



Penalties for VAT, Excise and Landfill Tax wrongdoings

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

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'.

VAT, Excise or Landfill Tax wrongdoings

VAT, Excise and Landfill Tax 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
- makes, knowingly causes, or knowingly permits a disposal of material at an unauthorised waste site from 1 April 2018
- 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
- otherwise dealing with them

For example, someone goes on holiday to France. They buy cigarettes to bring back into the United Kingdom (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 we may charge you a penalty for a wrongdoing

We may charge you a penalty if you commit a wrongdoing and it results in VAT, Excise Duty or Landfill Tax being due.

If you ask someone, 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.

When we will not charge you a penalty for a wrongdoing

We will not charge you a penalty for a VAT or Excise wrongdoing if all of the following apply:

- you have a reasonable excuse for the wrongdoing
- the wrongdoing was not deliberate
- you notified us without unreasonable delay after your reasonable excuse ended

We will not charge you a penalty for a Landfill Tax wrongdoing if the wrongdoing was not deliberate.

What we mean by 'deliberate' is explained on page 3 of 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've started a check, a disclosure can only be unprompted if, exceptionally, it's about a wrongdoing unrelated to what we're 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 you

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 us about, or agreeing that there's something wrong and how and why it happened
- telling us everything you can about the extent of what is wrong as soon as you know about it
- telling and helping us by answering our questions in full
- helping us to understand your accounts or records
- helping us by replying to our letters quickly
- helping us by agreeing to attend any meetings, or visits, at a mutually convenient time
- helping us by checking your own records to identify the extent of the inaccuracy
- helping us by using your private records to identify sales or income not included in your tax return
- giving us access to documents we've asked for without unnecessary delay
- giving us access to documents we may not know about, as well as those that we ask to see

We'll reduce the penalty by the maximum amount if you:

- tell us everything you can about any wrongdoing 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 do not need any extra assistance from you, and there has not been a significant delay in you coming forward, we'll give you the full reduction that the law allows for telling, 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 working out the penalty, you should let them know straightaway.

How we work out the amount of a penalty

There are 8 stages in working out the amount of any penalty. Each stage is explained in more detail below.

1 Working out the amount of the 'potential lost revenue' (PLR)

The penalty is a percentage of what we call the 'potential lost revenue'. PLR is the amount that arises as a result of the wrongdoing. The officer dealing with the check will explain how we work this out.

2 Determining our view of the 'behaviour'

When there is a wrongdoing, we'll 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. You will not be charged a penalty for a non-deliberate Landfill Tax wrongdoing.

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 titled 'Disclosing a wrongdoing before we find it' on page 2 of this factsheet.

4 The penalty ranges

The penalty percentage will fall within a range. This 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 (this does not apply to Landfill Tax wrongdoings)	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, see below. This does not apply to other wrongdoings.

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

If you've a reasonable excuse for a non-deliberate wrongdoing, we will not charge you a penalty for a VAT or Excise wrongdoing. There are no penalties for a non-deliberate Landfill Tax wrongdoings.

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 the wrongdoing. 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 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

During an Excise 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 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 Working out the amount of the penalty

To work out the amount of the penalty, we multiply the 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 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 on the same tax or duty. This then gives the amount of penalty that we'll charge.

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's 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 into account anything you've told us, we'll 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 a company may have to pay some or all of a company's penalty for a deliberate wrongdoing

A company officer may have to pay some or all of the company's 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's 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.

A company officer may be personally liable for a Landfill Tax wrongdoing where they make, knowingly cause, or knowingly permit a disposal of material at an unauthorised waste site.

What happens if you've deliberately done something wrong

We may carry out a criminal investigation with a view to prosecution 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're not entitled

Managing Serious Defaulters

If you've deliberately got your tax affairs wrong, we may need to monitor your tax affairs more closely. We've an enhanced monitoring programme called Managing Serious Defaulters. You can find more information about this in factsheet CC/FS14, 'Managing Serious Defaulters'. Go to www.gov.uk and search for 'CC/FS14'.

Publishing details of deliberate defaulters

In certain circumstances, we may publish your details if you've deliberately got your tax affairs wrong. We cannot publish your details if you qualify for the maximum penalty reduction. You can find more information in factsheet CC/FS13, 'Publishing details of deliberate defaulters'. Go to www.gov.uk and search for 'CC/FS13'.

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 an HMRC officer who has not 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.

You can find more information in:

- HMRC1, 'HM Revenue and Customs decisions – what to do if you disagree', for appeals and reviews
- CC/FS21, 'Alternative Dispute Resolution', for ADR
- Go to www.gov.uk and search for 'HMRC1' and 'CC/FS21'

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're 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've the right to ask that both appeals are considered together
- you've 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 for 'CC/FS9'.

Which tax periods and taxes these penalty rules apply to

The penalty rules in this factsheet apply to VAT and Excise wrongdoings that arise on or after 1 April 2010, for Alcohol Duty, Hydrocarbon Oils, Tobacco Duty, VAT, Excise Duties (Holding and Movements). They also apply to Landfill Tax from 1 April 2018.