

About this Unit

This introduction is designed to help you get the most out of the self-study unit on Penalties for Inaccuracies Schedule 24 Finance Act 2007. It includes notes on the content, and some suggestions on how you can maximise your learning from the material.

Accreditation

The material contained in this unit is examinable. From time to time we refer you to other sources, such as the legislation or departmental guidance. Margin notes show the derivation of the learning material and can be read for further information. You can assume material outside this unit is **NOT** examinable unless we state otherwise.

Content of this unit

This unit consists of seven chapters, each devoted to a different aspect of penalties for inaccuracies. They are

Chapter 1 – Overview of Legislation

This will cover

- what penalties are for and when they apply
- what is a document?
- types of behaviour
- understanding of 'reasonable care'
- minimum and maximum penalties
- Article 6 of the Human Rights Act (HRA).

Chapter 2 – Establish Behaviour

This will cover

- power to ask for information in relation to penalty
- gathering and assessing information, including evidence
- written records
- referrals to Evasion Referral Team (ERT)
- Data Protection.

Chapter 3 – Disclosing Inaccuracies

This will cover

- when a penalty is due
- maximum and minimum percentage
- gathering information
- quality of disclosure
- making your decision.

Chapter 4 – Calculating a Penalty

This will cover

- calculation of Potential Lost Revenue (PLR)
- grouping inaccuracies
- calculating the penalty
- suspension.

Chapter 5 – Decisions, Approval and Authorisation

This will cover

- when, why and from whom to seek authorisation
- tolerances and authorisation
- transfer of liability to officer of company
- settlement
- transitional issues
- function of authorising officer
- decision making process.

Chapter 6 – National Penalty Processing System

This will cover

- overview of system
- outputs
- issuing an assessment
- how penalties are collected.

Chapter 7 – Appeals, Special Reduction and the Central Penalty Team

This will cover

- appeals
- special reduction
- Central Penalty Team.

Time to complete

We estimate it should take you between 12 and 14 hours to study the unit. However, make sure you take the time you need to achieve the study objectives for each chapter.

About the self-study

This unit is an example of open learning. It is presented in a way that allows you to study at a pace that suits you.

A key principle of open learning is that people learn by doing. Working through this self-study unit is very different from reading a textbook. You are not simply presented with information, but are asked to practise applying it by doing activities. The activities are followed by responses, which allow you to assess and analyse your answers and correct your mistakes.

The following notes outline the main features of each chapter.

Chapter components

Introduction

Each chapter starts with an introduction that tells you what you are going to study. It places topics in context, making links where appropriate with what you have learned already.

Study Objectives

These are the goals to bear in mind as you study the chapter. They tell you what you should be able to do when you have completed the learning.

You may have some prior knowledge and experience, which means that some topics covered are already familiar to you. If you think you can already meet the study objectives in a chapter, you should work through the learning checks to help you decide whether you need to study the chapter or not. If you get any of the learning checks wrong, or are unsure about any points, we strongly advise you to study the chapter.

Study Advice

This gives guidance on how long it is likely to take you to study the chapter, and whether you'll need any other documents or equipment.

We value your feedback. To evaluate the quality of this learning material, you may be contacted by a colleague from Learning & Leadership Development. An important area they may want to know about, is how long it took you to complete your study of the material, including working through the examples and learning checks, and revising for the assessment. Please keep a note of these times.

Study time	
Revision	
Total	

Main text

The text of the chapter gives you the information you need. You'll find that the key words are often in bold type.

Activity

Activity	As you work through each chapter, you'll find a number of activities to tackle. They give you a chance to consider new procedures, or to practise new techniques and computations. By consolidating your learning, they'll save you valuable time, so we strongly urge you to try every activity. You'll find sufficient space on the page to write your response to the activity but, if you prefer, feel free to use your own paper.
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Response

Response	You'll get feedback on each activity in the response immediately afterwards, so you can quickly check whether you've grasped the main points, or got the right answer to a computation. If not, we suggest that you look back through the relevant text and try the activity again.
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Review

This follows the main body of text and reviews the key points.

Learning Check

Near the end of each chapter you'll find a series of questions. These help you judge whether you've understood the material in the chapter and achieved the study objectives. You can write your answers in the spaces provided or use your own paper.

You'll find that our answers immediately follow the learning check questions. If you get any wrong it's important that you try and sort out the problems immediately, so we ask you to reread the relevant parts of the chapter.

Before Moving On

This section contains a final reminder of the chapter's objectives. You should be confident that you have achieved these before moving on to the next chapter.

Getting the most out of your study

You are likely to concentrate better, and retain more, if you study in short chunks, so we recommend that you plan to spread your study and take regular breaks.

