



# Penalties for offshore non-compliance

This factsheet gives you detailed information about the penalties that we may charge for tax non-compliance which involves offshore matters or offshore transfers. In this factsheet, these are together referred to as 'offshore non-compliance'.

These penalties may apply when there is offshore non-compliance in relation to Income Tax, Capital Gains Tax or Inheritance Tax which involves either:

- an inaccuracy
- a failure to notify
- the deliberate withholding of information

If you are disclosing offshore non-compliance and liabilities to HM Revenue and Customs (HMRC), then you must work out the penalties which apply to you using the information below.

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## If you need help

If you have any health or personal circumstances that may make it difficult for you to deal with this matter, please tell the officer that's contacted you. We'll help you in whatever way we can.

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## Offshore matters

An offshore matter is where the potential loss of tax is charged on or relates to:

- income arising from a source in a territory outside the United Kingdom (UK)
- assets situated or held in a territory outside the UK
- activities carried on wholly or mainly in a territory outside the UK
- anything having effect as if it were income, assets or such activities

What we mean by a territory is explained later in this factsheet.

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## Offshore transfers

An offshore transfer takes place when there is a deliberate:

- inaccuracy
- failure to notify
- withholding of information

that does not involve an offshore matter, and:

- taxable income, or any part of the income, is received in a territory outside the UK
- taxable income, or any part of the income, is transferred to a territory outside of the UK before the statutory filing date
- disposal proceeds, or any part of the proceeds, giving rise to a charge to Capital Gains Tax are received in a territory outside the UK
- disposal proceeds, or any part of the proceeds, giving rise to a charge to Capital Gains Tax are transferred to a territory outside of the UK before the statutory filing date
- assets that give rise to a charge to Inheritance Tax are transferred outside of the UK after the event giving rise to the tax charge but before the statutory filing date

For disclosures which do not attract Failure to Correct (FTC) penalties, offshore transfers apply only for the tax year 2016 to 2017 and later tax years. For Inheritance Tax, offshore transfers apply when transfers of value take place on or after 1 April 2016.

Where offshore transfers relate to Income tax and Capital Gains Tax, FTC penalties arise for any tax year within the scope of the Requirement to Correct. That includes transfers ending before the tax year 2016 to 2017. Where offshore transfers relate to Inheritance Tax, penalties arise for any transfer of value within the scope of the Requirement to Correct. That includes transfers which took place before 1 April 2016.

What we mean by a territory is explained later in this factsheet.

The penalties for offshore transfers are the same as the penalties for offshore matters. The penalty rates are also explained later in this factsheet.

## **The Requirement to Correct (RTC) and Failure to Correct (FTC) penalties**

From 1 October 2018, there are 2 main factors in determining penalties for offshore matters and offshore transfers for Income Tax or Capital Gains Tax liabilities. These are:

- whether you were non-compliant during the tax year 2015 to 2016 and any earlier tax years
- whether any non-compliance was disclosed on or before 30 September 2018 under RTC legislation

For Inheritance Tax non-compliance discovered on or after 1 October 2018, the RTC legislation applies to tax HMRC could have lawfully assessed on 17 November 2017.

Under RTC, you had to make a disclosure by 30 September 2018. If you used the two-stage notify and disclose process under the RTC legislation, you had to make your disclosure by a different date set by HMRC. Whichever date applies to you is the deadline for the purposes of penalties. We explain this in more detail in our RTC guidance.

Go to [www.gov.uk/guidance/requirement-to-correct-tax-due-on-offshore-assets](http://www.gov.uk/guidance/requirement-to-correct-tax-due-on-offshore-assets) and see the section 'Ways of making a correction under the RTC rule'.

You can find the legislation for RTC in Schedule 18 of the Finance (No. 2) Act 2017.

Penalties for failing to make a disclosure under Requirement to Correct (RTC) legislation are called Failure to Correct (FTC) penalties.

FTC penalties are a minimum penalty of 100% of the tax you owe in relation to any offshore non-compliance. The maximum or 'standard' penalty rate is 200% but this can be reduced by the quality of the disclosure. These penalties apply when you have failed to make a disclosure under RTC before the relevant deadline. We explain how to calculate the penalty in more detail later in this factsheet.

