



iTax UK LLP
Tax Advisers



New Penalties for Errors on Tax Returns

The Changes

From 1 April 2009 HMRC will begin issuing harsher penalties in respect of errors on documents submitted or statements made where such errors reduce a tax liability or increase a repayment claim.

The Law

Section 97 and Schedule 24 to The Finance Act 2007 contain provisions imposing penalties on taxpayers who make errors in certain documents sent to HMRC or unreasonably fail to report errors in assessments by HMRC.

The penalties apply to:

- Statements, declarations or any document which is likely to be relied upon by HMRC
- VAT returns
- Excise duty returns
- Repayment claims
- Under-payments by the taxpayer in relation to an assessment which understates an actual liability
- an over-claim of any repayment or credit to the taxpayer

Culpability

In respect of the new measures, there are three levels of culpability:

- 1) "Careless" - where the inaccuracy is due to failure by a person to take reasonable care (maximum penalty 30% of the potential lost revenue);
- 2) "deliberate but not concealed" - where the accuracy is deliberate but no attempt has been made to conceal it (maximum penalty 70% of the potential lost revenue); and
- 3) "deliberate and concealed" - where the accuracy is deliberate and arrangements were made to conceal it e.g. by submitting false evidence in support of an inaccurate figure (maximum penalty 100% of the potential lost revenue).

Mitigation

Mitigation of penalties depends on whether a disclosure was "unprompted" or "prompted" by HMRC and the content of the disclosure such as timing, nature and extent of arrears. "Unprompted" relates to situations where a disclosure was made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy. "Prompted" relates to situations amounting to anything other than "unprompted".

30% penalties can be reduced to not less than 15% to reflect the quality of disclosure if "prompted" or reduced to an appropriate percentage (which may be 0%) if "unprompted".

70% penalties can be reduced to not less than 35% depending on the quality of disclosure if "prompted" or reduced to not less than 20% if "unprompted".

100% penalties can be reduced to not less than 50% depending on the quality of disclosure if "prompted" or reduced to not less than 30% if "unprompted".

Reason for Inaccuracy	Disclosure	Maximum Penalty	Minimum Penalty
Careless	Prompted	30%	15%
	Unprompted	30%	0%
Deliberate but not concealed	Prompted	70%	35%
	Unprompted	70%	20%
Deliberate and concealed	Prompted	100%	50%
	Unprompted	100%	30%

Other issues

For deliberate inaccuracies, penalties can be imposed personally on Directors, Company secretaries and Managing Officers.

In respect of "careless" error penalties, these can be suspended by HMRC for a period not exceeding two years.

The decision to impose a penalty, the amount of penalty, the decision not to suspend a penalty or the conditions surrounding suspension, can be the subject of an appeal to the Tax Tribunal.

Implications

- After 1 April 2009 errors and inaccuracies will become more expensive and time consuming to resolve;
- There will be an increased risk of litigation being required to resolve disputes with HMRC under the new regime;
- Significant penalties may have to be reported under Sarbanes Oxley Act where businesses are SEC registered; and
- Imposition of penalties could threaten the solvency of your business or lead to shareholder value issues.

Actions

It is vital that any liabilities are dealt with properly in order to avoid the imposition of the new penalties.

Our team of tax compliance experts can:

- Undertake a review of your systems in order to ensure that the risk of tax compliance failure is avoided as far as possible;
- Identify existing issues and manage any disclosure before the new provisions impact on your business;
- Represent your business in the Tax Tribunal in respect of any dispute

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