You are encouraged to study the material online and not print out the pages. You must, therefore, ensure that you comply with the Display Screen Equipment (DSE) guidance. In particular:

- Breaks away from pc work are important, to avoid eyestrain, upper limb disorders and stress. Breaks are mandatory, not optional, and should be used to prevent tiredness, not to recover from it.
- No one should use a screen, keyboard or mouse continuously for more than 1 hour without a break from screen work of 5 minutes.

We suggest that you discuss your proposed plan with your line manager, so that you're both aware of the time needed. Your line manager may also be able to suggest to whom you should go in the office if you have any questions about the study material.

Study tips

The following are some tips on studying the chapters.

- A chapter is designed to be a manageable chunk of work. Try not to leave a chapter unfinished.
- Each chapter tells you approximately how long it will take to work through. Don't start a new chapter unless you think you will have time to finish it.
- Read the objectives. They tell you what you should be able to do when you have completed the chapter. It's useful to keep these in mind as you're working through the text and activities.
- Don't ignore the activities or leave them for later. They are an essential element of the learning process. Work through the activities as you come to them.

- Don't look at the response to an activity until you've done your best to complete it.
- If you get the answer to an activity wrong, try to work out exactly where you went wrong and why.
- The learning check is there to help you judge your progress. If you can't complete this, be honest with yourself and go back over the relevant parts of the chapter. If you don't, you may have difficulty with any subsequent learning.
- If you have any queries or problems that you can't resolve yourself, make a note of them as they arise. You may be able to sort them out through discussion with your line manager or colleagues.

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Introduction

As a caseworker you need to be aware of the penalties for inaccuracies, and how they affect your day-to-day work. This chapter sets out which taxes are covered by the legislation, from what date the rules apply, and what you will have to consider when you identify an inaccuracy.

Study Objectives

After successfully studying this chapter you will be able to

- state the taxes to which Schedule 24 applies
- understand the term 'tax period'
- state the dates from which the provisions of Schedule 24 FA 2007 apply
- summarise what a 'document' for Schedule 24 purposes
- know the circumstances in which you will consider issuing a penalty.

Study Advice

This chapter may take you between 1¼ and 2¼ hours to complete, but this is only a general guide, and you may find that it takes you more or less time than this to study it properly.

Whilst studying the chapter, you may find it useful to refer to the Compliance Handbook (CH). Appropriate references are given as margin notes.

1.1 Background to Schedule 24

1.1.1 Review of powers, deterrents and safeguards

HMRC inherited a wide variety of penalties for inaccuracies from the two former departments, Inland Revenue and Customs & Excise.

The Penalties for Inaccuracies legislation is one of the first pieces of cross-cutting legislation from the Powers Review, to make the tax system simpler and more consistent.

The aim of these penalties is to strike an appropriate balance between

- supporting customers to get it right first time
 - providing a deterrent to non-compliance by penalising non-compliers
- and
- encouraging the non-compliant to return voluntarily to compliance.

1.1.2 Customer focus

Customer focus is at the centre of how we deliver all of HMRC's business objectives.

The Schedule 24 inaccuracy penalties are customer-focused, as they reflect the behaviour that led to the inaccuracy.

The primary aim of the penalties is to positively influence customer behaviour. We want them to help us achieve the HMRC objective of supporting those who seek to comply, whilst coming down hard on those seeking an advantage by non-compliance. To achieve this, there will not be a penalty for inaccuracies where reasonable care has been taken. There will, however, be penalties for failing to take reasonable care, and we will heavily penalise deliberate inaccuracies.

What we want to do is to encourage people to pay the right tax at the right time, and to help them where they have difficulties in understanding their obligations. We will, in certain circumstances, consider suspending penalties where a person takes steps to put matters right for the future.

1.1.3 Changing behaviour

The inaccuracy penalty legislation is primarily about changing customer behaviour, and encouraging better compliance in the future.

It aims to achieve this by

- driving up and encouraging voluntary compliance
- encouraging people to take care with their tax affairs
- encouraging and influencing positive customer behaviour. For example, the way customers maintain their books and records from 1 April 2008, could later impact upon their liability to a penalty if they make an error
- educating and supporting those who try to comply
- penalising those who do not take care with their tax affairs, or who deliberately evade tax.

In other words, encouraging the non-compliant to become compliant.

1.2 Which Taxes are Affected?

Schedule 24 was introduced in Finance Act 2007 in relation to an initial tranche of taxes. The list of taxes and duties to which Schedule 24 applies has been extended by Schedule 40, Finance Act 2008.

CH81020

CH401200

Schedule 24 FA 2007 introduced a standard penalty regime for

- inaccuracies in a range of returns and other documents submitted to HMRC, or
- failure to notify an under-assessment.

The penalties are tax based.

