

Contents

	Page
Introduction	2
5.1 Why we have Independent Approvals	3
5.1.1 What needs to be approved?	3
5.1.2 When to obtain approval	6
5.1.3 Who can give approval?	6
5.1.4 How you record approvals	6
5.2 Transition from Previous Penalty Regimes	7
5.3 Charging a Penalty	7
5.3.1 Contract settlements	7
5.3.2 Penalty assessments	8
5.3.3 Authorisation for a penalty assessment	8
5.3.4 Authorising officer	8
5.3.5 What you need to tell the customer	9
5.4 Recovery of Liability from a Company Officer	10
5.4.1 Personal gain	11
5.4.2 Amount to be recovered from an officer	12
Review	13
Learning Check	14
Learning check - answers	15

Introduction

Welcome to Chapter 5 of the Penalties for Inaccuracies manual.

After completing this chapter you will understand the decision-making process and who will approve and authorise your decisions.

Throughout this unit we have given you the relevant sections of the guidance where you can find more information.

Study Objectives

By the end of this unit you will be able to state

- who is protected by the approval and authorisation safeguards
- who will approve the decision that there has been deliberate behaviour with concealment
- the point at which a penalty needs to be authorised
- when we will recover a penalty from the officer of a company.

Study Advice

This is the fifth chapter 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 1-4 before working through this chapter.

5.1 Why we have Independent Approvals

To ensure that Schedule 24 penalties are applied fairly, consistently and effectively across the whole of HMRC the department has introduced safeguards by having various stages of authorisation and approval.

These safeguards are important for

- the customer
- the HMRC Officer
- HMRC.

5.1.1 What needs to be approved?

You will need to get written approval of

- your decision on the behaviour type
- your calculation of the Potential Lost Revenue (PLR)
- your decision on the reductions due for the quality of disclosure (including whether the disclosure was prompted or unprompted)
- any decisions relating to the suspension of a penalty, and suspension conditions if the inaccuracy is careless.

You will need to retain this approval within your case papers along with the facts relevant to that approval.

You must obtain any approval **before** communicating your view or decision to the customer.

Response

The customer - so that they can feel confident that the penalties are being applied consistently and reasonably and within the legislation across the whole of HMRC. Paramount in this process is that prior to any penalty being imposed, it will have been subject to a transparent quality assurance process that is separate from the caseworker's own decision.

The HMRC officer - because the safeguards provide an agreed framework of guidance within which you can act with certainty, knowledge and protection and know that you are doing so within HMRC's interpretation of the legislation.

HMRC - it ensures that the Schedule 24 penalties are implemented fairly, consistently and effectively and that penalties are sought in all appropriate cases and that penalties are suspended effectively where applicable.

5.1.2 When to obtain approval

CH433500

It is important to recognise that you should consider each of the approval stages independently. You should not, for instance, make decisions on a later one, such as penalty suspensions, until you have established the inaccuracy behaviour.

Nevertheless, in many cases, approval of all four stages will be given at the same time. Generally, customers want to know where they stand and what the monetary consequence will be if they accept your conclusions. You will, however, ideally still need to reach agreement with the customer about the behaviour type that gave rise to the inaccuracy before considering the latter three stages.

Whilst you must always bear in mind that the four stages are still independent, if you obtain approval to your conclusions before discussing and agreeing them with the customer this will reduce their administrative burden.

5.1.3 Who can give approval?

CH451400

Approval will be given by a manager or authorising officer.

5.1.4 How you record approvals

CH451400

The Penalty Approval and Authorising form should be used to record the approval and where appropriate any Contract Settlement Form (CSF) and EM Appendix 2 report.

Once approved the details entered should not be amended without receiving further approval.

The Penalty Input & Authorisation Form (PIAF) and CSF can be accessed from the Penalty Toolkit which is within SEES. The Appendix 2 report is also in SEES.

5.2 Transition from Previous Penalty Regimes

*Schedule 24, FA
2007*

*EM6402/6402b
ECH21550*

You may need to consider charging penalties under both the old and new rules. You will have to refer to the guidance to determine the level at which these will be approved/authorised.

(This text has been withheld because of exemptions in the Freedom of Information Act 2000).

5.3 Charging a Penalty

There are two methods by which you can charge a penalty. The method you use will depend on the tax/duty involved and how the tax/duty itself will be recovered.

5.3.1 Contract settlements

CH451300

Contract settlements have primarily been used in direct taxes and there is no change in that position. The contract settlement process can be used by officers checking

- income tax
- capital gains tax
- corporation tax
- employers' obligations to deduct and account for PAYE/NICs
- deductions under the Construction Industry Scheme
- petroleum revenue tax
- stamp duty land tax and
- stamp duty reserve tax.

There are presently no processes in place to recover tax/duty, interest and penalties by contract for other taxes and duties.

When your check involves only these duties, and you can agree the figures, you should always seek to settle the check by contract settlement. You will need to seek authorisation to accept the letter of offer using a contract settlement form (CSF). You may also need to submit an Appendix 2 report to the authorising officer.

You will cover this in more detail in Chapter 6.

A form of words for contracts including suspended penalties is available in [EM Appendix 1](#).

5.3.2 Penalty assessments

CH83020

If the penalty cannot be included within a contract settlement then you will need to issue a penalty assessment to the customer.

The penalty assessment will tell the person what they owe and when they must pay it. It is enforceable in the same way as an assessment 'to tax'. This means the rules that apply to the tax or duty that the penalty relates to also apply to the penalty assessment. So for Inheritance Tax, the penalty assessment is enforceable in the same way as a notice of determination.

