

Penalties for Inaccuracies Schedule 24 Finance Act (FA) 07

Chapter 2 Establishing Behaviour

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Introduction

Welcome to Chapter 2 of the Penalties for Inaccuracies learning.

This chapter expands on the legislative overview in Chapter 1. It explains how and why you need to establish the behaviour which caused an inaccuracy or under-assessment to occur. It also tells you how you should gather and record the evidence you need to support your views.

Study Objectives

After successfully studying this chapter you will be able to

- State the 4 types of behaviour that lead to inaccuracies.
- State for which behaviour types you may issue a penalty
- Provide 3 examples of reasonable care
- State why you need to keep evidence about the inaccuracies and customer behaviour

Study Advice

This is the second unit and should take you around 2 hours to complete. You will need access to the Compliance Handbook and the Enquiry Manual.

You should also have completed Chapter 1 before working through this chapter.

2.1 Establishing Behaviour

It is important that HMRC is consistent and fair when applying penalties for inaccuracies in documents and returns, or for failing to notify an under-assessment.

For inaccuracies whether we charge a penalty, and how much, is dependent upon two elements

- the customer's behaviour that led to the inaccuracy and
- the quality of the disclosure.

For under-assessments you will consider only the quality of the disclosure. Disclosure is covered in chapter 3.

Once you have established an inaccuracy there are four behaviour types to consider. Was the inaccuracy

1. made despite the person taking **reasonable care**
2. **careless** – if the inaccuracy is because the person did not take reasonable care
3. **deliberate, but not concealed** – if the inaccuracy is deliberate but the person does not make arrangements to hide it
4. **deliberate and concealed** – if the inaccuracy is deliberate and the person makes arrangements to hide it.

CH81120 – 60

CH430000

*Para 3 Sch 24 FA
2007*

CH420200

You must look at all aspects of your case. Deciding on behaviour is not about simply applying tests, but includes thinking about the customer and their situation.

A person may have a learning difficulty, be physically disabled or have caring responsibilities. Such circumstances may drastically interfere with their ability to look after their tax affairs. You must take these on board when establishing behaviour; what is reasonable for one person may not be for someone else.

We will now look at these behaviours in more detail, beginning with understanding what is meant by 'reasonable care'.

2.2 What is reasonable care?

CH81120

Every customer is required to take reasonable care in their tax affairs. You cannot identify why an error has arisen until you understand the particular customer's abilities or circumstances.

We do not, for example, expect someone who is unrepresented and running a small business to have the same level of knowledge or expertise as a large multinational company. However, we do expect our customers to demonstrate a greater degree of care over large and complex issues than simple, straight-forward ones.

All customers are required to make and keep adequate records to support the entries in their returns. We do not expect all records to be of the same degree of complexity. If a customer has simple tax affairs, then they may only need a simple regime for record-keeping provided they follow it carefully. A customer with larger and more complex tax affairs will need to put in place more sophisticated systems and follow them equally carefully.

If someone enters into a transaction or event that they are unfamiliar with we expect them to find out about the correct tax treatment, including taking advice.

If the customer is still not sure about the tax treatment of any issue, despite taking reasonable steps, then they should tell us about their doubts and draw attention to the details when they submit the return or document. Provided they do this, even if they have arrived at the wrong answer, they have demonstrated that they have taken reasonable care to get the matter right.

2.2.1 Inaccuracy despite taking reasonable care

CH81130
CH431010

Even meticulous people can make mistakes. We would accept that inaccuracies occurred despite taking reasonable care if, for example

- there was an arithmetical or transposition error that is not so large (either in absolute terms or relative to overall liability for the relevant period), as to produce an obviously odd result or be picked up by a quality check
- the customer sought our advice, gave the full facts, but we provided incorrect information
- the customer held a different, but reasonable, view of an issue but this was not upheld at a Tribunal
- the customer obtained advice from a competent adviser to whom they gave full facts, but the advice was incorrect.

CH81080
CH430500
S3(2) Sch 24 FA
2007

If an inaccuracy is made despite taking reasonable care, but then later discovered by the person and they do not take reasonable steps to tell us, we will regard it as being careless. When determining whether reasonable care still applies, you will consider the actions they took, including how promptly they told us about the error after they discovered it.

