

## Contents

|   | Page      |
|---|-----------|
| <b>Introduction</b>   | <b>2</b>  |
| <b>7.1 Appeals</b>  | <b>3</b>  |
| 7.1.1 What can be appealed?   | 3         |
| 7.1.2 Who can appeal?   | 3         |
| 7.1.3 How is an appeal made?  | 3         |
| 7.1.4 Can the penalty be postponed if an appeal has been made?                    | 4         |
| 7.1.5 Time limit for making an appeal   | 4         |
| 7.1.6 To whom is the appeal made?   | 6         |
| 7.1.7 Can I still try to reach agreement?   | 7         |
| 7.1.8 Internal review   | 7         |
| 7.1.9 Multiple appeals  | 8         |
| 7.1.10 More than one hearing may be required                                      | 8         |
| 7.1.11 Tribunal decision  | 9         |
| <b>7.2 Special Reductions</b>   | <b>10</b> |
| <b>7.3 Central Penalty Team</b>   | <b>12</b> |
| <b>7.3 Central Penalty Team</b>   | <b>12</b> |
| 7.3.1 Which suspensions will the CPT handle?                                      | 12        |
| 7.3.2 When does the CPT take responsibility?                                      | 13        |
| 7.3.3 What happens at the end of the suspension period?                           | 13        |
| 7.3.4 Checking the suspension conditions  | 14        |
| 7.3.5 Notifying the customer  | 14        |
| 7.3.6 Monitoring suspended penalties within LBS, CAR and CRMs in local compliance | 15        |
| <b>Review</b>   | <b>16</b> |
| Learning Check  | 18        |
| Learning Check  | 18        |
| Learning Check – Answers  | 19        |
| Before Moving On  | 20        |

## Introduction

Welcome to Chapter 7 of the Penalties for Inaccuracies learning.

Chapter 6 looked at how you use the National Penalty Processing System (NPPS) to calculate penalties and issue penalty assessments.

In this chapter we look at what happens after a penalty has been assessed.

### Study Objectives

After successfully studying this chapter, you will be able to

- state what decisions about the penalty the customer can appeal
- state who can decide whether Special Reduction can be given and
- decide who will review penalties that have been suspended.

### Study Advice

This is the final chapter and should take you around 1 hour to complete. You will need access to the Compliance Handbook (CH), the Enquiry Manual and the Appeals, Reviews and Tribunals Guidance (ARTG).

You should also have completed Chapters 1 to 6 before working through this chapter.

## 7.1 Appeals

*Para 15, Sch 24*

All HMRC decisions in relation to penalties can be appealed. Customers can request an HMRC internal review of any decision that can be appealed. This chapter tells you about how a customer can arrange to have a review, and/or ask an independent tribunal to decide the matter.

### 7.1.1 What can be appealed?

*ARTG2160*

A person can appeal against

- the imposition of a penalty
- the amount of the penalty
- a decision not to suspend the penalty
- the conditions set in relation to the suspension of a penalty.

### 7.1.2 Who can appeal?

*ARTG2150*

In normal circumstances, the right of appeal is restricted to the customer who is charged the penalty. However, appeals can also be made by authorised agents on behalf of their clients, and by individuals in their capacity as personal representatives or trustees. Note that **customers must be informed directly of any decision that affects their appeal rights, even when an agent is acting.**

In the case of a partnership, it is the nature of the incorrect document that determines who can make the appeal. If it is a partnership return for direct taxes, the right of appeal is restricted to the nominated partner or their successor. For other documents, any partner may appeal on behalf of the partnership.

*CH84600*

You saw in the last chapter that, where a deliberate inaccuracy was attributable to an officer of a company, we may pursue them for a portion of the penalty in certain circumstances. Where this happens, the company officer will then have the same appeal rights under paragraph 15 of Schedule 24, in respect of our decision to pursue them for their part of the penalty.

