

Penalties for Inaccuracies Schedule 24 FA07

Chapter 4

Potential Lost Revenue, Quality of Disclosure Reductions and Suspension

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Introduction

You will have established that there is an inaccuracy or underassessment (Chapter 1), the behaviour type – for inaccuracy (Chapter 2) and quality of disclosure (Chapter 3 – inaccuracy and underassessment). The next stage is to calculate the Potential Lost Revenue (PLR) and then calculate the penalty that will be assessed.

This chapter looks at how a penalty is calculated and the circumstances in which a penalty can be suspended.

Study Objectives

After successfully studying this unit, you will

- Be able to state the percentage used to calculate the PLR for delayed tax
- be able to provide 2 instances of when you cannot group inaccuracies,
- be able to calculate the PLR on an unutilised loss,
- be able to state the maximum suspension period that can be applied,
- be able to calculate a penalty

Study Advice

This is the fourth unit and should take you around 45 minutes to complete. You will need access to the Compliance Handbook (CH), the Enquiry Manual (EM) and the Employer Compliance Handbook (ECH)

You should also have completed Chapters 1-3 before working through this chapter.

4.1 Potential Lost Revenue (PLR)

CH 82160

The penalty to be charged is calculated on the Potential Lost Revenue (PLR). This will, in most instances, be the additional amount of tax due or the reduction in the amount of tax repayable once the inaccuracy is corrected. However, the new rules also allow for penalties to be assessed in respect of losses, group relief, S419(4) relief and Delayed Tax. The method of calculating PLR on these is explained later in this chapter. (4.3, 4.4 & 4.5)

Para 7, Sch 24

It is also possible that, in practice, there can be an amount of PLR where we have not actually repaid any part of the overpayment claimed. 'Repayment' can also include the situation where we have allowed a credit.

CH450300

PLR should be calculated separately for each inaccuracy for each head of duty.

For example

Miranda omits £3,000 of sales from her cashbook. You have identified the following inaccuracies

- understated output tax on her VAT return
- understated taxable profit on her Self Assessment (SA) return.

As you have identified inaccuracies under two different heads of duty, you will have to make two PLR calculations - one for the additional income tax due and another for the additional Output Tax.

- VAT (Output Tax) – PLR = £525 (£3000 x 17½%)
- Income Tax – PLR = £660 (£3000 x 22%)

Wherever possible you should agree the amount of the additional tax (PLR) with the customer and their agent before you calculate the penalty. In some cases it won't be possible to reach an agreement and you will have to base your calculations upon the facts that you have established and recorded.

EM 3905

For the purposes of calculating the PLR, 'tax' includes Class 1 and Class 4 National Insurance Contributions (NICs).

For direct taxes, all other allowable deductions and reliefs should be taken into account when calculating the PLR. This includes error or mistake claims provided the relevant conditions have been satisfied.

Activity One

Calculate the Potential Lost Revenue (PLR) in the following cases

1. Al, a self employed painter and decorator, submitted his 2009/10 Self Assessment return showing a liability to income tax and NIC of £7,500.

Following a compliance check it was agreed that Al's sales had been under-recorded, and his correct liability to income tax and NIC for 2009/10 was £9,500. This was a single inaccuracy with a single PLR.

Activity One *Continued*

2. Sanjit, a VAT registered trader, makes exempt and zero rated supplies and puts in a VAT repayment claim for £50,000 to recover input tax suffered on his expenses and purchases.

The repayment claim is selected for checking before the repayment is actually issued. Checks reveal that he has claimed for items on which input tax is not recoverable. His repayment claim is reduced to £42,900.

3. Tamara, a company director, submitted her 2009/10 return claiming a repayment of tax deducted at source of £15,000.

Following a compliance check in advance of the repayment being made, it was agreed that there was undisclosed income from abroad which meant that no repayment was due and that there was in fact income tax of £2,000 due for 2009/10.

Response

1. The potential lost revenue (PLR) is £2,000 (£9,500 - £7,500).
2. The potential lost revenue (PLR) is £7,100 (£50,000 - £42,900).
3. The potential lost revenue (PLR) is £17,000 (£15,000 + £2,000).

4.1.1 Overstatements

CH82260

You may also come across inaccuracies where the customer has overstated their tax liability.

