

Chargeable Events – Penalties following Audits and Voluntary Disclosures

This note explains how penalties under Section 98 TMA 1970 will be considered by HM Revenue & Customs following both HMRC audits and voluntary disclosure of failures in the reporting of chargeable events by insurers and friendly societies.

The guidance will apply to incorrect and late issued certificates identified during routine HMRC audits of chargeable event processes and the voluntary disclosure of failures to HMRC by companies following internal checks.

Existing arrangements for making annual returns to HMRC are not affected by this guidance.

Background

Where an institution fails to issue a chargeable event gain certificate within the time limit set by Section 552 ICTA 1988 it is liable to an initial maximum penalty of £300 under Section 98(1)(i) TMA1970 for the failure to issue the certificate to the appropriate policyholder within the relevant three month period set by Section 552(1)(a).

If the institution is also obliged to deliver a chargeable event certificate to HMRC under Section 552(1)(b) but has failed to do so within the relevant three month period it is liable to another initial maximum penalty of £300, under Section 98(1)(i) TMA 1970.

If a penalty is imposed under either leg and the institution still fails to issue the certificate then it becomes liable to continuing penalties of up to £60 for each day that the failure continues, under Section 98(1)(ii) TMA 1970.

Where an institution issues an incorrect chargeable event gain certificate, it is liable to a maximum penalty of £3,000, under Section 98(2) TMA 1970.

It is important to note that penalties for failures in relation to chargeable event reporting remained in Section 98 TMA 1970 when new penalties were introduced elsewhere following the Powers Review (i.e. they continue to be charged under the old rules).

Voluntary settlements – Current Procedure

Where a failure to issue a chargeable event certificate within the appropriate timescale has been notified to HMRC following internal reviews by institutions, HMRC is open to their choosing to meet the potential loss of income tax on behalf of their policyholders. Where this approach is adopted, HMRC enters into a contract settlement with the institution to take account of the recovery of the potential income tax lost by reason of an incorrect, non-issued or late-issued certificate, together with calculated interest upon this quantified tax loss. Such settlements may also take account of any Section 98 penalties to which the company is liable.

In practice, the amounts included in such settlements to take account of the penalties applicable for each late issued or incorrect certificate has generally fallen within a relatively narrow range.

Voluntary settlements – Revised Procedure

Following discussions with companies, and internally, HMRC has decided that it would be appropriate to update its approach to the charging of penalties in such cases.

In future, HMRC will continue to review each disclosure on an individual basis but, after discussion with the company involved, where it is considered that a penalty is appropriate, HMRC will consider abating the penalty potentially chargeable.

Such abatement of Section 98 penalties will follow the HMRC Policy for Abatement that applies to tax-gearred penalties charged under Taxes Management Act 1970.

This Policy awards abatement for:

- ✓ Disclosure - Maximum 20% (with an additional 10% available for spontaneous and complete disclosure)
- ✓ Co-operation - Maximum 40%
- ✓ Seriousness - Maximum 40%

Guidance on this abatement Policy can be found on the HMRC website from EM6052 onwards. <http://www.hmrc.gov.uk/manuals/emmanual/em6052.htm>

Depending on the particular circumstances of the disclosure it is possible, for example in cases involving spontaneous disclosure, that 100% abatement will be applied and the penalty will be reduced to nil.

In cases where disclosure and cooperation are good, HMRC would consider abatement of 90% to 95% to be appropriate, except for more serious failures.

Note that, under this Policy, spontaneous disclosure of chargeable event failures will be taken into account as part of the abatement process.

Chargeable Event Audits

Chargeable event audits are carried out by HMRC auditors on a regular basis to ensure that chargeable event reporting is properly administered by companies. Settlement of the audits can be reached, as described above, by agreeing with the company a recovery based on the quantification of potential lost tax, interest on that tax and a penalty for the relevant failure.

With effect from 1 December 2014, HMRC will also adopt its Abatement Policy to arrive at the level of penalty element to be included in audit settlements.

This revised procedure will apply to all ongoing and future compliance negotiations in relation to voluntary disclosure and chargeable event audits.

Any enquiries regarding this change of procedure should be made to the chargeable event auditors:

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