If a person keeps repeating the same errors, you will have to find out the reason before deciding whether to regard them as made despite taking reasonable care.

2.2.2 Inaccuracy caused by carelessness

CH81140

CH431010

The term 'failure to take reasonable care' is a parallel to the general law concept of negligence, or failing to take the action that a prudent and reasonable person would do.

When considering whether an inaccuracy has been caused by carelessness, you must be able to identify

- The care that should have been taken
- That there was a failure to take that care
- Why it was reasonable to expect the person to have taken the care, taking into account their abilities and circumstances

A person's intention is not relevant when considering whether they failed to take reasonable care. You are simply deciding whether someone who was taking reasonable care would have made that mistake.

If you had to consider the person's intent then you would do so only in deciding whether the error was deliberate.

Examples of some situations that could lead to careless errors are where the customer

- doesn't give enough time to keeping necessary records
- doesn't check the figures
- fails to seek necessary advice
- uncritically accepts advice
- doesn't give an adviser or HMRC the full facts when seeking advice
- fails to check the work done by an adviser
- doesn't take steps to act on the advice given or to use the records or systems at their disposal
- relies on unreasonable estimates
- relies on uncorroborated statements from third parties.

You may discover repeated inaccuracies that form part of a behaviour pattern suggesting a lack of care by the person in developing adequate systems for the recording of transactions or preparing tax returns.

It is, however, important to keep a sense of proportion. Repetition of the same inaccuracy would not always, of itself, indicate a failure to take reasonable care.

Activity One

Tony has several sales reps to whom he provides vehicles. In view of the numbers involved he gets a substantial discount on the cars. He should declare the manufacturer's list price when completing his employer returns. Instead, he does not check the list price, but puts in the sums he paid.

What are your views on the behaviour type, and why?

Response

Tony's behaviour suggests a failure to take reasonable care.

- As an employer he has a responsibility to make sure he knows what to put on the returns.
- If he doesn't know, he should try to find out
- He should be aware that the vehicles are at a discount and that affects the calculations on his returns
- If he is unsure after seeking advice he should let us know about his doubts.

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

2.2.3 Correcting Errors

CH81141

Indirect Taxes

There are several indirect taxes' error-correction regimes which allow

- errors made despite taking reasonable care

and

- careless errors

in previously submitted returns to be adjusted. The adjustment is made in the return for the period in which the errors are discovered.

The key features of the new rules for VAT error correction are as follows:

In summary, for previous return errors discovered on or after 1 July 2008 (where the accounting period starts on or after 1 July 2008):

-
- All net errors of £10,000 or less can be adjusted on the VAT return for the prescribed accounting period in which they were first discovered,

-
- All net errors over £50,000 must be corrected using the error correction procedures,
-

- Net errors between £10,000 and £50,000 can be adjusted on the VAT return for the prescribed accounting period in which they were discovered, provided the net error does not exceed 1% of the box 6 declaration figure required on that return. If the net error is greater than 1% of the box 6 figure required on the return, the trader must use the error correction procedures.
- Business should make a note of the error in their VAT account including when it was discovered.

Default interest

- Should be considered for all under statement disclosures reported to HMRC under the new limits
- The informal concession not charging DI on understatement disclosures reported to HMRC of less than £2,000 net VAT was withdrawn from 1/9/08 – the attached Revenue and Customs Brief 38/08 refers
<http://www.hmrc.gov.uk/briefs/vat/brief3808.htm>
and Newsboard 438/08 refers – see
http://bmsd.inrev.gov.uk/jslib/default_index.htm#http://bmsd.inrev.gov.uk/irnews2005/.
- The other indirect taxes (the same lower and upper limits of £10,000 and £50,000 respectively apply)
- For Insurance Premium Tax (IPT) the 1% test is calculated by reference to the box 10 net turnover IPT return declaration due on the return period of discovery.
- For Air Passenger Duty (APD) it is calculated by reference to the APD duty payable (before any adjustments for errors) due on the return period of discovery.

- For Landfill Tax (LFT), Climate Change Levy (CCL) & Aggregates Levy (AGL) the 1% test is calculated by reference to the box 6 net VAT turnover declaration required on the VAT return period current when the errors were discovered. For smaller businesses not required to be registered for VAT a single lower limit of £10,000 applies.