An overstatement is regarded as being any inaccuracy that is not an understatement. In other words it has **NOT** led to

- an understatement of a person's liability to tax
 - a false or inflated statement of a loss
- or
- a false or inflated claim to repayment of tax,

<p>Activity Two</p>	<p>Can you think of an example of when an overstatement may arise during the course of the compliance check ?</p>
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Response

Some examples you may of thought of are

- a transposition error which resulted in understated purchases and in turn produced a higher taxable profit
- the standard rate of VAT was declared on a zero-rated supply
- a sale was included which correctly falls into a different accounting period

The PLR is based on the overall additional tax from putting right careless or deliberate inaccuracies. You should take account of any overstatements to arrive at the PLR.

Overstatements are considered in more detail later in this chapter on multiple inaccuracies as there are particular rules about the order of setoff against understatements.

4.1.2 More than one inaccuracy / (Multiple Inaccuracies)

CH82180

On occasion, you will come across a document which includes more than one inaccuracy.

Strictly the PLR should be calculated individually for each inaccuracy, but you can simplify the penalty calculation by grouping inaccuracies together.

Remember that you are calculating the PLR for inaccuracies in the same return or document. You should consider inaccuracies in other documents for the same period separately.

CH82200

4.1.2.1 Grouping inaccuracies

The PLR should be calculated individually for each inaccuracy, although you can simplify the penalty calculation by grouping certain inaccuracies together provided that certain conditions can be met.

The conditions are that all the inaccuracies must

- relate to the same document
 - be for the same tax period
 - be for the same head of duty
 - arise from the same behaviour type. (Please note: For careless errors you will need to refer to the rules on suspensions. We will look at these in more detail later in this chapter.)
 - be of the same disclosure type (unprompted/prompted)
- and

the quality of the disclosure must be either

— the same for each inaccuracy if they were dealt with separately

or

— where an overall reduction for disclosure could be calculated which would be a reasonable reflection of the reductions which would have been due if they were dealt with separately.

Grouping of inaccuracies is only permitted in these circumstances because the same maximum and minimum penalty limits must apply to everything being grouped. You must be capable of arriving at a quality of disclosure which can be applied to all of the inaccuracies that are being grouped and ensure any suspension provisions can be aligned (refer to 4.8).

Example

Two deliberate errors are identified in a return which are both prompted. They are

- PLR of £10,000– Quality of Disclosure = 80%
- PLR of 5,000 – Quality of Disclosure = 50%

Although the quality reductions are different, it is possible to arrive at an overall percentage to take account of this. You need to pro-rata the quality percentages for each error by reference to the overall PLR as follows

$$\begin{array}{r}
 10,000 \times 80\% = 8,000 \\
 5,000 \times 50\% = 2,500 \\
 \text{-----} \\
 15,000 \qquad \qquad 10,500 \\
 \text{-----} \qquad \qquad \text{-----}
 \end{array}$$

$$\begin{array}{r}
 10500 \times 100 \\
 \text{-----} \quad \text{----} = 70\% \\
 15000 \quad 1
 \end{array}$$

We can group these together as the 70% figure reflects the penalty which could be charged if they were treated separately.

4.1.2.2 Inaccuracies that should not be grouped

CH82210

It is **not** possible to group inaccuracies that

- arise from different behaviours
or
- have been disclosed at different times
or
- that relate to different heads of duty.

Activity Three

State whether or not the errors in each example can be grouped and where they cannot be grouped explain the reasons why not.

1. Two errors are identified in a return, both of which are prompted disclosures. One is a careless error, the other a deliberate error.
2. Two deliberate errors are identified in a return. One is a prompted disclosure, the other an unprompted disclosure
3. Two careless errors are identified in a return and both are from unprompted disclosures. The quality of the disclosure (telling/helping/giving access) for each error is the same at 85%.

Response

4. Two errors are identified in a return, both of which are prompted disclosures. One is a careless error, the other a deliberate error.

They cannot be grouped because they arise from different behaviours.

5. Two deliberate errors are identified in a return. One is a prompted disclosure, the other an unprompted disclosure

They cannot be grouped because the disclosures are different.

6. Two careless errors are identified in a return and both are from unprompted disclosures. The quality of the disclosure (telling/helping/giving access) for each error is the same at 85%.

These two errors can be grouped together.

There are additional grouping rules to follow if you are considering suspending a penalty. We will look at this later in the chapter (4.8)

You should always give the customer clear notice of which inaccuracies have been grouped and advise of what the underlying behaviour and disclosure reduction is for

Ultimately the final decision rests with the customer as to whether or not inaccuracies should be grouped. If a customer does not want the inaccuracies grouped, the inaccuracies should be treated separately and you should follow the rules for multiple inaccuracies outlined below.