### 7.1.3 How is an appeal made?

**For direct taxes**, NPPS will automatically include an appeal form when it issues the penalty assessment. Guidance on how an appeal may be made is at ARTG 2140.

**For indirect taxes**, if a customer wishes to appeal and use the appropriate form, they must obtain it directly from the Tribunal, not from HMRC.

However, customers don't need to use any specific form provided the appeal

- is in writing
- specifies what is being appealed (for example, the imposition of a penalty/ the amount of penalty/ suspension/suspension conditions)
- gives the reasons for disagreeing with your decision
- provides any other information which is required to deal with the appeal (as would be specified on an appeal form).

#### 7.1.4 Can the penalty be postponed if an appeal has been made?

*Sch24, Para 13(2)*

A penalty assessment is treated in the same way as an assessment to tax, and the same procedures, rules and time limits apply.

*ARTG2530*

**For direct tax** this means that the customer can ask for collection of all or part of the penalty to be put on hold, pending the outcome of the appeal. HMRC may disagree with the request, and the customer can ask the Tribunal to decide the matter.

*ARTG3320,  
ARTG3330*

**For indirect tax** the penalty does not have to be paid before any appeal is heard by the Tribunal, but the assessment of tax that triggered the penalty must be paid, subject to any hardship application being accepted by either HMRC or the Tribunal.

**Note**

Finance Act 2009 amends Schedule 24, so that it is not necessary for a person to pay the penalty under Schedule 24 to FA 2007, in order for an appeal to be heard.

#### 7.1.5 Time limit for making an appeal

As we said, an assessment to a penalty is treated in the same way as an assessment to tax. Accordingly, the same rules and time limits will apply when making an appeal.

S31A (1) TMA 1970

ARTG2420

### Direct taxes

The customer must appeal to HMRC within 30 days from the date of the decision. Once they have done so, the customer may notify the appeal to the Tribunal

- at any time between appealing against HMRC's decision or assessment, and accepting an offer of a review of HMRC's decision or assessment (s 49D(1)-(4) TMA 1970), or
- at any time between appealing against HMRC's decision or assessment, and HMRC sending its latest view of the matter following the customer's request for a review assessment (s 49D(1)-(4) TMA 1970), or

following a review

- within 30 days of the date of HMRC's conclusion of review letter, see ARTG 4820, (s 49G(2), (5)(a) TMA 1970), or
- if HMRC did not complete the review within the time allowed, at any time after the expiry of the review period, provided it is within 30 days of HMRC notifying the customer of the conclusion that the review is treated as having reached (s 49G(2), (5)(b) TMA 1970).

## Indirect taxes

SI 1986/590  
Reg. 4

The customer may appeal to the Tribunal within

ARTG3120

- 30 days from the date of the document telling the customer of the decision (or where the time limit was extended, the date of document telling them they had 30 days to appeal), or
- where a review has taken place, 30 days from the date of the conclusion of review letter, see ARTG 4820, or
- where HMRC do not complete the review within the 45 days or other agreed period (the “review period”), any time from the day after the review period expired to 30 days from the date of the document telling the customer of the decision that the review is treated as having reached, see ARTG 4850, or
- 30 days from the date HMRC decided not to carry out a review when the customer asked for a review outside the time limit and we refused, see ARTG 4300.

### 7.1.6 To whom is the appeal made?

ARTG 2410  
(Appeals, Reviews  
and Tribunals Guide)

For **indirect taxes** the appeal must be made direct to the Tribunal.

For **direct taxes** the appeal must be made to HMRC before it can be notified to the Tribunal.

When the Tribunal receives an appeal for a direct tax case which has not already been made to HMRC, they will explain to the customer that they must appeal to HMRC before the Tribunal can consider their appeal.

Although error penalties apply equally to direct and indirect taxes, there may be some differences in the processes. You should follow the detailed rules contained in ARTG 2100 for direct taxes and ARTG 3000+ for indirect taxes.

