

Isle of Man Customs and Excise Compliance Checks – Penalties for not telling us about an under-assessment

This factsheet contains information about the penalties we may charge if there has been an under-assessment and you have not told us about it within 30 days.

This factsheet is one of a series. For the full list of factsheets in the Compliance checks series, go to <http://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/public-notices/visits-by-customs-and-excise-officers/>

What an under-assessment is

If you do not send us a completed tax return we may send you an assessment showing the tax we believe is due. If the amount of tax we have assessed is less than the amount that should have been shown on your return, our assessment is an 'under-assessment' because it is too low.

When may we charge a penalty for an under-assessment

We may charge you a penalty for an under-assessment if we sent you an assessment that was too low, and you did not tell us that it was too low within 30 days of the date of the assessment.

If you ask someone else, such as an employee or adviser, to do something on your behalf, you must do as much as you can to make sure they tell us about any under-assessment within 30 days. If you do not do this, we may charge you a penalty.

When we will not charge a penalty for an under-assessment

We will **not** charge a penalty for an under-assessment if you took reasonable steps to tell us that the assessment was too low **within 30 days** of the date of the assessment, for example by:

- sending us the completed return
- contacting us to tell us that the assessment is too low
- consulting a tax adviser to that they can let us know that the assessment is too low.

What 'reasonable steps' are depends on each person's circumstances.

Disclosing an under-assessment before we find it

If you tell us about an under-assessment before you have any reason to believe that we have found it or were about to find it, we call this an 'unprompted disclosure'. If you tell us about an under-assessment at any other time, we call it a 'prompted disclosure'.

The minimum penalty for an unprompted disclosure is lower than the minimum penalty for a prompted one.

If you need help

If you have any questions, please contact us. You can also look for the information you need on our website, <http://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/>

Authorising a representative

You can authorise someone to deal with us on your behalf. This includes professional tax advisers, friends or relatives. They can deal with us just for a compliance check, or more permanently for your day to day tax affairs.

If you want to authorise a professional tax adviser, they will be able to give you a form to complete and send to us. If you want to authorise someone other than a professional tax adviser, you will need to write to tell us who you want to authorise and what you want them to deal with for you.

What if you are unhappy with our service

If you are unhappy with our service, please tell the person or office you have been dealing with. They will try to put things right. If you are still unhappy, they will tell you how to complain.

What you can do to reduce any penalty we may charge

We can reduce the amount of any penalty we charge 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 or agreeing with us that there is an under-assessment
- telling us everything you can about the extent of the under-assessment as soon as you can
- helping us by using your own records to work out the amount under-assessed
- helping us to understand your figures or records
- giving us your return or other documents that help us to work out the amount under-assessed

Telling, helping and giving could be covered just by giving us your return showing the correct figures.

We will reduce the penalty by the maximum amount possible if you:

- tell us everything you can about an under-assessment as soon as you know about it or you believe we are about to find it
- do everything you can to help us correct it

If you delay telling us, you may still be entitled to a reduction but it will be smaller.

If we do not need any extra assistance from you, we will give you the full reduction that the law allows for telling, helping and giving.

Customers with particular needs

If there was anything about your health or personal circumstances that made it difficult for you to tell us about an under-assessment, please tell the officer that is carrying out the check. Telling them will mean that they can take this into account when considering penalties.

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 the penalty, you should let them know straightaway.

How we work out the amount of a penalty

There are six stages in working out the amount of any penalty. Each stage is explained in more detail below.

1. Calculating the amount of the potential lost revenue (PLR)

The penalty is a percentage of what we call the 'potential lost revenue'. Potential lost revenue (PLR) is the difference between the tax assessed and the correct amount of tax.

2. Deciding whether the disclosure was unprompted or prompted

This determines the minimum penalty percentage that we can charge.

For an under-assessment, the maximum penalty percentage is 30%. For an **unprompted** disclosure, the minimum penalty percentage is 0%. For a **prompted** disclosure, the minimum penalty percentage is 15%. This gives a range of 0% to 30% as shown below.

Unprompted disclosure	Prompted disclosure
0% to 30%	15% to 30%

What we mean by unprompted and prompted is explained in more detail in the section of this factsheet titled 'Disclosing an under-assessment before we find it'.

3. 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%.

4. Calculating the penalty percentage rate

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

Example

We sent a person a VAT assessment because they had not filed their VAT return on time. Three months later we started a compliance check to establish whether our assessment was correct. They did not send us the information we had asked for until we used our information powers to get their business records. They then made a disclosure of an under-assessment by sending us their VAT return. This was a prompted disclosure.

The penalty range for a prompted disclosure is 15% to 30%.

The reduction for quality of disclosure (telling, helping and giving) was 70%.

To work out the penalty percentage rate, we first calculate the difference between the minimum and maximum penalty percentages.	$30\% \text{ minus } 15\% = 15$
We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.	$15 \times 70\% = 10.5\%$
We then deduct the percentage reduction from the maximum penalty percentage we can charge.	$30\% \text{ minus } 10.5\% = 19.5\%$
This gives us the penalty percentage rate	19.5%

5. Considering other reductions

Before calculating the amount of the penalty, we take into account any other reductions that are necessary. For example, where we have already charged another penalty or surcharge on the same tax or duty.

6. Calculating the amount of the penalty

To calculate the amount of the penalty, we multiply the potential lost revenue (PLR) by the penalty percentage rate. In the example above, the PLR is £3,000. This means the penalty is £585 (£3,000 x 19.5% = £585).

How we will tell you about a penalty

We will write to you to tell you how much the penalty is and how we have worked it out. If there is anything about the penalty that you do not agree with, or if you think there is any information we have not already taken into account, you should tell us straightaway.

After taking account of anything you have told us, we will then send you a penalty assessment notice.

What to do if you disagree

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.

You can find more information 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.

Your rights when we are considering penalties

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

- 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 that you give us when we are 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 are entitled to have the matter of penalties dealt with without unreasonable delay.

You can find more information about these rights in factsheet 9 (MAN)
Compliance Checks – The Human Rights Act and Penalties.

What happens if you give us information that you know to be untrue

If you:

- give us information that you know to be untrue, whether verbally or in a document, or
- dishonestly misrepresent your liability to tax or claim payments to which you are not entitled

we may carry out a criminal investigation with a view to prosecution.