1.2.1 Schedule 24 Finance Act 2007

Schedule 24 Finance Act 2007 initially covered

- income tax (IT)
- capital gains tax (CGT)
- corporation tax (CT)
- value added tax (VAT) ¹
- pay as you earn (PAYE)
- construction industry deductions (CIS)
- Class 1 and Class 4 national insurance (NIC) ².

¹ Import VAT is treated as a Customs duty for penalty purposes, with any penalty being charged under Part 3 of the Finance Act 2003.

² Class 1A NIC is not currently within Schedule 24. Schedule 24 does not apply to incorrect forms P11D(b). Penalties will still be chargeable under Regulation 81(1) Social Security (Contributions) Regulations 2001.

ECH21041

1.2.2 Schedule 40 Finance Act 2008 changes

Schedule 40 Finance Act 2008 has extended the taxes and duties covered by Schedule 24, to a wider range of HMRC taxes and duties.

The additional duties covered are

- Insurance premium tax
- Inheritance tax (IHT)
- Stamp duty land tax
- Stamp duty reserve tax
- Petroleum revenue tax
- Aggregates levy
- Climate change levy
- Landfill tax
- Hydrocarbon oils duty (including biofuels and other fuel substitutes)
- Air passenger duty
- Alcoholic liquor duties
- Tobacco products duties
- General betting duties
- Pool betting duty
- Lottery duty
- Gaming duty
- Remote gaming duty
- other Excise duties, including warehouse keepers and Registered Excise Dealers and Shippers

Customs duties, tax credits, money laundering regulations and the national minimum wage are not within the scope of Schedule 24 FA 2007.

1.3 What Dates do Penalties or Inaccuracies Apply From?

1.3.1 Schedule 24 Finance Act 2007

For the initial taxes (listed at 1.2.1), Schedule 24 FA 2007 applies to documents submitted in relation to tax periods that began on or after 1 April 2008, and which are due to be filed on or after 1 April 2009.

CH81030

A '**tax period**' is a cross-tax term and means a tax year, accounting period or other period for which tax is charged.

CH81011

For any claims or other documents that are not related to a tax period, the new rules apply only to those submitted on or after 1 April 2009.

Exceptions to the normal rule

CH81012

The documents in the following situations either relate to a different tax period from that in the normal rule, or must carry a specific date. In all cases the filing date for the return, or the date the document is due to be submitted, must be on or after 1 April 2009. Documents relating to

- claims under the Thirteenth Council Directive (arrangements for the refund of VAT to persons not established in Community territory) must be for years commencing on or after 1 July 2008.
- claims under the Eighth Council Directive (arrangements for the refund of VAT to taxable persons not established in the territory of the country) must be for years commencing on or after 1 January 2009.
- all other claims for repayments of tax made on or after 1 April 2009, which are not related to a tax period, must be dated on or after 1 April 2009.
- any other case where the person's liability to pay relevant tax arises on or after 1 April 2009, must be dated on or after 1 April 2009.

When the inaccuracy relates to

CH81071

- a corporation tax credit, or
- a return by the administrator of a registered pension scheme

the penalty provisions apply if

- the inaccuracy is contained in (or the under-assessment relates to) a return or other document which is due to be filed/submitted on or after 1 April 2010, and
- the return or other document (or under-assessment) relates to a tax period beginning on or after 1 April 2009.

1.3.2 Schedule 40 Finance Act 2008

CH81013

Schedule 40 FA 2008 extends the scope of Schedule 24 to the wider range of taxes and duties (listed at 1.2.2). The extension applies to return periods starting on or after 1 April 2009, where the return for that period is due on or after 1 April 2010.

Exceptions to the normal rule

The documents in the following situations either relate to a different tax period from that in the normal rule, or must carry a specific date. In all cases the filing date for the return or document must be on or after 1 April 2010.

1. Documents relating to

- claims for repayments of tax made on or after 1 April 2010 which are not related to a tax period, must be dated on or after 1 April 2010
- any other case where the person's liability to pay relevant tax arises on or after 1 April 2010, must be dated on or after 1 April 2010.

2. Documents produced under IHTA84/S256, where the information or document is produced on or after 1 April 2009, must relate to a tax period beginning on or after 1 April 2009.

1.3.3 Earlier tax periods

Inaccuracies relating to earlier tax periods are not covered by the Penalties for Inaccuracies legislation.

You will need to establish the tax periods you are dealing with, and apply the penalty legislation relevant to each. You should check what penalties apply for those years in the relevant guidance.

The 'dishonest conduct' or civil evasion penalty chargeable under Section 60 VATA 1994 will continue to apply where a Schedule 24 penalty is not applicable. Section 60 imposes a penalty for dishonest conduct which does not relate to an inaccuracy in a document or failure to notify an under-assessment.