4.1.2 Multiple inaccuracy rules

CH82250

Higher tax rates

Where you have inaccuracies that cannot be grouped together into a single group there is a specific order in which PLR should be calculated. As PLR is, in most instances, based upon the additional tax due there may be occasions when the PLR falls to be calculated at different rates of tax. This will normally apply only in Direct Tax cases. For example, the customer may have appeared to be liable at basic rate only, but your compliance check identifies inaccuracies which results in them being liable at Higher Rate as well.

The PLR on inaccuracies should be allocated between different rates of tax by reference to the behaviour type for the inaccuracy. The PLR for the most serious behaviour type should be allocated last, so that the most serious behaviour is charged at the highest possible rate of tax.

Allocating overstatements

CH82270

As well as understatements you may also have overstatements. Overstatements will reduce the PLR so you should allocate overstatements against the least serious behaviour type first as follows

Step 1

Calculate the effect of any overstatements whether in the document or elsewhere on the amount of the tax liability or repayment that resulted from the document.

Step 2

Calculate the additional amount due or payable as a result of putting right the inaccuracies in the document to arrive at the right amount of tax liability or repayment in the following order

- inaccuracies where the person has taken reasonable care
- careless inaccuracies
- deliberate but not concealed inaccuracies
- deliberate and concealed inaccuracies.

Step 3

Calculate the amount by which the PLR for each inaccuracy should be reduced to take account of the effect of any overstatements in the same order as Step 2.

It is important these rules are followed because HMRC must ensure that

- penalties are applied fairly and impartially
- where more serious behaviours have been exhibited, those are penalised accordingly.

Example of allocating understatements

Mary's taxable income for 2009/10 after personal allowance is £32,000. We will assume that the basic rate of tax is 21% and that 40% is charged on income of more than £36,000.

During a check of her 2009/10 SA return, you find she has not declared taxable rental income of £7000 and bank interest (paid gross) of £2000

You have decided that the behaviours to be applied are

- rental income– deliberate but not concealed
- bank interest – careless.

The behaviours are different so the PLR for each must be calculated separately.

The PLR would be

Bank Interest £420 (£2000 @ 21%)

Rental Income: £2420 (£2000 @ 21% plus £5000 @ 40%)

Example of allocating overstatements

Overstatements are allocated in the specific order detailed above. This is illustrated in the example below, to ensure that the most serious understatements attract the highest tax charges.

As a result of a compliance check you establish

Understatements of tax totalling £80,000

Overstatements of tax in the same tax period totalling £50,000 (Step 1)

The overstatements are allocated in the following order.

Nature of inaccuracy	Amount (Step 2)	Overstatement allocated (Step 3)
Inaccuracy despite taking reasonable care	£10,000	(£10,000)
Careless inaccuracy	£15,000	(£15,000)
Deliberate	£20,000	(£20,000)
Deliberate and concealed	£35,000	(£5,000)
Total	£80,000	(£50,000)

So the net understatement is £30,000 PLR. The order of set off ensures that the most serious offence - 'deliberate and concealed' - attracts the largest penalty.

4.2 Losses (Direct Taxes only)

CH82300 onwards

If you are dealing with Direct Taxes, you may be responsible for working out revised losses using the existing rules for Income Tax, Corporation Tax or Capital Gains Tax. The legislation introduces new rules about when a penalty can be charged where losses are involved.

Losses do not arise in VAT or NICs

The guidance on losses can also apply to

- a charge
- an expense
- a deficit
- any other amount that may be available for, or relied on to claim, a deduction or relief

The additional liability arising from the disallowance of losses claimed will directly increase the PLR if these losses can be used against income. The tax liability they cover or reduce will be the PLR for that inaccuracy.

CH82360

You should treat losses as being used, even where only the receipt of further returns during the compliance check allows them to be utilised. Losses do not need to be restricted to the return being checked.

CH82320

Where the losses have not been utilised against any known income, the PLR is **10%** of the wrongly recorded loss.

Example 1

Lukasz's returns a trade loss of £8,000 in his accounts for the year ended 31st August 2011 (2011/12 Tax return). At the time of the compliance check, no later returns have been submitted.

The loss is unused and available for carry forward against future profits.

Lukasz's accounts are found to contain a careless inaccuracy which is put right, producing a loss of £3,000.

The potential lost revenue (PLR) is

Unused loss	5,000 x 10%	500
Total		500

Example 2

The facts are the same as Example 1 except that at the time of the compliance check on the 2011/12 return, the 2012/13 tax return has been submitted.

