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CHARTERED ACCOUNTANTS



Guide to HMRC penalties

HMRC tax penalties – an easy to understand guide

Our expert tax team at Clemence Hoar Cummings have put together this helpful guide to tax penalties – to help you know where you stand if ever you find yourself, or your business, on the wrong side of HM Revenue & Customs (HMRC).

Introducing HMRC penalties

HMRC can impose penalties upon businesses and individuals for a variety of reasons, from basic and easily avoidable errors in self-assessment tax returns to blatant failures to declare income or pay what is owed.

In today's tax environment, penalties are ever-present and are growing increasingly difficult to avoid. Even those who are not required to file a tax return can sometimes find themselves facing a penalty if they are deemed responsible for making a mistake in someone else's return.

Due to this, it is important to understand how HMRC operates, the

circumstances in which penalties are typically issued, and where you stand if you find yourself or your business facing a hefty fine.

Excuses such as "my dog ate my tax return" will inevitably not sit well with HMRC. However, there are often 'special circumstances' in which you may be entitled to a reduction or exemption from an HMRC penalty.

Clemence Hoar Cummings has put together this useful guide to help shed some light on the world of HMRC penalties. However, it is important to note that, while useful, this is guide is only a brief overview and expert advice should always be sought dependant on your unique circumstances.



“My dog ate
my tax return”

will inevitably not sit well with HMRC.

Tax compliance failures

HMRC will typically categorise all of the following as tax compliance failures:

- The late filing of tax returns
- Failure to submit a tax return
- Late payment of tax liabilities
- Failure to notify chargeability to tax
- Failure to provide information and documents

Fortunately, not every tax return error will lead to a penalty as whether or not a penalty is issued will usually depend on how far HMRC believes 'reasonable care' has been taken in completing the return.

On a less positive note, however, for those who do face a penalty which they believe is undeserved, it is not always easy to convince HMRC that 'reasonable care' has been taken.



What might be considered a reasonable excuse?

HMRC offers the following basic guidance as to what might constitute a reasonable excuse:

- Bereavement – this may apply if one of the taxpayer's close relatives or their domestic partner passed away around the time they should have filed their return or paid tax.
- Serious illness – if the taxpayer themselves or a close relative fell seriously ill around the time the tax should have been paid.
- Unforeseen events – which can include delays due to industrial action or returns/payments being lost in the post.

What might not be considered a reasonable excuse?

HMRC states a handful of circumstances in which a reasonable excuse can never – or will very rarely – exist. These are:

- Deliberate failure to submit a tax return on time – this will always be considered a failure on the taxpayers' part.
- Insufficient funds – this will not be deemed a reasonable excuse unless:
 - i) the shortage of funds could not have been reasonably foreseen by the taxpayer or
 - ii) the lack of funds can be attributed to another event outside of their control.
- Reliance on another person – this will not be deemed a reasonable excuse unless it can be proven that the taxpayer took 'reasonable care' to avoid the compliance failure.

What are the financial penalties?

Late filing of tax returns:

If you miss the deadline for submitting a tax return – even if you owe nothing – you will be fined £100. If you are three months overdue you will also be charged a penalty of £10 per day (up to a maximum of £900) and after six months you will receive an added penalty of £300 – or 5 per cent of any tax owing if this is greater. After 12 months you will receive an additional £300 penalty (or 5 per cent of any tax owing if this amount is greater.)

HMRC has the power, in exceptional circumstances, to issue a penalty of up to 100 per cent of the tax due.

It is important to note that if you operate as a business partnership penalties apply both to your partnership returns and your individual partner returns.

Late payment of taxes:

HMRC will hand out the following penalties for the late payment of any taxes due:

- 30 days late – 5 per cent of tax unpaid
- 60 days late – an additional 5 per cent of tax unpaid
- 12 months late – another 5 per cent of tax unpaid

You will normally also be expected to pay interest on the amount outstanding.

HMRC has particular powers, known as enforcement actions, which allows them to collect any unpaid tax through your earnings or pension. It is also able to use the services of a debt collection agency, send in the bailiffs, take money directly from your bank account, take court action and ultimately make you bankrupt or close down your business.