If the errors cannot be adjusted in the return for the period of discovery, the person

- must notify HMRC of the errors in writing, either by using form VAT652 or by letter

and

- must not make an adjustment for the errors on a later return.

If a trader makes an inaccuracy despite taking reasonable care **and** the net value is below the threshold, then we shall regard the error correction as 'taking reasonable steps' to inform us of the inaccuracy.

It is important to note that despite the error-correction regime described above, if a customer has made a careless or deliberate error, then for the purpose of Schedule 24 they have **not** made a disclosure simply by correcting the mistake. We may still issue a penalty for inaccuracies in the earlier return(s) that led to the adjustments.

Therefore, at the time of making the error correction, the customer will have to consider whether they regard the error as despite taking reasonable care, careless or deliberate and whether to make a separate disclosure of the details.

Direct Taxes

Similarly, a customer who is within SA or Corporation Tax SA has 12 months from the filing date of their return in which they can amend the original return. If we enquire into the return we must look at the behaviour behind any inaccuracies in the original return before deciding whether a penalty applies.

Activity Two

1. if a person keeps making the same mistake it can't be 'despite taking reasonable care'

True	<input type="checkbox"/>	False	<input type="checkbox"/>
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2. carelessness is when a customer doesn't bother keeping proper records, and is not then able to make an accurate return

True	<input type="checkbox"/>	False	<input type="checkbox"/>
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3. Bev works in an outlet shop. She picks up returned Designer items cheaply and auctions them on Ebay. She doesn't think to declare her profits on her tax return. When she finds out she should do so, she sends an amendment to the return within the 12-month time limit.

Can we consider issuing a penalty for the inaccuracy in the original return?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

Response

1. if a person keeps making the same mistake it can't be 'despite taking reasonable care'

True	<input type="checkbox"/>	False	<input checked="" type="checkbox"/>
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You must look at the individual circumstances to find out why the error occurs. It could be, for instance, a one-off slip when inputting data onto the computer for an item that repeats weekly.

2. carelessness is when a customer doesn't bother keeping proper records, and is not then able to make an accurate return

True	<input checked="" type="checkbox"/>	False	<input type="checkbox"/>
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Again, you will have to find out all the facts. Provided there is no intent to cause an inaccuracy, circumstances such as these may well be careless.

3. Bev works in an outlet shop. She picks up returned Designer items cheaply and auctions them on Ebay. She doesn't think to declare her profits on her tax return. When she finds out she should do so, she sends an amendment to the return within the 12-month time limit.

Can we consider issuing a penalty for the inaccuracy in the original return?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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The return contained the inaccuracy. Despite the amendment you would look at the behaviour leading to the omission of the profits. If you concluded it was careless or deliberate, then you would consider issuing a penalty.

2.3 Deliberate Inaccuracies

CH402150

If you find any evidence that an inaccuracy has been caused deliberately by the customer, you must make a referral to the Evasion Referral Team (ERT) before taking any more action on the case.

2.3.1 Deliberate but not concealed

CH 81150

When a person gives us a document that they know contains an inaccuracy, this is deliberate.

CH432000

Examples of deliberate inaccuracies in documents might include, knowingly

- systematically paying wages without accounting for PAYE or NIC
- failing to record all sales
- deliberately describing transactions inaccurately or in a way likely to mislead
- giving a VAT return to HMRC that includes a figure of net VAT due that is too low
- claiming a deduction for personal expenses of such a size or frequency that the inaccuracy **must** have been known
- withdrawing money for personal use from an incorporated business and not making any attempt to make sure it is treated correctly for tax purposes
- omitting a known asset from an Inheritance Tax account

2.3.2 Deliberate and concealed

CH 81160

CH432020

This is the most serious type of behaviour. The person has not only knowingly and intentionally made errors but has also taken steps to cover their tracks. Evasion cases at this level should be referred to the Evasion Referral Team who may send them on to Criminal Investigations.