### 7.1.7 Can I still try to reach agreement?

Wherever possible, you should try to reach agreement with the customer or their agent. The preferred route is that you settle the appeal without the need for a hearing. Taking an appeal to tribunal is a costly and time consuming process for both sides. However, you should be careful not to compromise on the penalty, simply to avoid the appeal going to tribunal.

If the grounds of the appeal are clearly unacceptable, you should explain the reasons, and invite the customer to withdraw it. If this is done verbally, make a careful note of what was said. It may be important if proceedings are taken forward to a tribunal.

### 7.1.8 Internal review

*ARTG2010 for Direct Taxes*

*ARTG2020 for Indirect Taxes*

*ARTG2212*

In addition to appealing against an HMRC decision, customers can ask for a separate internal review of the decision. The review process is separate from any informal discussions that have taken place between you or your manager and the customer. HMRC will offer a review if discussions with the customer or the agent to resolve the matter are no longer appropriate, or do not lead to a settlement.

The review will be carried out by an HMRC Review Officer. It is an opportunity for the customer to have the matter in dispute reviewed by someone who has not been involved in the original decision-making process. It also offers a further opportunity for agreement to be reached without the issue going to the Tribunal. A customer who is not satisfied with the outcome of the review may notify the appeal to the Tribunal.

The reviewer will notify both you and the customer of the conclusion of the review.

If the review recommends any variation or cancellation of the penalty, you should follow the relevant guidance in Chapter 6 (Appendices 1-3).

If, after the review, the customer disagrees with the review conclusion, then he or she may send the appeal to the Tribunal.

The customer cannot notify the appeal to the Tribunal whilst a review is in progress. The review must be completed before the appeal can be heard by the Tribunal.

### 7.1.9 Multiple appeals

The customer can appeal against each of the decisions (shown at 7.1.1) in relation to a single penalty. You should, where possible, try to have such multiple appeals reviewed together, and if the appeals are notified to the Tribunal, considered at the same hearing. For instance, an appeal against a decision that a penalty is payable, should be heard at the same time as an appeal against the amount of the penalty.

It may be difficult in practice to avoid two or more appeal hearings. For example, the question of suspension may only arise after an appeal has decided upon the behaviour that gave rise to the inaccuracy.

### 7.1.10 More than one hearing may be required

If you assess a penalty on the basis that the behaviour is 'deliberate', you would not have to consider suspension.

If, on appeal, the Tribunal decides that the behaviour is only 'careless', you will need to issue a revised assessment, because the revised behaviour type will result in a different penalty. If you decide at this point not to consider suspending the revised penalty, the customer may submit a further appeal against your decision not to suspend.

Similarly, if the Tribunal decides that a penalty should be suspended, the question of what conditions should be imposed could be the subject of a further hearing if you cannot reach agreement with the customer on the conditions to be set.

### 7.1.11 Tribunal decision

If the Tribunal agrees a change to a penalty assessment, or that it should be withdrawn, you will need to generate, either

- an amended penalty notice (NPS2), and an amended summary calculation
- or
- a penalty assessment withdrawal notice (NPS4).

You should follow the procedures in Chapter 6 (Appendices 1-3) to amend or cancel the penalty.

**Note for direct tax cases:** If the Tribunal agrees with the penalty assessment, you will have to cancel the appeal status on NPPS. You will only be able to close the case if no further appeal is possible.

## 7.2 Special Reductions

CH82490  
CH451000

S11 Sch 24, FA  
2007

The legislation in Schedule 24 allows HMRC to reduce a penalty, if we think it right, because of special circumstances.

Special reduction is a mechanism to allow further reductions in extreme and exceptional circumstances. This would be circumstances beyond those already set out in Schedule 24, as they will already have been taken into account in the disclosure reduction. Such circumstances are expected to be extremely rare.

Special circumstances do not include

- the ability to pay  
or
- the fact that a potential loss of revenue from one person is balanced by a potential overpayment by another.

