



# Penalties for enablers of offshore tax evasion or non-compliance

This factsheet gives you detailed information about the enabler penalty that we may charge a person who enabled another person to carry out offshore tax evasion or non-compliance. This is where the tax at stake is Income Tax, Capital Gains Tax or Inheritance Tax.

This factsheet is one of a series. For the full list of factsheets in the series, go to [www.gov.uk](http://www.gov.uk) and search 'Compliance checks factsheets'.

## If you need help

If you have any health or personal circumstances that may make it difficult for you to deal with this matter, please tell the officer that's contacted you. We'll help you in whatever way we can. For more details, go to [www.gov.uk/dealing-hmrc-additional-needs](http://www.gov.uk/dealing-hmrc-additional-needs)

You can also ask someone else to deal with us on your behalf, for example, a professional adviser, friend or relative. We may however still need to talk or write to you directly about some things. If we need to write to you, we'll send a copy to the person you've asked us to deal with. If we need to talk to you, they can be with you when we do, if you prefer.

## When we may charge an enabler penalty

You may be liable to an enabler penalty if you've encouraged, assisted or otherwise facilitated another person to carry out offshore tax evasion or non-compliance and both of conditions A and B are met:

Condition A is met if you knew that your actions enabled, or were likely to enable, another person to carry out offshore tax evasion or non-compliance. A person carries out offshore tax evasion or non-compliance if either:

- they commit a relevant offence
- their actions make them liable to a relevant civil penalty relating to Income Tax, Capital Gains Tax or Inheritance Tax

Condition B is met when the person carrying out the offshore tax evasion or non-compliance if either they:

- have been convicted of a relevant offence and the conviction is final
- are liable to a relevant penalty and the penalty is final

Condition B is also met if HMRC has entered into and agreed a contract settlement with the person carrying out the offshore tax evasion or non-compliance. This is in place of assessing a penalty or taking proceedings to recover such a penalty.

## Relevant offences

The relevant offences are:

- cheating the public revenue involving offshore activity
- fraudulent evasion of Income Tax involving offshore activity
- being chargeable to Income Tax or Capital Gains Tax on or by reference to offshore income, assets or liabilities, where the person has
  - failed to give notice of being chargeable to tax
  - failed to deliver a return
  - made an inaccurate return

## **Relevant penalties**

A relevant penalty is a penalty under:

- paragraph 1 of Schedule 24 Finance Act 2007 for inaccuracies in a document involving an offshore activity
- paragraph 1 of Schedule 41 Finance Act 2008 for a failure to notify liability to tax in involving an offshore activity
- paragraph 6 of Schedule 55 Finance Act 2009 for a failure to file a tax return on time involving an offshore activity
- paragraph 1 of Schedule 21 Finance Act 2015 for a relevant offshore asset move

You can find more information about these penalties in the following factsheets:

- CC/FS7a, 'Penalties for inaccuracies in returns and documents'
- CC/FS11, 'Penalties for failure to notify'
- CC/FS17 'Higher penalties for offshore matters'
- CC/FS18a, 'Penalties for failure to file annual and occasional returns and documents on time - including Self Assessment tax returns for Income Tax'

## **What we mean by 'offshore activity'**

A person has carried out an offshore activity if it involves:

- an offshore matter
- an offshore transfer
- a relevant offshore asset move

Our factsheet CC/FS17 'Higher penalties for offshore matters' contains more information about offshore activity.

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## **How we calculate the penalty**

### **Maximum penalty for all cases except where the enabler penalty relates to an offshore asset move**

To calculate the penalty we use the original amount of Potential Lost Revenue (PLR) used to apply a penalty to the person who carried out the offshore tax evasion or non-compliance.

The maximum penalty is the higher of either:

- 100% of the PLR
- £3,000

### **Maximum penalty where the enabler penalty relates to an offshore asset move**

To calculate the additional penalty for enabling an offshore asset move we use 50% of the original amount of PLR. This is the PLR used to apply a penalty to the person who carried out the offshore tax evasion or non-compliance.

The maximum penalty for an enabler of an offshore asset move is the higher of either

- 50% of the PLR
- £3,000

Where offences include offshore tax evasion and an offshore asset move, an enabler may be charged both types of penalty shown above. This means they may be charged a standard penalty for enabling another person to carry out offshore tax evasion or non-compliance and also a separate offshore asset move penalty.

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## **How we reduce the amount of penalty we may charge**

We may reduce the penalty depending on:

- whether the disclosure is prompted or unprompted
- the quality of the disclosure
- whether a special reduction is due

## Disclosing an offshore activity

If you tell us about the offshore activity before you've any reason to believe that we've discovered, or are about to discover the offshore tax evasion that you've enabled, we call this an 'unprompted disclosure'. If you tell us about this activity at any other time, we call it a 'prompted disclosure'.

