

SD7 Penalties for late Land Transaction returns

This publication tells you about penalties that you may get if you do not complete and send us your Land Transaction return on time. It also explains how to appeal against those penalties.

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Introduction

If we do not receive your Land Transaction return and any Stamp Duty Land Tax (SDLT) you owe on time, you will be liable to a penalty. This leaflet tells you what those penalties are, how to avoid being charged, how to appeal against a penalty determination and how you can get help with your Land Transaction return.

When should a Land Transaction return be delivered?

A Land Transaction return should be delivered so that we receive it by the 'filing date'. This is 30 days after the effective date of the transaction. The effective date is normally the completion date of the transaction, whether or not a document shows this.

However, if a contract is substantially performed before completion, the date that 'substantial performance' takes place is the effective date. Broadly, substantial performance is when:

- payment of a substantial amount of the consideration (generally 90% of the total amount) is made
- the purchaser is entitled to possession of the property
- the first payment of rent is made
- option or right of pre-emption is acquired.

What happens if my Land Transaction return is late?

If you miss the filing date, you will automatically be charged a penalty.

When penalties occur

Fixed penalties

If we do not receive the Land Transaction return within 30 days of the effective date but within three months of the 30-day limit, you will automatically be charged a £100 penalty. If your return is more than three months late you will be charged a penalty of £200. If you pay the tax late, you will also be charged interest.

Tax-based penalties

If your Land Transaction return is more than a year late, you may be liable to a tax-based penalty, which can be up to the amount of SDLT due on the Land Transaction return.

How will I know if I have been charged a penalty?

If you are charged a penalty, we will send you a formal notice telling you so. The penalty is due for payment 30 days after the date of the notice. We may charge interest on any penalties paid late.

What if I receive a penalty notice?

If you have not already done so, you should do what is necessary to send in your Land Transaction return as soon as you can, to avoid further possible penalties, and pay the penalty on time, to avoid any interest charge.

Checking your notice for a tax-based penalty

Check that you agree the calculation shown on the notice. Where a tax-based penalty is imposed, we will normally have been writing to you (or your tax adviser, if you have one) about it and will have shown you how we have calculated it.

What if the taxpayer has died?

If you are acting on behalf of a taxpayer who has died since submitting a Land Transaction return in respect of which we have charged a penalty, please tell us the date of death and give your details.

Appeals to HMRC

If you disagree with a penalty notice you have been sent there are a number of options open to you. In the first instance you should write to HMRC within 30 days of the date of the penalty notice setting out why you disagree with us and enclosing any supporting documents or information. We will then reconsider our original decision and notify you of the outcome.

In most cases your appeal will be settled by reaching an agreement with HMRC. If this cannot be done you can either ask HMRC to review their decision or appeal directly to the independent tax tribunal.

Reviews

You can ask us to look again at whether we were correct to issue you a penalty. You must do this within 30 days. Your penalty will be reviewed by an independent HMRC officer who has not been involved in making the initial penalty decision. You can ask for a review either when you initially appeal against the decision or at any point after you have appealed to us where either you or HMRC feel that the issue cannot be mutually resolved.

You can also appeal directly to a Tribunal within 30 days of the decision unless a review has been requested, and is still being considered. If you appeal directly to the Tribunal, however, we will be unable to review the penalty for you. Reviews will be carried out by an independent team of reviewers in our Birmingham office who will consider the particular details of cases put to them.

How do I get a review?

You can ask us for a review any time after you have appealed to us about a penalty (see above). You should write to the Review Team in Birmingham (see form SDLT46) asking for a review. You should also use this form to explain why you believe the penalty should be cancelled.

HMRC will have 45 days from the date of your request to complete their review. If HMRC are unable to complete the review within that period then the penalty will be deemed to have been confirmed. You can then, however, if you wish, appeal to the Tribunal on the basis of the HMRC's original decision. In addition, the 45 day review period can be extended by agreement between both parties. You should contact the Review Team if you wish to ask about an extension.

At the end of the review HMRC will write to you to inform you of the outcome of the review. HMRC could decide either to:

- uphold the penalty
- cancel the penalty
- amend the penalty.

If the penalty is upheld but you are still unhappy with the decision you will still be entitled to pursue the matter to Tribunal.

Late appeals

The time limit for you to appeal against a decision is 30 days from the date the decision was sent to you.

The law says that when you appeal to HMRC you must do so within the time limit. We may accept a late appeal if you had a reasonable excuse for not appealing within the time limit and you appealed as soon as you could after the excuse ended.

The law does not say what a reasonable excuse is. However, our view is that you have a reasonable excuse only where some exceptional event beyond your control has prevented you from sending in an appeal within the time limit. Each case is considered on its own facts.

Exceptional circumstances

If you seek a review because you think you have exceptional circumstances for not sending your return by the deadline, you will need to give us full details of your circumstances, including dates, of when events happened. When the situation causing the exceptional circumstances ends we expect the Land Transaction to be sent to us immediately, but normally we will make reasonable adjustments on a case by case basis.

Do I need to pay the penalty if I ask for a review?

To avoid any interest which may be charged on the late payment of a penalty you should pay the penalty even if you have asked for a review. If you pay it and the review removes the penalty, we will repay the penalty with interest.

If your review succeeds and you have not paid the penalty, no interest charge arises. But, if the review does not succeed and you have not paid the penalty, you may be charged interest from 30 days after the date of the penalty notice until the day you pay it.

What if HMRC agree you have exceptional circumstances?

