

Enquiries under Self Assessment

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Introduction

This leaflet explains what happens at the end of an enquiry into your Self Assessment tax return.

From 1 April 2009 some things have changed.

We now call all new enquiries opened after 1 April 2009 compliance checks. You can find more general information about compliance checks in our factsheet CC/FS1 *General Information*.

You can download this from

www.hmrc.gov.uk/compliance/factsheets.htm

The way we calculate penalties for inaccuracies in returns or documents has also changed. The new penalties will apply to returns or documents relating to tax periods beginning on or after 1 April 2008 but only for returns and documents due to be sent to us on or after 1 April 2009.

If our enquiry or compliance check includes a return or document for a period where we may need to consider charging a new penalty, we will give you a copy of our factsheet CC/FS6 *What happens when we find something wrong*. This explains the new penalty system.

We have given you this leaflet because our enquiry covers a period for which we may need to consider charging you a penalty under the old rules. In general this leaflet concentrates on these rules but some sections such as agreeing an offer and appeals apply equally to both old and new.

You can download our series of factsheets explaining our new powers and penalties from

www.hmrc.gov.uk/compliance/factsheets.htm

Self Assessment enquiries

When we start an enquiry it does not mean that we think you have done anything wrong. We check some tax returns to make sure they are right or if we need further information to understand the figures. We also randomly select tax returns for enquiry to ensure the system is operating fairly.

The enquiry might be concerned with one or more particular aspects of your tax return or the whole of it.

If nothing is wrong, we will not make any amendments to your Self Assessment tax return.

If our enquiry reveals that you made an error which does not result in a penalty, we will:

- tell you in writing that we have completed our enquiries, and
- amend your Self Assessment to the correct figures.

Although you will not be liable to a penalty, we charge interest on any additional tax that may be due. You could also incur a surcharge if you pay late.

If our enquiry reveals that you paid too little tax, or paid it late, as the result of your behaviour, including sending in your tax return late without a reasonable excuse, you may be liable to a penalty.

The behaviours we will take into account are either:

- fraudulent or negligent, or
- careless, deliberate or deliberate and concealed, for the new penalties.

If you claim tax credits and our enquiry shows that your award may have been wrong we will review that award.

We can use formal procedures to close the enquiry and amend your Self Assessment to bring the additional tax into charge on your next Statement of Account. These statements will include:

- interest on the additional tax due from you, and
- any penalties or surcharge that we formally determine are appropriate.

However, where penalties are involved, we will probably ask you to make an offer to pay an amount including interest, and penalties or surcharge, to settle the sum due from you. This leaflet describes the procedures involved.

Do I have to co-operate with your enquiry?

We would welcome your co-operation with our enquiry in establishing the correct tax and National Insurance. The extent to which you co-operate with us and provide us with information is entirely a matter for you. However, in making your decision, you may wish to get help from a professional adviser. If you do, your adviser can accompany you to all meetings held with us. He or she may correspond with us on your behalf.

We make notes of all meetings and can give copies of the notes to you or your adviser if you ask for them.

In calculating the amount of any penalty, we take into account the extent to which you have been helpful and freely and fully volunteered any information about income or gains, which were omitted or understated.

What happens first?

When we are ready to close our enquiries we will normally ask you and your professional adviser, if you have one, to attend a meeting with us.

We will discuss:

- what we have found
- the amount of tax we think you owe, and
- how far we believe the late payment or underpayment of tax is due to a specific behaviour on your part. This could be both fraudulent or negligent conduct and careless, deliberate or deliberate and concealed behaviour if new penalties are involved.

We will listen to any explanations you or your professional adviser give. We will then tell you the maximum amount of penalties we think could be determined under formal procedures and the amount of interest and possibly surcharge that you could pay.

Finally, we will explain that it is normal to ask someone in your position to offer to pay one sum for tax, interest and penalties or surcharge. We will then ask you if you are prepared to make such an offer. If you ask, we will suggest an amount.

How do you work out the figure you think I should offer?

We add together the tax, the interest on that tax, any surcharge and an amount for penalties. We calculate interest from the date the tax should have been paid up to the date you actually paid or will pay it.

How do you work penalties out?

If our check included a return or document for a period where we may need to consider charging a new penalty, we will give you a copy of our factsheet *CC/FS6 What happens when we find something wrong* which will explain how new penalties are calculated.

The guidance in this section relates specifically to penalties for:

- errors in returns for years up to and including 2007-08
- failing to file your return on time for all years.

The penalty figure will be a percentage of the tax underpaid or paid late. In law it could be 100% of that amount, but in practice it is always less than that in an agreed contract settlement.

We start with a penalty figure of 100% and reduce it by an amount which depends on:

- whether you disclose all the details of your tax affairs
- how well you co-operated over the whole period of the enquiry, and
- the seriousness of the offence.

Disclosure - A reduction of up to 20% (30% for full voluntary disclosure where there was no fear of early discovery by us).

If you make a full disclosure at the time we first open the enquiry, you will get a considerable reduction in the amount of the penalty.

If you deny until the last possible moment that anything is wrong, you will get little or no reduction for disclosure.

Between these two extremes a wide variety of circumstances is possible. We will consider how much information you gave, how quickly, and how that contributed towards settling the enquiry.