These FTC penalties apply where there has been a failure to comply with the RTC legislation.

They do not vary according to:

- the original behaviour associated with the non-compliance – for example, it does not matter if the behaviour was 'careless' or 'deliberate'
- the location of the income gains or assets – territorial categories do not apply

However, non-compliance which results in a FTC penalty may also result in Asset Moves penalties and Asset-Based penalties being charged. We explain these in more detail later in this factsheet.

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## **How to work out the amount of the FTC penalty**

FTC penalties can vary according to whether the RTC disclosure is voluntary (made without contact from HMRC) or non-voluntary (after contact from HMRC) and according to the quality of the disclosure. The penalty is based on the potential lost revenue (PLR).

The standard 200% penalty can be reduced by the quality of the disclosure to a minimum of 100% when the disclosure is voluntary or to a minimum of 150% where the disclosure is not voluntary. This is shown in the table.

<b>Disclosure</b>	<b>Standard</b>	<b>Minimum</b>
Voluntary (no contact from HMRC)	200% of PLR	100% of PLR
Non-voluntary (after contact from HMRC)	200% of PLR	150% of PLR

## **Offshore non-compliance not subject to Failure to Correct penalties**

Offshore non-compliance will not attract FTC penalties if, by 30 September 2018, either:

- you had disclosed it to HMRC in line with the RTC
- HMRC already held the relevant information

If you made a disclosure, this must have been a full and accurate disclosure of the relevant information, and have been made by the deadline.

In addition, offshore non-compliance for the tax year 2016 to 2017 and later tax years will not attract FTC penalties. In these cases, penalties will be charged as under the existing penalty system and the behaviour and territorial categories will continue to apply. For the tax year 2016 to 2017 and later tax years, the minimum penalty for 'deliberate' and 'deliberate and concealed' increases by 10%. This increase applies to both prompted and unprompted disclosures in all categories of territory.

You can find more information about onshore penalties for an inaccuracy, failure to notify or the deliberate withholding of information by failing to file returns on time in the following factsheets:

- Compliance checks: penalties for inaccuracies in returns or documents – CC/FS7a
- Compliance checks: penalties for failure to notify – CC/FS11
- Compliance checks: penalties if you do not file Income Tax, Capital Gains Tax and Annual Tax on Enveloped Dwellings returns on time – CC/FS18a

We'll give you whichever of those factsheets is relevant to you and explain why. They explain how to work out penalties for onshore matters. You should read them together with this factsheet which explains the differences where offshore matters or offshore transfers are involved. This factsheet also explains when we may charge an offshore asset moves or an asset-based penalty.

We explained what we mean by offshore matters and offshore transfers earlier in this factsheet. We explain about asset moves penalties and asset-based penalties later in this factsheet.

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## **When we may charge a higher penalty for an offshore matter or offshore transfer**

We may charge a penalty of more than 100% where:

- there is an inaccuracy, failure to notify or the deliberate withholding of information
- it involves offshore matters in certain categories of 'territory', or an offshore transfer
- the tax at stake is either Income Tax, Capital Gains Tax, or, for transfers on or after 1 April 2016, Inheritance Tax

As well as a higher penalty for an offshore matter or offshore transfer, we may also charge you:

- an offshore asset moves penalty
- an asset-based penalty

We give more information about these penalties later in this factsheet.

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## **How to work out the amount of the penalty (this does not apply to FTC penalties)**

The amount of a penalty (the penalty percentage range) for offshore matters is determined by the place where the income or gains arose. For Inheritance Tax, it's the place where the asset was located or transferred to. For offshore transfers, the penalties are based on the highest category of territory involved in the transfer regardless of where the income or gain arose.

### **Territories and categories (this does not apply to FTC penalties)**

We call this place the territory. Territories are divided into 3 categories, based on how willing the territory is to share information with the UK. The relevant category for each territory has been worked out taking into account the cooperation arrangements between the territory and the UK. You can find a list of the territories and the categories on our website. Go to [www.gov.uk](http://www.gov.uk) and search for 'Territory categorisation for offshore penalties'.

### Category 1

The maximum penalty is 100% of the tax.

### Category 2

The maximum penalty is 150% of the tax.

