Penalties for failure to notify

This factsheet contains information about the penalties we may charge where there has been a failure to notify.

This factsheet is one of a series. For the full list of factsheets in our compliance checks series, go to www.gov.uk and search ‘factsheets’.

What is a failure to notify

There are certain circumstances that affect your liability to tax that you must tell us about, and you must do so within certain time limits. If you don’t do this, we call this a ‘failure to notify’.

The circumstances that you must tell us about include when you:

- first become liable to pay tax
- either carry out, or intend to carry out a taxable activity that must be registered with us

Examples of when you first become liable to pay tax include when:

- your business exceeds the VAT registration threshold - you must tell us within 30 days of this happening
- the VAT supplies you make change - you must tell us within 30 days of this happening
- your company first becomes chargeable to tax - you must tell us within 3 months of when the company’s accounting period began
- you are self-employed - you must tell us that you are due to pay Class 2 National Insurance contributions within 3 months from the end of the calendar month in which you started
- your profits from self-employment first make you chargeable to tax - you must tell us within 6 months of the end of the relevant tax year
- you have no earned income but your investment income first reaches a level that makes you chargeable to tax - you must tell us within 6 months of the end of the relevant tax year

Examples of when you either carry out, or intend to carry out, a taxable activity that must be registered with us include when you intend to:

- promote bingo - you must register at least 14 days before the play starts
- brew beer - you must register with us at least 14 days before you intend to start brewing
- make available for play any amusement machines on which Machine Games Duty is payable - you must register with us at least 14 days before the machines are made available for play
- operate flight(s) from the United Kingdom which are liable to Air Passenger Duty - you must register with us within 7 days of operating the first flight

When we may charge you a penalty for a failure to notify

We may charge you a penalty if you fail to notify us, or don’t notify us on time. If you ask someone else, such as an employee or adviser, to do something on your behalf, you must do as much as you can to make sure that a failure to notify doesn’t occur. If you don’t do this, we may charge you a penalty.

When we will not charge you a penalty for a failure to notify

We will not charge you a penalty for a failure to notify if all of the following apply:

- you have a reasonable excuse for the failure
- the failure wasn’t deliberate
- you told us without unreasonable delay after your reasonable excuse ended

What we mean by ‘deliberate’ is explained later in this factsheet.
A reasonable excuse is something that stopped you from meeting a tax obligation on time which you took reasonable care to meet. It might be due to circumstances outside your control or a combination of events. Once the reasonable excuse has ended, you must put things right without any unnecessary delay.

Whether you have a reasonable excuse depends upon the particular circumstances in which the failure occurred and your particular circumstances and abilities. This may mean that what is a reasonable excuse for one person may not be a reasonable excuse for someone else. If you think you have a reasonable excuse please tell us. If we accept that you have a reasonable excuse, we will not charge you a penalty.

If there was anything about your health or personal circumstances that made it difficult for you to notify us of your liability to tax, 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.

### Disclosing a failure to notify before we find it

If you tell us about a failure to notify before you had any reason to believe that we were about to find it, we call this an ‘unprompted disclosure’. If you tell us about a failure at any other time, we call it a ‘prompted disclosure’. Once we have started a check, a disclosure can only be unprompted if, exceptionally:

- it is about a failure unrelated to what we’re checking
- you had no reason to believe that we could have found it during our check

The minimum penalty for an unprompted disclosure is lower than the minimum penalty for a prompted one.

### What you can do to reduce any penalties we may charge you

We can reduce the amount of any penalty we charge you 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 there is a failure and how and why it happened
- telling us everything you can about the extent of the failure as soon as you know about it
- telling and helping us by answering our questions in full
- helping us to understand your accounts or records.
- helping us by replying to our letters quickly
- helping us by agreeing to attend any meetings, or visits, at a mutually convenient time
- helping us by checking your own records to identify the extent of the failure
- giving us access to documents we’ve asked for without unnecessary delay
- helping us to access documents we may not know about, as well as those that we ask to see

We’ll reduce the penalty by the maximum amount possible if you:

- tell us everything you can about any wrongdoing as soon as you can
- do everything you can to help us correct it

If you delay telling us, you may still be entitled to a reduction but it will be smaller. If we don’t need any extra assistance from you, we’ll 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 working out the penalty, you should let them know straightaway.

