

Isle of Man Customs and Excise Compliance Checks – Penalties for VAT and Excise wrongdoing

This factsheet contains information about the penalties we may charge you for a VAT or Excise wrongdoing.

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-notice/visits-by-customs-and-excise-officers/>

VAT or Excise wrongdoings

VAT and Excise wrongdoings are when any person:

- who is not registered for VAT or is not authorised to issue VAT invoices, issues an invoice that includes an amount shown as VAT
- uses spirits or hydrocarbon oils for a purpose that attracts a higher rate of excise duty (this is called 'misuse'). For example, red diesel (normally used in farm machinery) carries a lower duty than diesel for road vehicles. If someone uses red diesel in a road vehicle, this is misuse, which is a wrongdoing
- supplies spirits or hydrocarbon oils knowing that they will be used in a way that means a higher rate of excise duty should have been paid. For example, the duty on fuel for domestic heating is lower than the duty on fuel for private boats. If someone supplies domestic heating fuel knowing that the purchaser will use it for a private boat, this is a wrongdoing because the supplier knows that the fuel will be used for a purpose that attracts a higher duty
- handles alcohol (all), tobacco or hydrocarbon oils on which there is unpaid excise duty or where the duty has not been deferred. Handling goods includes
 - acquiring possession of them
 - being involved in the carrying, removing, depositing or keeping of them, or
 - otherwise dealing with them.

For example, someone goes on holiday to France. They buy cigarettes and bring them back into the UK with the intention of selling them. As the cigarettes were not imported for their own use, they should have paid the duty on them. They have committed a wrongdoing. The person they sold the cigarettes to has also committed a wrongdoing for handling the goods.

When may we charge a penalty for a wrongdoing

We may charge you a penalty if you commit a wrongdoing and it results in VAT or Excise duty being due.

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

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/>

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.

When we will not charge penalties for a wrongdoing

We will **not** charge a penalty for a wrongdoing if:

- you have a reasonable excuse for the wrongdoing, and
- the wrongdoing was not deliberate, and
- 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 contributed to you committing a wrongdoing, 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 wrongdoing before we find it

If you tell us about a wrongdoing before you had any reason to believe that we were about to find it, we call this an 'unprompted disclosure'. If you tell us about a wrongdoing 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 wrongdoing unrelated to what we are checking, or
- 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 penalties 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 wrongdoing and telling us how and why it happened
- telling us everything you can about the extent of the wrongdoing as soon as you know about it
- and helping us by answering our questions in full.

Tax periods and taxes these penalty rules apply to

The penalty rules in this factsheet apply to VAT and Excise wrongdoing that arises on or after 1 April 2010, for the taxes and duties listed below.

- Alcohol Duty
- Excise duties (Holding and Movements)
- Hydrocarbon Oils Duty
- 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.

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
- checking your own records to identify the extent of the wrongdoing
- helping us by using your own private records to identify sales or income not included in your tax return.

3. Giving

- us access to the documents we have asked for without unnecessary delay
- us access to see 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 wrongdoing. The officer dealing with the check will explain how this is calculated.

2. Determining our view of the 'behaviour'

When there is a wrongdoing, 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 committed a wrongdoing but it was not deliberate or deliberate and concealed.

Deliberate

This is where you knew that you had committed a wrongdoing but did not attempt to conceal it.

Deliberate and concealed

This is where you knew that you had committed a wrongdoing and you took active steps to hide it 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 wrongdoing 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 disclosure	Prompted disclosure
Non-deliberate	10% to 30%	20% to 30%
Deliberate	20% to 70%	35% to 70%
Deliberate and concealed	30% to 100%	50% to 100%

There is also a separate penalty range for supplying a product knowing that it will be misused. This is shown below.

Type of behaviour	Unprompted disclosure	Prompted disclosure
Deliberate	30% to 100%	50% to 100%

If you have a reasonable excuse for a non-deliberate wrongdoing, 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 (or 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%.

6. Calculating the penalty percentage rate

The 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 wrongdoing that the customer had not told us about before we started our check. When we told them about the wrongdoing, they agreed with us that they committed a wrongdoing. This was therefore a prompted disclosure. The penalty range for a non-deliberate wrongdoing with a prompted disclosure is 20% to 30% of the 'potential lost revenue' (PLR). 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.

$$30\% \text{ minus } 20\% = 10$$

We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.	$10 \times 70\% = 7\%$
We then deduct the percentage reduction from the maximum penalty percentage we can charge.	$30\% \text{ minus } 7\% = 23\%$
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 ($\text{£}3,000 \times 23\% = \text{£}690$).

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 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 showing the amount due.

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 wrongdoing

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 both of the following applies:

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

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, 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.

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, who will decide the matter.

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*.