



Penalties for failure to file annual and occasional returns and documents on time (including Self Assessment tax returns for Income Tax)

This factsheet applies to annual and occasional returns for Income Tax, Capital Gains Tax, The Registered Pension Scheme, Bank Payroll Tax, Annual Tax on Enveloped Dwellings and Stamp Duty Reserve Tax.

It tells you about the increased penalty percentage we may charge when your return is more than 12 months late.

This factsheet is one of a series. For the full list of factsheets in the series, go to www.gov.uk and search for 'Compliance checks factsheets'.

The penalties we may have already charged you

Because you didn't file your tax return or another document on time, we may have already charged you the following penalties:

- an initial penalty of £100 on the day after the date your tax return or document was due
- daily penalties of £10 per day for 90 days after your return or document was 3 months late
- a 'further penalty' of £300 or 5% of our estimate of your liability to tax (whichever was the higher) after your tax return or document was 6 months late
- a second 'further penalty' of £300 or 5% of our estimate of your liability to tax, (whichever was the higher) after your tax return or document was 12 months late

When your return or document hasn't been filed, we can estimate your liability to tax. If we do this, the penalty charged at 6 months and 12 months will be 5% of the estimated liability or £300 if this is higher.

When you file your return or document, the 6 month and 12 month penalties will automatically be re-calculated if the liability to tax in the return is different from our estimate.

'Liability to tax' means the amount of tax and any National Insurance contributions (NICs) that should have been shown or notified on your return or other document.

If we haven't already charged you these penalties and the return or document is already 12 months late, we may charge you all the penalties for failing to file your return on time together.

When we'll increase the percentage rate of the second further penalty

When we've already charged the second further penalty, we'll increase the percentage rate if, by failing to file your return or document within 12 months, you:

- withheld information
- knew that the information would help us to establish your correct liability to tax

During our check we'll establish whether you've withheld information and if so, the reason why. We call this reason the 'behaviour'. The different behaviours are explained below.

When we won't charge you any penalties for failure to file on time

We won't charge you **any** penalties for failing to file your return or document on time if you had a reasonable excuse, as long as you then filed your return or document without delay once the reasonable excuse had ended.

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 won't charge you penalties for failure to file on time. If we've already charged any, we'll cancel them.

If there was anything about your health or personal circumstances that made it difficult for you to file your return or document 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.

Why you should tell us about information that you've withheld before we find out about it

If you know that you've withheld information, you should tell us straightaway. If you tell us about information that you've 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've withheld at any other time, we call it a 'prompted disclosure'. The penalty percentage rate for unprompted disclosures will be smaller than for prompted disclosures.

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

We can reduce the amount of any increased second further penalty, 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 by using your own records to work out your correct tax liability
- 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 your correct liability to tax

We'll give you the maximum reduction available when we work out the higher second further penalty if you:

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

The amount of telling, helping and giving that will be needed depends on the circumstances in which the information was withheld. If we don't need any extra assistance from you and there hasn't been a significant delay in you coming forward, we'll give you the full reduction available 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 percentage rate

There are 8 stages in working out the amount of the increased penalty percentage. Each stage is explained in more detail below.

1 Working out the liability to tax

The penalty is a percentage of the liability to tax that should have been shown on the return or document. The officer dealing with the check will explain how this is worked out.

2 Determining our view of the 'behaviour'

When a return is more than 12 months late, we need to find out the reason why. We refer to this reason as the 'behaviour'. The type of behaviour will determine whether we increase the percentage rate of the second further penalty.

There are 3 types of behaviour.

Non-deliberate

This is where you didn't know that, by failing to file your tax return or document on time, information was being withheld from us that would help us to establish your correct liability to tax. In such cases, we won't increase the percentage rate of the second further penalty.

Deliberate

This is where you knew that, by failing to file your tax return or document on time, information was being withheld that would help us to establish your correct liability to tax.

Deliberate and concealed

This is where you knew that information was being withheld that would help us to establish your correct liability to tax and you took additional steps to conceal this. This is the most serious type of failure and attracts the highest penalties.

3 Deciding whether there was an unprompted or prompted disclosure

This determines the minimum penalty percentage that we can charge. This is explained in more detail in the section of this factsheet titled 'Why you should tell us about information that you've withheld before we find out about it'.

4 Deciding the range that the increased penalty percentage rate falls within

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.

of behaviour	Unprompted disclosure	Prompted disclosure
Non-deliberate	No penalty increase	No penalty increase
Deliberate	20% to 70%	35% to 70%
Deliberate and concealed	30% to 100%	50% to 100%

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

When calculating penalties for deliberate and concealed failures we'll take into account how long it has taken you to come forward. If you've taken a significant period (normally 3 years) we'll normally restrict the amount of the reduction given for quality of disclosure.

We'll restrict the penalty range by 10 percentage points above the minimum to reflect the time taken, before working out the reductions for telling, helping and giving.

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 Working out the increased penalty percentage rate

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

Example

We established that a customer had deliberately withheld information about a taxable gain from the sale of an asset, by failing to file their return for that year. When challenged, they told us about the gain, 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

Calculation example

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

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

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

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

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

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

This gives us the increased penalty percentage rate.

$$35\%$$

7 Working out the amount of the second further penalty

To work out the amount of the second further penalty, we multiply the liability to tax by the increased penalty percentage rate. See the example above.

The liability to tax is £10,000 and the increased penalty percentage rate is 35%. This means that the amount of the second further penalty is £3,500. We then take into account the penalty already charged, which is £500 (£10,000 x 5% = £500). The balance to be charged is £3,000.

8 Considering other reductions

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

How we tell you if we increase the percentage rate of the second further penalty

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

- normally send you a further penalty assessment notice
- enter into a contract with you to pay the penalty together with any tax and interest you owe us

What happens if you've deliberately done something wrong

We may carry out a criminal investigation with a view to prosecution 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 aren't entitled

Managing Serious Defaulters

If you've 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.gov.uk and search for 'CC/FS14'.

What to do if you disagree

If there's 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'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 hasn't been involved in the matter
- arrange for your appeal to be heard by an independent tribunal, who'll 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're disputing.

You can find more information in:

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

Go to www.gov.uk and search for 'HMRC1' and 'CC/FS21'.

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'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 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've 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.gov.uk and search for 'CC/FS9'.

The tax periods these penalty rules apply to

The penalty rules in this factsheet apply to:

- Income and Capital Gains Tax returns for the year 2010 to 2011 and later years
- Annual Tax on Enveloped Dwellings for the year 2013 to 2014 and later years
- Bank Payroll Tax returns due to be filed on or after 31 August 2010
- Registered Pension Tax returns due to be filed on or after 30 September 2010
- Stamp Duty Reserve Tax transactions on or after 1 January 2015