

Penalties for Inaccuracies Schedule 24 FA07

Chapter 7 **Appeals, Special Reductions, Central Penalty Team.**

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Introduction

Welcome to Chapter 7 of the Penalties for Inaccuracies learning.

Chapter 6 looked at how you use the New Penalty System (NPS) 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 unit, you will be able to

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

Study Advice

This is the final unit and should take you around 1 hour to complete. You will need access to the Compliance Handbook and the Enquiry Manual.

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. This is the route by which the customer can ask for an independent review to be carried out if they disagree with the decisions in the case.

7.1.1 What can be appealed?

CH84010

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?

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.

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 para 15, Sch24 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, NPS will automatically include an appeal form when it issues the penalty assessment.

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, postponement application rules and time limits apply.

For direct tax this means that the customer can ask for collection of the penalty to be put on hold pending the outcome of the appeal.

For indirect tax the penalty is payable in full and can't be put on hold.

7.1.5 Time Limit for making an appeal

As we said, the rules and time limits relevant to the assessment procedures for the tax involved apply when making an appeal.

S31A(1) TMA 1970

For direct taxes, the appeal period is 30 days from the date you issue the penalty assessment.

*SI 1986/590
Reg. 4*

For VAT purposes the time limit will normally be 30 days also - but this can be subject to authorised extensions [Reg 4(2)] or to a longer appeal period [Reg 4(3)].

7.1.6 To whom is the appeal made?

*ARTG 2410
(Appeals, Reviews
and Tribunals
Guide)*

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

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

The general rules within HMRC for the treatment of appeals are dealt with by the Appeals, Reviews and Tribunals guidance (ARTG).

Although error penalties apply equally to direct and indirect taxes, there will be some variations in the way the appeal processes will be applied.

You should follow the detailed rules contained in ARTG for the particular duty. (ARTG 2100 for Direct Tax and ARTG 3000 for Indirect Tax).

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

From 1 April 2009, in addition to appealing against an HMRC decision, customers will be able to ask for a separate internal review of the decision. The review process is separate from any informal discussions that have taken place with the customer by you or your manager.

The internal review will be carried out by a Specialist HMRC Review Officer before the matter is heard at a Tribunal. 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 the opportunity for agreement to be reached without the issue going to the Tribunal.

The decision of the internal review will be communicated separately to both you and the customer by the reviewer.

If the internal review recommends any variation or cancellation of the penalty, for direct tax you will have to change the penalty assessment using NPS. For indirect tax when the amendment involves the VAT main frame, apply the instructions detailed at sub-unit 6.2.1.

If after the internal review the customer is still not in agreement with our decision then the appeal can be heard by the tribunal.

Direct taxes: The internal review option is a new procedure. When you receive an appeal you must offer an independent review in order to try to settle the case.

The appeal cannot be passed to the Tribunal whilst an independent review is in progress. The independent review must be completed before the appeal can be heard by the Tribunal.

7.2 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, at the same hearing. For instance, appeals against a decision that a penalty is payable should be heard at the same time as appeals 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.

7.3 More than one hearing might be necessary

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 instructs 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.

Tribunal's Decision

For direct tax cases: If the tribunal agrees with the penalty assessment, you will have to cancel the appeal status on NPS. You will only be able to close the case if no further appeal is possible.

If the tribunal agrees a change to a penalty assessment, or that it should be withdrawn, you should input details into NPS to effect the change. The system will generate a notice in all cases, either

- an amended penalty notice, (NPS2) and an amended summary calculation

or

- a penalty assessment withdrawal notice (NPS4).

In direct tax cases: You should use NPS to change the assessment and automatically amend the penalty charge.

For VAT cases: You should use NPS to generate the outputs but you will also need to issue a VAT 292 Form to amend the customer's account in the VAT Mainframe.

7.4 Special Reductions

CH82480
CH451000

S11 Sch 24, FA
2007

The legislation in Schedule 24 FA 2007 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 (TAA) via your Grade 6 Business Unit Head in Local Compliance. It would then be for TAA to consider the request and, if relevant, to indicate the particular reduction.

The customer can appeal to the tribunal that special reduction should apply. 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 CH 82480.

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 a Tribunal), award a special reduction, you must inform TAA immediately. This is because HMRC will need to review the decision and may wish to lodge an appeal. You will also have to adjust the calculation on NPS for direct tax, or follow the procedures at sub-unit 6.2.1 for indirect tax, to give effect to the Tribunal decision. This will amend the summary penalty calculation.

7.5 Central Penalty Team

CH346550

Another new introduction as part of the new penalty regime is the creation of the Central Penalty Team. Their primary role is to monitor a customer's compliance with the suspension conditions. This will be covered in separate guidance.

In any case where a penalty is suspended it will be transferred automatically to the Central Penalty Team through NPS once the penalty has been assessed and the suspension letter issued.

When a penalty is suspended, responsibility in Local Compliance cases for dealing with the penalty rests with Central Penalty Team. The Local Compliance officer will not generally be expected to monitor interim or final alerts. In SI and LBS cases, the officer retains responsibility throughout the period of suspension.

The NPS will generate alerts automatically to notify the Central Penalty Team that the suspension period is about to end. These alerts will enable them to take the appropriate action to ensure that the conditions of the suspension have been met.

You can set additional **alerts** on NPS when setting the conditions of the suspension if you think that additional checks are required during the suspension. For example, HMRC may need to check on the returns and payments due.

When you enter a case on NPS, the system may indicate that there is another currently suspended penalty. If that happens you must notify the Central Penalty Team to enable them to release the earlier suspended penalty for collection.

Review

In this chapter we've looked at what happens after the NPS 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 a penalty form 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 independent review. They may request one at any time, or if we receive an appeal we should offer a review to try to settle a case without needing a formal tribunal hearing.

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

Finally we found that the Central Penalty team 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-unit 7.1.1

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

- TAA will make the decision on behalf of the Board if special reduction can be given
- Tribunals can grant special reduction on appeal but only if they feel that HMRC thinking on the matter is flawed

We looked at this in sub-unit 7.3

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

The Central Penalty Team will be notified of the suspended penalty and the conditions and suspension period. They will then review this at the end of the suspension period to decide if the conditions have been met.

We saw this in sub-unit 7.5