EM4800

ECH21505

Where you are settling a compliance check by contract settlement (primarily used in direct taxes), the detailed rules relating to the contract remain in Enquiry Manual [EM] and Employer Compliance Handbooks [ECH]. You should continue to invite employers to volunteer to settle employee liabilities on benefits in kind, on the employees' behalf.

Activity One

Which of the following inaccuracies will fall within Schedule 24 FA2007?

1. You are carrying out a compliance check on Samantha Carter's self-assessment tax returns, and have identified inaccuracies in the returns for the years ended 5 April 2006 to 5 April 2010.
2. Henry is the executor of his late aunt's estate. In order to keep the value of the estate under the limit for IHT, he omits a Rolls Royce car from the IHT account and return. He transferred the car to his son. The transfer occurred on 31 January 2010. The IHT return was due on 28 February 2010 and was submitted on 4 May 2010.

Response

1. Schedule 24 will apply to the self assessment tax returns for years ended 5 April 2009 and 2010.

These returns meet the criteria for Schedule 24

- they relate to tax periods commencing on or after 1 April 2008, and
 - they were due to be filed on or after 1 April 2009.
2. Schedule 24 does not apply to the IHT return as the return was due to be filed before 1 April 2010.

1.4 Definitions

1.4.1 Documents

CH81050 –
CH81060

Schedule 24 charges penalties where there has been a deliberate or careless inaccuracy in a **document** given to HMRC.

~~CH81035~~
CH81035

There are specific recognised documents (such as returns and accounts) that are set out in Schedule 24.

Take some time to study the variety of documents specified. You may be asked questions on some of these later in the learning to check your understanding.

Note that as already discussed in this chapter, Schedule 24 does **not** apply to incorrect forms P11D(b).

For the taxes and duties specified in Schedule 24, the legislation also allows you to charge a penalty when an inaccuracy occurs in

S1 Sch 24 FA 2007

Any document which is likely to be relied upon by HMRC to determine, without further inquiry, a question about

- (a) that person's liability to tax
- (b) payments by that person by way of, or in connection with, tax
- (c) any other payment by that person (including penalties), or
- (d) repayments or any other kind of payment or credit to that person.

Definition of a document

A document is anything in which information of any description is recorded. It includes part of a document or an extract from it.

This wide definition means a document covers such things as a written or printed piece of paper, or an electronic storage device.

This device might be the actual computer or server, including an internal hard drive system. It could also include an external storage device holding backed up information or scans of previously printed documents.

Examples of documents include

- spreadsheets
- minutes of meetings
- bank statements
- invoices
- VAT and other returns, wages records and sets of accounts
- photographs
- computers or servers
- CDs or DVDs
- memory sticks
- magnetic tapes
- e-mails.

If

- you accept information verbally by telephone or at a meeting, and
- without enquiring further, or asking for documents in support, use that information to determine a person's tax liability, repayment or credit,

that information is a document for the purposes of Schedule 24.

It is important that you keep a full record of how, when and what information you have been given and by whom it was given.

Activity Two

Which of the following would be considered documents for the purposes of Schedule 24?

- a) PAYE return P35
- b) PAYE return P11(D)
- c) Tax Credit Claim
- d) Return of Air Passenger Duty
- e) Accounts in connection with liability to corporation tax
- f) VAT return
- g) Statement or declaration in connection with a claim for relief of Petroleum Revenue Tax.

Response

Which of the following would be considered documents for the purposes of Schedule 24?

- a) PAYE return P35
- b) PAYE return P11(D)
- c) Tax Credit Claim
- d) Return of Air Passenger Duty
- e) Accounts in connection with liability to Corporation Tax
- f) VAT return
- g) Statement or declaration in connection with a claim for relief of Petroleum Revenue Tax

All of the above, except b and c, would be considered documents.

Tax credits do not fall under Schedule 24, and P11(D)s are a return of Class1A NIC which too is excluded.

1.4.2 Behaviour, reasonable care, disclosure and potential lost revenue

Before we study in more detail the circumstances when a penalty can be charged, we will look at a few of the other terms that the legislation refers to.

You may have come across some or all of these terms before, and it is important that you understand what they mean. They are all key to the charging and calculation of penalties.

Behaviour

CH81110

Inaccuracies arise as a result of one of four different behaviour types. Inaccuracies can be

- made despite the person taking reasonable care (see below)
- careless – if the inaccuracy is because the person did not take reasonable care
- deliberate but not concealed – if the inaccuracy is deliberate but the person does not make arrangements to hide it
- deliberate and concealed – if the inaccuracy is deliberate and the person makes arrangements to hide it.

You will look at these in more detail in Chapter 2, and learn what factors to consider when making your decision on the type of behaviour that led to the inaccuracy.

Reasonable care

CH81120

CH430500

If a customer takes reasonable care to get it right, we won't charge them a penalty, even if they make a mistake. That's because most customers take care to fill in their tax returns correctly. We want to encourage that and help them get it right.