The return for the period ended 31 August 2012 shows

Profit	£6,000
Loss relief	(£6,000)
Assessable profit	NIL

Unused loss to carry forward £2,000 (£8,000 - £6,000 used in 2012/13)

Assume that personal allowances have been utilised against other income sources.

The PLR is calculated as

Additional amount due or payable	3000 x 22%	660
Unused loss	2,000 x 10%	200
Total		860

In Example 2, part of the wrongly recorded 2011/12 loss (£5,000) had been utilised in 2012/13. The PLR on the part of the loss which had been utilised is £3,000 @ 22%. The PLR on the remainder of the wrongly recorded loss, £2,000, which would have been available to carry forward is calculated at 10%.

As you can see from Example 1, if unused losses are the only inaccuracy, it is possible for there to be a penalty even though no additional tax is payable at the time of closing the intervention. That's because, if the business or the source is still continuing, the presumption must be that the losses will be used at some time.

*Para 7, Sch 24
CH82300 onwards*

This is an important change.

If you are certain of your ground, and have the support of your manager, there is no reason why penalties should not be sought in these circumstances. You should discuss the basis of your proposals with the customer or their agent.

4.2.1 Exceptions: No reasonable prospect of utilising a loss

CH82370

If you are satisfied that the loss is unlikely to ever be used, you should discount it entirely and it will attract no PLR. You will need to be satisfied of this though, and not simply accept that losses currently unused will always remain so.

The test to apply is

Step 1

Based on current circumstances, is there a legal or factual reason why the particular loss cannot ever be used?

If the answer is 'yes' then the potential lost revenue (PLR) for that unusable part of the wrongly recorded loss will be Nil.

If the answer to the question is 'no', consider Step 2.

Step 2

Is there a reasonable prospect of the loss being used in the future based on current projections of the customer's future circumstances?

Having answered 'no' to Step 1, legally there will be a prospect that the loss can be used. The use of the word reasonable means you should take each person's specific circumstances into account.

<p>Activity Four</p>	<p>Can you think of any instances where you might accept that losses may never be utilised?</p>
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Response

Listed below are some of the circumstances you may have thought of

- No further trading profits will arise and the losses cannot be set against any other profits which may arise in the future.
- The business is declining; possibly because of the age or infirmity of the proprietor.
- The individual is bankrupt or the company is in liquidation.

4.3 Corporation Tax Group Relief and S419(4) (Direct Taxes)

CH82282

The penalties apply to companies in a group in the same way as to singleton companies.

A penalty applies if a careless or deliberate inaccuracy results in an understatement of the group's overall tax position.

A penalty also applies if a careless or deliberate inaccuracy results in overstatement of the group's losses, but the PLR is calculated at the discounted rate of 10%

When calculating PLR for CT purposes you should normally ignore Group Relief and S419(4) relief. The only exceptions to this are

- a penalty may still be charged on an inaccurate claim to relief
- Group Relief claims where the inaccuracy has the effect of creating or increasing an aggregate loss recorded for a group of companies,

refer to CH82283 for an example of Group Relief ignored

refer to CH82284 for an example of Group Relief not ignored

Note: Relief due following the repayment of a loan which gives rise to the S419 liability does not reduce the PLR on which a penalty may be due.

CH82340

Where there is an **aggregate** loss for a group of companies, the PLR should be calculated using the normal loss rules (CTM80000 onwards), even if the inaccuracy that creates or increases the aggregate loss is an understatement of profit.

An aggregate profit arises where, for all of the companies in the group for Group Relief purposes,

- the profits chargeable to CT from which Group Relief could be deducted if it were surrendered,

exceed

- the amounts available for surrender as Group Relief.

Also, losses or other relievable amounts previously unclaimed as Group Relief may be used when calculating PLR. You should not ignore Group Relief where the inaccuracy has the effect of creating or increasing an aggregate loss recorded for a group of companies.

For examples see

- CH82342 - the understatement of profits has created an aggregate loss
- CH82343 - the overstatement of a loss has created an aggregate loss
- CH82344 - the understatement of profits has increased the aggregate loss
- CH82345 - the overstatement of a loss has increased the aggregate loss

4.4 Delayed Tax

CH82390

Where an inaccuracy results in an amount of tax being declared later than it should have been (delayed tax) the potential lost revenue (PLR) is 5% of the delayed tax for each year of the delay.

