

Penalties for Inaccuracies Schedule 24 FA07

Chapter 3 Disclosing Inaccuracies

Contents

	Page
Introduction	3
Study Objectives	
Study Advice	
3.1 To recap	5
3.1.1 Penalty ranges	6
3.2 Unprompted or prompted?	9
3.3 Quality of disclosure	17
3.3.1 Telling, helping and giving access	17
Review	21
Learning Check	25
Learning Check - Answers	27

Introduction

Having established that there are inaccuracies in a document or an under assessment and the behaviour types which apply to those inaccuracies the next stage in deciding the level of penalty due is to consider the disclosure of the inaccuracy or under assessment. In particular, to consider

- whether it was unprompted or prompted
and
- the quality of the disclosure.

This chapter looks at the factors you need to consider to decide the type of disclosure and to decide the range within which you'll set the penalty. It also looks at the factors which you will take into account when deciding the quality of the disclosure.

Study Objectives

After successfully studying this chapter, you will be able to

- identify the difference between an unprompted and a prompted disclosure
- state the range of penalties chargeable for each behaviour type
- list the factors to be taken into account in order to determine the quality of disclosure.

Study Advice

This is the third 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 Chapters 1 & 2 before working through this chapter.

3.1 To recap

To establish whether a penalty is due and decide the amount you need to

- Identify an inaccuracy in a document
- or a failure to notify an under assessment of tax.

For each inaccuracy that you have found, if it leads to a loss of tax, you must decide on the behaviour that led to that inaccuracy.

If the inaccuracy does not lead to a loss of tax there will be no penalty, but you should help the person correct the inaccuracy for the future.

We considered the four types of behaviour that can give rise to an inaccuracy in Chapter 2.

These are where the inaccuracy was

- made despite the person taking **reasonable care**
- **careless** – where the person did not take reasonable care
- **deliberate, but not concealed** – where the inaccuracy is deliberate but the person does not make arrangements to hide it
- **deliberate and concealed** – where the inaccuracy is deliberate and the person makes arrangements to hide it.

You can't charge a penalty if the inaccuracy arose despite the customer taking reasonable care - but for all other behaviour types where there is a loss of tax or an underassessment, a penalty will be due.

For under assessments you do not need to consider behaviour.

3.1.1 Penalty ranges

The amount of penalty you will charge will be based upon the value of the tax affected by the inaccuracy. How you calculate this value will be covered in Chapter 4.

For each behaviour type the amount of penalty you can charge will fall within a range depending on whether the disclosure of the inaccuracy was unprompted or prompted. These ranges are given in the table below.

Inaccuracy penalty ranges

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%

Under-assessment penalty ranges

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

Exactly where the percentage falls within these ranges depends on the **quality** of the disclosure.

CH 82410

CH 450510

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FA 2007

For example, for a deliberate but not concealed inaccuracy where there is an unprompted disclosure, the maximum penalty is 70% and the minimum penalty is 20%.

The quality of the disclosure enables you to decide the point between the maximum and minimum at which you'll set the penalty.

So, to determine the percentage to be applied, you have to decide on two things

- whether the disclosure was unprompted or prompted
and
- the quality of the disclosure

and you'll look at each of these in turn in the next two sections.

3.2 Unprompted or prompted?

CH 82420

A disclosure is **unprompted** if it is made at a time when the person making it has no reason to believe that we have discovered or are about to discover the inaccuracy.

CH 450520

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You must base your decision of whether a disclosure is prompted or unprompted, on fact. The standard intelligence package from RIS will tell you why the case was selected and whether any disclosure or inaccuracy correction was made by the customer.

You are likely to consider that a disclosure is unprompted if no compliance checks are currently in progress for the person who is making the disclosure, or for another customer with whom they have a link.

It will not be possible or reasonable to identify and review all related parties, but you should be aware of the possibility of connections. As an example, a director has associations with their spouse, their company, co-directors/shareholders, forebears, siblings, children and business partners. There may also be wider links, such as with key employees or connected companies.

CH 82420

CH 82422

If a compliance check is already underway

When a compliance check is already underway into the customer or a connected party you will have to consider whether the disclosure has been made because that person believes that you will find the error anyway. You should look at the following areas to decide whether the disclosure is unprompted.

