

Treasury
Customs and Excise Division

Notice 160 MAN

Compliance Checks into Indirect Tax Matters



December 2011
(updated to 30 April 2018)



Isle of Man
Government

Reilys Ellan Vannin

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1. **Compliance Checks into Indirect Tax Matters**

This Notice explains what happens during a check into indirect tax matters if we suspect conduct involving dishonesty or deliberate behaviour.

1.1 **Introduction**

We make checks into tax matters for a number of different reasons. This notice deals only with cases where we have reason to believe dishonest conduct or deliberate behaviour has occurred. Our practices in relation to other enquiries is set out in a series of factsheets. This notice covers all indirect taxes other than customs duties and import VAT.

2. **How does this affect me?**

If we identify irregularities due to conduct involving dishonesty, a civil evasion penalty will normally be applied. If we identify irregularities due to deliberate behaviour we will normally apply a deliberate penalty or a deliberate and concealed penalty.

We will normally ask you and your professional adviser, if you have one, to attend a meeting with us. Please tell us in advance if you need an interpreter or have any special needs so that we can take these into account when we prepare for the meeting.

We will tell you:

- the check is not being conducted with a view to prosecution in relation to the matters that are the subject of our check;
- the matters that are the subject of the check. This means the behaviour(s) and period(s) under enquiry, rather than the specific information we hold that gives rise to our suspicion of dishonesty or deliberate behaviour.

You will have an opportunity to disclose any irregularities or matters in relation to your tax affairs.

We will:

- listen to any explanations that you or your professional advisers give and,
- keep an open mind to the possibility that there may be an innocent explanation for the suspected irregularities.

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

If you wish to disclose irregularities or matters in relation to your tax affairs in areas that are not the subject of our check we may not be able to deal with these as part of the check. However we will consider any disclosures that you make, or additional matters that we may uncover during the check, to determine how they should be treated. Any irregularities outside of the matters being checked may be investigated with a view to prosecution if appropriate.

We expect you to be truthful, to tell us all relevant facts and to co-operate fully in putting your tax affairs in order. If you are unsure whether particular facts are relevant, you should tell us anyway.

It may be necessary to make further checks. If this happens, we will explain to you the compliance checks process and the steps that need to be taken to establish the relevant facts. It may be necessary to use our statutory information powers, including contacting third parties.

We will invite you to make payments on account towards any tax arrears, both at the initial meeting and throughout the check. This will reduce any interest charges.

If, as a result of the check, we believe that the tax arrears are due to conduct involving dishonesty or deliberate behaviour on your part we will consider whether you should pay a penalty.

2.1 **Do I have to co-operate with your check?**

The extent to which you co-operate with us and provide us with information is entirely a matter for you. 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 would welcome your co-operation with the check and in establishing the correct amount of tax due. Such co-operation can significantly reduce the amount of any penalties due.

Please also read Factsheet 9 MAN - Compliance Checks - Human Rights Act which tells you about your rights under the European Convention on Human Rights when we are considering penalties. Factsheet 9 MAN can be found on our website at <https://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/public-notices/visits-by-customs-and-excise-officers/>

2.2 **How do you work penalties out?**

The penalty is calculated as a percentage of the tax loss. If there is a potential tax loss the penalty is a percentage of the potential loss.

Which penalty applies depends upon the date the irregularity occurred.

For VAT irregularities involving dishonest conduct that relates to returns or documents due to be sent to us **before** 1 April 2009 irrespective of the date the accounting period commences, or if the accounting period commences before 1 April 2008 irrespective of the date the return is due to be sent to us, a civil evasion penalty will normally be applied.

For Indirect Tax irregularities other than VAT due to conduct involving dishonesty, that relates to returns or documents due to be sent to us **before** 1 April 2010 irrespective of the date the accounting period commences, or if the accounting period commences before 1 April 2009 irrespective of the date the return is due to be sent to us, a civil evasion penalty will normally be applied.

A civil evasion penalty starts at 100% of the tax evaded.

If the irregularity occurs outside these dates, penalties other than a civil evasion penalty may apply. For instance VAT inaccuracies or failures to notify Customs and Excise of an under assessment of VAT, where the accounting period commences on or after 1 April 2008 and the return is due on or after 1 April 2009, will be subject to a penalty for inaccuracy. Indirect Tax inaccuracies or failures to notify an under assessment for Indirect Tax other than VAT, where the accounting period commences on or after 1 April 2009 and where a return is due on or after 1 April 2010, would be subject to a penalty for inaccuracy.

If Customs and Excise have not been notified at the correct time about certain changes that arise on or after 1 April 2010 which may affect your liability to tax, including a failure to notify liability to be registered for tax, a penalty for failure to notify may apply.

A VAT & Excise wrongdoing penalty may apply for certain VAT (unauthorised issue of an invoice showing VAT) and Excise wrongdoings which take place on or after 1 April 2010. Definitions of what constitutes a VAT or Excise wrongdoing can be found on our website, <https://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/public-notice/visits-by-customs-and-excise-officers/>.

