

Isle of Man Customs and Excise

Compliance Checks – Penalties for transactions connected with VAT fraud

This factsheet tells you about the penalties we may charge if you knew or should have known that you participated in one or more transactions connected with a VAT fraud by a defaulting trader. A defaulting trader is a business, often known as a “missing trader” that has fraudulently failed to correctly account for VAT that it has charged on its supplies to customers.

The penalties in this factsheet apply to businesses that facilitate missing trader fraud, such as missing trader intra-community (MTIC) fraud.

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/>

When we may charge you a penalty for transactions connected with MTIC VAT fraud

We may charge you a penalty when you meet all of the following 3 conditions:

- you’ve participated in one or more transactions that were connected with VAT fraud
- you knew or should have known that these transactions were connected with VAT fraud
- we’ve told you that you’re not entitled to rely on a “VAT right” because “knowledge principle” applies – “VAT right” and “knowledge principle” are explained below.

A VAT right includes the right to deduct input tax, the right to apply a zero rate to international supplies, and any other right connected with VAT relating to a supply.

We can make a decision under what is known as the knowledge principle that you are not entitled to rely on a VAT right. We can make this decision when you knew or should have known that you participated in one or more transactions connected with VAT fraud.

As a result of any decision we make under the knowledge principle, we may do either or both of the following:

- deny you the deduction of input tax or another VAT right
- assess any VAT that may be due.

Our right to apply the knowledge principle has been established through the European courts that includes the judgements at the Court of Justice of the European Union for the cases of *Axel Kittel & Recolta Recycling* (c-439/04 and c-440/04) and *Mecsek-Gabona* (c-273/11).

Any penalty will be charged under section 69C of the Value Added Tax Act 1996.

When we will not charge you a penalty

We will not charge you a penalty if either:

- you have already been charged a penalty for an inaccuracy involving the same transactions under Schedule 24 of the Finance Act 2007 (as applied)
- you have been convicted of a criminal offence involving the same transactions.

What you can do to avoid a penalty in future

You can avoid a penalty by not becoming involved in any transactions connected with VAT fraud.

You can find out how to spot missing trader fraud in the guide ‘VAT: missing trader fraud’ – available on the gov.uk website –

www.gov.uk and search for 'missing trader fraud'.

How we work out the amount of a penalty

The penalty is based on the amount of VAT that we've denied or assessed under the knowledge principle which is explained above in the section 'When we may charge you a penalty'.

Working out the amount of the penalty

To work out the amount of the penalty, we multiply the amount of VAT denied or assessed under the knowledge principle by the percentage rate of 30%. The penalty rate for this type of penalty is fixed at 30%.

For example, if we deny £1,000 input tax under the knowledge principle based on the 'Kittel' Judgement, then the penalty would be £300.

Mitigation

We may reduce the penalty when there are mitigating circumstances. These reductions only apply where you can satisfy us that you've not been using your VAT registration number primarily to participate in VAT fraud.

You are not entitled to any reductions if over 50% of the value of the transactions in any of the VAT periods under consideration are artificially contrived or connected with fraud and you knew or should have known about this.

The amount by which a penalty may be mitigated will depend on the facts and circumstances of each case.

In exceptional circumstances we can also allow mitigation where you have acted in good faith or where little or no tax has been lost.

How we tell you about a penalty

We'll write to tell you how much the penalty is and which transactions it relates to. The penalty assessment notice will normally be included in the same document as the notice of the amount of VAT denied or assessed, but we may also send it separately.

If you do not agree with the penalty or the amount of the penalty, you can appeal. There's more information about your appeal rights later in this factsheet.

Company officer liability

A company officer may be liable to pay some or all of the company's penalty when:

- the company which they were acting for at the time of the transactions is liable to a penalty because it knew or should have known that its transactions were connected with VAT fraud
- the actions of the company, which give rise to that penalty, were attributable to the company officer, for example where the officer knew or should have known that the company's transactions were connected with fraud.

If the company pays the penalty, we will not ask the individual officers to pay.

A company officer is a director, shadow director, company secretary or manager of a company, a member of a limited liability partnership or where the company is not a body corporate or LLP, any other person managing or claiming to manage any of the company's affairs.

Where more than one company officer is liable to pay some or all of the penalty, then we may divide the penalty between the company officers. We'll take into account the extent of each officer's involvement in the relevant transactions when we decide how to divide the penalty.

Informing company officers of their liability for a penalty

Before we issue a liability notice to a company officer we'll:

- tell them that we're considering issuing a penalty
- give them the opportunity to make representations about whether a liability notice should be issued to them or about the portion of the penalty that we believe they'll need to pay.

Where the penalty is attributable to a company officer and we've sent them a liability notice, the company officer must **pay the amount shown in the notice within 30 days**.

If we send you, as the company officer, a liability notice and you do not agree that you're liable to pay the penalty or the amount attributed to you, you can appeal. There's more information about your appeal rights later in this factsheet.

Naming those that have participated in VAT fraud

We can publish certain information about those we consider are participating in VAT fraud. Under certain circumstances we can publish:

- the names of businesses that knew or should have known that their transactions were connected with VAT fraud, where the amount of VAT denied or assessed, upon which the penalty or penalties are chargeable exceeds £50,000
- the name of company officers where the amount of the penalty that's attributable to them exceeds £25,000

We'll only name businesses and officers in what we consider to be serious cases. We'll only name participants in fraud where they are repeat offenders and we believe they're involved in an orchestrated attack on the VAT system.

We **will not** name businesses:

- that exist to carry out legitimate trade
- where the penalty is in dispute, for example where you've made an appeal

Publishing details of participants in VAT fraud

We'll tell you if we intend to publish your details. You'll have 30 days to tell us why we should not publish your details. If we do not agree with your reasons, we'll publish your details, for which you have no right of appeal.

If we do not hear from you or are not persuaded by your representations we'll publish your details on www.gov.uk

There is no right of appeal against having your details published.

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 a Customs and Excise officer who hasn't been involved in the matter
- arrange for your appeal to be heard by an independent tribunal.

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 rights when we're considering whether to charge certain types of penalties. These rights are that:

- if we ask you any questions to help us decide whether to charge you a penalty, you do not have to answer them – you can decide how much help you give us when we're considering what penalties to charge you
- if you decide 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 penalties we believe are due, you can appeal – if you appeal about both tax and penalties, you can ask for both appeals to be considered together
- you can apply for funded legal assistance for dealing with any appeal against certain penalties
- you are entitled to have the matter of penalties dealt with in a reasonable time.

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

Taxes and tax periods these penalty rules apply to

These penalties only apply to VAT. They only apply where we have decided that you knew or should have known that one or more transactions were connected with VAT fraud.

These penalties only apply to transactions which have taken place after 1st March 2018. For transactions occurring before this date, we may consider an inaccuracy penalty under Schedule 24 of the Finance Act 2007 (as applied).