- What taxes does the disclosure relate to?
- Are these taxes likely to be covered by your compliance checks?
- Is it likely that your customer would know about the compliance check into a connected party.
- If the person had not told you about the error, could they expect you to be able to identify the error from the documents and particulars you are looking at as part of your compliance check?

Remember, the disclosure will only be unprompted if it is about something that you have not discovered or are thought not likely to be about to discover. An inaccuracy found as a result of a VAT pre-cred check will, for instance, be regarded as a prompted disclosure.

If the disclosure doesn't meet the criteria to be regarded as **unprompted** then you will treat it as being a **prompted** disclosure.

Activity One

Say whether, and why, you think the following disclosures were prompted or unprompted.

1. Jemima returned a capital gain which is the subject of a compliance check which is clearly limited to the gain. She discloses that she employs a nanny and that she has not registered for a Domestic PAYE scheme.
2. During a VAT assurance visit you find that VAT has been incorrectly claimed on a company car. Alphonso, the company director, then discloses that the company has not submitted an employer return to declare his car benefit, nor has he entered it on his own SA Tax Return.
3. During an Employer Compliance review the company accountant makes a disclosure that the rate of VAT being applied to one of their sales products is wrong.

Response

4. This is an **unprompted** disclosure. Payments to the nanny would not normally have been identified without the disclosure.
5. This would be related to the subject under review and so is a **prompted** disclosure. Given that the officer is reviewing the treatment of the company car, cross-tax working would mean you would consider the income tax implications for the director of using a company vehicle. This would include whether the benefit of the car had been returned by the director, or by the company on an employer's return.
6. This is unrelated to the subject under review and wouldn't be within the scope of the compliance check, so it would be regarded an **unprompted** disclosure.

Communicating the decision to the customer

Your decision on whether a disclosure is prompted or unprompted should normally be factual and uncontroversial.

You should confirm your decision with the customer and their agent at the same time the behaviour is established. If necessary you should explain how we distinguish between the two alternatives. If the customer disputes that their disclosure was prompted and claims earlier contact with HMRC, you will need to check this.

CH 82420

CH 82422

CH 434000

Activity Two

You are carrying out a compliance check of Marilyn's self-assessment tax return and have found that property rental profits have not been returned.

Marilyn tells you that after she had sent in her tax return she realised that this income had been omitted and she had then telephoned HMRC to provide details of the letting income. Her view is that, because of her earlier telephone call, this should be classed as an unprompted disclosure.

You notice there is no mention of the telephone call in the RIS package and there is no other indications of Marilyn having been in telephone contact with HMRC.

What information should you obtain from Marilyn in order to check this and what should you tell her that you will do next?

Response

You should explain to Marilyn that you don't hold any information about an earlier telephone call. To follow this up you will need as much information from Marilyn as possible as soon as she mentions it. The information would include

- date of the call
- destination of the call (HMRC Office/Contact Centre/Hotline Tel No)
- name of the person she spoke with (if known)
- what information she provided in the call
- what advice was she given by the person she spoke to.

You should also make it clear that you will check what she has told you.

In addition, if the call was made to a Customer Contact Centre you should also make it clear that comprehensive records of telephone calls to Customer Contact Centres are retained.

If the claim appears to be half-hearted or inherently implausible, challenge it and, if appropriate, invite a retraction.

What if the customer only gives partial details?

CH 82440

CH 450530

If a compliance check shows that, although a disclosure was unprompted, the customer had not revealed the full details, it still remains an unprompted disclosure of that inaccuracy.

Activity Three

Desmond is a company director. During a compliance check into an unrelated matter, he makes a disclosure that he has been using his company credit card to buy petrol for his wife's car totalling £1000 in the period. When you examine the credit card statements and receipts you find that the payments were actually £2500.

You also find evidence that Desmond has not returned income from a let property, which he admits to on challenge and provides full details.

What are your views on the disclosures made?

Response

Petrol

Although the inaccuracy was only partially disclosed because the details given were not correct, it would still be treated as an unprompted disclosure. You'd take into account the fact that he didn't tell you about the full extent of the private fuel that had been charged to the company credit card when you calculate the reduction for the 'quality of disclosure'.

Letting Income

This relates to a different inaccuracy and would be treated as a prompted disclosure.

You'd treat any failings in the initial disclosure, or attempts by the customer to justify the partial disclosure, as part of the **quality** of the disclosure.

We'll move on to look at the quality of disclosure in more detail next.

