for one person may not be a reasonable excuse for another. If you think you have a reasonable excuse please tell us. If we accept that your excuse was a reasonable excuse, we will not charge a penalty.

We cannot normally accept the following as a reasonable excuse.

Lack of funds to pay – unless it is because of circumstances outside your control.

Reliance on another person to file your return on your behalf, unless you took reasonable care to avoid the failure to file.

If there was anything about your health or personal circumstances that made it difficult for you to file your returns on time, please tell the officer that is carrying out the check. Telling them will mean that they can take this into account when considering whether you had a reasonable excuse.

How we charge penalties for late CIS returns

In most cases we will automatically charge you a penalty as soon as each return is more than 1 day late, 2 months late, 6 months late and 12 months late

When a return is 6 months late and 12 months late, we will normally automatically charge you a penalty of £300. When you then file the return, if this shows any liability to make payments, we will normally work out whether 5% of any liability to make payments is more than the £300 already charged. If it is, we will automatically charge you the additional amount.

In some cases we will not have been able to automatically charge you these penalties as soon as they became due. For example, when we did not know that you needed to file a CIS return. In such cases we will normally send you a notice of penalty assessment when we find out about the late CIS return. The notice of penalty assessment will then include all of the penalties that are due for each return that you did not file on time.

If we automatically charged a penalty of £300 when a return was 6 months or 12 months late and we then charge you a penalty for the same return based on a percentage of any liability to make payments shown on the return, we will send you a notice of penalty assessment for the difference.

During a compliance check we may estimate the amount of any liability to make payments that should have been shown on a return. If we do this, the 6-month and 12-month penalties that we charge will be based on our estimate. If we estimate the liability to make payments that should have been shown on the return, we will also send you an assessment for any CIS deductions that should have been paid.

There are some circumstances when different rules may apply to the way we work out these penalties. For more information see below.

When we may cap the total amount of £100 and £200 fixed penalties

When a contractor first files a CIS return, and has not previously filed any CIS returns for earlier periods we will cap the total amount of £100 and £200 fixed penalties that we charge for that first and earlier returns to a maximum of £3,000. We will not cap penalties for returns that are due for any later periods.

The rules for capping only apply to monthly CIS returns due to be filed on or after 19 November 2011.

How we decide the amount of penalty we charge when a return is more than 6 months and 12 months late

Once a return is 6 months and 12 months late, we normally automatically charge a penalty of £300 or 5% of any liability to make payments that should have been shown on the return. The amount of this penalty will be based on the information we hold at the time.

When we receive the return or if we receive any further information that may affect the amount of penalty due, we may need to change the amount of penalty that we have charged. For example, if we have automatically charged £300 and your late return shows a liability to make payments that is more than £6,000 we would increase the amount of the penalty. This is because 5% would be more than £300.

When a return is 12 months late we also need to consider whether to charge a 'higher' penalty or whether we need to increase the amount, or the percentage rate, of the second further penalty that we have already charged. We will do this if:

- by failing to file the return you knew that you had deliberately withheld information from us
- you took action to conceal the withholding of information from us

Special rules for the penalties we charge when a return is 6 months or 12 months late

If we have capped the £100 and £200 fixed penalties to £3,000, special rules may apply to the way we work out the further penalties when a return is 6 months and 12 months late.

Under these circumstances, we will normally charge you 5% of any liability to make payments, even if this is less than £300.

These special rules do not however apply to the 12-month second further penalty if you deliberately withheld information from us by failing to file your return.

When we may charge you a 'higher' second further penalty when a return is more than 12 months late

We will charge you a 'higher' second further penalty or increase the amount we have already charged if your return is more than 12 months late and you withheld information that:

- would have helped us establish your correct liability to make payments, and
- you knew it would have helped us establish your correct liability to make payments

We may also charge you a 'higher' second further penalty or increase the amount we have already charged if your return is more than 12 months late and:

- the return relates only to subcontractors registered for gross payment, and
- you knowingly withheld the information on the return

We will normally only consider charging you a 'higher' second further penalty if, during a compliance check, we find out that you have deliberately withheld information. We call this 'deliberate behaviour'. The amount of the second further penalty that we charge you will depend on the type of behaviour. These are explained below.

