
PRACTICE NOTE

PN 194/16

Date: 21 March 2016

INCORRECT RETURNS – CHANGES TO PENALTIES

INTRODUCTION

From 6 October 2016 the Assessor will change the current practice regarding the imposition of penalties where an incorrect tax return has been submitted. Full details can be found in Guidance Note GN 34 "Incorrect Tax Returns". The current version of GN 34 and the updated version that will apply from 6 October 2016 are now available on the Division's [website](#).

Currently, a taxpayer who voluntarily discloses tax irregularities which affect a number of years can have their penalty reduced to zero subject to a number of conditions. From 6 October this year the Assessor will begin to charge penalties in such cases. The updated version of GN 34 explains the circumstances in which a taxpayer who makes a mistake in their tax return and voluntarily discloses their error as soon as possible will still be able to have their penalty reduced to zero.

Additionally, from 6 October 2016 the Assessor will limit the amount by which penalties can be reduced for most other cases of negligence. Again, full details can be found in the updated version of GN 34.

LEGISLATION

The maximum level of penalty that can be charged by the Assessor in cases where tax cannot be charged as a result of the submission of an incorrect tax return is set out in section 111 of the Income Tax Act 1970.

Where the return is incorrect as a result of the taxpayer's neglect, the maximum penalty is 100% of the additional tax due. Where the return is incorrect as a result of the taxpayer's fraud, the maximum penalty is 200% of the additional tax due. Additionally, in both instances, the taxpayer is charged interest from the date on which the tax should have been paid, had a correct return been made at the correct time.

Section 111 also gives the Assessor absolute discretion to vary the level of the penalty to suit the facts of each case. GN 34 provides guidance on how that discretion is exercised in practice and this is to change from 6 October 2016.

TRANSITION

Voluntary disclosures received and investigation cases concluded prior to 6 October 2016 will still be dealt with in accordance with the existing guidance provided that the additional income tax, interest and penalties have been agreed and paid in full by that date. All other voluntary disclosures and investigation cases will be subject to new increased penalties.

The table below sets out the current position and the new position from 6 October 2016. The penalty figures are shown as a percentage of the additional tax due.

Circumstances	Maximum penalty	Penalty to 5 October 2016	Penalty from 6 October 2016
Voluntary disclosure – simple	100%	0%	0%
Voluntary disclosure - complex	100%	0%	10% -15%
Voluntary disclosure - incomplete	100%	5% - 15%	15% - 25%
Investigation – full co-operation	100%	15% - 30%	25% - 35%
Investigation – limited co-operation	100%	20% - 40%	35% - 50%
Investigation – little or no co-operation	100%	Up to 100%	Up to 100%
Investigation – fraud	200%	Up to 200%	Up to 200%

Nicola Guffogg
Assessor of Income Tax

This Practice Note is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person's right of appeal on points concerning their own liability to income tax.

Comments and suggestions for improvements of issued Practice Notes and suggestions for future Practice Notes are always welcome.