Of course, customers do make mistakes. We do not expect perfection. We are simply seeking to establish whether they have taken the care and attention that could be expected from a reasonable person, taking reasonable care in similar circumstances.

CH81080

*para 3(2) Schedule
24*

CH81141

However, if they later realise that there has been an inaccuracy, they must take reasonable steps, without delay, to tell HMRC about it. If they do not do so, you will then treat the inaccuracy as careless.

Also, where an error is made despite taking reasonable care, and is adjusted under the error correction regime (indirect taxes) for the period of discovery, this will be treated as taking reasonable steps.

What is reasonable care will depend on the circumstances, knowledge and abilities of the person involved. So, for example, what we would expect from a large company with many employees and departments, would be very different to an individual working for themselves, and who has no adviser acting.

We expect each person to keep adequate records to allow them to complete accurate returns and documents. Someone whose tax affairs are simple and straightforward could have a basic system of record keeping, provided it is followed carefully and kept up to date. A person with larger and more complex tax affairs will need more sophisticated and detailed systems, but again the processes put in place must be followed.

It is HMRC's view that if any person is dealing with a situation that they are not familiar, they should take reasonable steps to find out about the correct tax treatment, or seek appropriate advice.

If, after doing so, they are still unsure of the position, they should draw attention to any relevant entry on the return or document.

Disclosure

A key aim of the penalties system is that a person who has submitted an inaccurate document should be encouraged to let HMRC know about it voluntarily, and as soon as possible.

Penalties, therefore, take into account whether there has been an unprompted or prompted disclosure of any inaccuracy.

You will look at this in more detail in Chapter 3.

Potential lost revenue

The amount of any penalty charged for inaccuracies will be dependant on the potential lost revenue (PLR).

The PLR is

- the additional amount of tax due or payable as a result of putting right an inaccuracy
- the additional amount of tax due or payable as a result of failing to tell HMRC about an under-assessment, or an amount of tax HMRC has wrongly repaid
- the amount of tax that would wrongly have been repayable by HMRC.

For these purposes 'tax' includes NIC, but excludes Class1A NIC.

You will study more about PLR in Chapter 4

1.5 When Can a Penalty be Charged?

CH81010

There are four circumstances in which you will consider a penalty

CH81070

S1 & S2 Sch 24, FA
2007

- an inaccuracy in a document
- failure to notify HMRC of an under-assessment of their tax liability within 30 days of the date of the assessment

CH81080

- when a person doesn't tell us about an inaccuracy after the document has been submitted
- an inaccuracy due to another person.

1.5.1 An inaccuracy in a document

There are two conditions that must be satisfied before a penalty can be charged on an inaccuracy.

1. The document given by the customer to HMRC must contain an inaccuracy that leads to
 - a. an understatement of the customer's liability to tax
 - or
 - b. a false or inflated statement of a loss by the customer
 - or
 - c. a false or inflated claim to repayment of tax

and
1. The inaccuracy must be the result of customer behaviour that was either careless or deliberate.

1.5.2 Failure to notify HMRC of an under-assessment

Para 2, Sch24

CH81090 and
CH81170

A penalty can also be charged where a customer fails to take reasonable steps to notify us, within 30 days of the date of the assessment, that we have under-assessed his or her tax liability. This will normally apply when HMRC has issued an estimated assessment or determination.

You will normally issue an estimated assessment, or HMRC determination, of a person's liability, where the person has failed to make a return.

You will charge a penalty where

- an assessment or determination that we issued in these circumstances, understates a person's liability to tax or duty, and
- CH81080*
- the person fails to take reasonable steps within 30 days of the date of the assessment to tell us that it is an under-assessment of his or her liability.

You will need to consider whether the customer knew, or should have known, about the under-assessment, and what steps it would have been reasonable for that customer to take to notify us of the under-assessment.

CH410300 If the original assessment does not result in the person taking steps to inform HMRC of any inadequacy, and an additional assessment is later issued, then an under-assessment penalty may be due.

CH410200 It will be a question of fact whether the customer made contact with us within 30 days to tell us of the under-assessment. You will have to judge whether the steps taken were sufficient to treat the customer as bringing the under-assessment to our attention.

There is no statutory extension to the 30-day time limit. If a customer tries to comply but is prevented from doing so, he or she should contact us as soon as possible. You should take a reasonable view based on the facts the customer presents.

A person who sends a return in on time will not receive an assessment of estimated liability. They will have self-assessed, or declared their tax liability, and so this penalty will not apply.

1.5.3 Failing to tell us about an inaccuracy after a document has been submitted

CH81080

If an inaccuracy was neither careless nor deliberate at the time the document was sent to us, it will be treated as careless if the person

- discovers the inaccuracy at some later time, and
- does not take reasonable steps to inform us.