The timing of the disclosure relates to the original evasion or non-compliance.

When calculating penalties we'll take account of how long it's taken you to come forward since the inaccuracy or failure occurred.

If you make an unprompted disclosure we may reduce the penalty to a lower amount than if you make a prompted disclosure.

The penalty will fall into one of the ranges below depending on whether the disclosure is prompted or unprompted.

### Reduction for disclosure in all cases except where the enabler penalty relates to an offshore asset move

Disclosure	Range Minimum	Range Maximum
Unprompted	Higher of 10% of the PLR or £1,000	Higher of 100% of the PLR or £3,000
Prompted	Higher of 30% of the PLR or £3,000	Higher of 100% of the PLR or £3,000

### Reduction for disclosure where the enabler penalty relates to an offshore asset move

Disclosure	Range Minimum	Range Maximum
Unprompted	Higher of 10% of the PLR or £1,000	Higher of 50% of the PLR or £3,000
Prompted	Higher of 30% of the PLR or £3,000	Higher of 50% of the PLR or £3,000

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

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 any or all matters which have led to an inaccuracy in a document, a supply of false information or failure to disclose an under-assessment
- telling us about what you did to enable another person to carry out a relevant offence
- helping us by encouraging that person to co-operate with us
- helping us to calculate that person's liability to a penalty
- giving us access to records we've asked for without unnecessary delay
- giving us access to records we may not know about, as well as those that we ask to see
- telling and helping us by answering our questions in full

The quality of disclosure (telling, helping and giving), determines the amount of the penalty we'll charge. The reduction we give depends on how much assistance you give us. If you delay telling us, you may still be entitled to a reduction but it'll be smaller.

## 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 the penalty, you should let them know straightaway. These will be uncommon or exceptional circumstances that we have not already considered when working out the quality of disclosure.

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

There are 6 stages in working out the amount of any penalty. Each stage is explained in more detail below.

### **1 Work out the amount of the maximum penalty**

This is the maximum amount worked out as shown on page 2 (amount A).

### **2 Deciding whether the disclosure was unprompted or prompted**

This determines the minimum penalty percentage that we can charge. This is explained in more detail in the section of this factsheet titled 'Disclosing an offshore activity'.

The penalty falls into one of the ranges shown in the tables on page 3 depending on whether the disclosure is prompted or unprompted.

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

The quality of disclosure (telling, helping and giving), determines where the penalty will fall within the penalty range shown above on page 3. 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%

### **4 Working out the penalty percentage rate**

The penalty percentage rate is determined by the penalty range shown on page 3 and the reduction for quality of disclosure percentage.

To work out the penalty percentage rate, shown in the example below, we first work out the difference between the minimum (amount D) and maximum (amount C) penalty percentages to give us the maximum penalty percentage we can charge (amount E).

We then take off the percentage reduction from the maximum penalty percentage we can charge. This gives us the penalty percentage rate (amount G).

### **5 Working out the amount of the penalty**

To work out the amount of the penalty, we multiply the potential lost revenue (PLR) by the penalty percentage rate.

For example: a prompted disclosure, where the quality and timing of the disclosure had been minimal.

Step 1

The PLR is £5,255,700 (amount A)

Step 2

The penalty range for a prompted disclosure is 30% to 100% of the PLR

Step 3

The percentage reduction for quality of disclosure (telling, helping and giving) was 7% (amount B).

Step 4

The maximum penalty (C) is 100% and the minimum penalty (D) is 30%.

So the maximum penalty percentage we can charge (E) is  $100 - 30 = 70\%$ .

The actual reduction percentage for disclosure (F) is  $7\% \times 70 = 4.9\%$  (say 5%).

Penalty percentage to be charged (G) is  $100\% - 5\% = 95\%$ .

Step 5

The penalty to be charged is  $\text{£}5,255,700 \times 95\% = \text{£}4,992,915$

## **6 Considering other reductions**

After working out the amount of the penalty, we then take into account any other reductions that are necessary. This will give the amount of penalty that we'll charge.

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## **How we tell you about a penalty**

We'll write to you to tell you how much the penalty is and how we've worked it out. If there's anything about the penalty that you do not agree with, or if you think there is any information we have not already taken into account, you should tell us straightaway.

After taking account of anything you've told us, we'll 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 do not pay it on time.

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## **What to do if you disagree**

If there's something that you do not 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'll 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'll decide the matter

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## **Your rights when we are 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 the following 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've the right not to answer them
- the amount of help that you give us when we're 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 any penalties we believe are due, you can appeal
- you've 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](http://www.gov.uk) and search for 'CC/FS9'.

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## **What happens if you give us information that you know to be untrue**

If you:

- give us information that you know to be untrue, whether verbally or in a document
- dishonestly declare the wrong amount of duty or claim payments to which you are not entitled  
we may carry out a criminal investigation and you may be prosecuted.