### Category 3

The maximum penalty is 200% of the tax.

We explain the penalty rates for each category later in this factsheet.

### Penalty rates for inaccuracies (this does not apply to FTC penalties)

You should read the explanation below together with factsheet 'Compliance checks: penalties for inaccuracies in returns or documents – CC/FS7a'. This explains how to work out an inaccuracy penalty. The penalty percentages in factsheet CC/FS7a do not apply to offshore matters or offshore transfers. We explain the offshore penalty rates below.

The minimum penalty which can be charged depends on the tax year. The table below sets out the current lowest and highest percentages. It also gives the lowest percentages which apply to:

- tax years ending before 6 April 2016 (IT/CGT)
- transfers of value made before 1 April 2016 (IHT)

Exactly what percentage penalty is to be charged depends on the quality of the disclosure. The minimum penalty will be charged where there is the highest quality of disclosure and the fullest additional information is given. You can find more details below in the section 'Additional information requirements'.

Category of territory and type of disclosure	Careless	Deliberate	Deliberate and concealed
<b>1 Unprompted</b>	0% to 30%	30% (20% before 1 April 2016 or 6 April 2016) to 70%	40% (30% before 1 April 2016 or 6 April 2016) to 100%
<b>1 Prompted</b>	15% to 30%	45% (35% before 1 April 2016 or 6 April 2016) to 70%	60% (50% before 1 April 2016 or 6 April 2016) to 100%
<b>2 Unprompted</b>	0% to 45%	40% (30% before 1 April 2016 or 6 April 2016) to 105%	55% (45% before 1 April 2016 or 6 April 2016) to 150%
<b>2 Prompted</b>	22.5% to 45%	62.5% (52.5% before 1 April 2016 or 6 April 2016) to 105%	85% (75% before 1 April 2016 or 6 April 2016) to 150%
<b>3 Unprompted</b>	0% to 60%	50% (40% before 1 April 2016 or 6 April 2016) to 140%	70% (60% before 1 April 2016 or 6 April 2016) to 200%
<b>3 Prompted</b>	30% to 60%	80% (70% before 1 April 2016 or 6 April 2016) to 140%	110% (100% before 1 April 2016 or 6 April 2016) to 200%

## Penalty rates for a failure to notify (this does not apply to FTC penalties)

You should read the explanation below together with factsheet 'Compliance checks: penalties for failure to notify – CC/FS11'. This explains how to work out a failure to notify penalty. The penalty percentages in factsheet CC/FS11 do not apply to offshore matters. We explain the offshore rates below.

The minimum penalty which can be charged depends on the tax year. The table below sets out the current lowest and highest percentages. It also gives the lowest percentages applying to tax years ending before 6 April 2016 (Income Tax or Capital Gains Tax). These higher penalty rates apply only to Income Tax and Capital Gains Tax.

Category of territory	Non-deliberate	Deliberate	Deliberate and concealed
<b>1 Unprompted</b> Failure disclosed more than 12 months after the tax becomes unpaid	10% to 30%	30% (20% before 6 April 2016) to 70%	40% (30% before 6 April 2016) to 100%
Failure disclosed within 12 months of the tax becoming unpaid	0% to 30%	30% (20% before 6 April 2016) to 70%	40% (30% before 6 April 2016) to 100%
<b>1 Prompted</b> Failure disclosed more than 12 months after the tax becomes unpaid	20% to 30%	45% (35% before 6 April 2016) to 70%	60% (50% before 6 April 2016) to 100%
Failure disclosed within 12 months of the tax becoming unpaid	10% to 30%	45% (35% before 6 April 2016) to 70%	60% (50% before 6 April 2016) to 100%
<b>2 Unprompted</b> Failure disclosed more than 12 months after the tax becomes unpaid	15% to 45%	40% (30% before 6 April 2016) to 105%	55% (45% before 6 April 2016) to 150%
Failure disclosed within 12 months of the tax becoming unpaid	0% to 45%	40% (30% before 6 April 2016) to 105%	55% (45% before 6 April 2016) to 150%
<b>2 Prompted</b> Failure disclosed more than 12 months after the tax becomes unpaid	30% to 45%	62.5% (52.5% before 6 April 2016) to 105%	85% (75% before 6 April 2016) to 150%
Failure disclosed within 12 months of the tax becoming unpaid	15% to 45%	62.5% (52.5% before 6 April 2016) to 105%	85% (75% before 6 April 2016) to 150%
<b>3 Unprompted</b> Failure disclosed more than 12 months after the tax becomes unpaid	20% to 60%	50% (40% before 6 April 2016) to 140%	70% (60% before 6 April 2016) to 200%
Failure disclosed within 12 months of the tax becoming unpaid	0% to 60%	50% (40% before 6 April 2016) to 140%	70% (60% before 6 April 2016) to 200%
<b>3 Prompted</b> Failure disclosed more than 12 months after the tax becomes unpaid	40% to 60%	80% (70% before 6 April 2016) to 140%	110% (100% before 6 April 2016) to 200%
Failure disclosed within 12 months of the tax becoming unpaid	20% to 60%	80% (70% before 6 April 2016) to 140%	110% (100% before 6 April 2016) to 200%