1.5.4 Inaccuracy due to another person

CH81075

A person (P) may have to rely on another person (T) to supply information to enable them to give us a document. If P's document is inaccurate, whether or not because of the information supplied (or not supplied) by T, P may be charged a penalty.

CH81165-81167

In addition, T may be charged a penalty where all the following conditions are satisfied

- P gives us an inaccurate document, and
- the inaccuracy amounts to or leads to
 - an understatement of a liability to tax,
 - a false or inflated statement of a loss, or
 - a false or inflated claim to repayment of tax, and
- the inaccuracy is because T deliberately supplied false information to P, and
- T intended the false information to make P's document inaccurate.

T can supply the false information directly to P or indirectly through another person.

The penalty charge also applies where, rather than supplying false information, T deliberately withholds information from P, with the intention of making P's document inaccurate.

A penalty may be charged on T, whether or not P is charged a penalty in respect of the same inaccuracy.

1.5.5 Deceased persons

CH402000

You can not issue an inaccuracy penalty to the personal representatives of a deceased person, even when the person submitted inaccurate documents ,or failed to notify an under-assessment prior to the date of death. This does not apply, however, if the personal representatives submit incorrect returns or documents. They will be chargeable to a penalty in the normal way.

1.6 Information Powers

CH210000 et seq

Schedule 36 of the Finance Act 2008 (FA) contains our powers for information and inspection. The powers are available to use when checking a person's 'tax position'. This includes a liability to penalties.

Normally, once you have established the inaccuracies, you would expect the customer to be proactive in helping you finalise matters as quickly as possible. If the customer doesn't wish to co-operate then you should explain that not doing so may have an affect on any penalty that will be assessed.

If a customer chooses not to co-operate with you in identifying their behaviour type, you may be able to use the information powers within Schedule 36 to obtain the evidence you need. These powers may help you to establish the behaviour of the customer, as well as the additional tax that will be due.

You should, in most cases, be able to obtain the information you need without the use of these formal powers. You can only use the powers within Schedule 36 if you have, first, undertaken the appropriate training.

1.7 Penalty Ranges

There are separate penalty ranges for

- an inaccuracy, and
- failing to notify an under-assessment

1.7.1 Penalty ranges for an inaccuracy

CH 82470

CH 450510

There are minimum and maximum penalties for each type of behaviour (see the table below). The minimum percentage is dependent on the type of disclosure.

S4 Sch 24 FA 2007

S10 Sch 24 FA 2007

By setting a lower minimum penalty level for customers who voluntarily tell us about mistakes, we hope to encourage compliance. People who do not tell us about their errors, or wait until HMRC intervenes, will face a higher statutory minimum penalty level.

A disclosure is unprompted if it is made at a time when the customer has no reason to believe that we have discovered, or are about to discover, the inaccuracy or under-assessment. This is covered in more detail in Chapter 3.

Customer Behaviour	Unprompted Disclosure	Prompted Disclosure
Reasonable care	No Penalty	No Penalty
Careless	0% - 30%	15% - 30%
Deliberate but not concealed	20% - 70%	35% - 70%
Deliberate and concealed	30% - 100%	50% - 100%
Attributable to another person	30% - 100%	50% - 100%

1.7.2 Penalty range for failing to notify an under-assessment

As with inaccuracies, there are minimum and maximum penalties for failing to notify HMRC about an under-assessment (see the table below). However, for these penalties, you do not need to consider behaviour; you only need to consider the disclosure.

	Unprompted Disclosure	Prompted disclosure
An understated assessment that is not notified to HMRC within 30 days	0% - 30%	15% - 30%

Exactly where in the range the penalty will fall depends on the **quality** of the disclosure made. You'll cover this in more detail in Chapter 3.

1.8 Human Rights Act, Article 6

EM1350

CH433010

The Human Rights Act (HRA) came into being in 2000, and affects individuals and individuals authorised to act on behalf of both companies and non-corporate bodies. Following several decisions in the European Court of Human Rights, HMRC has accepted that some of our penalties are potentially 'criminal charges' for the purposes of Article 6. This does not mean they are anything other than civil penalties under UK domestic law. The civil standard of proof still applies.

CH433020

The penalties that we accept are 'criminal' for the purposes of Article 6 are those that are based upon

- 100 per cent of the tax difference, unpaid or potential lost revenue
- 70 per cent of the potential lost revenue.

CH433030

For Schedule 24 penalties there is a maximum penalty, which is determined by the seriousness of the behaviour. We accept that penalties which arise from deliberate and deliberate and concealed behaviour are within the scope of Article 6.

We do not accept that penalties that arise because of careless behaviour are within the scope of Article 6. However, it is unlikely that you will know that the behaviour was careless when you first discuss penalties, so you must always issue the HRA message.