If the delay is for a period of less than one year then the PLR should be 5% of the delayed tax reduced pro-rata.

Delayed tax will only apply when there is an inaccuracy which has a timing effect provided that

- there is no overall loss of tax
- the nature of the inaccuracy has been reversed in a later period with no other action being taken
- the reversal occurs before any contact by, or with HMRC.

Please note, the phrase '*reversed in a later period with NO other action being taken*', is crucial when considering the application of delayed tax. It prevents the delayed tax provisions being applied where the customer has taken action to correct the inaccuracy.

This is intended to reflect true 'timing' differences and not instances where a transaction clearly falls into a different return period, such as a disposal for capital gains tax purposes.

*For Examples see
CH82395-7*

It is not possible to have delayed tax in Inheritance Tax cases.

4.5 Calculating the Penalty

CH450200

All penalties will be calculated by the new penalty system (NPS) and you **must not** use any informal methods of calculation.

Using the NPS system will provide consistency and produce the summary calculations, penalty notices and suspension notices. Chapter 6 looks at the NPS system in more detail.

However you still need to understand how penalties will be calculated as it may be necessary to explain this to the customer.

CH82110

In order to calculate a penalty you should now have the following information

- for each inaccuracy or group of inaccuracies

CH430000

- behaviour

CH450520

- unprompted/prompted disclosure

CH450530

- quality of disclosure

- Delayed Tax only – the correct period for which the tax is due and the period for which the tax was originally paid/declared.

or

- for an underassessment
 - unprompted or prompted disclosure
 - quality of disclosure

EM6050

ECH21000+

NPS does not cover penalties due under earlier legislation so you will have to calculate those penalties separately using the earlier rules.

The example below illustrates how a penalty is calculated.

Calculation of the Penalty	
Determine the quality of disclosure (a)	
Calculate the maximum disclosure reduction for the inaccuracy or underassessment (d)	
Maximum penalty percentage	(b)
<i>Less</i>	
Minimum penalty percentage	(c)
<i>Equals</i>	
Maximum disclosure reduction	(d)
Calculate the reduction for disclosure percentage (e)	
(e) = (d) x (a)	
Calculate the penalty percentage to be charged (f)	
(f) = (b) – (e)	
Calculate the penalty chargeable (g)	
(g) = PLR x (f)	

You will obtain the penalty range minimum **(c)** and maximum **(b)** figures from the following tables

Inaccuracies

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-assessments

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

Example

Jasbinder Widgets Ltd has made an unprompted disclosure involving a deliberate inaccuracy without concealment. The PLR is £145,000. The quality of disclosure consists of Telling (15%), Giving Access (30%) and Helping (20%)

Example:

1. The percentage for the quality of the disclosure **(a)** has been determined to be 65%.

2. The maximum penalty **(b)** is 70 % and the minimum penalty **(c)** is 20%.

3. So the maximum disclosure reduction **(d)** is

$$70 - 20 = 50$$

4. The actual reduction percentage for disclosure **(e)** is

$$50 \times 65\% = 32.5\%$$

5. Penalty percentage to be applied **(f)** is

$$70\% - 32.5\% = 37.5\%$$

6. The penalty to be assessed **(g)** is

$$£145,000 \times 37.5\% = £54,375$$

Having looked at an example of how a penalty is calculated you should now try the following activity.

Activity Five

Calculate the penalty in the following cases

1. An inaccuracy caused by careless behaviour. The disclosure is unprompted. The quality of the disclosure is considered to be Telling (20%), Giving Access (30%) and Helping (20%). The PLR is £6,000

2. There has been a prompted disclosure of an inaccuracy which was caused by deliberate behaviour with concealment. Quality of Disclosure has been Telling (5%), Giving Access (10%), Helping (5%).

The PLR is £87,000

3. The customer makes a prompted disclosure of an underassessment. Quality of Disclosure is Telling (30%), Giving Access (30%), Helping (20%). The PLR is £9,600.

