

Isle of Man Customs and Excise

Compliance Checks – Suspending penalties for careless inaccuracies in returns or documents

This factsheet tells you what happens when we are considering whether to suspend penalties for careless inaccuracies in returns or documents.

This factsheet is one of a series. For the full list of factsheets in the Compliance checks series, and factsheet IOMC&E1 *IOM Customs & Excise Decisions – what to do if you disagree*, go to <http://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/public-notices/visits-by-customs-and-excise-officers/>

When we can suspend a penalty

We can only suspend penalties for careless inaccuracies in returns or documents if we are able to set at least one suspension condition that will help you avoid penalties for similar inaccuracies in the future. Each condition must be:

Specific – which means it must be directly related to the cause of the inaccuracy.

Measurable – which means you will need to be able to show us whether you have met the condition.

Achievable – which means you will need to show us that you are able to meet the condition.

Realistic – which means we can realistically expect that you will meet the condition.

Time bound – which means you must meet the condition by the end of the suspension period.

We call these SMART conditions.

The SMART conditions are in addition to the condition that you must file all your returns on time during the suspension period.

If we suspend a penalty, you will not have to pay it if you can satisfy us that you have:

- met all the conditions at the end of the suspension period, and
- not incurred another penalty within the suspension period.

When we cannot or will not suspend a penalty

We cannot suspend penalties for deliberate or deliberate and concealed inaccuracies.

We will not suspend penalties for careless inaccuracies if:

- we are not able to set any SMART conditions, or
- we believe that it is unlikely you will comply with any of the suspension conditions, or
- the penalty is a result of an attempt to use an avoidance scheme.

This factsheet relates to compliance checks into any of the following:

Air Passenger Duty
Alcoholic Liquor Duties
Excise Duties (Holding and Movements)
Gambling Duty
Hydrocarbon Oils Duty
Lottery Duty
Machine Games Duty
VAT

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

If we decide not to suspend a penalty, you can appeal against our decision. For more information about this, please read the section 'What to do if you disagree' below.

What you need to do before we suspend a penalty

Before we suspend a penalty, you will need to agree conditions with us. It is important that:

- you understand the conditions
- you can meet the conditions
- the conditions reflect the size of the inaccuracy
- the conditions take your circumstances into account
- it will be clear to both you and us when you have met the conditions.

As well as agreeing specific SMART conditions to help you avoid similar inaccuracies in the future, you will also have to agree to file all your returns on time during the suspension period.

Please think carefully about whether you can meet the conditions before you agree them. If you have an adviser, you can also ask them for help. After you have agreed conditions with us, we will send you a notice of suspension. This will show the conditions and the suspension period.

How we determine the length of the suspension period

The length of the suspension period will depend on how long it will take you to meet the specific suspension conditions. The maximum suspension period allowed by law is two years but normally it would be less than this.

What you need to do during the suspension period

During the suspension period, you must meet the conditions that you have agreed to. You must also make sure that you do not send any other inaccurate returns during the period, as this may make you liable to another inaccuracy penalty. **If you incur another inaccuracy penalty during the suspension period, you will have to pay the previously suspended penalty.**

What happens at the end of the suspension period

At the end of the suspension period, we will ask you whether you have met the conditions. We may need to check your records and ask for other evidence, to make sure that you have met them. If we agree that you have met the conditions, we will cancel the penalty. If we decide that you have not met the conditions, you will have to pay the penalty. You cannot appeal against this decision. However, you can apply for judicial review of our decision. But this can be expensive, so you should seek legal advice first.

What to do if you disagree

If you disagree with anything during the check please tell the officer dealing with the check what you disagree with and why.

You can appeal against most of the decisions that we make. We will write and tell you when we make a decision that you can appeal against. We will also explain the decision and tell you what 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 an IOM Customs & Excise officer who has not been involved in the check
- arrange for your case to be heard by an independent tribunal, who will decide the matter.

You can find more about this in factsheet IOMC&E1 *IOM Customs & Excise decisions – what to do if you disagree*. Details of how you can get a copy are on page 1.