### How we work out the amount of a penalty

There are 8 stages in working out the amount of any penalty. Each stage is explained in more detail on page 3 of this factsheet.
1 Working out the amount of the potential lost revenue (PLR)

The penalty is a percentage of what we call the ‘potential lost revenue’. Potential lost revenue (PLR) is the amount that arises as a result of the failure to notify. The officer dealing with the check will explain how we work this out.

2 Determining our view of the ‘behaviour’

When there is a failure to notify, we’ll work with you to find out what caused it. We refer to this as the ‘behaviour’. The type of behaviour will affect whether we charge you a penalty and the amount of the penalty. The 3 different types of behaviour are described below.

Non-deliberate

This is where you failed to tell us about a circumstance that affected your liability to tax within the relevant time limit, but the failure was not deliberate or deliberate and concealed.

Deliberate but not concealed

This is where you knew that you should have told us about a circumstance that affected your liability to tax within the relevant time limit, but you chose not to tell us.

Deliberate and concealed

This is where you knew that you should have told us about a circumstance that affected your liability to tax within the relevant time limit, but you chose not to tell us. As well as choosing not to tell us, you also took active steps to hide the failure to notify from us.

3 Deciding whether the disclosure was unprompted or prompted

This determines the minimum penalty percentage that we can charge you. The section titled ‘Disclosing a failure to notify before we find it’, on page 2 of this factsheet, explains this in more detail.

4 The penalty ranges

The penalty percentage will fall within a range. This range will depend on our view of the type of behaviour and whether the disclosure was unprompted or prompted. The following table shows the penalty ranges.

<table>
<thead>
<tr>
<th>Type of behaviour</th>
<th>Unprompted or prompted disclosure</th>
<th>Penalty range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-deliberate</td>
<td>Unprompted - within 12 months of tax being due</td>
<td>0% to 30%</td>
</tr>
<tr>
<td></td>
<td>Unprompted - 12 months or more after tax was due</td>
<td>10% to 30%</td>
</tr>
<tr>
<td></td>
<td>Prompted - within 12 months of tax being due</td>
<td>10% to 30%</td>
</tr>
<tr>
<td></td>
<td>Prompted - 12 months or more after tax was due</td>
<td>20% to 30%</td>
</tr>
<tr>
<td>Deliberate</td>
<td>Unprompted</td>
<td>20% to 70%</td>
</tr>
<tr>
<td></td>
<td>Prompted</td>
<td>35% to 70%</td>
</tr>
<tr>
<td>Deliberate and concealed</td>
<td>Unprompted</td>
<td>30% to 100%</td>
</tr>
<tr>
<td></td>
<td>Prompted</td>
<td>50% to 100%</td>
</tr>
</tbody>
</table>

If you have a reasonable excuse for a non-deliberate failure to notify, we will not charge you a penalty.

5 Working out the reductions for the quality of disclosure (telling, helping and giving)

The quality of disclosure (telling, helping and giving) 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 Working out the penalty percentage rate

The penalty percentage rate is determined by the penalty range and the reduction for the quality of disclosure.

Example

During a compliance check, we found a non-deliberate failure to notify that the customer had not told us about before we started our check. When we told them about the failure, they agreed with us that there had been a failure. This was therefore a prompted disclosure. The failure occurred more than 12 months after the tax became due.

The penalty range for a non-deliberate failure to notify with a prompted disclosure more than 12 months after the tax was due is 20% to 30% of the ‘potential lost revenue’ (PLR).

The reduction for quality of disclosure (telling, helping and giving) was 70%.

<table>
<thead>
<tr>
<th>Steps</th>
<th>Calculation example</th>
</tr>
</thead>
<tbody>
<tr>
<td>To work out the penalty percentage rate, we first work out the difference between the minimum and maximum penalty percentages.</td>
<td>30% minus 20% = 10</td>
</tr>
<tr>
<td>We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.</td>
<td>10 x 70% = 7%</td>
</tr>
<tr>
<td>We then take off the percentage reduction from the maximum penalty percentage we can charge.</td>
<td>30% minus 7% = 23%</td>
</tr>
<tr>
<td>This gives us the penalty percentage rate.</td>
<td>23%</td>
</tr>
</tbody>
</table>

7 Working out the amount of the penalty

To work out the amount of the penalty, we multiply the PLR by the penalty percentage rate. For example, if the PLR in the example above was £3,000, and there were no other reductions, the penalty would be £690 (£3,000 x 23% = £690).

