



Transcript of the HM Revenue & Customs video - Learning Together: Penalties for inaccuracies in documents and returns

[Video clip 1 of 2 begins.]

[A slide appears which reads: 'Learning Together: Penalties for inaccuracies in documents and returns'.]

[A male presenter appears and speaks directly to the camera.]

Welcome to this Learning Together session on HM Revenue & Customs (HMRC) penalties.

This presentation includes information on the changes to the penalties regime brought into force by the Finance Acts of 2007 and 2008. It covers changes in legislation and explains how penalties will be applied for inaccuracies in information, documents and returns supplied to HMRC.

You will hear how the quality of the disclosure of any inaccuracies can reduce these penalties and go on to see how the penalty calculation is made.

There will also be guidance on the suspension of a penalty and grounds for appeal.

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[A slide appears which reads: 'Penalties Legislation'.]

So let's start by looking at the penalties legislation. This legislation was first introduced in the Finance Act of 2007.

[A slide appears which reads: 'Legislative basis: Section 97 and Schedule 24 Finance Act 2007. Penalties for: inaccuracies in returns or other documents; failure to notify HMRC of an underassessment to tax.']

Under Section 97 and Schedule 24 of this act, penalties were brought into force for inaccuracies in returns and other documents. The act also allowed for penalties for failure to notify HMRC of any inaccuracy resulting in the incorrect assessment of tax liability.

[The presenter re-appears.]

Penalties are based on the amount of tax understated, under-assessed, over-claimed or over-repaid. This is the potential tax lost or as the act says 'the Potential Lost Revenue'.

[A slide appears which reads: 'Return periods that penalties apply to. The penalties regime takes effect for inaccuracies in returns or documents and under assessments: for return periods starting on or after 1 April 2008 and; where the due date for filing is on or after 1 April 2009. Both conditions must apply in order for the inaccuracies to come under this regime'.]

The act applies to return periods from 1 April 2008 and where the filing date is on or after 1 April 2009.

[A slide appears which reads: 'Act 2007 Penalties apply to: Income Tax, Capital Gains Tax, Corporation Tax, Pay As You Earn, National insurance contributions (except Class 1A), Construction Industry Scheme, VAT.']

As you can see, Schedule 24 of the Finance Act 2007 applied the new penalties regime to the main types of personal and business taxes that HMRC administers.

[A slide appears which reads: 'Act 2008 Extends Penalties. Schedule 40 FA08: Effective from 1 April 2010. Brings most of the remaining taxes and duties into Schedule 24 provisions.']

Schedule 40 of the Finance Act 2008 extended the penalties regime to include most other taxes and duties.

The conditions of this legislation came into effect for return periods starting on or after 1 April 2009 and where the filing date is on or after 1 April 2010.

A slide appears which reads: 'Act 2008 Penalties extend to: Environmental Taxes (aggregates levy, climate change levy, landfill tax); Excise Duties (alcohols, tobacco, oils, gambling, holding and movements and air passenger duty); Inheritance Tax; Insurance Premium Tax; Pension Schemes; Petroleum Revenue Tax; Stamp Duties; Class 1 A NIC.']

You can see environmental taxes, excise duties, stamp duty and several other taxes are now included.

[The presenter re-appears.]

This means that the new penalties now apply to most of the taxes administered by HMRC. There are some important exceptions, for example custom duties, tax credits and the national minimum wage are not within the scope of Schedule 24.

Penalties can also be assessed on third parties.

[A slide appears which reads: 'Penalty conditions apply to third parties. A third party may be liable for a penalty if they: deliberately supply false information, or deliberately withhold information that results in an inaccurate return.']

If a customer has to rely on information provided by another person and the information given was deliberately false or withheld then, that third party may be charged a penalty for any resulting inaccuracy.

[The presenter re-appears.]

It is unlikely that a tax agent or adviser would be liable to this type of penalty. Normally a tax adviser receives information from a person and then gives advice based on that information.

So what do all these changes in legislation mean? Let's start by considering why this new legislation has been introduced.

HMRC is responsible for ensuring everyone pays the right tax at the right time, and the penalties regime is designed to promote this. It voluntary compliance and positive customer behaviour, and penalises those who deliberately evade tax.

The vast majority of our customers take care with the returns and documents they submit.

[A slide appears which reads: 'Penalties regime aims to encourage: Taking care with your tax (records, systems, advice); Disclosing inaccuracies or problems without being prompted; Helping HMRC put things right; Agreeing steps to prevent future errors.']