Response

1. the penalty will be £540 and is calculated as follows
 1. The percentage for the quality of the disclosure **(a)** has been determined to be 70%.
 2. The maximum penalty **(b)** is 30 % and the minimum penalty **(c)** is 0%.
So the maximum disclosure reduction **(d)** is
 $30 - 0 = 30$
 3. The Actual reduction percentage for disclosure **(e)** is
 $30 \times 70\% = 21\%$
 4. Penalty percentage to be charged **(f)** is
 $30\% - 21\% = 9\%$
 5. The penalty chargeable **(g)** is
 $£6,000 \times 9\% = £540$

2. the penalty will be £78,300 and is calculated as follows
 1. The percentage for the quality of the disclosure **(a)** has been determined to be 20%.
 2. The maximum penalty **(b)** is 100 % and the minimum penalty **(c)** is 50%.
So the maximum disclosure reduction **(d)** is
 $100 - 50 = 50$
 3. The actual reduction percentage for disclosure **(e)** is
 $50 \times 20\% = 10\%$
 4. Penalty percentage to be charged **(f)** is
 $100\% - 10\% = 90\%$
 5. The penalty chargeable **(g)** is
 $£87,000 \times 90\% = £78,300$

Response Continued

3. the penalty will be £1728 and is calculated as follows
1. The percentage for the quality of the disclosure **(a)** has been determined to be 80%.
 2. The maximum penalty **(b)** is 30 % and the minimum penalty **(c)** is 15%.

So the maximum disclosure reduction **(d)** is
 $30 - 15 = 15$
 3. The actual reduction percentage for disclosure **(e)** is
 $15 \times 80\% = 12\%$
 4. Penalty percentage to be charged **(f)** is
 $30\% - 12\% = 18\%$
 5. The penalty chargeable **(g)** is
 $£9,600 \times 18\% = £1728$

4.5.1 Interaction with previous penalty legislation

Sometimes, the same behaviour has continued over a number of tax periods where there are similar inaccuracies in documents such as returns and records. In other cases, it will be agreed that inaccuracies established in one year, have been carried on in a broadly similar fashion over a number of earlier years.

If all of the periods are covered by Schedule 24 penalties and the behaviour and disclosure are the same, then you would expect to have similar, if not identical, levels of penalty for each period.

Where you are also dealing with periods for which penalties will be due under previous penalty legislation, the penalty calculations have to be made separately.

When considering the behaviours in the latest year you should try to equate these to earlier years offences which fall under the previous penalty legislation.

CH402150

For example, if the behaviour for an inaccuracy in a tax period to which Sch 24 applies is considered to be careless, it would be equated to negligent conduct or could attract a VAT misdeclaration penalty for years prior to Sch 24. On the other hand, if the behaviour in the latest year is considered to be deliberate, with or without concealment, it would be equated with fraud or dishonesty for earlier years. (Remember, where there is deliberate behaviour in relation to an inaccuracy then you will have to consider a referral to the Evasion Referral Team (ERT) where the duty is £10,000 or more).

CH401600

EM0303

ECH6065

You should make separate calculations according to the different rules applying to each. That could mean different outcomes for different years; say 30% penalty for failing to take reasonable care for 2009/10, but only 20% for neglect for 2007/08.

We will now look at the conditions for suspending a penalty.

4.6 Suspending a Penalty

CH450650

CH83110

The purpose of suspending a penalty is to support those who are trying to get it right and prevent the same error arising in the future. You can only consider suspending a penalty for careless behaviour. If the penalty is for a 'deliberate' behaviour it cannot be suspended. Suspension can only be considered for penalties charged under Sch 24.

CH83130

CH450650

Although you may have similar failings in records or systems over a number of periods, any penalties under the previous penalty regime for negligent conduct would be charged in full and cannot be suspended.

CH82200

It is also important to remember that, if you are considering suspending a penalty, you can group only those inaccuracies which are capable of being suspended. In other words you cannot include an inaccuracy which is incapable of being suspended.

CH450660

When you are considering suspensions the tests to be applied must be capable of applying to each inaccuracy within that group - in other words, each inaccuracy must be for failing to take reasonable care and must be capable of having a condition set to it.

4.6.1 Test 1: Behaviour Type

The first test is based upon the behaviour which gave rise to the inaccuracy. You can only consider suspending where there has been Careless behaviour.

If it is Careless behaviour then you can proceed to the second test.

4.6.2 Test 2: It is a continuing inaccuracy

The purpose of suspension is to encourage compliance and to prevent the inaccuracy continuing. If the inaccuracy was not going to continue then you would not suspend the penalty.

4.6.3 Test 3: Can conditions be set to prevent the inaccuracy recurring

CH450690-
CH450730

You must be able to identify improvements in records or systems that could be made in order for the customer to be able to prevent the inaccuracy recurring. It is therefore envisaged that the majority of suspension cases will involve customers who operate a business as they will maintain records and systems to which conditions can be applied.