Further information about these penalties can be found in factsheets CC/FS7 MAN (Penalties for errors in returns and documents), Factsheet 11 MAN (Penalties for failure to notify), and Factsheet 12 MAN (Penalties for VAT and Excise Wrongdoings), which can be found on our website, <https://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/public-notice/visits-by-customs-and-excise-officers/>

Where an irregularity is not within the provisions of the penalty for inaccuracies, the failure to notify penalty or the VAT and Excise Wrongdoings penalty, a civil evasion penalty may still apply.

2.3 When do the new penalties take effect?

Tax, duty or levy	Take effect from 1 April 2009 Inaccuracy penalties Schedule 24 Finance Act 2007	Take effect from 1 April 2010 Inaccuracy penalties Schedule 24 FA 2007 (as amended by Schedule 40 Finance Act 2008)	Take effect from 1 April 2010 Failure to notify penalty Schedule 41 Finance Act 2008	Take effect from 1 April 2010 VAT and Excise wrongdoing penalties Schedule 41 Finance Act 2008
Air Passenger Duty		X	X	
Alcoholic Liquor Duties		X	X	X
Excise Duties		X	X	X
General Betting Duty		X	X	
Hydrocarbon Oils Duties		X	X	X

Lottery Duty		X	X	
Online Gambling Duty		X	X	
Pool Betting Duty		X	X	
Tobacco Products Duty		X	X	X
VAT	X		X	X

2.4 How can penalties be reduced?

It is for you to decide whether or not to co-operate with our check, but if you do you should be truthful as making a statement to us you know to be false, may render you liable to prosecution.

If you choose to co-operate and disclose details of your true liability then you can significantly reduce the amount of any penalties due.

You should tell us about anything you think is relevant when we are working out the level of the penalty. At the end of the check we will take into account the extent of your co-operation.

2.5 Reductions under Civil Evasion Penalty Rules

The maximum penalty of 100% tax evaded will normally be reduced as follows:

- up to 40% - early and truthful explanation as to why the arrears arose and the true extent of them
- up to 40% - fully embracing and meeting responsibilities under this procedure by, for example, supplying information promptly, disclosure and quantification of irregularities, attending meetings and answering questions.

In most cases, therefore the maximum reduction obtainable will be 80% of the tax on which penalties are chargeable. In exceptional circumstances however, consideration will be given to a further reduction, for example, where you have made a full and unprompted voluntary disclosure.

2.6 What happens after your check?

Having considered all the facts and evidence gathered during the course of the check we will make a decision on whether or not any penalties are due and, if so, how much that penalty will be. The penalty assessment will be in addition to any tax that may also be due.

2.7 What if I cannot pay?

If you agree the amounts of assessment and penalty to be paid, but cannot pay the full amounts straight away, it may be possible to arrange payment by instalments.

You will be given the address of our debt management section with whom you should correspond.

2.8 **Can I appeal against your decision?**

If you disagree with our decision to charge you a penalty or the amount of the penalty we have charged, you can:

- have your case reviewed by an officer not previously involved, or
- you can have your case heard by an independent VAT and Duties Tribunal.

If you opt to have your case reviewed you will still be able to appeal to the Tribunal if you disagree with the outcome.

If you want a review you should write to us within 30 days of the date the penalty notice was sent to you, giving reasons why you disagree with our decision. You do not have to write to us yourself. An accountant or adviser can do this on your behalf.

You can find further information about appeals and reviews on our website.

You can find out more about tribunals on the [Tribunals Service website](#) or you can phone 0300 123 1024.

3. **Your rights under our service commitment to you**

3.1 **During our checks**

We will always be courteous, fair and professional. If you or your professional adviser writes to us we will aim to respond to the questions or issues you raise within our published service standards. This includes matters such as your legal rights and obligations under the law.

We will undertake any further enquiries promptly and keep you informed as to what we expect from you.

3.2 **Your costs**

You have to pay for any costs that you incur in dealing with our check, including the fees of an accountant or other professional adviser. We know that dealing with our checks can cost you time and money, so we will make sure that our checks are reasonable and necessary to your case. We will close our checks as soon as we are satisfied that your tax affairs in relation to the matters under investigation are in order or settled.

4. **Glossary**

Returns

All Indirect Tax declarations, statements, disclosures, tax returns or claims etc, are

referred to as “returns”.

Indirect Taxes

VAT, all customs duties and excise duties including those applicable to alcohol, tobacco, gambling and oils, Air Passenger Duty and any other indirect taxes matters for which responsibility is laid to Customs and Excise.

Tax Assessment

A legal method of establishing a debt due to the Crown by a trader who has made an error, an understatement or an overclaim of tax.

Do you have any comments?

We would be pleased to receive any comments or suggestions you may have about this notice. Please write to:

Isle of Man Customs and Excise
PO Box 6
Custom House
North Quay
Douglas
Isle of Man
IM99 1AG

Email: customs@gov.im

Putting things right

If you are unhappy with our service, please contact the person you have been dealing with. They will try to put things right. If you are still unhappy, you can complain in writing to the Collector, Isle of Man Customs and Excise, PO Box 6, Custom House, North Quay, Douglas, Isle of Man, IM99 1AG.

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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.

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Published by:
Isle of Man Customs & Excise Division
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Custom House
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Isle of Man
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Telephone: (01624) 648100

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