A person to whom Article 6 proceedings might apply is entitled to a fair and public hearing within a reasonable time. We must not cause, or allow, delay as it could be viewed as breaching that person's rights.

If you mention penalties to the customer before you have explored the risks, or established inaccuracies, this could be viewed as prejudging, or as a threat.

- CH432500* As soon as you have any reason to believe that a penalty may be due, you must make the customer aware of their rights under the HRA, Article 6. Sometimes this can be right at the start of an enquiry; discovery cases, for example. There are no circumstances in which you may discuss a potential liability to a penalty without first issuing the HRA message.
- Guidance about the HRA and HMRC penalties starts at **CH 300000**. The message is set out in **CH 300900** and in factsheet **CC/FS9** – HRA.
- CH433050* As soon as there is evidence that there maybe liability to a penalty you must
- CH433060*
- explain the offence that may give rise to the penalty, and what the person has done to make you think the penalty is due
 - explain the person's rights under Article 6, and give them a copy of the HRA Fact Sheet
 - make a written record of what is said, and send a copy of those notes to the person and their agent, if one is acting
- CH433090*
- work the case without unreasonable delay
 - explain to the person that you will issue early penalty assessments if a contentious appeal hearing is needed, or if they request early closure of the case and the tribunal agrees.
- CH433040* As this will be before any decision is made regarding the behaviour, all potential inaccuracies should be treated as if they are within Article 6.
- If you later establish that the behaviour was careless then, although the maximum penalty would be less than 70 per cent, you should continue to work as if Article 6 applied. This will ensure that each customer is treated the same, and that all cases are worked to the same standard.
- The customer should be left in no doubt that you are considering penalties. You should not assume that either the person or their agent understands the principle of penalties.
- CH432500* **The HRA message that you should give to the customer is set out in Factsheet CC/FS7 – Information About Penalties. The way you deliver the message will depend on the circumstances.**

CH433060

For both direct and indirect taxes you should issue

- factsheet CC/FS7 (penalties) and
- factsheet CC/FS9 (HRA).

CH433080

If you have a meeting with the person, hand them the factsheets; if you do not have a meeting you should send a copy to them. At the same time, draw attention to the inaccuracy you have discovered. Explain to the customer that penalties have to be considered as a result of an inaccuracy, and you need to find out the reason why it occurred.

Depending on the circumstances, you may discuss whether suspension of penalties might be appropriate, and issue factsheet CC/FS10. Penalty suspensions are covered in Chapter 4.

You should record notes of any meeting, and these should be copied to the person. If you are writing to the person, remember to send a copy to their adviser, if they are represented.

Review

Schedule 24 FA 2007 brought in a cross-tax penalty regime. It applies

- to inaccuracies in returns and documents
- for tax periods beginning on or after 1 April 2008, where the due date for filing is on or after 1 April 2009.

For 13th and 8th EU Directive claims, the relevant tax periods are those commencing 1 July 2008 and 1 January 2009 respectively.

Claims or documents that do not relate to tax periods are covered by the legislation, where they are submitted on or after 1 April 2009.

Schedule 24 FA 2007 initially covers

- IT
- CGT
- VAT
- PAYE
- CT
- CIS deductions
- Class 1 and Class 4 NIC.

It has been extended by Schedule 40 FA 2008 to cover a wider range of taxes and duties. The extended range will apply to return periods starting from 1 April 2009, where the return is to be submitted on or after 1 April 2010.

The legislation is not retrospective, and the old penalties regimes apply to earlier periods. For direct tax fraud or neglect or, in VAT cases, dishonest conduct, this could mean that for several years to come you will have to calculate penalties according to both sets of rules.

The term 'document' covers returns and a wide range of other items that customers may need to give us. It also applies to customers giving information to us by any method, such as electronically, over the phone or in a meeting.

For a penalty to apply there must be

- a failure to notify HMRC of an under-assessment to tax,
or
- an inaccuracy leading to
 - an understatement of liability,
 - a false or inflated loss, or
 - a false or inflated claim to repayment

and, for an inaccuracy, it must have been the result of careless or deliberate behaviour.

You cannot charge a penalty on the personal representatives of a deceased person for inaccuracies in documents the person submitted prior to the date of their death.

The level of penalty chargeable will vary according to the behaviour that led to the inaccuracy, and whether any disclosure was prompted or not. For under-assessments, you do not need to consider the person's behaviour, although you will look at whether the disclosure was unprompted, and the quality of disclosure.

The penalty levels range from no penalty, where the customer took reasonable care, to 100% for deliberate and concealed irregularities.