## Penalty rates for the deliberate withholding of information (this does not apply to FTC penalties)

You should read the explanation below together with factsheet 'Compliance checks: penalties if you do not file Income Tax, Capital Gains Tax and Annual Tax on Enveloped Dwellings returns on time – CC/FS18a'. This explains how to work out a late filing penalty, including a late filing penalty for the deliberate withholding of information. The penalty percentages in factsheet CC/FS18a for deliberately withholding information do not apply to offshore matters. We explain the offshore rates below.

The minimum penalty which can be charged depends on the tax year. The table below sets out the current lowest and highest percentages. It also gives the lowest percentages which apply to:

- tax years ending before 6 April 2016 (IT/CGT)
- transfers of value made before 1 April 2016 (IHT)

These higher penalty rates apply only to Income Tax, Capital Gains Tax and Registered Pension Schemes.

Category of territory	Deliberate	Deliberate and concealed
<b>1 Unprompted</b>	30% (20% before 1 April 2016 or 6 April 2016) to 70%	40% (30% before 1 April 2016 or 6 April 2016) to 100%
<b>1 Prompted</b>	45% (35% before 1 April 2016 or 6 April 2016) to 70%	60% (50% before 1 April 2016 or 6 April 2016) to 100%
<b>2 Unprompted</b>	40% (30% before 1 April 2016 or 6 April 2016) to 105%	55% (45% before 1 April 2016 or 6 April 2016) to 150%
<b>2 Prompted</b>	62.5% (52.5% before 1 April 2016 or 6 April 2016) to 105%	85% (75% before 1 April 2016 or 6 April 2016) to 150%
<b>3 Unprompted</b>	50% (40% before 1 April 2016 or 6 April 2016) to 140%	70% (60% before 1 April 2016 or 6 April 2016) to 200%
<b>3 Prompted</b>	80% (70% before 1 April 2016 or 6 April 2016) to 140%	110% (100% before 1 April 2016 or 6 April 2016) to 200%

For Inheritance Tax, this relates to transfers on or after 1 April 2016. For penalty percentages in category 1 for Inheritance Tax prior to 1 April 2016, read factsheet 'Compliance checks: penalties for inaccuracies in returns or documents – CC/FS7a'. Go to [www.gov.uk](http://www.gov.uk) and search for 'CC/FS7a'.

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## The taxes these penalty rules apply to and when they apply (this does not apply to FTC penalties)

The higher penalty rates for categories 2 and 3 apply only to Income Tax, Capital Gains Tax and Inheritance Tax.

For Inheritance Tax, this factsheet applies to inaccuracies in returns submitted for deaths and chargeable events on or after 1 April 2016.