Co-operation - A reduction of up to 40%.

If you supply information quickly, attend interviews, answer questions honestly and accurately, give all the relevant facts and pay tax on account when it becomes possible to estimate the amount due, you will then get the maximum reduction for co-operation.

If you put off supplying information, give misleading answers to questions, do nothing until we take formal action against you and generally obstruct the progress of the enquiry you will not get any reduction at all.

Between these extremes there is a wide range of possible circumstances and we will look at how well you have co-operated with the enquiry.

Seriousness - A reduction of up to 40%.

Your actions may amount to a premeditated and well-organised fraud or something much less serious. We will take into account what you did, how you did it, how long it went on and the amounts of money involved. The less serious the offence, the bigger the reduction in the penalty.

If, for example, we think that the reduction for disclosure is 15%, for co-operation 30% and for seriousness 20%, the total reduction will be 65%, making the expected penalty 35% (100% minus 65%).

The calculation of what we think you should offer might look like this.

	£
Tax underpaid	10,337
Interest, say	4,165
Penalty at 35%	<u>3,618</u>
Total	18,120

How do we agree the offer?

We will have already agreed the figures for tax, interest and, where appropriate, surcharge leaving only the penalty to be agreed.

You will have the opportunity to draw our attention to any matters affecting the penalty figure, which you think we have not given enough weight to. We will consider the effect of these on the figure we had in mind, and will comment on any figure you might suggest. As a result, we might be able to reach an agreement either straight away or after a few days consideration. If you agree to make an offer, you have to sign a formal letter offering to pay the agreed sum within a stated period and give, or send, that letter to us. If we are happy with it, we will then issue a letter of acceptance.

What happens next?

The exchange of letters amounts to a legal contract between us and we are both bound by its terms. If you pay under the terms of the contract, we cannot use formal proceedings to recover the tax, interest, surcharge or penalties. For this reason, we make sure that the terms of the letter are precise.

When we send you the acceptance letter, it will contain a payment reference number and explain the different payment methods. These include:

- cheque, and
- debit card using our online BillPay service - www.billpayment.co.uk/hmrc

There is a full list of all the payment options on our payments website. The website address is www.hmrc.gov.uk/payinghmrc

When you pay the amount under the terms of the contract, the matter will be at an end. If you do not keep to the terms of the contract, we will charge interest for late payment and we may take Court action to recover the amount due.

We will not take advantage of the fact that a formal closure notice has not been issued. If any additional liabilities, relating to the years covered by the enquiry, come to light at any time after we have accepted your offer, we will not under any circumstances seek to amend your assessment. But we will arrange to recover any such liabilities.

What if I cannot pay?

If you agree the amount to be paid, but cannot pay the full amount straight away, it may be possible to arrange payment by instalments. We will expect you to make as large a down payment as you can and to pay the rest, including an amount for extra interest, by agreed instalments over as short a period as possible.

If we agree that you can pay by instalments we suggest that you set up a Direct Debit payment plan to ensure that you do not miss any of the payments.

You can set up a payment plan by phoning **01274 539665**.

What if I do not make an offer?

If you do not want to make an offer or you make one which we cannot accept, we will regard this as the end of our discussions (unless you seek to reopen them). We will then proceed as follows.

Tax

We will issue a notice of closure for each Self Assessment year that has an open enquiry, which will explain:

- that our enquiries have finished
- what our conclusions are

- the amendments we are making, and
- that for other year's involved we will issue assessments.

The tax due will be shown on your next Statement of Account.

Interest

When the further tax appears on your Statement of Account, interest will automatically be charged and will run from the date that the tax should have been paid until the date you actually pay it.

Surcharges

These will, where appropriate, be imposed automatically when the additional tax liabilities appear on your Statement of Account. However, we do not impose surcharges on any tax on which tax geared penalties are also being charged.

Penalties

We will send you a formal notice showing the amount of penalty that we think is appropriate.

Appeals

When we make a decision that you can appeal against, we will write to you, explain the decision and tell you what you need to do if you disagree. You will usually have three options. Within 30 days you can:

- send new information or arguments to the officer you have been dealing with
- have your case reviewed by a different officer
- have your case heard by an independent tribunal.

You can find further information about this in factsheet HMRC1 *HM Revenue & Customs Decisions - What to do if you disagree*. You can view and download this factsheet from our website at www.hmrc.gov.uk/factsheets/hmrc1.pdf

Further information

If you want to find out more about deadlines, penalties and surcharges go to www.hmrc.gov.uk/sa/dead-pen.htm

We produce a wide range of factsheets and leaflets which you might find useful. These are available at www.hmrc.gov.uk and from any Enquiry Centre. Most are open to the public from 08.30 to 17.00, Monday to Friday. You will find us in *The Phone Book* under *HM Revenue & Customs* and at www.hmrc.gov.uk/local

Your library or Citizens Advice Bureau may also have copies of some of our leaflets, but may not have them all.

Our service commitment to you

For more information about our service commitment go to www.hmrc.gov.uk/about/sc.htm

These notes are for guidance only and reflect the position at the time of writing. They do not affect any right of appeal.

Customer Information Team

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