8 Considering other reductions

After working out the amount of the penalty, we then take into account any other reductions that are necessary. For example, where we’ve already charged another penalty on the same tax or duty. This then gives the amount of penalty that we’ll charge.

How we tell you about a penalty

We’ll write to tell you how much the penalty is and how we have worked it out. If there’s anything about the penalty that you don’t agree with, or if you think there is any information we’ve not already taken into account, you should tell us straightaway. After taking account of anything you have told us, we’ll then either:

- send you a penalty assessment notice
- invite you to enter into a contract with us to pay the penalty, together with the tax and interest

In certain circumstances you may also have to pay interest on the penalty if you don’t pay it on time.

When an officer of a company may have to pay some or all of a company’s penalty for deliberate failure to notify

A company officer may have to pay some or all of the company’s penalty if the penalty is due to their actions, and one or more of the following applies:

- they have gained, or attempted to gain, personally from a deliberate inaccuracy
- the company is, or we believe it is, about to become insolvent - even if the officer didn’t gain personally from the deliberate inaccuracy

If the company pays the penalty, we’ll not ask the individual officers to pay.

A company officer is a director, shadow director, company secretary or manager of a company, or a member of a limited liability partnership.
What happens if you’ve deliberately done something wrong

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

Managing Serious Defaulters

If you’ve deliberately got your tax affairs wrong, we may need to monitor your tax affairs more closely.
We’ve 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.gov.uk and search ‘CC/FS14’.

Publishing details of deliberate defaulters

In certain circumstances, we may publish your details if you have deliberately got your tax affairs wrong.
We can’t publish your details if you qualify for the maximum penalty reduction. You can find more information in factsheet CC/FS13, ‘Publishing details of deliberate defaulters’. Go to www.gov.uk and search ‘CC/FS13’.

What to do if you disagree

If there is something that you don’t agree with, you should tell us.

If we make a decision that you can appeal against we’ll 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’ve 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.gov.uk and search ‘HMRC1’ and ‘CC/FS21’ to find more information about:
- appeals and reviews in factsheet HMRC1, ‘HM Revenue and Customs decisions – what you can do if you disagree’
- ADR in factsheet CC/FS21, ‘Alternative Dispute Resolution’

Your rights when we’re considering penalties

The European Convention on Human Rights gives you certain important rights. If we’re considering penalties, we’ll tell you. We’ll 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 don’t 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’re 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.gov.uk and search ‘CC/FS9’.
Which tax periods and taxes these penalty rules apply to

The penalty rules in this factsheet apply to failures to notify that arise on or after 1 April 2010, for all the taxes and duties listed below, except where stated.

<table>
<thead>
<tr>
<th>Tax</th>
<th>Penalty Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggregates Levy</td>
<td>Hydrocarbon Oils Duty</td>
</tr>
<tr>
<td>Air Passenger Duty</td>
<td>Income Tax (including Self Assessment)</td>
</tr>
<tr>
<td>Alcohol Duty</td>
<td>Insurance Premium Tax</td>
</tr>
<tr>
<td>Amusement Machine Licence Duty</td>
<td>Landfill Tax</td>
</tr>
<tr>
<td>Bingo Duty</td>
<td>Lottery Duty</td>
</tr>
<tr>
<td>Capital Gains Tax</td>
<td>Machine Games Duty (from 1 February 2013)</td>
</tr>
<tr>
<td>Climate Change Levy</td>
<td>National Insurance Class 2 and Class 4</td>
</tr>
<tr>
<td>Corporation Tax</td>
<td>Pool Betting Duty</td>
</tr>
<tr>
<td>Excise Duties (Holding and Movements)</td>
<td>Remote Gaming Duty</td>
</tr>
<tr>
<td>Gaming Duty</td>
<td>Tobacco Duty</td>
</tr>
<tr>
<td>General Betting Duty</td>
<td>VAT</td>
</tr>
</tbody>
</table>