

VAT

More Indirect Tax Penalties



New Penalty Regime

Mitigating Penalties

Consequences

Appeals

HM Revenue & Customs is continuing to update the penalty regime in respect of indirect taxes and is introducing a 'VAT and Excise Wrongdoing Penalty' with effect from 1 April 2010.

New Penalty Regime

This new penalty will operate alongside the existing penalty regime rather than replacing it and will apply in the following situations:

- The issue of an invoice that includes VAT by a person not entitled to charge VAT. For example, a business that has applied for VAT registration but not yet received its VAT number is not allowed to issue invoices showing an amount identified as VAT. If it does it could be subject to a wrongdoing penalty.
- Handling goods on which Excise Duty has not been paid or has been deferred. For example, anyone involved in the buying, moving, storing or selling of cigarettes or alcohol on which Excise Duty should have but has not been paid.
- Uses a product in a situation where additional duty should be paid but fails to do so. For example, red diesel is taxed at a reduced rate of Excise Duty if used in certain specified ways such as agricultural use but is subject to a higher rate of Excise Duty if used as ordinary road fuel.

- Supplying a product at a lower rate of Excise Duty knowing that it is going to be used for a purpose that would mean that a higher rate of Excise Duty should apply. For example, fuelling an agricultural vehicle with red diesel knowing that the vehicle is not going to be put to agricultural use.

Mitigating Penalties

The penalty will be calculated as a percentage of the potential lost revenue and the percentage will depend on whether the wrongdoing was:

- Deliberate and concealed;
- Deliberate but not concealed; or
- Not deliberate.

It will be possible to mitigate the penalty by telling HM Revenue & Customs about the wrongdoing:

Reason for Wrongdoing	Disclosure	Minimum Penalty	Maximum Penalty
Reasonable Excuse		No penalty	No penalty
Non Deliberate	Unprompted	10 %	30 %
	Prompted	20 %	30 %
Deliberate	Unprompted	20 %	70 %
	Prompted	35 %	70 %
Deliberate and Concealed	Unprompted	30 %	100 %
	Prompted	50 %	100 %

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It is important to remember that these penalties operate in conjunction with the existing penalty regime. So someone caught returning from France with a van load of booze and fags and cannot convince HM Revenue & Customs that they are for personal use may face:

- Seizure of the goods;
- Forfeiture of the van; and
- A wrongdoing penalty.

In order to get the goods and the van back it would be necessary to pay an additional financial penalty consisting of:

- The value of the goods;
- The unpaid duty and VAT; and
- The value of the van.

If this additional financial penalty is not paid within a reasonable time the goods will be destroyed and the van will be crushed even if it does not belong to you!

Appeals

There have been a few appeals against penalties levied under the regime that succeeded on the basis that the penalty was disproportionate in comparison to the amount of duty owed. It remains to be seen whether the addition of the wrongdoing penalty leads to an increase in the number of appeals.

What has become clear, after almost two years of experience with the VAT Errors and Penalty regime introduced on 1 April 2008 in respect of errors on VAT returns, is that VAT Officers are much more inclined to seek penalties than they were under the old system. This suggests that collecting penalties is seen as just as

lucrative as collecting under paid VAT!

Our recommendation, therefore, is to review all business systems and ensure they are robust enough to avoid the possibility of being penalised or, at the very least, demonstrate use of reasonable care

Specific advice should be obtained before taking action, or refraining from taking action, on any of the subjects covered.

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