If customers take reasonable care with their tax records and systems then even if an inaccuracy occurs no penalty will be due.

If a customer tells HMRC, without prompting, when inaccuracies do occur, then either no penalty or a reduced penalty will be charged.

If customers help HMRC put things right, any penalty due will be reduced.

For certain penalties where a customer can agree steps to prevent future inaccuracies, the penalty may be suspended and if conditions met, cancelled altogether.

[The presenter re-appears.]

Where an error has been made HMRC needs to understand how the error came about. It is the behaviour which led to the inaccuracy that determines whether a penalty is due and which penalty range applies.

Where documents contain more than one inaccuracy each inaccuracy will be considered separately.

So let's look at behaviour.

[A slide appears which reads: 'Behaviours', then the presenter re-appears.]

Where a person has taken 'reasonable care' no penalty will be charged even if an inaccuracy is made.

So what is meant by taking reasonable care?

HMRC doesn't expect perfection and knows mistakes do happen.

What constitutes reasonable care varies according to the particular circumstances and abilities of each customer. HMRC doesn't expect the same level of knowledge from say an unrepresented sole trader as it would from a large multi-national company.

So although every customer has the same duty of care, what is required to discharge this duty, will vary from customer to customer.

Every customer however must take reasonable care to submit accurate tax returns and documents.

[A slide appears which reads: 'What is reasonable care? What is considered as reasonable care can vary according to circumstances and ability but includes: Taking care with records and systems; Acting on advice from a competent adviser; Seeking advice when dealing with something new or unfamiliar; The screen then alternates between the slide and the presenter.']

The key message is to encourage customers to take care when keeping records. Documenting when and why decisions were made and steps taken will help to show the level of care that has been put into practice.

Customers can show they have taken reasonable care if they follow the systems they have in place that can be reasonably expected to produce an accurate tax figure. They should follow the advice of a competent tax agent or advisor or seek advice when they encounter something new or unfamiliar.

[The presenter re-appears.]

So what behaviours can lead to a penalty being charged?

[A slide appears which reads: 'Behaviours leading to Penalties. Penalties are assessed for behaviour that is: careless; deliberate' or; deliberate and concealed.']

Where reasonable care has not been taken the inaccuracies are described in one of the following ways: careless, deliberate or, deliberate and concealed.

[A slide appears which reads: 'Behaviours leading to penalties: careless.' The law defines 'careless' as a failure to take reasonable care. Inaccuracies made despite taking reasonable care may be treated as careless if, on discovery you don't tell HMRC about them. Depends on the specific circumstances of each inaccuracy and each period.' The screen then alternates between the slide and the presenter.]

An inaccuracy is described as 'careless' if it is due to a failure to take reasonable care. In law this can be likened to negligence. It could be for example where changes have taken place within the business and no advice has been taken on the tax implications.

[The presenter re-appears.]

Or, where someone is asked to cover some record keeping but steps have not been taken to give them the understanding they need to carry out this work. If this type of behaviour continues and the problem is knowingly not corrected this could lead to the inaccuracy being classed as deliberate.

Where an inaccurate record has been submitted despite taking reasonable care; this will be treated as a careless inaccuracy if on discovery you don't tell HMRC about it.

There is no question of intent; if there had been the inaccuracy would be classed as deliberate.

[A slide appears which reads: 'Deliberate: A deliberate inaccuracy occurs if inaccurate documents are given to HMRC knowingly' and then the presenter re-appears.]

A deliberate inaccuracy occurs when a person knowingly and intentionally gives HMRC an inaccurate document or return. This is not just a careless mistake.

Deliberate inaccuracies can include omissions such as omitting takings or paying wages without accounting for PAYE or Class 1 NIC.

Where a careless inaccuracy has previously been discovered but steps have not been taken to rectify the process or the behaviour that led to the inaccuracy, HMRC may class this as deliberate.

[The slide re-appears with additional text which reads: 'Deliberate and concealed. Where steps have been taken to conceal a deliberate inaccuracy (for example, by submitting false evidence in support of an inaccurate figure).']

A deliberate and concealed inaccuracy is the most serious level of evasion. It occurs where a document containing an intentional inaccuracy is given to HMRC and active steps have been taken to hide the inaccuracy either before or after the document has been submitted.

[The presenter re-appears.]