If we agree that your circumstances are exceptional, we will write to tell you and cancel the penalty.

If we do not agree you have exceptional circumstances

If we do not agree that your circumstances are exceptional, we will explain why and ask if you accept this. If you still think you have a good reason, you may wish to ask the Tribunal service if they will consider your case at an appeal hearing. They will listen to the arguments of both sides and decide if you have exceptional circumstances.

Tribunal appeals

There are two tiers of Tribunals which deal with tax issues, a first and upper tier. Nearly all tax appeals will be heard by the first-tier Tribunal. Only a small number of very complex cases are likely to be heard by the Upper Tribunal but it will be for the Tribunal President to select such cases.

Tax Tribunals are appointed by the Lord Chancellor, rather like local magistrates, to deal with cases arising in a particular area, or Division. They normally consist of three members with expertise in taxation and they are assisted by a Clerk who is often a solicitor or accountant.

Tribunals usually hold their proceedings in public, but they can suggest that all or part of a hearing should be in private if justice so requires. Likewise, if you want your hearing to be in private, you should ask the Clerk to the Tribunal who will hear your appeal.

How do I appeal?

You can appeal against a penalty, however normally a tribunal would wish to see proof of 'exceptional circumstances' for not sending your return on time before it would accept your appeal against a penalty. You should read the guidelines on what we agree are exceptional circumstances before you make an appeal.

If an internal review has been requested, an appeal to the tribunal cannot be made until that review has ended. Internal review, however, will give an opportunity for customers to better understand HMRC's case or indeed for either party to reflect and not pursue the case.

In the past you had to notify HMRC of intentions to apply to a Tribunal. You must now apply directly to the Ministry of Justice to see if they will list your case for hearing by a Tribunal. They will notify where the hearing will be held and other details you need to know.

Further details

If you need more details about Tribunals, these can be found at www.tribunals.gov.uk

Do I need to pay the penalty if I ask for a Tribunal hearing?

To avoid any interest which may be charged on the late payment of a penalty you should pay the penalty even if you have asked for a Tribunal hearing. If you pay it and the Tribunal hearing cancels the penalty, we will repay the penalty with interest.

If your review succeeds and you have not paid the penalty, no interest charge arises. But, if the review does not succeed and you have not paid the penalty, you may be charged interest from 30 days after the date of the penalty notice until the day you pay it.

Reasons for not meeting the deadline

What is a reasonable excuse?

We consider each case and each excuse on its own merits. In our view, you only have a reasonable excuse where some exceptional event, beyond your control, has prevented you sending back your completed Land Transaction return to us, or making other arrangements to do this by the deadline.

If you disagree with our view of what is a reasonable excuse then you can ask for a review or appeal direct to the Tribunal. When the circumstances causing the reasonable excuse cease the position must be remedied immediately.

Lost or delayed in the post, you should allow sufficient time for your Land Transaction return to reach us by the due date. However, where it was posted in good time, and you can provide evidence of posting, we would agree as a reasonable excuse an unforeseen event, which disrupted the normal postal service and led to the loss or delay of your Land Transaction return.

For example:

- fire or flood at the Post Office where the Land Transaction return was handled, or
- prolonged industrial action within the Post Office or other document carrier, which occurred after the Land Transaction return had been posted to us or delivered to the document carrier for transmission to us, or
- serious illness of your adviser. We would agree that serious acute illness, such as a heart attack, stroke, or other life threatening condition that prevented your adviser from controlling his or her business and private affairs is a reasonable excuse
- death of your adviser. We would agree that the death of the adviser dealing with your Land Transaction return is a reasonable excuse.

What is not a reasonable excuse?

It is your responsibility to gather all the necessary information to ensure that your Land Transaction return is completed and sent by the deadline.

We are unlikely to agree you were prevented from sending in your Land Transaction return if you were able to manage the rest of your private or business affairs during the period which you claim to be covered by the reasonable excuse.

For example:

- Land Transaction return is too difficult. We would not agree as a reasonable excuse your opinion that the Land Transaction return is too difficult to complete. If you have difficulties, you should ask for help as early as possible from the Stamp Taxes Helpline on **0845 6030135**, or a tax adviser
- Pressure of work. We would not agree that pressure of work is a reasonable excuse.

- adviser is waiting for payment. We would not agree as a reasonable excuse that the reason for not submitting your Land Transaction return on time is because your adviser is waiting for payment or the SDLT is being paid by another firm of advisers
- waiting for a valuation. We would not agree that waiting for a valuation is a reasonable excuse for not sending your Land Transaction return on time. You should submit one with a best estimate of the valuation
- delay caused by vendor's adviser. If the delay is due to the vendor's adviser, and this means that your adviser is unable to submit the Land Transaction return within 30 days. We would not accept this as a reasonable excuse
- return cannot be signed as you are abroad. We expect you to submit the Land Transaction return within the deadline. Although your adviser cannot sign the Land Transaction return, your Power of Attorney can. They must indicate they are signing in that capacity within box 71, by writing 'Power of Attorney' underneath their signature. (The Deed of Attorney does not need to be submitted with the Land Transaction return.)

Help and advice

You will find your tax affairs easier to manage if you keep them up-to-date. If you have any queries relating to any aspect of Stamp Duty or Stamp Duty Land Tax, please phone the Stamp Taxes Helpline on **0845 6030135**. You can get copies of our leaflets from the Orderline by phoning **0845 302 1472**.

You can also get information by visiting the Stamp Taxes area of the HMRC website, go to **www.hmrc.gov.uk**