



# Penalties for failure to notify

This factsheet contains information about the penalties we may charge where there has been a failure to notify.

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

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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.

You can also ask someone else to deal with us on your behalf, for example, a professional adviser, friend or relative. We may however still need to talk or write to you directly about some things. If we need to write to you, we'll send a copy to the person you've asked us to deal with. If we need to talk to you, they can be with you when we do, if you prefer.

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## What is a failure to notify

There are certain circumstances that affect your liability to tax that you must tell us about, and you must do so within certain time limits. If you do not do this, we call this a 'failure to notify'.

The circumstances that you must tell us about include when you:

- first become liable to pay tax
- either carry out, or intend to carry out a taxable activity that must be registered with us

Examples of when you first become liable to pay tax include when:

- your business exceeds the VAT registration threshold – you must tell us within 30 days of this happening
- the VAT supplies you make change – you must tell us within 30 days of this happening
- your company first becomes chargeable to tax - you must tell us within 3 months of when the company's accounting period began
- your profits from self-employment first make you chargeable to tax – you must tell us within 6 months of the end of the relevant tax year
- you've no earned income but your investment income first reaches a level that makes you chargeable to tax – you must tell us within 6 months of the end of the relevant tax year
- you knowingly disposed of, or caused or permitted the disposal of material at an unauthorised waste site before 1 April 2018 where the material remained at the site on or after 1 April 2018 – you must have told us about the disposal before 1 May 2018

Examples of when you either carry out, or intend to carry out, a taxable activity that must be registered with us include when you intend to:

- promote bingo – you must register at least 14 days before the play starts
- brew beer – you must register with us at least 14 days before you intend to start brewing
- make available for play any amusement machines on which Machine Games Duty is payable – you must register with us at least 14 days before the machines are made available for play
- operate flights from the United Kingdom which are liable to Air Passenger Duty – you must register with us within 7 days of operating the first flight

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## Penalty for a failure to notify

We may charge you a penalty if you fail to notify us, or do not notify us on time. 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 failure to notify does not occur. If you do not do this, we may charge you a penalty.

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## When we will not charge you a penalty for a failure to notify

We will not charge you a penalty for a failure to notify if all of the following apply:

- you have a reasonable excuse for the failure
- the failure was not deliberate
- you told 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 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 made it difficult for you to notify us of your liability to tax, 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.

For failure to notify disposals at unauthorised waste sites – we will not charge you a penalty unless your behaviour was deliberate.

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## Disclosing a failure to notify before we find it

If you tell us about a failure to notify 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 failure 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 failure unrelated to what we're checking
- 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.

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## 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 a failure and how and why it happened
- telling us everything you can about the extent of the failure 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 failure
- 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 possible if you:

- tell us everything you can about any wrongdoing as soon as you can
- 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, we'll give you the full reduction that the law allows for telling, helping and giving.

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## 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.

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## 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 on page 3 of this factsheet.

### 1 Working out 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 failure to notify. The officer dealing with the check will explain how we work this out.

### 2 Determining our view of the 'behaviour'

When there's a failure to notify, 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 you a penalty and the amount of the penalty. The 3 different types of behaviour are described below.

#### Non-deliberate

This is where you failed to tell us about a circumstance that affected your liability to tax within the relevant time limit, but the failure was not deliberate or deliberate and concealed.

#### Deliberate but not concealed

This is where you knew that you should have told us about a circumstance that affected your liability to tax within the relevant time limit, but you chose not to tell us.

#### Deliberate and concealed

This is where you knew that you should have told us about a circumstance that affected your liability to tax within the relevant time limit, but you chose not to tell us. As well as choosing not to tell us, you also took active steps to hide the failure to notify from us.

### 3 Deciding whether the disclosure was unprompted or prompted

This determines the minimum penalty percentage that we can charge you. The section titled 'Disclosing a failure to notify before we find it', on page 2 of this factsheet, explains this in more detail.