As well as consciously recording an inaccuracy, the person has purposefully covered their tracks. It can include actively fabricating evidence in support of a deliberately inaccurate figure.

These behaviours, along with how the inaccuracies are disclosed to HMRC will determine the penalty range to be applied.

[A new slide appears which reads: 'The way in which HMRC finds out about an error influences the penalty.']

Disclosures can be either prompted or unprompted.

[A slide appears which reads: 'Prompted & unprompted disclosure. A disclosure is unprompted if it is made at a time when the person has no reason to believe that HMRC has discovered or is about to discover the inaccuracy or under-assessment.']

As you can see from the definition an unprompted disclosure is one which is made when the customer has no reason to believe HMRC has, or is about to, discover the inaccuracy.

Otherwise, it is prompted.

The particular facts and circumstances which led to the disclosure are the basis of the test, not just the belief that it was either unprompted or prompted.

[A slide appears which contains a diagram. The diagram shows that the penalties for incorrect returns increase depending on whether the mistake was careless, deliberate and deliberate and concealed, and also increase depending on whether the disclosure was unprompted or prompted.]

This diagram summarises the range of penalties that can be applied for the various types of behaviour and how a prompted or unprompted disclosure impacts on each range.

You can see that for each penalty range the rate will be determined by not only the behaviour that caused the inaccuracy, but also how HMRC found out about it.

If a customer has told HMRC about an inaccuracy without prompting, then the penalty range will be from the minimum to the maximum percentage for the appropriate underlying behaviour.

If however, HMRC finds the inaccuracy itself or the person has reason to believe HMRC was about to find out about it then the minimum percentage for that particular behaviour range is higher. The significance of this will become apparent when we work through an example.

[A slide appears which reads: 'Quality of disclosure'.]

[Another slide appears which reads: 'Reductions for quality of disclosure. Reductions are available for quality of disclosure: 'telling' - up to 30 per cent reduction; 'helping' - up to 40 per cent reduction; 'giving' - up to 30 per cent reduction. Allowed against the particular penalty range.']

Within each penalty range, whether prompted or unprompted, reductions are available for the quality of the disclosure. The reductions can be given for:

- telling HMRC about the inaccuracy
- helping HMRC to quantify the inaccuracy
- giving HMRC access to their records

[The presenter re-appears.]

These are applicable to the actions taken after the inaccuracy has come to light and can collectively bring the penalty down from the maximum to the minimum rate for that particular type of inaccuracy.

[A slide appears which reads: 'Reductions for quality of disclosure: 'timing'; 'nature'; and 'extent' are key factors contributing to the reduction for each quality of disclosure.']

What is important is the **timing**, **nature** and **extent** of each type of disclosure.

[Video clip 2 of 2 begins. The presenter re-appears.]

Let's now look at 'Quality of Disclosure' in more detail.

A customer can be given up to a 30 per cent reduction within each penalty range for 'telling' HMRC about the inaccuracy.

[A slide appears which reads: "Reductions for Quality of Disclosure Telling: Up to 30 per cent reduction given for: Admitting the inaccuracy or under-assessment, Disclosing any inaccuracies in full, Explaining how and why it (they) arose."]

This means:

- admitting the documents were inaccurate
- disclosing the inaccuracy in full

- explaining how and why the inaccuracy occurred

[The presenter re-appears, accompanied by the word 'Telling.']

The timing here relates to the period over which the disclosure is made, and not how long since the inaccuracy arose before the disclosure. The customer must tell the HMRC officer all the facts at that time.

The nature covers why the document was inaccurate or why HMRC were not told about the under-assessment.

The extent is whether everything is disclosed. If there is only a partial disclosure then a full reduction will not be due.

Overall, telling about the disclosure must be positive and as complete as possible. This can be by a phone call, in person, by letter or by providing an amended return.

[A slide appears which reads: Reductions for Quality of Disclosure: Helping: Up to 40 per cent reduction given for: Giving reasonable help to quantify the inaccuracy, Positive assistance, Actively engaging in the work to accurately quantify the inaccuracies, Volunteering any relevant information.]

Up to 40 per cent reduction within the penalty range can be given for 'helping' HMRC to quantify the inaccuracy. This means giving reasonable and positive assistance and volunteering any relevant information in connection with the disclosure.

[The presenter re-appears, accompanied by the word 'Helping.']