Deliberate behaviour

This is where you knew that, by failing to file your return on time, information was being withheld from us.

Deliberate and concealed behaviour

This is where you knew that information was being withheld from us and you took additional steps to conceal this. This is the most serious type of failure and attracts the highest penalties.

If the behaviour is not deliberate or deliberate and concealed, we call it non-deliberate.

Why you should tell us about information you have withheld before we find out about it

If you know that you have withheld information, you should tell us straightaway. If you tell us about information that you have withheld before you had any reason to believe that we were about to find out about it, we call this an 'unprompted disclosure'. If you tell us about information that you have withheld at any other time, we call it a 'prompted disclosure'. If you have a liability to make payments on your return, and we charge an increased penalty percentage rate, any increase will be smaller than for prompted disclosures.

What you can do to reduce the percentage rate of any higher second further penalty

This section does not apply to returns that only include subcontractors who are registered to receive gross payments.

When your return is 12 months late we will normally charge you an automatic second further penalty of 5% of the liability to make payments on the return or £300 if we have not received the return. The circumstances when we may charge you a higher second further penalty or increase the amount we have already charged you is explained on page 4 of this factsheet.

When we intend to charge you a higher second further penalty or increase the amount we have already charged, we can limit the percentage rate of the higher penalty. We do this by reducing the potential increase from the maximum percentage we can charge, depending on our view of how much assistance you gave us.

We refer to this assistance as the **'quality of disclosure'** or as 'telling, helping and giving'.

Examples of telling, helping and giving include:

- telling us about or agreeing that you withheld information
- telling us everything you can about the information that was withheld as soon as you can
- helping us to work out any liability to make payments by using your own records
- helping us to understand your figures or records
- telling and helping us by answering our questions in full
- giving us access to your records by sending us your return and any other documents we need to accurately work out any liability to make payments

If we agree that you have done everything you can to assist us, we will give you the maximum reduction that we can when we work out the higher second further penalty. The amount of telling, helping and giving that will be needed depends on the circumstances in which the information was withheld. If we do not need any extra assistance from you, we will give you the full reduction that the law allows for telling helping and giving.

Letting us know about any special circumstances

If there are any special circumstances that you believe the officer dealing with the check should take into consideration when calculating **any** of the penalties for failing to file your return on time, you should let them know straightaway.

How we work out the amount of any increased second further penalty for deliberately withholding information

There are 6 stages in working out the amount of the increased penalty.

1 Calculating any liability to make payments

If there is any liability to make payments, the penalty will be a percentage of any liability to tax that should have been shown on the return. The officer dealing with the check will explain how this is worked out. Where there is no liability to make payments we will increase the fixed penalty we charge.

2 Determining our view of the 'behaviour'

When a return is more than 12 months late, we need to find out the reason why or the behaviour. What we mean by behaviour is explained on page 3 of this factsheet. The type of behaviour will determine whether we increase the amount of the second further penalty.

3 Deciding whether there was an unprompted or prompted disclosure

This does not apply to returns that only include subcontractors who are registered to receive gross payments. Where there is a liability to make payments this determines the minimum penalty percentage that we can charge. This is explained in more detail in the section headed 'Why you should tell us about information that you have withheld before we find out about it', see page 6 of this factsheet.

4 Deciding the percentage range or amount of the increased penalty

Where there is a liability to make payments, the increased penalty percentage rate depends on whether the behaviour was 'deliberate' or 'deliberate and concealed' and on whether the disclosure was 'prompted' or 'unprompted'. The following table shows the penalty ranges.

Type of behaviour	Unprompted disclosure	Prompted disclosure
Deliberate	20% to 70% of the liability to make payments or a minimum of £1,500	35% to 70% of the liability to make payments or a minimum of £1,500
Deliberate and concealed	30% to 100% of the liability to make payments or a minimum of £3,000	50% to 100% of the liability to make payments or a minimum of £3,000

Where there is no liability to make payments the amount of the increased penalty will depend on whether the behaviour was 'deliberate' or 'deliberate and concealed'. The following table shows the amount of the increased penalty for each behaviour.

