



# Coronavirus support payments – penalties for failure to notify

This factsheet contains information about the penalties we may charge where there has been a failure to notify an Income Tax charge relating to the overpayment of certain coronavirus support payments made under one of the following schemes:

- Coronavirus Job Retention Scheme (CJRS)
- Self-Employment Income Support Scheme
- Eat Out to Help Out Scheme

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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 who 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

If you've received a coronavirus support payment that you are not entitled to, you must tell us about this by the end of the notification period. If you do not do this, we call this a 'failure to notify'.

The notification periods are:

- Eat Out to Help Out Scheme – 90 days after the date you received the amount you were not entitled to
- Self Employment Income Support Scheme – 90 days after the date you received the amount you were not entitled to
- Coronavirus Job Retention Scheme – 90 days after the date you received the amount you were not entitled to or after you ceased to be entitled to retain the amount you were paid, which could be because
  - of a change in your circumstances
  - you have not used the payment to pay the costs it was intended to reimburse, within a reasonable period of time (for example, to pay your staff)

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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 to notify
- the failure to notify was not deliberate
- you notified us without unreasonable delay after your reasonable excuse ended

If the failure to notify is deliberate in nature then the reasonable excuse provisions do not apply.

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 even though you took reasonable care to make sure that you did so. 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.

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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'. PLR is the amount that is unpaid as a result of the failure to notify. The officer dealing with the check will explain how we work this out.

#### **If you knew you were not entitled to the payment at the time you received it or you stopped being entitled to the payment**

The PLR for failure to notify is the amount of Income Tax which would have been assessable on you at the end of the last day of the notification period.

The Income Tax assessable is the amount of the coronavirus support payment that you were not entitled to and did not repay by the last day of the notification period.

## **If you did not know you were not entitled to the payment when you received it or you stopped being entitled to it**

Except for companies, the PLR is the amount of Income Tax which would have been assessable at the end of 31 January following the tax year in which the coronavirus support payment was received.

For companies, PLR is the amount of Income Tax which would have been assessable 12 months after the end of an accounting period by reason of the failure to notify.

## **2 Determining our view of your '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.

For a failure to notify penalty where you knowingly received coronavirus support payments that you were not entitled to, or additionally for CJRS, knew you were no longer entitled to retain the payment, the law treats your failure as deliberate and concealed.

The 4 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**

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 and took active steps to hide the failure to notify from us.

### **Deliberate treated as deliberate and concealed**

This is where you received a coronavirus support payment that you knew you were not entitled to at the time you received the payment, or additionally for CJRS, knew you were no longer entitled to retain the payment.

In these circumstances, the law treats the behaviour as deliberate and concealed, and the penalty ranges for deliberate and concealed as shown in the table below will apply. There is no need for there to be any element of concealment for the deliberate and concealed penalty range to apply.

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

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.

## 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 table below 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%
	Prompted - 12 months or more after tax was due	20% to 30%
Deliberate	Unprompted	20% to 70%
	Prompted	35% to 70%
Deliberate and concealed or treated as deliberate and concealed	Unprompted	30% to 100%
	Prompted	50% to 100%

## 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%

## 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	
<p>During a check, we found a deliberate but treated as deliberate and concealed 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.</p> <p>The penalty range for a deliberate but treated as deliberate and concealed failure to notify with a prompted disclosure is 50% to 100% of the 'potential lost revenue' (PLR).</p> <p>The reduction for quality of disclosure (telling, helping and giving) was 70%.</p>	
<b>Steps</b>	<b>Calculation example</b>
To work out the penalty percentage rate, we first work out the difference between the minimum and maximum penalty percentages.	100% minus 50% = 50
We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.	50 x 70% = 35%
We then take off the percentage reduction from the maximum penalty percentage we can charge.	100% minus 35% = 65%
This gives us the penalty percentage rate.	65%

## 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 £1,950 (£3,000 x 65% = £1,950).

## 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 send you a penalty assessment notice.

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've 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 HM Revenue and Customs (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 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](http://www.gov.uk) and search for '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 22 July 2020, for all the taxes listed below, except where stated:

- Coronavirus Job Retention Scheme
- Eat Out to Help Out Scheme
- Self Employed Income Support Scheme

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## More information

For more information on the coronavirus support payment schemes, go to [www.gov.uk](http://www.gov.uk) and search for:

- CC/FS47 'Self-Employment Income Support Scheme – receiving grants you were not entitled to'
- CC/FS48 'Coronavirus Job Retention Scheme – receiving grants you were not entitled to'
- CC/FS58 'Eat Out to Help Out Scheme – receiving payments you were not entitled to'