

Isle of Man Customs and Excise

Compliance Checks – Penalties for failure to notify

This factsheet contains information about the penalties we may charge where there has been a failure to notify.

This factsheet is one of a series. For the full list of factsheets in the Compliance checks series and factsheet IOM C&E 1 – *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/>

What is a failure to notify

There are certain circumstances that affect your liability to tax that you must tell us about, and you must do so within certain time limits. If you do not do this, we call this a 'failure to notify'.

Circumstances that you must tell us about include: when you become liable to pay tax and when you either carry out, or intend to carry out a taxable activity that must be registered with us. Examples of these include –

When you become liable to pay tax:

- when your business exceeds the VAT registration threshold you must tell us within 30 days of this happening
- when the VAT supplies you make change, you must tell us within 30 days of this happening.

When you either carry out or intend to carry out, a taxable activity that must be registered with us:

- when you intend to brew beer you must register with us at least 14 days before you intend to start brewing
- when you intend to make available for play any amusement machines on which Machine Games Duty is payable – you must register with us at least 14 days before the machines are made available for play
- operate flight(s) from the Island which are liable to Air Passenger Duty – you must register with us within 7 days of operating the first flight.

When we may charge a penalty for a failure to notify

We may charge you a penalty if you fail to notify us, or do not notify us on time.

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 that a failure does not occur. If you do not do this, we may charge you a penalty.

When we will not charge a penalty for a failure to notify

We will **not** charge a penalty for a failure to notify if:

- you have a reasonable excuse for the failure, and
- the failure was not deliberate, and

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.

- you notified us without unreasonable delay after your reasonable excuse ended.

What we mean by 'deliberate' is explained later in this factsheet.

A reasonable excuse is something that stopped you from meeting a tax obligation on time which you took reasonable care to meet. It might be due to circumstances outside your control or a combination of events. Once the reasonable excuse has ended, you must put things right without any unnecessary delay.

Whether you have a reasonable excuse depends upon the particular circumstances in which the failure occurred and your particular circumstances and abilities. This may mean that what is a reasonable excuse for one person may not be a reasonable excuse for someone else. If you think you have a reasonable excuse please tell us. If we accept that you have a reasonable excuse, we will not charge you a penalty.

If there was anything about your health or personal circumstances that made it difficult for you to notify us of your liability to tax, please tell the officer that is carrying out the check. Telling them will mean that they can take this into account when considering whether you had a reasonable excuse.

Disclosing a failure to notify before we find it

If you tell us about a failure to notify before you had any reason to believe that we are about to find it, we call this an 'unprompted disclosure'. If you tell us about a failure at any other time, we call it a 'prompted disclosure'. Once we have started a check, a disclosure can only be unprompted if, exceptionally:

- it is about a failure unrelated to what we are checking, and
- you had no reason to believe that we could have found it during our check.

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

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:

1. Telling

- agreeing that there is a failure and telling us how and why it happened
- telling us everything you can about the extent of the failure as soon as you know about it
- and helping us by answering our questions in full.

2. Helping

- helping us understand your accounts or records
- replying to our letters quickly
- agreeing to attend meetings, including any visits to your business premises, at a mutually convenient time

Which tax periods and taxes these penalty rules apply to

The penalty rules in this factsheet apply to failures to notify that arise on or after 1 April 2010, for all the tax and duties listed below, except where stated..

- Air Passenger Duty
- Alcohol Duty
- Excise duties (Holding and Movements)
- Gambling Duty
- Hydrocarbon Oils Duty
- Lottery Duty
- Machine Games Duty (from 1 February 2013)
- Soft Drinks Industry Levy (from 1 April 2019)
- Tobacco 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.

- checking your own records to identify the extent of the failure.

3. Giving

- us access to the documents we have asked for without unnecessary delay
- us access to documents we may not know about, as well as those that we ask to see.

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

- tell us everything you can about any wrongdoing as soon as you know about it or you believe we are about to find it, and
- 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 help or records from you, we will give you the full reduction that the law allows for helping and giving.

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 eight 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 amount that arises as a result of the failure to notify. The officer dealing with the check will explain how we work this out.