Type of behaviour	Amount of increased penalty
Non-deliberate	No penalty increase so we charge a minimum of £300 (unless the penalty is capped)
Deliberate	£1,500
Deliberate and concealed	£3,000

5 Working out the reductions for the quality of disclosure (also referred to as 'telling, helping and giving')

This does not apply to returns that only include subcontractors who are registered to receive gross payments. Where there is a liability to make payments the quality of disclosure determines where the penalty will fall within the penalty range. The reduction we give depends on how much assistance you give us. For:

- telling – we give up to 30%
- helping – we give up to 40%
- giving access to records – we give up to 30%

6 Calculating the increased penalty percentage rate or amount

The increased penalty percentage rate or amount is determined by the penalty range and any reduction for the quality of disclosure, where these apply.

Example

We established that a customer had deliberately withheld information about their liability to make payments, by failing to file their return for that year.

When challenged, they told us about the liability, they sent us the return and admitted that they had deliberately withheld the information. This was a prompted disclosure.

The penalty range for deliberate behaviour with a prompted disclosure is 35% to 70% of the liability to tax.

The reduction for quality of disclosure (telling, helping and giving) was 100%.

Steps

To work out the penalty percentage rate, we first work out the difference between the minimum and maximum penalty percentages.

Calculation example

$$70\% \text{ minus } 35\% = 35$$

We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.

$$35 \times 100\% = 35\%$$

We then deduct the percentage reduction from the maximum penalty percentage we can charge.

$$70\% \text{ minus } 35\% = 35\%$$

This gives us the increased penalty percentage rate.

$$35\%$$

What happens when we charge you a penalty

We will send you a calculation of the amount we believe is due. We will try to agree this amount with you. We will either send you a penalty assessment notice or we may ask you to enter into a contract with us to pay the penalty together with any tax or interest you owe us.

What happens if you have deliberately done something wrong

If you:

- give us information that you know to be untrue, whether verbally or in a document, or
 - dishonestly misrepresent your liability to tax or claim payments to which you are not entitled
- we may carry out a criminal investigation with a view to prosecution.

Managing Serious Defaulters

If you have deliberately got your tax affairs wrong, we may need to monitor your tax affairs more closely. We have an enhanced monitoring programme called Managing Serious Defaulters. You can find more information about this in factsheet CC/FS14, 'Managing Serious Defaulters'. Go to www.hmrc.gov.uk/compliance/factsheets.htm

What to do if you disagree

If there is something that you do not agree with, you should tell us.

If we make a decision that you can appeal against we will write to you to explain the decision and tell you what to do if you disagree. You will usually have 3 options. Within 30 days you can:

- send new information to the officer you have been dealing with and ask them to take it into account
- have your case reviewed by an HMRC officer who has not been involved in the matter
- arrange for your appeal to be heard by an independent tribunal, who will decide the matter

Whichever you choose, you may also be able to ask for an HMRC specialist officer to act as a neutral facilitator to help resolve the dispute. This process is known as 'Alternative Dispute Resolution' (ADR).

ADR is only available for disputes relating to some of the taxes and other areas that we administer. The officer dealing with your check will tell you if ADR is available for the matter that you are disputing.

Go to www.hmrc.gov.uk/compliance/factsheets.htm to find more information about:

- appeals and reviews in HMRC1, 'HM Revenue & Customs decisions – what to do if you disagree'
- ADR in factsheet CC/FS21, 'Alternative Dispute Resolution'

Your rights when we are considering penalties

The European Convention on Human Rights gives you certain important rights. If we are considering penalties, we will tell you. We will also tell you that these rights apply and ask you to confirm that you understand them. These rights are that:

- if we ask you any questions to help us decide whether to charge you a penalty, you have the right not to answer them. The amount of help that you give us when we are considering penalties is entirely a matter for you to decide
- when deciding whether to answer our questions, you may want to get advice from a professional adviser – particularly if you do not already have one
- if you disagree with us about the tax or any penalties we believe are due, you can appeal. If you appeal about both tax and penalties, you have the right to ask for both appeals to be considered together
- you have the right to apply for funded legal assistance for dealing with any appeal against certain penalties
- you are entitled to have the matter of penalties dealt with without unreasonable delay

You can find full details about these rights in factsheet CC/FS9 'The Human Rights Act and penalties'. Go to www.hmrc.gov.uk/compliance/factsheets.htm