5.3.3 Authorisation for a penalty assessment

If the penalty is to be collected by assessment then you will need to obtain authorisation to make an assessment.

You must use the PIAF (part of the SEES – Penalty Toolkit) to obtain the authorisation. You may also need to seek authorisation on an Appendix 2 report.

5.3.4 Authorising officer

The authorising officer is responsible for

- giving you the authority to issue a penalty, or
- giving their approval not to issue a penalty

The authorising officer is there to check that the correct procedures have been followed and that the conclusions drawn are fair and reasonable. They will need to refer to the case papers or Electronic Folder to do this.

5.3.5 What you need to tell the customer

CH81180

CH451500+

Once you have established that there is an inaccuracy and issued the HRA message, you should establish and seek to agree with the customer and agent the behaviour that led to the inaccuracy. You should normally do this before considering the subsequent actions such as finalising the PLR, Quality of Disclosure reductions, expected penalty calculations and penalty suspensions.

Once you have finalised all these matters you must give the customer an explanation of how you have arrived at the penalty figure, the suspension decision and any suspension conditions. You should give the customer details of their appeal rights. Take into account their views of the penalty and, if appropriate, seek approval to a revised penalty figure.

CH451540

If you cannot reach agreement with the customer, you should explain the formal process of appeal, internal review and their right to have the matter decided by the Tribunal.

5.4 Recovery of Liability from a Company Officer

CH84610

When a company is liable to a penalty for a **deliberate** inaccuracy and the inaccuracy arose from the **deliberate** action of an officer of the company, we can look to the officer **as well as** the company for payment of all or part of the penalty. Each deliberate inaccuracy should be considered separately.

For companies registered with Companies House an officer includes

CH84620

- a director (or shadow director)
- the company secretary.

For unincorporated associations officers include

- director
- manager
- company secretary
- any other person who manages, or alleges they manage any of the company's affairs.

You should not assume that the signing of a document on behalf of a company is evidence that the officer made a deliberate inaccuracy. Look at the underlying actions or failures before drawing a conclusion.

Although you would normally recover the penalty from the company, where you do have evidence that shows one or more officers have deliberately caused the irregularity, those officers will also be liable for the penalty.

You would normally only pursue the officer for payment if

CH84650, CH84660

- you have evidence that the officer gained personally from the deliberate inaccuracy
- or
- the company is insolvent
- or
- you have reasonable grounds to expect the company will become insolvent.

If you take the decision to pursue an officer of the company for the full amount of the penalty, the same procedures and safeguards apply to them as to the company. You must follow the Human Rights procedures and keep your audit trail in the normal way.

You should send a copy of the penalty assessment with a notice to each officer of the company to tell them the amount of the penalty to which they are individually liable.

Although you may be able to take action against both the company and its officers to recover the penalty, you cannot recover any more than 100% of the penalty.

5.4.1 Personal gain

CH84650

An officer of the company might accept that there was personal gain from a deliberate inaccuracy. Alternatively it might be clear from the business records or officer's lifestyle that the officer benefited directly from the result of the deliberate inaccuracy.

The payment of salary, wages or dividends to a company officer will not normally be regarded as personal gain. There are exceptions to this, for example where the company did not make the appropriate PAYE and NIC deductions from the salary or wages payments.

5.4.2 Amount to be recovered from an officer

The amount to be charged on each officer varies according to the circumstances:

- **personal gain by one officer** – charge the whole of the penalty on the officer
- **personal gain by more than one officer** – divide the penalty in proportion to the amount by which each officer gained. You should not make any distinction for varying degrees of disclosure.
- **insolvency or imminent insolvency** – split the penalty equally between the officers who caused the deliberate inaccuracy. Do not make any distinction for varying degrees of disclosure. It is irrelevant whether or not the officers gained personally.

If one officer defaults on payment, you cannot recover the outstanding amount from another officer.

CH84660

Once the decision has been made that the penalty should not be charged on the company's officers, that is final. If circumstances change such as if the company goes into liquidation, you should not pursue the officers for payment.

Review

In this unit we considered the need to have some safeguards in place to provide protection for the caseworker as well as the customer.

There are various decisions which need to be approved

- your decision on the behaviour type
- your calculation of the PLR
- your decision on the reductions due for the quality of disclosure (including whether the disclosure was prompted or unprompted)
- any decisions relating to suspension of a penalty.

The approval will be given by a manager.

You will need to keep written approval within your case papers together with the facts relevant to that approval.

The authorising officer will authorise the issue of penalty assessments.

You must obtain any approval or authorisation **before** communicating your view or decision to the customer.

Finally we saw that you can recover a penalty from a company's officers if there is a deliberate inaccuracy which stems from a deliberate act by a company officer, and

- the officer gained personally
or
- the company is insolvent or likely to become so in the near future.

Learning check - answers

1. Who will be protected by the approval and authorisation safeguards that are part of the technical and operational guidance?

The safeguards protect the customer, you and HMRC. They ensure that penalties are applied fairly and consistently and in accordance with the legislation and that you are acting with the proper authority.

This is covered in sub-unit 5.1

2. What should the approvals be recorded on?

You should record approvals on the Penalty Approvals and Authorisations form.

This was covered at sub-unit 5.1.4

3. What must you obtain before issuing a penalty assessment?

You will need to get written authorisation before you can issue a penalty assessment.

This was covered at sub-unit 5.1.1

4. Karen who is the company secretary also deals with the payroll. She made a series of deliberate errors to give a fellow (unrelated) employee more net pay, as he was in financial difficulties. Would you recover the penalty from the company secretary?

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

You would not recover the penalty from the company secretary. The company secretary has not personally gained from the inaccuracy.

We looked at this in sub-unit 5.4.1