



Penalties for not telling us about an under-assessment

This factsheet contains information about the penalties we may charge if there has been an under-assessment and you haven't told us about it within 30 days.

This factsheet is one of a series. For the full list of the factsheets in the series, go to www.gov.uk and search for 'Compliance checks factsheets'.

What is an under-assessment

If you don't send us a completed tax return, we may send you an assessment showing the tax we believe is due. If the amount of tax we've assessed is less than the amount that should have been shown on your return, our assessment is an 'under-assessment' because it is too low.

When we may charge you a penalty for an under-assessment

We may charge you a penalty for an under-assessment if:

- we sent you an assessment that was too low, and
- you didn't tell us that it was too low within 30 days of the date of the assessment

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 they tell us about any under-assessment within 30 days. If you don't do this, we may charge you a penalty.

When we won't charge you a penalty for an under-assessment

We **won't** charge you a penalty for an under-assessment if you took reasonable steps to tell us that the assessment was too low **within 30 days** of the date of the assessment, for example by:

- sending us the completed return
- contacting us to tell us that the assessment is too low
- consulting a tax adviser so that they can let us know that the assessment is too low

What 'reasonable steps' are depends on each person's circumstances.

Disclosing an under-assessment before we find it

If you tell us about an under-assessment before you've any reason to believe that we've found it or were about to find it, we call this an 'unprompted disclosure'. If you tell us about an under-assessment at any other time, we call it a 'prompted disclosure'.

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 you 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:

- telling or agreeing with us that there is an under-assessment
- telling us everything you can about the extent of the under-assessment as soon as you can
- helping us by using your own records to work out the amount under-assessed
- helping us to understand your figures or records

- giving us your return or other documents that help us to work out the amount under-assessed

Telling, helping and giving could be covered just by giving us your return showing the correct figures.

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

- tell us everything you can about an under-assessment as soon as you know about it or you believe we're about to find it
- 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 don't need any extra assistance from you, we'll give you the full reduction that the law allows for telling, helping and giving.

Customers with particular needs

If there was anything about your health or personal circumstances that made it difficult for you to tell us about an under-assessment, please tell the officer that's carrying out the check. Telling them will mean that they can take this into account when considering penalties.

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 working out the penalty, you should let them know straightaway.

How we work out the amount of a penalty

There are 6 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'

The penalty is a percentage of what we call the 'potential lost revenue' (PLR). The PLR is the difference between the tax assessed and the correct amount of tax.

2 Deciding whether the disclosure was unprompted or prompted

This determines the minimum penalty percentage that we can charge. For an under-assessment, the maximum penalty percentage is 30%. For an **unprompted** disclosure, the minimum penalty percentage is 0%. For a **prompted** disclosure, the minimum penalty percentage is 15%. This gives a range of 0% to 30% as shown below.

Unprompted disclosure	Prompted disclosure
0% to 30%	15% to 30%

What we mean by unprompted and prompted is explained in more detail in the section of this factsheet titled 'Disclosing an under-assessment before we find it' on page 1 of this factsheet.

3 Working out the reductions for the quality of disclosure (also referred to as 'telling, helping and giving')

When we work out the quality of disclosure, we'll take into account how long it has taken for you to tell us about the under-assessment. If you've taken a significant period (normally 3 years) to disclose the under-assessment, we'll normally restrict the amount of reduction given for disclosure.

We'll restrict the penalty range by 10 percentage points above the minimum to reflect the time taken, before working out the reductions for 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%

4 Working out the penalty percentage rate

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

Example

We sent a person a VAT assessment because they had not filed their VAT return on time. Three months later we started a compliance check to establish whether our assessment was correct. They didn't send us the information we had asked for until we used our information powers to get their business records. They then made a disclosure of an under-assessment by sending us their VAT return. This was a prompted disclosure.

The penalty range for a prompted disclosure is 15% to 30%.

The reduction for quality of disclosure (telling, helping and giving) was 70%.

Steps

Calculation example

To work out the penalty percentage rate, we first work out the difference between the minimum and maximum penalty percentages.

$30\% \text{ minus } 15\% = 15$

We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.

$15 \times 70\% = 10.5\%$

We then take off the percentage reduction from the maximum penalty percentage we can charge.

$30\% \text{ minus } 10.5\% = 19.5\%$

This gives us the penalty percentage rate.

19.5%

5 Calculating the amount of the penalty

To work out the amount of the penalty, we multiply the PLR by the penalty percentage rate. In the example above, the PLR is £3,000. This means the penalty is £585 ($£3,000 \times 19.5\% = £585$).

6 Considering other reductions

After working out the amount of the penalty, we then take into account any other reductions that are necessary. For example, where we've already charged another penalty or surcharge on the same tax.

How we tell you about a penalty

We'll write to you to tell you how much the penalty is and how we've worked it out. If there is anything about the penalty that you don't agree with, or if you think there is any information we haven't already taken into account, you should tell us straightaway. After taking account of anything you've told us, we'll then either:

- send you a penalty assessment notice
- invite you to enter into a contract with us to pay the penalty, together with the tax and interest

In certain circumstances, you may also have to pay interest on the penalty if you don't pay it on time.

What to do if you disagree

If there is something that you don't 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 an HMRC officer who hasn't been involved in the matter
- arrange for your appeal to be heard by an independent tribunal, who will decide the matter

Whichever you choose, you may also be able to ask for an HMRC specialist officer to act as a neutral facilitator to help resolve the dispute. This process is known as 'Alternative Dispute Resolution' (ADR).

ADR is only available for disputes relating to some of the taxes and other areas that we administer. The officer dealing with your check will tell you if ADR is available for the matter that you're disputing.

Go to www.gov.uk and search 'HMRC1' and 'CC/FS21' to find more information about:

- appeals and reviews in factsheet HMRC1, 'HM Revenue and Customs decisions – what to do if you disagree'
- ADR in factsheet CC/FS21, 'Alternative Dispute Resolution'

Your rights when we're considering penalties

The European Convention on Human Rights gives you certain important rights. If we're considering penalties, we'll tell you. We'll also tell you that these rights apply and ask you to confirm that you understand them. These rights are that:

- if we ask you any questions to help us decide whether to charge you a penalty, you've 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 don't 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're entitled to have the matter of penalties dealt with without unreasonable delay

You can find full details about these rights in factsheet CC/FS9 'The Human Rights Act and penalties'. Go to www.gov.uk and search 'CC/FS9'.

What happens if you give us information that you know to be untrue

If you either:

- 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 aren't entitled
- we may carry out a criminal investigation with a view to prosecution.