

VAT 'Failure to Notify' Penalties



New Penalty Rates

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Conclusion

HMRC is continuing to harmonise the multitude of penalty regimes that apply to the various taxes and duties it administers.

The latest set of penalties to be harmonised are those that relate to 'failures to notify'. So failing to register for VAT on time or failing to tell HMRC that you need to file a tax return are covered in this category.

New Penalty Rates

The new penalty rates come into effect from 1 April 2010 and are tax geared but are also weighted in a manner designed to reward good behaviour and punish bad behaviour:

Reason for Wrongdoing	Disclosure	Minimum Penalty	Maximum Penalty
Reasonable Excuse		No penalty	No penalty
Non Deliberate	Unprompted within 12 months	0 %	30 %
	Unprompted after 12 months	10%	30%
	Prompted within 12 months	10%	30%
	Prompted after 12 months	20%	30%
Deliberate	Unprompted	20 %	70 %
	Prompted	35 %	70 %
Deliberate and Concealed	Unprompted	30 %	100 %
	Prompted	50 %	100 %

Mitigation

It is possible to avoid a penalty completely if you have a reasonable excuse for failing to notify on time. It should be noted, however, that "I relied on my accountant and he let me down" or "I couldn't afford to pay the tax" are not regarded as being reasonable excuses.

Mitigation of the penalties can also be earned by volunteering to tell HMRC about the matter and helping to sort things out and calculate the tax.

The Old Vs. The New

What is shocking is the size of the percentages particularly when they are compared to some of the existing penalty regimes. For example, up to 31 March 2010 the penalty for failing to register for VAT on time is:

Period of Lateness	Penalty
0-9 Months	5%
9-18 Months	10%
Over 18 Months	15%

So the maximum penalty under the old regime is 15% whereas under the new regime it could be a whopping 100%!

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Rights of Appeal

Although taxpayers have a right of appeal to the Tax Tribunal they will still be very much at the mercy of HMRC as it will be up to the VAT officer or tax inspector to decide:

- Which behaviour category the taxpayer falls into
- Whether the disclosure was prompted or unprompted
- Whether the taxpayer has been cooperative.

It should also be noted that even if the taxpayer is successful in an appeal to the Tribunal the cost of fighting the appeal needs to be weighed against the value of the penalty as legal costs can no longer be claimed at Tribunal level.

Conclusion

So although it is a laudable aim to harmonise and simplify the penalty regimes the scale of them leaves a lot to be desired.

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