2. Determining our view of the 'behaviour'

When there is a failure to notify, we will work with you to find out what caused it. We refer to this as the 'behaviour'. The type of behaviour will affect whether we charge a penalty and the amount of the penalty. The different types of behaviour are:

Non-deliberate

This is where you failed to tell us about a circumstance that affected your liability to tax within the relevant time limit, but the failure was not deliberate or deliberate and concealed.

Deliberate but not concealed

This is where you knew that you should have told us about a circumstance that affected your liability to tax within the relevant time limit, but you chose not to tell us.

Deliberate and concealed

This is where you knew that you should have told us about a circumstance that affected your liability to tax within the relevant time limit, but you chose not to tell us. As well as choosing not to tell us, you also took active steps to hide the failure to notify from us.

3. Deciding whether the disclosure was unprompted or prompted

This determines the minimum penalty percentage that we can charge. This is explained in more detail in the section of this factsheet titled 'Disclosing a failure to notify before we find it'.

4. The penalty ranges

The penalty percentage will fall within a range. The range will depend on our view of the type of behaviour and whether the disclosure was unprompted or prompted. The following table shows the penalty ranges.

Type of behaviour	Unprompted or prompted disclosure	Penalty range
Non-deliberate	Unprompted – within 12 months of tax being due	0% to 30%
	Unprompted – 12 months or more after tax was due	10% to 30%
	Prompted – within 12 months of tax being due	10% to 30%
	Prompted – 12 months or more after tax was due	20% to 30%
Deliberate	Unprompted	20% to 70%
	Prompted	35% to 70%
Deliberate and concealed	Unprompted	30% to 100%
	Prompted	50% to 100%

If you have a reasonable excuse for a non-deliberate failure to notify, we will not charge you a penalty.

5. Working out the reductions for the quality of disclosure (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%.

When we work out the quality of disclosure, we'll also consider how long it's taken you to tell us about your failure to notify. If it's taken you a long time, (such as 3 years or more), to correct or disclose what is wrong, we'll usually restrict the maximum reduction we give for the quality of disclosure to 10 percentage points above the minimum of the penalty range. This means you will not benefit from the lowest penalty percentage that's normally available.

6. Calculating the penalty percentage rate

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

Example

During a compliance check, we found a non-deliberate failure to notify that the customer had not told us about before we started our check. When we told them about the failure, they agreed with us that there had been a failure. This was therefore a prompted disclosure. The failure occurred more than 12 months after the tax became unpaid.

The penalty range for a non-deliberate failure to notify with a prompted

disclosure more than 12 months after the tax was due is 20% to 30% of the potential lost revenue (PLR).
The reduction for quality of disclosure (telling, helping and giving) was 70%.

Steps	Calculation example
To work out the penalty percentage rate, we first calculate the difference between the minimum and maximum penalty percentages.	30% minus 20% = 10
We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.	10 x 70% = 7%
We then deduct the percentage reduction from the maximum penalty percentage we can charge.	30% minus 7% = 23%
This gives us the penalty percentage rate	23%

7. 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. For example, if the PLR in the example above was £3,000, and there were no other reductions, the penalty would be £690 (£3,000 x 23% = £690).

8. Considering other reductions

After 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 on the same tax or duty. This then gives the amount of penalty that we will charge.

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.

In certain circumstances you may also have to pay interest on the penalty if you do not pay it on time.

When an officer of the company may have to pay some or all of a company's penalty for deliberate failure to notify

A company officer may have to pay some or all of the company penalty if the penalty is due to their actions, and one or more of the following applies:

- they have gained, or attempted to gain, personally from a deliberate inaccuracy
- the company is, or we believe it is, about to become insolvent - even if the officer did not gain personally from the deliberate inaccuracy.

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, or a member of a limited liability partnership.

What happens if you have deliberately done something wrong

If you:

- give us information that you know to be untrue, whether verbally or in a document
- 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.

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 about this in factsheet IOM C&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*.

Privacy Notice

To find out more about how we collect and use personal information, contact any of our offices or visit our website at: <https://www.gov.im/about-the-government/departments/the-treasury/privacy-notice/> We will send you a paper copy if you telephone us or write to us using the contact details provided on this form.