



**Isle of Man
Government**

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Isle of Man Customs and Excise Compliance Checks –

Penalties for failure to file returns on time – Machine Games Duty

This factsheet contains information about the penalty percentage that we may charge when your Machine Games Duty (MGD) return is more than 12 months late. The penalty rules in this factsheet apply to returns for a period starting on or after 1 February 2013.

This factsheet is one of a series of compliance checks factsheets. Further details can be found at:

<https://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/public-notice/visits-by-customs-and-excise-officers/>

The penalties we've already charged

Because you didn't file your MGD return on time, we've already charged you the following 3 penalties.

An initial penalty of between £100 and £400 on the day after the date your return was due. The amount we've charged will depend on how many returns you've previously filed late.

A 'further penalty' of £300 or 5% of the liability to MGD, (whichever was the higher), after your return was 6 months late.

A second 'further penalty' of £300 or 5% of the liability to MGD, (whichever was the higher), after your return was 12 months late.

When a return hasn't been filed, we can estimate the liability to MGD. If we do this, the penalty charged at 6 months and 12 months will be 5% of the estimated liability.

When the return is filed, the 6 month and 12 month penalties will automatically be re-calculated if the liability in the return is different from our estimate.

When we'll increase the percentage rate of the second further penalty

We'll increase the percentage rate of the second further penalty if, by failing to file your return within 12 months, you:

- withheld information;
- knew that the information would help us to establish the correct liability to MGD.

During our check we'll establish whether you've withheld information and if so, the reason why. We call this reason the 'behaviour'. The different behaviours are explained on page 2 of this factsheet.

When we won't charge you any penalties for failure to file on time

We won't charge you any penalties for failing to file your return on time if you had a reasonable excuse, as long as you then filed your return without delay once the reasonable excuse had ended. A reasonable excuse is something that stopped you from meeting a tax obligation on time, which you took reasonable care to meet. It might be due to circumstances outside your control or a combination of events. Once the reasonable excuse has ended, you must put things right without any unnecessary delay.

Whether you have a reasonable excuse depends upon the particular circumstances in which the failure occurred and your particular circumstances and abilities. This may mean that what is a reasonable excuse for one person may not be a reasonable excuse for someone else. If you think you have a reasonable excuse, please tell us. If we accept that you have a reasonable excuse, we won't charge you a penalty for failure to file on time. If we've already charged a penalty, we'll cancel it.

If there was anything about your health or personal circumstances that made it difficult for you to file your returns on time, please tell the officer that is carrying out the check. Telling them will mean that they can take this into account when considering whether you had a reasonable excuse.

Why you should tell us about information that you've withheld before we find out about it

If you know that you've withheld information, you should tell us straightaway. If you tell us about information that you've withheld before you had any reason to believe that we were about to find out about it, we call this an 'unprompted disclosure'. If you tell us about information that you've withheld at any other time, we call it a 'prompted disclosure'.

The penalty percentage rate for unprompted disclosures will be smaller than for prompted disclosures.

What you can do to reduce any increase to the percentage rate of the second further penalty

We can reduce the amount of any increased second further penalty, depending on our view of how much assistance you gave us. We refer to this assistance as the 'quality of disclosure' or as 'telling, helping and giving'.

Examples of telling, helping and giving include:

- telling us about, or agreeing with us that you withheld information;
- telling us everything you can about the information that was withheld as soon as you can;
- helping us to work out any liability to MGD by using your own records;
- helping us to understand your figures or records;
- telling and helping us by answering our questions in full;
- giving us access to your records by sending us your return and any other documents we need to accurately work out the correct liability to MGD.

Unless you've taken significant time to tell us about the information you withheld and we agree that you've done everything you can to assist us, we'll give you the maximum reduction that we can when we work out the higher second further penalty. The amount of telling, helping and giving that will be needed depends on the circumstances in which the information was withheld. If we do not need any extra assistance from you, we'll give you the full reduction that the law allows for telling, helping and giving.

Letting us know about any special circumstances

If there are any special circumstances that you believe the officer dealing with the check should take into consideration when calculating any of the penalties for failing to file the return on time, you should let them know straightaway.

How we work out the amount of any increased second further penalty percentage rate

There are 8 stages in working out the amount of the increased penalty percentage. Each stage is explained in more detail below.

1. Working out the liability to Machine Games Duty (MGD)

The penalty is a percentage of the duty that should have been shown on the return. The officer dealing with the check will explain how this is worked out.

2. Determining our view of the 'behaviour'

When a return is more than 12 months late we need to find out the reason why. We refer to this reason as the 'behaviour'. The type of behaviour will determine whether we increase the percentage rate of the second further penalty.

There are 3 types of behaviour.

Non-deliberate

This is where you didn't know that, by failing to file the return on time, information was being withheld from us that would help us to establish the correct liability to MGD. In such cases, we won't increase the percentage rate of the second further penalty.

Deliberate

This is where you knew that, by failing to file the return on time, information was being withheld that would help us to establish the correct liability to MGD.

Deliberate and concealed

This is where you knew that information was being withheld that would help us to establish the correct liability to MGD and you took additional steps to conceal this. This is the most serious type of failure and attracts the highest penalties.

3. Deciding whether there was an unprompted or prompted disclosure

This determines the minimum penalty percentage that we can charge. This is explained in more detail in the section of this factsheet titled 'Why you should tell us about information that you've withheld before we find out about it'.

