

# Take care to avoid a VAT and Excise wrongdoing penalty

We are introducing new penalties to help prevent abuse in the VAT and Excise tax systems. This guide will help you understand what you can do to avoid a penalty.

## What is the VAT and Excise wrongdoing penalty?

We know that most people take care to declare and pay the right amount of tax. We use penalties to stop people who don't take care from gaining an unfair advantage.

From 1 April 2010 we will apply new wrongdoing penalties where a person:

- issues an invoice that includes VAT which the person is not entitled to charge
- handles goods on which Excise Duty has not been paid or deferred
- uses a product in a way that means more Excise Duty should have been paid
- supplies a product at a lower rate of Excise Duty knowing that it will be used in a way that means a higher rate of Excise Duty should be paid.

## What does 'handling goods' mean?

Handling goods is:

- acquiring the goods
- carrying, removing, depositing or keeping the goods
- selling the goods.

An example is buying cigarettes abroad and selling them in the UK. Cigarettes can only be brought into the UK, without paying UK Excise Duty, if they are for your own use.

## Why can someone using red diesel be penalised?

Red diesel has a lower rate of duty because its use is restricted to certain industries, like agriculture. A red dye is added to deter misuse by making it easier for us to detect. Because it is cheaper, its misuse may give an unfair commercial advantage. The wrongdoing penalty is one of the penalties used to discourage its improper use.

## What is 'reasonable excuse'?

We will not charge you a VAT or Excise wrongdoing penalty if you have a reasonable excuse for the wrongdoing. A reasonable excuse might be an unforeseeable and exceptional event beyond your control that led to the wrongdoing, such as:

- the death of a partner or close relative
- serious illness of the person, partner or close relative.

If the wrongdoing is deliberate, we cannot consider a reasonable excuse.

## How is a wrongdoing penalty calculated?

The penalty will be a percentage of the potential lost revenue, such as the amount of VAT on an unauthorised invoice.

The percentage used will depend on whether the wrongdoing was:

- deliberate and concealed
- deliberate but not concealed, or
- not deliberate.

The penalty may then be reduced to take account of whether, and to what extent, you tried to make us aware of the wrongdoing. The reduction depends on:

- whether the disclosure is unprompted or prompted
- the quality of the disclosure.

A disclosure is unprompted if you tell us when you have no reason to believe that we have discovered or are about to discover the wrongdoing.

Reason for wrongdoing	Disclosure	Minimum penalty	Maximum penalty
Reasonable excuse		No penalty	No penalty
Non-deliberate	Unprompted	10 per cent	30 per cent
	Prompted	20 per cent	30 per cent
Deliberate	Unprompted	20 per cent	70 per cent
	Prompted	35 per cent	70 per cent
Deliberate and concealed	Unprompted	30 per cent	100 per cent
	Prompted	50 per cent	100 per cent

### What if I disagree with a penalty notice?

If we decide a penalty is due we will issue a penalty notice. If you disagree with it you can appeal to an independent tribunal, or ask us to review:

- that a penalty is payable
- the amount of the penalty.

[Click here for a factsheet that explains what to do if you disagree.](#)

### Am I responsible for another person's wrongdoing?

If you use an agent such as an employee or adviser, you must try to ensure that a wrongdoing does not occur.

This means you can be penalised if your agent commits a wrongdoing unless you can show you took reasonable care to avoid the wrongdoing. For example, an employer should take reasonable care to set up systems and procedures, and to supervise and manage the employee to prevent wrongdoing.

### What about company directors or the company secretary?

Where we can identify that a company director or company secretary caused a deliberate wrongdoing, they will be liable for payment of all or part of the penalty if:

- there is evidence that they gained personally from the deliberate wrongdoing
- the company is insolvent
- there are grounds to suspect that the company will become insolvent.

### What about existing penalties?

We will use the new penalties alongside existing penalties and sanctions like the forfeiture of goods and vehicles, criminal prosecution or revoking tax registration. As well as the wrongdoing penalties we may also recover any amount of VAT or Excise Duty that is due.

### Where can I get more help?

You can find more information on penalties for errors at [www.hmrc.gov.uk/about/new-penalties](http://www.hmrc.gov.uk/about/new-penalties)