Actions to conceal the errors could be

- creating false invoices to support inaccurate figures in the return
- backdating or postdating contracts or invoices
- creating false minutes of meetings or minutes of fictitious meetings
- destroying books and records
- systematically diverting takings into undisclosed bank accounts and covering the traces
- invoice routing, for example the purported sale or purchase of goods through a tax haven company
- creating sales records that deliberately understate the value of the goods sold, the balance of the full price being paid separately to the person
- describing expenditure in the business records in such a way as to make it appear to be business related when it is in fact private
- altering genuine purchase invoices to inflate their value
- compiling false business accounts to support the availability of agricultural or business relief from Inheritance Tax
- mis-declaring the strength of alcoholic products on paperwork and accompanying documentation.

Examples

George Landry is the director (and 100% shareholder) of Acme Engineering (Shelf 99) Ltd. He has a salary taxed under PAYE each month, plus dividends from his company. In addition to these payments he draws a further £2,000 every month.

He wishes to avoid showing his director's current account as overdrawn as he would incur a personal tax bill for a S175 ITEPA charge (beneficial loans) and for the company under Section 419 ICTA (loans to participators). He therefore creates false purchase invoices to the value of £2,000 per month (including VAT). He records the inflated purchase figure in the business records and claims input VAT to which the company is not entitled on the quarterly VAT returns.

The extra purchase costs reduce the profits in his accounts so that the company tax return is also incorrect.

Delta Fridges PLC buy refrigerators from China and sell to electrical retail outlets in the UK. The directors set up a company registered in Panama. Whilst the goods continue to be shipped directly from China to the UK they arrange for paperwork to be produced showing the Panamanian company as an intermediary, with a 10% management fee being charged to the UK company.

This 10% fee is then deposited into offshore personal bank accounts of the directors and is used to fund loan payments for the purchase of holiday homes they each have in Dubai.

To sum up, you will gather and assess the available evidence and from this draw your conclusion about which of the 4 error types will apply.

Error Type	
Despite taking reasonable care	The customer tried to get it right and took all reasonable steps to make sure that they did so
Careless	Parallel with negligent. The customer didn't take the care they should, but there was no intent to be inaccurate, or inaccuracy despite reasonable care that they discovered but took no timely steps to tell us so.
Deliberate	Knowingly getting it wrong and not correcting it
Deliberate and concealed	Knowingly getting it wrong, not correcting it and taking steps to hide it

Now try the following activities to identify the behaviours which gave rise to the inaccuracy.

Activity Three

Consider into which behaviour types the following might fall

1. Mark is a builder. His firm is constructing a housing development. He is also renovating a large stone barn which will become his family home. Most of the purchases for the development come from Sharon's building supplies. She is an old friend. At his request she agrees to put the address of the development on the invoices relating to the barn. He includes all the barn construction and renovation costs in his books and assures his accountant that he never puts any personal costs through the business. The accountant therefore makes no adjustment for private use.
 - Mark's behaviour is

2. Dan pays his employees a Christmas bonus in cash. He knows that he should deduct Pay-As-You-Earn (PAYE) and National Insurance Contributions (NIC) but chooses not to do so.
 - Dan's behaviour is

3. Herbert is an 80-year-old former railway worker. He has cataracts and is in the early stage of Alzheimer's disease. When he fills in his tax return he forgets about his British Railway pension, making no reference to it on the form. He has always shown it in previous years.
 - Herbert's behaviour is

Activity Three *Continued*

4. Talal keeps accurate business records. Because of cash flow problems he decides to enter an inflated figure of input tax on one of his VAT returns to reduce his net liability. He discloses the error to HMRC several months later when his cash flow has improved.

- Talal's behaviour is

5. Jane is a self-employed taxi driver. She does not record each fare, and does not always count the cash on hand at the end of her shift; nor does she always retain receipts for her expenditure. Every few days she attempts to calculate her takings since she last recorded them. Because she has not kept a daily record of income she has to try to recall approximately how much she took and how much she has spent. At the end of the year she presents her accountant with a box of expenses receipts and a takings book in which she has recorded her takings. The agent prepares the tax return and business accounts from this information.

- Jane's behaviour is

Activity Three *Continued*

6. Faruq is a director and shareholder of a company. He has been paid a substantial dividend. When completing his Self-Assessment return he realises that this dividend will result in him being liable to income tax at higher rate (40%). He takes the decision to leave the dividends off his return and hopes that HMRC will accept the return without checking it.