HMRC will clearly explain what is needed to assist them in quantifying the correct amount of tax or duty and why it is needed. The abilities and circumstances of the person will be taken into account.

Again, the timing, nature and extent of the help the person provides to quantify the inaccuracies or under-assessment is important.

The timing is relevant to the period over which the help is given.

The nature covers whether the help is useful and saves HMRC time and money in quantifying the inaccuracy and helps bring the compliance check to a speedy and accurate conclusion.

The extent of the help covers the whole period and all aspects of the compliance check. If help is only received for part of the time, or in certain aspects the full reduction would not be able to be given.

Finally up to a further 30 per cent reduction can be made for a customer 'giving' access to assist HMRC.

[A slide appears which reads: “Reductions for quality of disclosure. Giving: up to 30 per cent reduction: Responding to requests for information and documents, Allowing access to their business and other records or other relevant documents.”]

Giving access includes a person responding positively to requests for information and documents and allowing access to business records and other relevant

documents.

[The presenter re-appears, accompanied by the word 'Giving.']

This is to make sure that the inaccuracy or under-assessment is fully put right.

Again the timing, nature and extent of the access given is considered.

A person should give access when requested and there should rarely be a need for HMRC to use information powers or issue reminders.

There are some circumstances when a formal request for information is issued, either without an informal request being made first, or when a person requests one. Provided this does not obstruct HMRC's access to the records, a full reduction can still be given. If it is not possible to produce the records or relevant documents at the time of the request, the person should give reasons and make every effort to provide them as soon as possible.

The full reduction will not be given if the HMRC officer encounters difficulty in getting access.

So, the maximum reduction for quality of disclosure would be 100 per cent bringing the penalty down to the minimum for the particular behaviour. The agreed reduction could be anywhere between 0 per cent and 100 per cent giving rise to a charge somewhere within the minimum and maximum for the underlying behaviour.

There may be some overlap between these three categories ('telling', 'helping' and 'giving'). Where this is the case the same action may qualify for reduction under more than one category.

There may also be instances where HMRC doesn't require information for one or more of the three categories; for example where HMRC doesn't need any help to quantify an inaccuracy or require access to documents.

[A slide appears which reads: 'Calculating quality of disclosure. Where disclosure is not required it will be taken as if given in full. Part reduction for the quality of disclosure will be given where telling, helping or giving has not been as full as possible.']

Where telling, helping or giving is not required by HMRC, and the customer has done everything they can, then the maximum reduction for that particular category will be given.

Part reduction for the quality of disclosure will be given where HMRC consider the assistance, whether telling, helping or giving, has not been as full as possible.

[The presenter re-appears.]

In most circumstances an agreement is reached on the appropriate reduction for quality of disclosure. This must then be authorised by a more senior officer before the penalty assessment is issued. An audit trail is kept of how the decision was reached.

Now let's bring everything together and work through a full penalty calculation.

[A slide appears which contains a diagram. The diagram shows that the

penalties for incorrect returns increase depending on whether the mistake was careless, deliberate and deliberate and concealed, and also increase depending on whether the disclosure was unprompted or prompted.]

The inaccuracy in this example has given rise to Potential Lost Revenue of £100,000.

The behaviour that led to the inaccuracy is judged to be careless and the disclosure of the inaccuracy was unprompted.

[The diagram changes: the word 'careless' is circled.]

This gives a penalty range from 0 per cent to 30 per cent, so deducting the minimum from the maximum to give the maximum disclosure reduction, which in this case is 30 per cent.

[The diagram changes: the following text is added: Potential Lost Revenue: £100,000.]

The quality of disclosure has been agreed as 100 per cent. This would be because the customer received the maximum reduction for telling, helping and giving.

[The diagram changes: the following text is added: Quality of disclosure reduction: 100 per cent.]

Multiplying the maximum disclosure reduction possible, which is 30 per cent, by the 100 per cent quality of disclosure reduction rate, gives the actual percentage for disclosure reduction, which is 30 per cent.

[The diagram changes: the following text is added: 100 per cent of 30 per cent 30 per cent.]

To work out the actual penalty percentage to be charged, take the 30 per cent reduction from the maximum penalty percentage, which is 30 per cent, for a careless inaccuracy, giving a final percentage to be charged of nil.

[The diagram changes: the following text is added: 30 per cent - 30 percent = NIL.]

[The presenter re-appears.]

So there would actually be no penalty chargeable in this case.