The conditions you set will be determined by the customer and their records, on a case by case basis. It is not possible to produce a list of conditions covering every situation. We will look at this in more detail in 4.8.2.

The test to apply is whether a further penalty may be prevented, if the customer were to comply with the conditions that you set.

4.6.4 How do I identify improvements in records

CH450670

You would normally carry this out as part of your compliance check when reviewing the records and systems that the customer uses. This would normally take place at a meeting with the customer at their premises. It would enable you to see first hand the extent of their records and any deficiencies. If there were clear deficiencies that could be put right, these might form the basis for a condition of suspension.

4.6.5 Test 4: Is the customer likely to adhere to the conditions

The purpose of suspending the penalty is to help and support those customers who wish to get things right and to prevent the same error recurring in the future.

If the customer is unlikely or unwilling to adhere to the conditions there is little point in suspending a penalty.

In establishing the behaviour type which gave rise to the inaccuracy and the quality of the disclosure (telling, giving access and helping) you should have obtained sufficient information to enable you to decide if the customer is likely to adhere to the conditions that would be set.

Examples of when you may have to consider not suspending a penalty

- the inaccuracy may be symptomatic of a poor attitude to completing returns. In such circumstances suspension is unlikely to improve compliance and therefore would not be appropriate.
- if you have careless behaviour, combined with no real effort to assist your compliance checks, this may indicate poor compliance with any proposed conditions. Suspension would not therefore be appropriate.

4.6.6 Setting Conditions

Conditions must be **SMART**, that is

CH83250

- **Specific** – directly related to the business or individual being penalised

*CH450690-
CH450730*

- **Measurable** – in order to have a penalty cancelled the person needs to be able to demonstrate that conditions have been met
- **Achievable** – the person must be able to meet the conditions
- **Realistic** – we cannot impose conditions that are unrealistic
- **Time bound** – the conditions must be met by a certain date.

CH82360

At least one of the conditions you set must be designed to help the person avoid a further penalty for careless inaccuracy. You may also impose other conditions provided that they are aimed at ensuring general compliance.

CH450730

In all cases you should set a condition insisting that the person submits all returns and pays all taxes due during the period of suspension.

You should also include a requirement that the person's evidence to demonstrate their compliance with the suspension conditions will be made available to HMRC if requested at a later point. This is so HMRC can check that the person has met the conditions you originally set

Example 1

You review Brahim's 2009/10 and 2010/11 SA tax returns and find that he has omitted gross interest in both years. You have decided that the inaccuracy was caused by carelessness (**Test 1 - satisfied**).

Although this happen has happened two years running – it is not a single recurring problem. It is a series of individual inaccuracies. (**Test 2 - failed**)

You cannot put in place any corrective and measurable action to help Brahim avoid making a similar error in the future. **(Test 3- failed)**

Activity Six

Look at the example below and decide whether Tests 1-4 can be satisfied to consider suspending the penalty.

Marjory chooses not to employ an accountant and has been preparing her accounts every year. You review her records and find that she has been preparing her accounts on a cash receipts basis and has not properly accounted for credit sales/debtors. You have decided that the behaviour that led to this inaccuracy was carelessness. This is a continuing problem and if not corrected, would continue into the future.

During the course of your compliance check Marjory helped you fully and asked your advice on what she could do to ensure that this problem did not occur again in the future.

Response

Behaviour Type: Careless – **(Test 1 – Satisfied)**

Continuing Inaccuracy – Yes, Marjory maintains her records on a cash receipts basis and if left uncorrected this will continue in future years – **(Test 2 – Satisfied)**

Can conditions be set to prevent recurrence - Yes, by explaining to Marjory the correct treatment for credit sales and ensuring that she adjusts her record keeping and sales processes accordingly. These conditions will be SMART and, provided she adheres to them, will prevent the same inaccuracy occurring in future years. – **(Test 3 Satisfied)**

Marjory has demonstrated a willingness to improve her record keeping and accounting systems to ensure that future re-occurrence of this problem is prevented **(Test 4 – Satisfied)**

For further examples of

- conditions of suspension for a direct tax case, see [CH83261](#)
- conditions of suspension for an indirect tax case, see [CH83262](#).

4.6.7 Duration of the suspension

CH83230

You will need to consider carefully the length of the period of the suspension. The maximum period for suspension is two years from the date of the penalty assessment.

CH450740

However, you need to decide what is the most appropriate period to enable the customer to demonstrate they have been able to meet the conditions you set.

It would be unusual for a period of suspension to be less than 12 months.