- Faruq's behaviour is

7. Colin is a plastic surgeon who is employed by his local NHS trust. In addition to his employment he operates a private patients' clinic at a private hospital nearby. He records only 10% of his private clinic income and arranges for the other 90% to be paid into bank accounts held in the name of his two children. He also owns a holiday home in France to which he takes his family at weekends and school holidays. He claims the running costs (gas/electricity and council tax) of the holiday home as expenses for use of home as office.

- Colin's behaviour is

Response

1. Mark's behaviour is deliberate and concealed. He knows that what he is doing is wrong and he has taken active steps to hide it by arranging for inaccurate paperwork to be created.

You would send this case to the Evasion Referral Team for their consideration before discussing penalties with Mark or his agent.

2. Dan's behaviour is deliberate but not concealed. He knows what he should do, but makes the decision not to account for PAYE/NIC in respect of the bonus payments.

You would also consider whether to send this case to the Evasion Referral Team.

3. Herbert's error is likely to be treated as despite taking reasonable care. You would offer him help for the future, possibly finding out whether anyone could act as his representative.

4. Talal's behaviour is deliberate. He knew the correct amount of input tax and decided to include an inflated figure on the return. The Error Correction Scheme for VAT does not allow for deliberate errors to be corrected in a later return.

As with all deliberate errors, you should consider whether to pass this case on to the Evasion Referral Team.

5. Jane is disorganised. She cannot be sure that she has returned the correct amount of her profit. Her attitude towards her record-keeping amounts to a lack of reasonable care, or **careless**. If the pattern and size of understatement were such that she must have known she was not declaring her full profits, then her inaccuracy would be **deliberate**.

Response Continued

6. Faruq knows what he is doing, but apart from leaving the dividends off his return makes no attempt to hide them. His behaviour is **deliberate, but not concealed**.

7. Colin deliberately mis-describes his private costs as business. He has also taken steps to conceal a substantial amount of his taxable income. His behaviour is both **deliberate and concealed**

2.4 Gathering Evidence about Behaviour

CH430000

It is up to you as caseworker to decide which behaviour type reflects each inaccuracy. You will need to produce an audit trail from the obtaining of facts up to your decision. It must show why you think that the facts and explanations given to you led you to that particular decision.

CH433500

You must obtain approval to your views before discussing the matter with the customer or their representative. The approval process is covered in Chapter 5.

The records of your evidence will have to be examined by the authorising officer when giving approval to your decision on the behaviour type. They will also have to be produced if the customer appeals against the decision.

For this reason you must keep records of these facts and any discussions which took place. These will include details of what the customer said and did.

Evidence may include

- material generated from the compliance visit
- statements made by the person or their representative
- notes of discussions with the customer
- copies of relevant documentation.
- the effect of the inaccuracy on their personal life, such as unexplained availability of cash
- the frequency of the errors. The more often an error occurs the more likely it is to be spotted
- multiple errors. The more that are discovered, the less likely they are to be accidental
- Size. A large error will have more of an effect on other transactions or balances and should be more easily identified by the customer
- Significance. If a transaction is particularly important to a person, they are far more likely to notice the effect of any mistakes

Example

When completing a quarterly VAT return the book-keeper makes a transposition error. Input VAT is £1,575,000. She puts £1,755,000. Normally the trading pattern does not widely fluctuate but this quarter the VAT payable to HMRC is significantly lower. Any business that has an appropriate system of checks and reviews should notice the changes in expected VAT liability as well as additional funds. They should investigate the reasons behind the changes.

2.4.1 Previous compliance history

CH420900

You must not take reports from previous compliance checks as evidence about the behaviour leading to the current inaccuracy. This applies even if the customer has been given advice about errors on previous occasions, yet repeats them. Each inaccuracy has to be judged in isolation. Using former errors as evidence to judge current ones is pre-determining the outcome.

You may look at any previous compliance history in only two circumstances

- Where you and your manager are in doubt as to the **balance of probabilities** in support of the decision
- only when there is real doubt, and only to support a decision of a less serious behaviour category.

You are most likely to look at this when you have a doubt as to whether the customer has taken reasonable care. If records show that they have an exemplary compliance history, this may point to a balance of probabilities that they took reasonable care in relation to the current inaccuracy.

Weigh any explanations offered and be critical, but also try to keep an open mind.