For Income Tax and Capital Gains Tax, the penalty rules in this factsheet apply to:

- inaccuracies in returns or other documents which relate to the tax year 2011 to 2012 or later, and are given to us on or after 6 April 2011
- failures to notify that arise on or after 6 April 2012
- the deliberate withholding of information for the tax year 2011 to 2012 or later years

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## Additional information requirements (this applies to all offshore penalties including FTC penalties)

As set out in the tables above there is a percentage range for each penalty which may be charged. The exact amount which is charged within that range depends on what we call the 'quality of the disclosure'. This refers to the amount and quality of the additional information you give us. The penalty rate will decrease as the amount and quality of the additional information increases. You should give us additional information about:

- anyone who encouraged, assisted or facilitated you to carry out offshore tax evasion or non-compliance – this person is called an enabler
- assets you hold in any country outside the UK and any other people or entities you engaged to hold those assets on your behalf

If your penalty relates to events after the relevant date, you must take this information into account when working out the penalty and any reduction for the quality of disclosure. The relevant date for this purpose is:

- for Income Tax and Capital Gains Tax, tax years starting on or after 6 April 2016
- for Inheritance Tax, transfers of value made on or after 1 April 2016

Examples of additional information we need could include:

- name and address of the enabler
- a description of what the enabler did to encourage, assist or facilitate you
- a description of how you and the enabler first made contact and how you maintained contact
- a description of all documents you hold about their behaviour
- name and address of any other joint beneficial owner of the asset held abroad
- the extent of your share of the beneficial ownership of the asset held abroad
- a description of all documents of title or other documents showing your beneficial ownership
- details of where the asset is situated or held
- details of when and how you became a beneficial owner of the asset
- a description of all changes in the arrangements for the ownership of the asset since you became a beneficial owner
- the names and last known addresses of all people who have been asset holders of the asset during your beneficial ownership of it
- where the asset holder is not an individual, the name and business address (if known) of any director, senior manager, employee or agent of the asset holder who has advised or assisted you in relation to their beneficial ownership of the asset

If you did not involve an enabler or you have no assets located outside the UK held by another person, then by telling us this you have met the requirement to give us additional information.

You should take account of the amount and quality of the additional information you give us when working out any reduction for quality of disclosure. We explain this in more detail in the relevant penalty factsheet.

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## **Offshore asset moves penalties (these may apply where we have charged a FTC penalty)**

The Offshore Asset Moves Penalty is a separate penalty charged for moving assets between territories to avoid or delay the discovery of tax non-compliance. You may have to pay an offshore asset moves penalty if both of the following apply:

- you're being charged a penalty for failing to comply with certain Income Tax, Capital Gains Tax or Inheritance Tax obligations or you are being charged an FTC penalty – this is called the underlying penalty
- there has been a relevant asset move

A relevant offshore asset move occurs if either:

- an asset or a person who holds an asset moves from a specified territory or the UK to another non-specified territory
- there is a change in the ownership arrangements of an asset which results in the owner, before the move, remaining the owner afterwards

The officer dealing with the check will tell you what territories are specified territories and if there has been a relevant offshore asset move.

Where there's a relevant asset move and a relevant underlying penalty, the following 5 conditions must also be met before charging an asset moves penalty:

- 1 the underlying penalty must involve a deliberate inaccuracy, a deliberate failure to notify, or the deliberate withholding of information
- 2 the tax at stake for the underlying penalty must be Income Tax, Capital Gains Tax, or from 1 April 2016, Inheritance Tax

- 3 there must be a relevant offshore asset move made after the relevant time connected to the underlying penalty (we explain the relevant time below)
- 4 the relevant offshore asset move must have occurred after 26 March 2015
- 5 the main purpose, or one of the main purposes, of the relevant offshore asset move was to prevent or delay the discovery by HMRC of the inaccuracy, failure or deliberate withholding of information that led to the underlying penalty

### **Relevant time for asset moves penalties**

An asset moves penalty can be charged when the conditions above have been met. For a penalty to be charged, the relevant offshore asset move must have occurred after 26 March 2015 and after the relevant time. The relevant time depends on the type of penalty and tax at stake.

For inaccuracy penalties where the tax at stake is Income Tax or Capital Gains Tax, the relevant time is the start of the tax year for which an inaccuracy penalty was charged. For inaccuracy penalties concerning Inheritance Tax, the relevant time is when the liability for the tax at stake first arises.

For penalties for a failure to notify and the deliberate withholding of information, the relevant time is the start of the tax year the return relates to, for example 6 April 2016.

### **Amount of the penalty**

The offshore asset move penalty is 50% of the amount of the underlying penalty and is in addition to the underlying penalty.