4. Deciding the range that the increased penalty percentage rate falls within

The increased penalty percentage rate depends on whether the behaviour was 'deliberate' or 'deliberate and concealed' and on whether the disclosure was 'prompted' or 'unprompted'. The following table shows the penalty ranges.

Type of behaviour	Unprompted disclosure	Prompted disclosure
Non-deliberate	No penalty increase	No penalty increase
Deliberate	20% to 70%	35% to 70%
Deliberate and concealed	30% to 100%	50% to 100%

5. Working out the reductions for the quality of disclosure (also referred to as 'telling, helping and giving')

The quality of disclosure (telling, helping and giving), determines where the penalty will fall within the penalty range. The reduction we give depends on how much assistance you give us. For:

- telling – we give up to 30%;
- helping – we give up to 40%;
- giving access to records – we give up to 30%.

When we work out the quality of disclosure, we'll also consider how long it's taken you to tell us about the information you withheld. If it's taken you a long time, (such as 3 years or more), to tell us about this information, we'll usually restrict the maximum reduction we give for the quality of disclosure to 10 percentage points above the minimum of the penalty range. This means you will not benefit from the lowest penalty percentage that's normally available.

6. Working out the increase penalty percentage rate

The increased penalty percentage rate is determined by the penalty range and the reduction for the quality of disclosure.

Example	
We established that a person registered for MGD held a one-off gaming convention on their premises, which resulted in unusually high profits from gaming machines.	
When challenged, they told us about the convention, sent us the return and admitted that they had deliberately withheld the information by failing to file the return on time. This was a prompted disclosure.	
The penalty range for deliberate behaviour with a prompted disclosure is 35% to 70% of the liability to MGD.	
The reduction for quality of disclosure (telling, helping and giving) was 100%.	
Steps	Calculation example
To work out the penalty percentage rate, we first work out the difference between the minimum and maximum penalty percentages.	70% minus 35% = 35
We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.	35 x 100% = 35%
We then deduct the percentage reduction from the maximum penalty percentage we can charge.	70% minus 35% = 35%
This gives us the penalty percentage rate.	35%

7. Working out the amount of the second further penalty

To work out the amount of the second further penalty, we multiply the liability to MGD by the increased penalty percentage rate. See the example above.

The liability to MGD is £10,000 and the increased penalty percentage rate is 35%. This means that the amount of the second further penalty is £3,500.

We then take into account the penalty already charged, which is £500 (£10,000 x 5%). The balance to be charged is £3,000.

8. Considering other reductions

After calculating the amount of the penalty, we take into account any other reductions that are necessary. For example, where we've already charged another penalty or surcharge on the same duty. This then gives the amount of penalty that we'll charge.

How we tell you if we increase the percentage rate of the second further penalty

We'll write to tell you how much the increased second further penalty is and how we've worked it out. If there's anything about the penalty that you do not agree, or if you think there is any information that we haven't already taken into account, you should tell us straightaway. After taking account of anything you've told us, we'll send you a further penalty assessment notice.

What happens if you've deliberately done something wrong

We may carry out a criminal investigation with a view to prosecution, if you:

- give us information that you know to be untrue, whether verbally or in a document;
- dishonestly misrepresent your liability to MGD.

What to do if you disagree

If there's something that you do not agree with, you should tell us.

If we make a decision that you can appeal against we'll write to you to explain the decision and tell you what to do if you disagree. You'll usually have 3 options. Within 30 days you can:

- send new information to the officer you've been dealing with and ask them to take it into account;
- have your case reviewed by an officer who hasn't been involved in the matter;
- arrange for your appeal to be heard by an independent tribunal, who will decide the matter.

You can find more information about appeals and reviews in:

- [Factsheet 1](#) – Compliance checks – IOM C and E decisions – what to do if you disagree
- [Notice Appeal 1 MAN](#)

Your rights when we're considering penalties

The European Convention on Human Rights gives you certain important rights. If we're considering penalties, we'll tell you. We'll also tell you that these rights apply and ask you to confirm that you understand them. These rights are that:

- if we ask you any questions to help us decide whether to charge you a penalty, you have the right not to answer them. The amount of help you give us when we're considering penalties is entirely a matter for you to decide;
- when deciding whether to answer our questions, you may want to get advice from a professional adviser – particularly if you do not already have one;
- if you disagree with us about the tax or any penalties we believe are due, you can appeal. If you appeal about both tax and penalties, you have the right to ask for both appeals to be considered together;
- you have the right to apply for funded legal assistance for dealing with any appeal against certain penalties;
- you're entitled to have the matter of penalties dealt with without unreasonable delay.

You can find full details about these rights in [Factsheet 9 MAN](#) – The Human Rights Act and penalties.

Privacy Notice

The Treasury collects information about you in order to administer taxation and carry out other functions for which it is responsible (e.g. National Insurance, customs and excise duties, property rates, social security benefits, state pensions and legal aid etc.), and for the detection and prevention of crime.

Whilst that information will primarily be provided by you, where the law allows we may also get information about you from other organisations, or give information about you to them. This may be to check the accuracy of the information provided, prevent or detect crime or protect public funds in other ways. These organisations may include other government departments, the police and other agencies.

To find out more about how we collect and use personal information, contact any of our offices or visit our website at: <https://www.gov.im/about-the-government/departments/the-treasury/privacy-notice/>