3.3 Quality of Disclosure

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The more a person tells, helps or gives access to us, the more the penalty will be reduced for disclosure. We refer to this as the **quality** of the disclosure.

You should make sure that the customer is aware of this. Explain that co-operating with your enquiries not only minimises the potential penalty, but may also decrease their costs by shortening the enquiry.

To calculate the reduction for the disclosure you need to consider the nature, extent and timing of three elements. They are

CH 82440

- telling us about it

CH 82450

- giving us reasonable help

CH 82460

- allowing us access to records.

These terms have been expressed in plain English to

- show what HMRC expects the customer to do
- enable the customer to easily understand what he or she can do to reduce the level of penalty.

We'll look at each of these in a bit more detail next.

3.3.1 Telling, helping and giving access

Telling

CH 82440

Telling includes

- admitting the document was inaccurate or that there was an under assessment
- disclosing the inaccuracy in full (even though additional work may be required to quantify the inaccuracy in full)
- explaining how and why the inaccuracy arose
- giving assurance about the extent of the inaccuracy, for example through supplying a certificate of full disclosure.

Helping

CH 82450

Helping includes

- giving reasonable help in quantifying the inaccuracy or under-assessment
- positive assistance as opposed to passive acceptance or obstruction
- actively engaging in the work to accurately quantify the inaccuracies
- volunteering any information relevant to the disclosure
- attending meetings if requested.

Giving access

CH 82460

Giving access includes the customer responding positively to your requests for information and documents and allowing access to

- their business and other records
and/or
- other relevant documents.

You need access to make sure that the inaccuracy or under assessment is fully put right. Access is more than simply complying with requests for information. It includes explaining and, where appropriate, analysing records.

Where you do not need any input from the customer on a particular aspect, then you can give full credit for that element. For example, say Fred has omitted the pay & tax figures for a second employment from his 2009/10 SA return. You obtain the relevant figures from the P14 submitted by the employer. If this was the only risk and you were able to establish the actual figures without having to ask Fred for his P60 certificate, you can give full credit for 'Giving Access'.

Weighting each element

CH 82430

As a guide, you can weight these elements as follows.

S10 Sch 24 FA
2007

	Percentage
Telling	30%
Helping	40%
Giving access	30%

This breakdown is only a guide. You should consider in each case whether the overall penalty reflects the overall quality of disclosure.

In the previous error penalty legislation for direct taxes there were three penalty abatement elements for disclosure, co-operation and seriousness. These no longer apply.

A penalty fact sheet will be available. This explains the benefits of fully telling, helping and giving access. Hand this out, or send it out, in every case where a penalty may be chargeable.

CH 82431

Refer to CH 82431 for further guidance on how to determine the quality of disclosure.

Making your decision

CH 82470

You must look at how the customer has contributed to the three quality elements. This will include evidence from the compliance check, your subsequent correspondence and discussions with the customer.

You should then be in a position to decide by reference to the percentages given in the previous section what level of reductions should be applied for each of the three disclosure elements. Later, when you have to enter the penalty information into New Penalty System (NPS) or SEES Penalty Calculator, you will be prompted to enter individual figures for each of these three items.

You have to be able to justify the conclusions that you come to in arriving at the percentage reductions for disclosure. To do so, you will have to record all the facts of the case fully – right through to the decision that you've reached. You need to do this for internal quality control anyway, and you should always bear in mind that you may need to present and defend your conclusions at an Appeal Tribunal or Internal Review of your case.

It won't normally be necessary to keep verbatim notes of any meeting – although recording any admissions made or precise responses to key questions may increase the credibility of the account.

VAT Staff

You should record notes of the meeting in your officer's notebook. You should note the discussions in the audit report section in Electronic Folder (EF). Additionally note and link any supporting documents, eg invoices scanned into EF. These should be marked 'not to be weeded'.

Direct tax and Employer Compliance staff

You should write up notes as soon as possible after the meeting or visit. Have the question of penalties as a separate section in the account. If more than one officer is present both officers should sign the note, and retain their rough notes in the papers.

Review

This chapter has reminded you of the steps so far.

- you have found an inaccuracy in a return or document, or a failure to notify an under-assessment that leads to
- a loss of tax (or has no tax-effect in which case there is no penalty, but you will give help to the customer)
- for inaccuracies you have decided on the type of behaviour as one of
 - despite taking reasonable care – in which case you cannot charge a penalty
 - careless
 - deliberate
 - deliberate and concealed.