In a meeting, if the person wants to call in their agent for support, you should arrange a further appointment. The agent may be able to give you useful information about the reasons behind the error, but the discussion cannot be delegated to them completely. A return or document is the responsibility of

- the person who signs it (for direct tax purposes)
- the registered entity responsible for making the declaration (for VAT purposes),

so it is their behaviour you are trying to establish and only they can know all the facts.

CH434000
CH451500

You cannot 'establish' a behaviour type by simply deciding or asserting it. You should try to reach agreement with the customer and have them acknowledge their behaviour. Whether you seek agreement before or after calculating the penalty will be for you to decide, depending upon the individual customer. In many cases the customer will want to know whether a penalty is due, and the amount, at the same time.

If you cannot reach agreement then you will have to make a decision on the behaviour. The customer has a right of appeal against your decision. Appeals are covered in Chapter 7.

2.4.2 Standard of proof

CH81190
CH420500
CH 81190 and
CH321500

Your standard of proof for both careless and deliberate behaviour is 'balance of probabilities'. This is whether the evidence you have gathered shows that under the circumstances it is more probable than not that the inaccuracy was made carelessly or deliberately. For more serious behaviour, the quality of your evidence will need to be higher than for, say, careless errors.

A deliberate inaccuracy will almost always be dishonest or fraudulent. To meet the 'balance of probabilities' test the evidence required to establish an inaccuracy as deliberate will have to be particularly strong. This is because the courts have held that there is an inherent likelihood that any given person is honest. Evidence of dishonesty in other matters, such as other tax obligations, may therefore be relevant: if you can show that a person is dishonest in one aspect of their life, it is more likely that they have been dishonest in another.

See CH82180,
CH82200,
CH82210 and
CH82250

Your decision about the behaviour is crucial to the overall penalty level. If you have any doubts about your conclusion you must discuss your findings with your manager/team leader. Do not leave it to the point where penalties have to be authorised.

If you feel that there may be a more serious behaviour than you have established, but cannot see how you can demonstrate it, you should discuss this with your manager. Ensure that your reasons and the manager's input (including any additional action to be taken) are recorded in the papers/ on Electronic Folder (EF).

You will usually treat each inaccuracy individually, as each could be caused by different behaviour and be subject to a different penalty. Someone who has deliberately created and concealed an irregularity can still make careless errors as well.

See CH82200

Inaccuracies which are broadly similar can sometimes be grouped together for calculating the penalty, provided the customer or their agent agrees. This is covered further in Chapter 4.

If the person chooses not to co-operate following Human Rights Act advice, then the meeting or visit should be terminated and evidence will have to be obtained by correspondence, using formal powers. When you have gathered all the information and documents to settle the tax liability, you can come to a decision regarding the behaviour and disclosure for penalty purposes.

Activity

You are in an interview with a customer and have identified inaccuracies. What questions might you ask to help you decide on the behaviour type?

Response

Your questions might include

- In this business who is responsible for what?
- What is your role?
- Has the business, its personnel or anything else changed from earlier years
- What information did you give to your agent?
- If the return was prepared by your agent did you check the figures the agent entered, if so how did you check?
- Did you review the whole of the return before you signed?
- What steps did you take to try to make sure the document was correct?
- What documentation do you have that can support your conclusions?
- What is the extent of the problem? Has it ever happened before?
- Does the problem affect earlier years?
- If you did not know what you should include, what advice was available to you? What advice did you ask for? From whom?
- If you were unsure why didn't you seek advice ?
-

2.5 Questioning Third Parties

On a visit to business premises, the customer may agree to you questioning a third party, such as a bookkeeper or wages clerk, to gather evidence or understand behaviour. You must not discuss the imposition of penalties with the third party.

Their evidence can be crucial to understanding the business but this is a sensitive area. Company officers or business owners may be happy to delegate a VAT or employer compliance visit or a Corporation Tax or Income Tax records examination to an employee. They may be less happy if that visit results in a penalty.

Consider carefully any questions to employees, and restrict them to establishing the facts about what went wrong, and what part they took. You may place an employee in a difficult position by asking them questions about matters beyond their immediate knowledge and responsibility. You should not put them under any pressure to speak about matters outside their duties. If you need to speak the Company secretary/proprietor and that person is not available, you will have to arrange a further meeting.

If the employer asks you not to speak to the employees, then you should make no further contact.