Neither you nor your local managers are authorised to grant special reductions locally. If the customer claims Special Reduction

- you will need to ask the customer for a full, reasoned explanation as to why they think they should have a special reduction
- if the customer persists with their request for a special reduction, and you think they have valid arguments in support of their request, you must make a report to Central Policy (Tax Administration Advice (TAA)) via your Grade 6 Business Unit Head in Local Compliance (LC). It would then be for TAA to consider the request and, if relevant, to indicate the particular reduction.

CH84040

The customer cannot appeal against our decision not to allow a special reduction. The customer can, however, appeal against the amount of the penalty. If this happens, you shouldn't enter into any further discussion with the customer, other than to provide them with details of the HMRC view set out in CH82490.

Tribunals can give effect to a special reduction only if they feel that the HMRC decision on the matter is flawed. If our decision is not flawed, then the tribunal will not be able to give effect to special reduction.

If the tribunal or the courts, (if a case is referred higher than the Upper Tribunal), award a special reduction, you must inform TAA immediately. This is because HMRC will need to consider the Tribunal's or court's decision, and may wish to appeal against it. You will also have to adjust the penalty calculation. by following the procedures in Appendices 1-3 of Chapter 6, to give effect to the Tribunal decision.

## 7.3 Central Penalty Team

The Central Penalty Team (CPT) has been created to deal with certain tasks under the Penalties for Inaccuracies regime.

The CPT will

- monitor a customer's compliance with the suspension conditions.

They will also

- record and manage penalties and
- issue penalty notices and assessments on behalf of caseworkers, while the manual process is in operation, until the full functionality of the NPPS is made available to caseworkers.

### 7.3.1 Which suspensions will the CPT handle?

Once the compliance check is completed and the suspended penalty agreed, the responsibility for monitoring it during the suspension period will pass to the CPT for the following teams only

- Special Investigations (SI)
- LC.

**For LC this excludes those cases where a Customer Relationship Manager (CRM) is appointed in Large and Complex, and in Individuals and Public Bodies (I&PB).**

### **7.3.2 When does the CPT take responsibility?**

You must pass responsibility for any suspended penalty to the team at the following stages

- assessment cases - after the issue of the penalty assessment and notice of suspension
- Contract Settlement cases - when the letter accepting the persons offer in settlement has been issued.

Using the Penalty Toolkit in SEES, you must send details of the conditions set, and the period of suspension to the CPT.

### **7.3.3 What happens at the end of the suspension period?**

The person has to satisfy HMRC that the agreed suspension conditions have been met. This evidence will take the form of a self-certificate that will be provided by the person to the CPT at the end of the suspension period, or in some cases earlier, if the person considers that they have complied with the agreed suspension conditions.

The CPT will issue a form to the person before the end of the suspension period (1-3 months, depending on the length of the suspension period) reminding them that they will be required to self-certify at the end of the period.

The CPT will issue the self-certificate to the person 30 days before the period of suspension expires. If no response is received, the CPT will issue a copy of the self-certificate as a reminder.

If there is still no response, the CPT will issue a form to the person advising that, as they have not returned the self certification confirming that they have met the conditions, HMRC will take action to enforce the penalty.

Note: If a person fails to send in a self-certificate, they will be deemed to have not met the agreed suspension conditions.

### 7.3.4 Checking the suspension conditions

CPT will be responsible for notifying Risk and Intelligence Service (RIS) when the person returns the completed self-certificate.

RIS are responsible for selecting a percentage of self-certificates for further compliance checks, dependant on risks identified. Cases selected for a further compliance check will not necessarily be returned to the original caseworker.

The CPT will acknowledge receipt of the self-certificate.

### 7.3.5 Notifying the customer

The CPT will notify the person when the self-certificate and, therefore, compliance with the agreed suspension conditions has been accepted. They will also tell the person that the penalty is cancelled.

For contract settlements, the final instalment relating to the suspension is no longer payable.