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## **Asset-based penalties (these may apply where we have charged a FTC penalty)**

You may have to pay an asset-based penalty if all of the following apply:

- you have been charged an underlying penalty for a deliberate inaccuracy, failure to notify or for deliberately withholding information, or an FTC penalty
- the inaccuracy or failure relates to an offshore matter or offshore transfer
- the income, gain or transfer of value that relates to the inaccuracy has a clear link to the underlying asset
- the potential amount of tax at stake relating to the offshore matter exceeds £25,000 in a single year and
- the underlying penalty relates to Capital Gains Tax, Inheritance Tax or 'asset-based Income Tax'

'Asset-based Income Tax' is Income Tax charged under one of the provisions listed at paragraph 13 of Schedule 22 Finance Act 2016. The officer dealing with the check will tell you if the Income Tax you owe is 'asset-based Income Tax'.

### **1 Working out the amount of the asset-based penalty**

The standard amount of the asset-based penalty is the lower of:

- 10% of the value of the asset
- 10 x the offshore tax at stake

If the underlying penalty involves both offshore and domestic matters, this is called a combined penalty. The officer you're dealing with will explain the special rules for combined penalties.

The offshore tax at stake is the total for the year of both the:

- potential lost revenue (PLR), see below, used to work out the underlying inaccuracy or failure to notify penalty
- liability to tax (see below) used to work out the underlying penalty for deliberately withholding information

PLR means the potential lost revenue used to work out a standard offshore inaccuracy or failure to notify penalty. The liability to tax means the amount of tax used to work out a standard offshore penalty for the deliberate withholding of information. We explain how to work out the PLR and liability to tax in the relevant penalty factsheets.

## 2 Deciding whether the disclosure was unprompted or prompted (voluntary or non-voluntary disclosure in the case of FTC)

Whether the disclosure of the inaccuracy or failure was unprompted or prompted determines the minimum penalty percentage that can be charged and depends on the nature of the underlying penalties.

A disclosure relating to an asset-based penalty can only be treated as unprompted if all underlying penalties were themselves treated as being unprompted disclosures. If any underlying penalty to which the asset-based penalty is linked was treated as being a prompted disclosure, then the whole of the asset-based penalty will be treated as being a prompted disclosure.

If you make an unprompted disclosure, the penalty may be reduced to a lower amount than if you make a prompted disclosure. We explain this in more detail in the relevant penalty factsheets.

The penalty will fall into one of the ranges below depending on whether the disclosure is prompted or unprompted.

Disclosure	Range Minimum	Range Maximum
Unprompted	50% of the standard penalty	100% of the standard penalty
Prompted	80% of the standard penalty	100% of the standard penalty

## 3 Working out the quality of disclosure reduction

When calculating penalties, you will need to take account of how long it has taken you to come forward. If you have taken a significant period (normally 3 years) to tell us about the offshore asset, then you will not normally receive the full reduction for disclosure. We compare the earliest date you could have told us about the asset to the actual date you did tell us. The penalty range will be restricted by 10 percentage points above the minimum to reflect the time taken before working out the reductions for telling, helping and giving.

The amount of the asset-based penalty should be reduced where you:

- make a disclosure of the inaccuracy or failure relating to the underlying penalty
- give us a reasonable valuation of the asset
- give us information or access to records that we need to value the asset

The quality of disclosure (timing, nature and extent of information you give), determines where the penalty will fall within the penalty range. The reduction depends on how much help you give us.

## 4 Considering other reductions

After working out the amount of the penalty, we can then take into account any special circumstances that you have told us about. These will be uncommon or exceptional circumstances that we have not already considered when working out the quality of disclosure.

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

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 declare the wrong amount of duty or claim payments to which you are not entitled

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## Legislative references

References in this factsheet to penalties for inaccuracies, a failure to notify and the deliberate withholding of information mean:

- an inaccuracy in a return or document under paragraph 1 of Schedule 24 Finance Act 2007
- a failure to notify chargeability to tax under paragraph 1 of Schedule 41 Finance Act 2008
- the deliberate withholding of information by failing to file a return or document within 12 months of the filing date under paragraph 6 Schedule 55 Finance Act 2009

This factsheet is one of a series. For the full list of factsheets in the series, go to [www.gov.uk](http://www.gov.uk) and search for 'compliance checks factsheets'.