### 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 or prompted disclosure	Penalty range
Non-deliberate	Unprompted - within 12 months of tax being due	0% to 30%
	Unprompted - 12 months or more after tax was due	10% to 30%
	Prompted - within 12 months of tax being due	10% to 30%

*Non-deliberate does not apply to failures to notify waste disposals at unauthorised waste sites	Prompted - 12 months or more after tax was due	20% to 30%
Deliberate	Unprompted	20% to 70%
	Prompted	35% to 70%
Deliberate and concealed	Unprompted	30% to 100%
	Prompted	50% to 100%

If you have a reasonable excuse for a non-deliberate failure to notify, 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 (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 your failure to notify. 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 a compliance check, we found a non-deliberate failure to notify that the customer had not told us about before we started our check. When we told them about the failure, they agreed with us that there had been a failure. This was therefore a prompted disclosure. The failure occurred more than 12 months after the tax became due.

The penalty range for a non-deliberate failure to notify with a prompted disclosure more than 12 months after the tax was due is 20% to 30% of the 'potential lost revenue' (PLR).

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

### Steps

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

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

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

This gives us the penalty percentage rate.

### Calculation example

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

$$10 \times 70\% = 7\%$$

$$30\% \text{ minus } 7\% = 23\%$$

$$23\%$$

## 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.

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### How we tell you about a penalty

We'll write 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've not 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 do not pay it on time.

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### When an officer of a company may have to pay some or all of a company's penalty for deliberate failure to notify

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 more of the following applies:

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

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.

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### If you've deliberately done something wrong

We may carry out a criminal investigation with a view to prosecution if you've deliberately done something wrong, such as:

- given us information that you know is not true, whether verbally or in a document
- dishonestly misrepresented how much tax you owe, or claimed payments you're not entitled to

#### Managing serious defaulters

If you deliberately got your tax affairs wrong, and we find this during the check, we may monitor your tax affairs more closely. We have an enhanced monitoring programme called 'managing serious defaulters'. For more information, read factsheet CC/FS14, 'Managing serious defaulters'. Go to [www.gov.uk](http://www.gov.uk) and search for 'CC/FS14'.

#### Publishing details of deliberate defaulters

We may publish your details if you deliberately got your tax affairs wrong, but we'll not do this if we've given you the maximum penalty reduction. For more information, read factsheet CC/FS13, 'Publishing details of deliberate defaulters'. Go to [www.gov.uk](http://www.gov.uk) and search for 'CC/FS13'.

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### If you disagree

If there's something that you do not agree with, please tell us.

If we make a decision that you can appeal against, we'll write to you about 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 dealing with the check 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 an independent tribunal to hear your appeal and 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. We call this Alternative Dispute Resolution (ADR).

ADR is only available for disputes that relate to particular tax areas. The officer dealing with the check will tell you if ADR is available for your dispute. For more information about appeals and ADR, read factsheets:

- HMRC1, 'HM Revenue and Customs decisions – what to do if you disagree'
- CC/FS21, 'Alternative dispute resolution'

Go to [www.gov.uk](http://www.gov.uk) and search for 'HMRC1' or 'CC/FS21'.

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## 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 have 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 for both appeals to be 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](http://www.gov.uk) and search 'CC/FS9'.

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## Which tax periods and taxes these penalty rules apply to

The penalty rules in this factsheet apply to failures to notify that arise on or after 1 April 2010, for all the taxes and duties listed below, except where stated.

Aggregates Levy	Hydrocarbon Oils Duty
Air Passenger Duty	Income Tax (including Self Assessment)
Alcohol Duty	Insurance Premium Tax
Amusement Machine Licence Duty	Landfill Tax
Bingo Duty	Lottery Duty
Capital Gains Tax	Machine Games Duty (from 1 February 2013)
Climate Change Levy	National Insurance Class 2 and Class 4
Corporation Tax	Pool Betting Duty
Digital Services Tax (from 1 April 2020)	Remote Gaming Duty
Diverted Profit Tax	Soft Drinks Industry Levy
Excise Duties (Holding and Movements)	Tobacco Duty
Gaming Duty	VAT
General Betting Duty	