The level of penalty will reflect

- whether the disclosure of the inaccuracy or under-assessment was unprompted or prompted
- how the customer has helped you in identifying the inaccuracies or under-assessment.

The inaccuracy penalty ranges for the different types of behaviour and disclosure are:

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%

And for under assessments:

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

We looked at the steps you will take to decide whether there has been an unprompted disclosure and also to determine the quality of the disclosure.

A disclosure is unprompted if the customer makes it at a time when they have no reason to suppose you will find out about the inaccuracy or under-assessment.

As with behaviour, you will look at the facts to see whether you can accept the disclosure as unprompted. You will look at whether there is a compliance check into the customer or anyone with whom they are connected. If there are no checks, then it is likely you will treat the disclosure as unprompted.

If any compliance checks are in progress, either into the customer's affairs or those of connected people, then you will look at the types of tax being reviewed. You will consider whether it was reasonable for the customer to believe that you would not find the inaccuracy during the intervention.

The customer has the chance to minimise their penalty for the quality of their disclosure by giving you assistance in three areas:

- **telling** you about the inaccuracy or under assessment, which includes explaining how and why it arose and assuring you as to the extent of the error
- **helping** you in an active way to quantify the inaccuracy and to settle the case, volunteering relevant information and attending meetings
- **giving access** by providing requested information and documents and allowing access to, or analysing, records.

When considering reductions for quality of disclosure you will weight the elements as

- telling – 30%
- helping – 40%
- giving access – 30%.

This breakdown is only a guide. You should look at the overall penalty to see whether the amount reflects the quality of disclosure.

There is a fact sheet that you should give to the customer. It explains how helping with the compliance check can reduce their costs.

We explained that you have to be able to justify your decisions and that you have to record the facts leading to your views. If you hold any meetings you should keep notes accurately reflecting what was said, although they do not have to be verbatim.

Learning Check

1. Martha, who trades on the internet selling tennis racquets has submitted her 2010/11 SA tax return showing a Capital Gain on a the disposal of her rental property. You take up the gain as an aspect enquiry and write to Martha to ask her how she arrived at the valuations she used to calculate the gain.

In her reply she includes a further note that she has just discovered that she hadn't accounted for VAT on sales in 2010/11 that she had made to a retailer in Greece. She explains that she did not think that Greece was a member of the EU.

Is Martha's disclosure prompted or unprompted ?

2. What is the minimum penalty that could be charged for the prompted disclosure of an inaccuracy that arose because of careless behaviour ?

3. What are the names for the elements you take into account when considering the quality of the disclosure ?

a	Giving Access	<input type="checkbox"/>
b	Explaining	<input type="checkbox"/>
c	Helping	<input type="checkbox"/>
d	Delays	<input type="checkbox"/>
e	Telling	<input type="checkbox"/>
f	Seriousness	<input type="checkbox"/>

Learning Check - Answers

1. Martha, who trades on the internet selling tennis racquets has submitted her 2010/11 SA tax return showing a Capital Gain on a the disposal of her rental property. You take up the gain as an aspect enquiry and write to Martha to ask her how she arrived at the valuations she used to calculate the gain. In her reply she includes a further note that she has just discovered that she hadn't accounted for VAT on sales in 2010/11 that she had made to a retailer in Greece. She explains that she did not think that Greece was a member of the EU.

Is Martha's disclosure prompted or unprompted ?

As your enquiries related only to the CG disclosure it would be regarded as an unprompted disposal. At the point that Martha has made her disclosure she had no reason to believe that the VAT inaccuracy would have be identified by HMRC.

You looked at unprompted disclosure in sub-unit 3.2.

2. What is the minimum penalty that could be charged for the prompted disclosure of an inaccuracy that arose because of careless behaviour ?

The minimum penalty that could be charged is 15%.

Penalty ranges are covered in sub-unit 3.1.1.

3. What are the names for the elements you take into account when considering the quality of the disclosure ?

a	Giving Access	<input checked="" type="checkbox"/>
b	Explaining	<input type="checkbox"/>
c	Helping	<input checked="" type="checkbox"/>
d	Delays	<input type="checkbox"/>
e	Telling	<input checked="" type="checkbox"/>
f	Seriousness	<input type="checkbox"/>

You studied this in sub-unit 3.2.1.