Failure to notify liability to pay tax

For any new income sources, you have a duty to notify HMRC no later than 5 October following the end of the tax year in which the income was received.

The amount you could be charged after this date depends on whether you proactively disclose the late notification to HMRC (known as 'unprompted') or if HMRC discover it themselves during an investigation (known as 'prompted.'). The size of the penalty will also depend upon whether the failure was non deliberate, deliberate or, in the worst case scenario both deliberate and concealed:

- Non deliberate and unprompted within 12 months of tax being due – 0 to 30 per cent
- Non deliberate and unprompted but more than 12 months after tax was due – 10 per cent to 30 per cent
- Prompted but within 12 months – 10 per cent to 30 per cent
- Prompted after 12 months – 20 per cent to 30 per cent
- Deliberate and unprompted – 20 per cent to 70 per cent
- Deliberate and prompted – 35 per cent to 70 per cent
- Deliberate & concealed and unprompted – 30 per cent to 100 per cent
- Deliberate & concealed and prompted – 50 per cent to 100 per cent.



'Special reductions' and 'special circumstances'

Very often it is more likely that HMRC will be able to provide a 'special reduction' to a penalty, as opposed to eliminating the penalty altogether. Compliance errors such as mistakes in tax returns, a failure to notify HMRC or a failure to submit a return can all be liable to 'special reductions', under the right circumstances.

Special reductions will be considered on a case-by-case basis, as HMRC's Compliance Handbook offers no solid definition of what constitutes 'special circumstances'. A special reduction can include HMRC 'staying' a penalty, which will see the enforcement of a penalty postponed until a later date. This may involve the taxpayer having to 'agree a compromise' with the Revenue in order to forego part of the penalty.

'Telling helping and giving'

HMRC is more lenient on those who disclose information – otherwise referred to as 'telling, helping and giving.'

- For telling HMRC of a failure to notify, it will award a reduction of up to 30 per cent
- For helping it will award up to 40 per cent
- For giving access to documentation and other records it will award up to 30 per cent.

Special reductions by a tax Tribunal

UK taxpayers have the right to appeal an HMRC decision that a disputed penalty should be payable.

In instances where HMRC does not allow a special reduction in relation to a penalty, and the Revenue's decision is considered by the taxpayer to be 'flawed', the taxpayer may be able to challenge the decision at a Tribunal – which is independent of Government and will weigh up both sides of an argument prior to making a decision.

At a Tribunal, the taxpayers will have a chance to prove 'reasonable care', a 'reasonable excuse' or 'special circumstances'.

However, as HMRC's Compliance Handbook offers such cloudy definitions of what constitutes each of the above, this may not always be easy to do.

When it comes to such contentious matters, taxpayers will often consider alternative dispute resolution (ADR) before applying to the Tribunal.





HMRC's view in a nutshell

HMRC says that, under all circumstances, it expects each taxpayer to be "a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the tax Acts".

What does this mean for you?

In brief, if you find yourself facing a penalty for submitting a late tax return, the onus will be on you to satisfy that you had a 'reasonable excuse' at the point the failure occurred, assuming you wish to seek out a 'special reduction' or exemption from that penalty.

If you are unable to define a 'reasonable excuse' in relation to your circumstances, HMRC will simply weigh up the unique circumstances of your case in order to determine whether the penalty you have been issued with is justified. However, at a later date, you are entitled to challenge a 'flawed' decision at a Tribunal or via alternative dispute resolution if you so wish.

It is worth keeping in mind that what is considered a reasonable excuse in one person's case will not always constitute a reasonable excuse elsewhere.

Therefore it is always best to seek specialist advice depending on your unique circumstances. An even better solution is to appoint a specialist accountant or tax adviser to assist with all of your tax affairs from the outset in order to minimise the likelihood of any errors in your returns and HMRC correspondence.

Contact us

For further information about any of the issues raised in this guide, or to find out more about Clemence Hoar Cummings' expert tax, business and accountancy services, please contact us.

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