Learning Check

1. Which of the following are within Schedule 24 FA 2007 initially?

a	CGT	<input type="checkbox"/>
b	IHT	<input type="checkbox"/>
c	PAYE	<input type="checkbox"/>
d	Lottery Duty	<input type="checkbox"/>

2. What is a 'tax period'?

a	A tax year	<input type="checkbox"/>
b	The period covered by a company return	<input type="checkbox"/>
c	A VAT quarter	<input type="checkbox"/>

3. To what tax periods do the Schedule 24 provisions apply for IT, CGT, CT, VAT, PAYE, CIS deductions and Class 1 & 4 NIC?

a	Tax periods beginning on or after 1 April 2008, where the due date for filing the document is on or after 1 April 2009	<input type="checkbox"/>
b	Tax periods commencing after 1 January 2010, when Schedule 40 FA 2008 comes into effect	<input type="checkbox"/>
c	Tax periods commencing on or after 1 April 2008, provided the documents are submitted by 31 March 2009	<input type="checkbox"/>
d	Tax periods beginning on or after 1 April 2009, where the due date for filing the document is on or after 1 April 2010	<input type="checkbox"/>

4. Is a handwritten repayment claim on a seaside postcard a document for Schedule 24 purposes?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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5. In which of the following circumstances will you consider issuing a Schedule 24 penalty?

a	During a VAT inspection on a trader's return for quarter ended 31/12/2009 you find that she has overstated input VAT. There is further tax to pay	<input type="checkbox"/>
b	You find an inaccuracy in a self assessment tax return for the year ended 5 April 2008. There is an additional £1000 of income tax due	<input type="checkbox"/>
c	A company's corporation tax return is late. You have issued a determination based upon its level of declared profits in recent years. Apart from paying the tax there is no contact from the company until it submits its return 90 days later. The CT for the period is £20,000 more than the figure shown on the determination	<input type="checkbox"/>

Learning Check – Answers

1. Which of the following are within Schedule 24 FA 2007 initially?

a	CGT	<input checked="" type="checkbox"/>
b	IHT	<input type="checkbox"/>
c	PAYE	<input checked="" type="checkbox"/>
d	Lottery Duty	<input type="checkbox"/>

You looked at this in sub-unit 1.2.1.

2. What is a 'tax period'?

a	A tax year	<input checked="" type="checkbox"/>
b	The period covered by a company return	<input checked="" type="checkbox"/>
c	A VAT quarter	<input checked="" type="checkbox"/>

This is covered at sub-unit 1.3.1.

3. To what tax periods do the Schedule 24 provisions apply for IT, CGT, CT, VAT, PAYE, CIS deductions and Class 1 & 4 NIC?

a	Tax periods beginning on or after 1 April 2008, where the due date for filing the document is on or after 1 April 2009	<input checked="" type="checkbox"/>
b	Tax periods commencing after 1 January 2010, when Schedule 40 FA 2008 comes into effect	<input type="checkbox"/>
c	Tax periods commencing on or after 1 April 2008, provided the documents are submitted by 31 March 2009	<input type="checkbox"/>
d	Tax periods beginning on or after 1 April 2009, where the due date for filing the document is on or after 1 April 2010	<input type="checkbox"/>

This is covered at sub-chapter 1.3.1.

4. Is a handwritten repayment claim on a seaside postcard a document for Schedule 24 purposes?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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A document can be any form of communication that gives information to HMRC. It includes letters, phone calls, meetings, emails and faxes.

You looked at this in sub-chapter 1.4.

5. In which of the following circumstances will you consider issuing a Schedule 24 penalty?

a	During a VAT inspection on a trader's return for quarter ended 31/12/2009, you find that she has overstated input VAT. There is further tax to pay	<input checked="" type="checkbox"/>
b	You find an inaccuracy in a self assessment tax return for the year ended 5 April 2008. There is an additional £1000 of income tax due.	<input type="checkbox"/>
c	A company's corporation tax return is late. You have issued a determination based upon its level of declared profits in recent years. Apart from paying the tax, there is no contact from the company until it submits its return 90 days later. The CT for the period is £20,000 more than the figure shown on the determination	<input checked="" type="checkbox"/>

Schedule 24 penalties relate to

- inaccuracies in returns or documents for periods beginning on or after 1st April 2008, with a filing date on or after 1st April 2009
- or
- for failure to notify an under-assessment within 30 days (penalties for late returns are charged under other legislation).

This is covered in sub-chapter 1.5.

Before Moving On

If you have successfully completed the learning check, you will have achieved the study objectives, which are to

- state the taxes to which Schedule 24 applies
- understand the term 'tax period'
- state the dates from which the provisions of Schedule 24 FA 2007 apply
- summarise what a 'document' is for Schedule 24 purposes
- know the circumstances in which you will consider issuing a penalty.

If you have not met any of the objectives, go back and reread the relevant part(s) of the chapter before moving on. If you are still having problems, make a note of them for discussion with your manager.

In Chapter 2 we will look at how to establish the behaviour that led to the inaccuracy.