Even though this customer has been deemed careless, by disclosing the inaccuracy fully and without prompting, no penalty would be charged.

For the same inaccuracy but where the disclosure is prompted the penalty is affected as follows.

[The slide containing the diagram appears again. The diagram again includes the added text: 'Potential Lost Revenue: £100,000' and the added text: 'Quality of disclosure reduction: 100 per cent'.]

The maximum disclosure reduction here is 30 per cent - 15 per cent (the maximum penalty minus the minimum penalty in the range), which is 15 per cent. Multiply this 15 per cent by the 100 per cent reduction for quality of disclosure giving 15 per cent

for the reduction in penalty rate.

[The diagram changes: the following text is added: 100 per cent of 15 per cent = 15 per cent.]

Take this 15 per cent reduction from the maximum penalty rate of 30 per cent; this gives a final percentage to be charged of 15 per cent.

[The diagram changes: the following text is added: 30 per cent - 15 per cent = 15 per cent.]

You will see that with a 100 per cent reduction for quality of disclosure the minimum penalty rate of 15 per cent would be due.

[The diagram changes: the following text is added: £100,000 x 15 per cent = £15,000]

So the actual penalty chargeable is £100,000 x 15 per cent giving a penalty of £15,000.

[The presenter re-appears.]

There would be a penalty due here for a prompted disclosure. However this penalty may still not be charged for a careless inaccuracy if it can be suspended. How does this work?

[A slide appears which reads: 'Suspended penalties' then the presenter re-appears.]

There are circumstances where a penalty can be suspended and, if conditions are satisfied at the end of the suspension period and they do not become liable to any other Schedule 24 penalties in this period, the penalty will be cancelled altogether.

This is incentive to encourage customers to take care in future rather than punish past inaccuracies.

[A slide appears which reads: 'Suspended penalties. Only a penalty for a careless inaccuracy can be suspended (failure to take reasonable care).']

Penalties can **only** be suspended where they are due to careless behaviour.

[A slide appears which reads: 'Suspended penalties. Must be a genuine risk of repeating the error and a means of addressing it that can be evidenced. Appropriate conditions must be set and agreed (SMART). Penalty can be suspended for up to two years and cancelled if conditions are met'. This screen then alternates between the slide and the presenter.]

There must also be a genuine risk of the same or a similar inaccuracies being repeated and that, by improving systems and processes, these inaccuracies will be prevented from recurring in the future.

Appropriate conditions for suspension must be set and agreed.

For example, where inaccuracies arose because staff were not using existing systems and processes correctly, it may be possible to frame a suspension condition

that provides additional training for them. HMRC will also need to be sure that the training is effective.

Therefore they need to consider a further condition that focuses on the business taking appropriate steps to control the risk of the inaccuracy reoccurring. If this can be demonstrated the person will have met this condition of suspension.

[A slide appears briefly which reads: 'SMART: Specific, Measurable, Achievable, Realistic, Time bound.' then the screen returns to the 'suspended penalties' slide.]

These conditions must be SMART which is HMRC's acronym for specific, measurable, achievable, realistic, and time bound.

The period of suspension can run for a maximum of two years. The suspension period should be the shortest period possible to show that conditions have been met.

[The presenter re-appears.]

It is expected that for most cases the period of suspension will be less than 12 months. This will ensure that at least one future return is included. The maximum period of two years will be considered only in complex cases.

An important point to note is that the suspended penalty only becomes at the end of the period of suspension, if the conditions of the suspension are not met. If during this period the person becomes liable to another Schedule 24 penalty for any tax, the suspended penalty is payable immediately.

[A slide appears which reads: 'Resolving disagreements' then the presenter re-appears.]

It is worth bearing in mind that there are areas within the penalty regime where customers have the right to appeal.

[A slide appears which reads: 'What can be appealed? Imposition of a penalty, Amount of penalty, Decision not to suspend, Suspension conditions.' And this then alternates with the presenter.]

A customer can appeal against the imposition of a penalty. They can also appeal against the amount of a penalty.

This could be in respect of any of the aspects of the calculation that affects the ultimate penalty applied. This could include the underlying behaviour, whether disclosure is deemed prompted or unprompted and the amount of the reduction for quality of disclosure.

A customer also has the right of appeal against the decision not to suspend a penalty and the suspension conditions.

[The presenter re-appears.]

More information about penalties and suspension is available on the HMRC website.

Thanks for watching.

[The video ends.]