Any person who fails to self-certify their compliance with agreed suspension conditions, or after a compliance review, is deemed to have failed to meet the agreed suspension conditions, will be notified by CPT that they must pay the suspended penalty. There is no appeal against this decision.

If the person fails to meet the agreed suspension conditions, the CPT is responsible for bringing the previously suspended penalty into charge.

All Schedule 24 penalties in relation to direct tax cases will be collected through Strategic Accounting Framework Environment (SAFE). All Schedule 24 penalties for customers within the VAT mainframe, will be processed through the existing VAT292 procedures.

### **7.3.6 Monitoring suspended penalties within LBS, CAR and CRMs in local compliance**

The following teams will monitor their own suspended penalties, and interact directly with the person at the end of the suspension period

- Large Business Service (LBS)
- Charity, Assets and Residence (CAR)
- Large and Complex within LC, in cases where a CRM is appointed
- I&PB within LC, in cases where a CRM is appointed.

If you are an officer within these teams, you must retain responsibility for the cases, and consider any self-certification produced by the person at the end of the period of suspension. You must consider whether the conditions have been met, and you are then responsible for any subsequent action.

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## Review

In this chapter we've looked at what happens after the NPPS issues a penalty assessment.

We looked at the appeals process and saw that the customer can appeal against

- the imposition of the penalty
- the amount of the penalty
- a decision not to suspend all or part of a penalty
- the conditions attached to a suspension.

Normally, it's the person who has been charged, or their authorised agent who makes the appeal. However, in a partnership, who can appeal depends on the nature of the document containing the inaccuracy. In a company case, if we are seeking the recovery of the penalty from a company officer, because they have made a deliberate inaccuracy, that officer has the right to appeal.

The customer can use an appeal form to appeal if they wish, but this is not necessary, provided

- the appeal is in writing
- it specifies what is being appealed
- it gives the reasons for the appeal  
and
- it contains any other relevant information which is required by the legislation.

Unless the legislation specifies otherwise, a penalty assessment appeal will generally be treated in the same way as the tax that underlies it. They will share the same time limits and postponement rules. Detailed instructions are in the ARTG manual.

We also looked at the customers' right to an internal review. For direct taxes, once the customer has appealed to HMRC, he or she may request a review at any time (unless there has already been a review of the decision, or he or she has notified the appeal to the Tribunal), or we may offer a review to try to settle a case without needing a formal tribunal hearing. For indirect taxes, we shall offer customers a review when we tell them of the penalty.

We mention that Special Reductions are for exceptional circumstances beyond those that Schedule 24 already allows, and look at what you should do if someone claims that Special Reduction should apply.

Finally we found that the CPT will follow up suspended penalties to make sure that the customer fulfils the agreed conditions. Provided that the customer has done so, the penalty can be cancelled.



## Learning Check – Answers

1. What four items in relation to a penalty can be appealed?

They are

- the imposition of a penalty
- the amount of the penalty
- can the penalty be suspended
- the conditions being set for the suspension.

This was covered in sub-chapter 7.1.1.

2. Who can decide if Special Reduction can be given?

If you think that a special reduction may be appropriate, you must submit the case to Central Policy, TAA. Your submission should give a concise summary of the compliance check leading up to the penalty, and full details of the facts upon which the request for a special reduction is based.

**You MUST obtain authority from TAA before allowing a special reduction.**

We looked at this in sub-chapter 7.2.

3. Who reviews the suspension conditions at the end of the suspension period?

This will depend on which business stream you are in.

Caseworkers within LBS, CAR or CRMs in Large and Complex and I&PB within LC will be responsible monitoring their own suspended penalties. The CPT will be responsible for monitoring penalties raised by SI and LC (excluding those cases where a CRM has been appointed).

We saw this in sub-chapter 7.3.1.

## Before Moving On

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

- state what decisions about the penalty the customer can appeal
- state who can decide whether special reduction can be given and
- decide who will review penalties that have been suspended.

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