In status cases, however, when you are trying to establish whether workers are employees or self-employed, you will have to have meetings with workers with or without the engager's agreement. If the engager agrees you can interview the workers on the premises.

In Chapter 3, Disclosing Inaccuracies, we will look at how you decide whether a disclosure is unprompted or not and what steps the customer can take to reduce their penalty.

Review

This chapter started at the point in an intervention when you have identified either an inaccuracy in a document or a failure to notify an under-assessment.

For an inaccuracy you need to determine the behaviour that led to it. You do not need to determine behaviour for under-assessments.

Four types of behaviour were explained and described

- reasonable care
- careless
- deliberate, not concealed
- deliberate with concealment.

We looked at what is meant for each behaviour

- Reasonable care includes keeping adequate records appropriate to the financial activity and taking advice when warranted. We cannot charge penalties where reasonable care has been taken.
- A careless inaccuracy will be one that would not be made by a person taking reasonable care. Careless equates to the legal concept of negligence.
- Deliberate and not concealed is the behaviour from a person who knows they are submitting an inaccurate document but take no particular steps to hide it.
- Deliberate and concealed is the most serious behaviour type. This involves knowing that there is an inaccuracy but taking conscious action to try to hide the inaccuracy.

If you consider an error is deliberate you should refer the matter to the Evasion Referral Team (ERT) before taking any more action on the case.

If you do not make a referral to the ERT, or if they return the case for you to work, then you must make the customer aware of Article 6 Human Rights Act as soon as you have established the possibility of penalties.

Invite and welcome the customer's help with your enquiries, but make them aware that they do not have to co-operate. Explain the consequences if they choose not to, including that you may need to use Information and Inspection Powers, Schedule 36 FA 2008.

We explored the kinds of evidence you will need to gather about the behaviour that led to the inaccuracy.

We looked at the importance of recording your findings and notes of meetings or discussions as they will support your decision to the authorising officer, and possibly be cited in a Tribunal hearing.

Finally, we explained how you should assess the evidence to come to a reasonable conclusion about behaviour. This will take into account the actions and intention of the customer and also their personal circumstances and areas of expertise.

Learning Check

1. State the 4 behaviour types

-
-
-
-

2. You cannot charge a penalty if the inaccuracy arose

a	because of deliberate behaviour	<input type="checkbox"/>
b	despite taking reasonable care	<input type="checkbox"/>
c	for failing to take reasonable care	<input type="checkbox"/>

3. Give 3 examples of 'reasonable care'

-
-
-

4. When deciding on a person's behaviour you will

a	treat everyone the same	<input type="checkbox"/>
b	look at the person's circumstances	<input type="checkbox"/>
c	record only matters where the customer disagrees with your conclusions in case it goes to Tribunal	<input type="checkbox"/>
d	record only what you agree upon because it won't go to Tribunal	<input type="checkbox"/>

Learning Check – Answers

1. State the 4 behaviour types

- Reasonable care
- Careless
- Deliberate but not concealed
- Deliberate and concealed

We looked at the behaviour types in paragraph 2.1

2. You cannot charge a penalty if the inaccuracy arose

a	because of deliberate behaviour	<input type="checkbox"/>
b	despite taking reasonable care	<input checked="" type="checkbox"/>
c	for failing to take reasonable care	<input type="checkbox"/>

This is covered in paragraph 2.2.1

3. Give 3 examples of 'reasonable care'

- Setting up records or systems appropriate to the activity and carefully maintaining them
- Finding out about unfamiliar subjects, including taking advice
- If still unsure, drawing attention to doubts when submitting the return or other document.

Reasonable care is described in paragraph 2.2

4. When deciding on a person's behaviour you will

a	treat everyone the same	<input type="checkbox"/>
b	look at the person's circumstances	<input checked="" type="checkbox"/>
c	record only matters where the customer disagrees with your conclusions in case it goes to Tribunal	<input type="checkbox"/>
d	record only what you agree upon because it won't go to Tribunal	<input type="checkbox"/>

Customer focus is at the heart of the Error Penalties. When establishing behaviour it is vital that you consider the person's circumstances and how they affected behaviour. Whatever your initial views, it is important to record all the evidence you gather so that no matter how the enquiry develops you can demonstrate that you have made a reasonable decision.