CH83290

The suspended penalty will be cancelled only if the customer has been able to satisfy HMRC that they have met their required conditions.

As mentioned earlier in this chapter, when grouping inaccuracies together you must also take account of whether the penalty on that inaccuracy is going to be suspended.

Activity Six

There are six inaccuracies in a return. Which of the following can be grouped together and which ones cannot?

- a) Careless – Prompted – Quality (80%) – Can be suspended for 2 years
- b) Deliberate - Unprompted – Quality (70%)
- c) Careless – Unprompted – Quality (80%) – Can be suspended for 2 years
- d) Deliberate – Unprompted – Quality (50%)
- e) Careless – Prompted – Quality (80%) – Can be suspended for 2 years
- f) Careless – Unprompted – Quality (80%) – Cannot be suspended

Response

You can consider grouping the inaccuracies as follows

a & e – same behaviour and type and quality- suspension can be aligned

b & d can be grouped if the overall reduction for quality can reflect the different figures for each

c – treat this separately as the disclosure type is different from a & e.

f – treat this separately from a & e as it cannot be suspended

4.6.8 Examples of when you cannot suspend a penalty

CH83150

You must not suspend a penalty if

- the nature of the inaccuracy is a one-off
- the customer has attempted to use an avoidance scheme
- past behaviours indicate that conditions are unlikely to be complied with
- a person becomes liable to a further penalty for an inaccurate return or document during the period of suspension.

4.6.9 Can the customer appeal if I decide not to suspend the penalty

CH83300

A person can appeal against our decision not to suspend a penalty. It is therefore crucial you properly document throughout the compliance check

- all facts,
- discussions with the customer
- the decisions that you have reached surrounding the reasons for the inaccuracy
- the behaviour type
- disclosure
- how the customer has given access and helped you during the course of the compliance check.

This was covered in Chapters 2 & 3.

Review

This chapter has covered the steps you would take to calculate the PLR. It explained how a penalty is calculated so that you understand the process when explaining it to the customer.

We looked at the rules for grouping inaccuracies and the order of allocating these based on the seriousness of the behaviour.

We also considered when penalties can apply even when there has been no overall tax loss. This could occur where there are unrelieved losses for direct taxes or where there has been delayed tax.

We considered the circumstances in which you should consider suspending a penalty. We told you that it is only careless behaviour for which suspension of the penalty can be considered. We then set out the various steps you will need to consider to finally be able to decide whether or not to suspend a penalty and the maximum period for which it can be suspended.

Learning check

1. What percentage is to be used when calculating the PLR for delayed tax?

a	5%	<input type="checkbox"/>
b	10%	<input type="checkbox"/>
c	the rate of tax appropriate to the head of duty involved	<input type="checkbox"/>

2. State 2 circumstances in which you cannot group inaccuracies

-
-

3. Calculate the PLR on an unutilised loss of £8,000.

Learning Check Answers

1. What percentage is to be used when calculating the PLR for delayed tax?

a	5%	<input checked="" type="checkbox"/>
b	10%	<input type="checkbox"/>
c	the rate of tax appropriate to the head of duty involved	<input type="checkbox"/>

This was covered at 4.4

2. State 2 circumstances in which you cannot group inaccuracies

You should have two of the following three instances

- Inaccuracies that arise from different behaviours
- Inaccuracies that have been disclosed at different times
- Inaccuracies that relate to different heads of duty

This was covered at 4.1.2.2

3. Calculate the PLR on an unutilised loss of £8,000.

$$£8,000 \times 10\% = £800$$

This was covered at 4.2

4. What is the maximum suspension period that can be applied?

2 years from the date of the penalty assessment

This was covered at 4.6.7

5. Calculate the penalty to be charged where

- PLR = £30,000
 - Quality of Disclosure = 55%
 - Behaviour Type = Deliberate, not Concealed
 - Disclosure = Unprompted
- **1.** The percentage for the quality of the disclosure **(a)** has been determined to be 55%.
 - **2.** The maximum penalty **(b)** is 70 % and the minimum penalty **(c)** is 20%.
 - So the maximum disclosure reduction **(d)** is $70 - 20 = 50$
 - **3.** The actual reduction percentage for disclosure **(e)** is $50 \times 55\% = 27.5\%$
 - **4.** Penalty percentage to be charged **(f)** is $70\% - 27.5\% = 42.5\%$
 - **5.** The penalty to be charged **(g)** is $£10,000 \times 42.5\% = £4,250$

This was covered at 4.5