

ROTHERHAM TAYLOR
LIMITED
Chartered Accountants & Registered Auditors

GUIDE TO HMRC PENALTIES

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HMRC TAX PENALTIES MADE EASY

Our expert team at Rotherham Taylor has put together this helpful guide to tax penalties – to help you know where you stand if ever you find yourself, or your business, on the wrong side of HM Revenue & Customs (HMRC).

INTRODUCING HMRC PENALTIES

HMRC can impose penalties upon businesses and individuals for a variety of reasons, from basic and easily avoidable errors in self-assessment tax returns to blatant failures to declare income or pay what is owed.

In today's tax environment, penalties are ever-present and are growing increasingly difficult to avoid. Even those who are not required to file a tax return can sometimes find themselves facing a penalty if they are deemed responsible for making a mistake in someone else's return.

Due to this, it is important to understand how HMRC operates, the circumstances in which penalties are typically issued, and where you stand if you find yourself or your business facing a hefty fine.

“ In many instances, excuses such as “My dog ate my tax return” will inevitably not sit well with HMRC. However, there are often ‘special circumstances’ in which you may be entitled to a reduction or exemption from an HMRC penalty. ”

Rotherham Taylor has put together this useful guide to help shed some light on the world of HMRC penalties. However, it is important to note that, while useful, this is guide is only a brief overview and expert advice should always be sought dependent on your unique circumstances.

TAX COMPLIANCE FAILURES

HMRC will typically categorise all of the following as tax compliance failures:

- The late filing of tax returns.
- Failure to submit a tax return.
- Late payment of tax liabilities.
- Failure to notify chargeability to tax.
- Failure to provide information and documents.

Fortunately, not every tax return error will lead to a penalty, as whether or not a penalty is issued will usually depend on how far HMRC believes 'reasonable care' has been taken in completing the return.

On a less positive note, however, for those who do face a penalty which they believe is undeserved, it is not always easy to convince HMRC that 'reasonable care' has been taken.



TAX RETURN ERRORS

Generally speaking, if a taxpayer has made an error in their tax return, HMRC will consider whether or not to issue that taxpayer with a penalty.

The Revenue tends to accept that tax returns can be complex and confusing to the untrained eye and therefore allowances will be made in some instances. However, every so often taxpayers will be hit with a penalty on grounds of making an error in their return – and this may come as a complete surprise.

Under HMRC's existing penalty regime for errors, the level of penalty will depend on the degree of culpability of the taxpayers' mistake. In the tax authority's eyes, this will fall into one of the following categories:

- **'Careless'** – which can incur a maximum penalty of 30 per cent of the additional tax.
- **'Deliberate but not concealed'** – which can incur a maximum penalty of 70 per cent.
- **'Deliberate and concealed'** – which can incur a penalty of 100 per cent, or potentially more if the error involves a serious matter, i.e. offshore tax matters.

“ In the first instance, HMRC has the power to suspend all or part of a penalty. The taxpayer must be notified as to what part of a penalty will be suspended, and the Revenue must specify a period of suspension which must not exceed two years. ”

HMRC officers are instructed to consider the suspension of every penalty issued for a 'careless' error. However, penalties cannot be suspended for 'deliberate' errors.

In instances of a 'deliberate' error which is later disclosed by the taxpayer, HMRC will assess whether the taxpayer's disclosure was 'prompted' or 'unprompted' – and the latter may be looked upon more favourably.

'REASONABLE CARE' AND 'REASONABLE EXCUSE'

HMRC will not usually impose penalties for errors which the taxpayer has taken 'reasonable care' to avoid. If it does, however, and the taxpayer believes that a 'reasonable excuse' for the failure exists, this will have to be proven.

The concepts of 'reasonable care' and 'reasonable excuse' are almost entirely subjective – as neither is clearly defined by HMRC. More often than not, HMRC's opinion on the matter will differ from that of the taxpayer.

CIRCUMSTANCES BEYOND THE TAXPAYER'S CONTROL

In some cases, there can be an exception from certain penalties if the taxpayer can demonstrate a 'reasonable excuse' for committing the offence. This can apply to various compliance penalties, such as:

- Late payment of tax.
- Late filing of tax returns.
- Failure to notify liability to tax.
- Failure to comply with an HMRC information notice.

In terms of tax returns, the penalty provisions for late or incorrect returns do not explicitly define what counts as a 'reasonable excuse' – hence why disputes over such matters can often be confusing and difficult to resolve, and may even go to the Courts should a taxpayer wish to appeal an HMRC decision. Fortunately, some very basic guidance is provided by HMRC.

WHAT MIGHT BE CONSIDERED A REASONABLE EXCUSE?

HMRC offers the following basic guidance as to what might constitute a reasonable excuse:

- **Bereavement** – this may apply if one of the taxpayer's close relatives or their domestic partner passed away around the time they should have filed their return or paid tax.
- **Serious illness** – if the taxpayer themselves or a close relative fell seriously ill around the time the tax should have been paid.
- **Unforeseen events** – which can include delays due to industrial action or returns/payments being lost in the post.

WHAT MIGHT NOT BE CONSIDERED A REASONABLE EXCUSE?

HMRC states a handful of circumstances in which a reasonable excuse can never – or will very rarely – exist. These are:

- **Deliberate failure to submit a tax return on time** – this will always be considered a failure on the taxpayers' part.
- **Insufficient funds** – this will not be deemed a reasonable excuse unless a) the shortage of funds could not have been reasonably foreseen by the taxpayer or b) the lack of funds can be attributed to another event outside of their control.
- **Reliance on another person** – this will not be deemed a reasonable excuse unless it can be proven that the taxpayer took 'reasonable care' to avoid the compliance failure.

'SPECIAL REDUCTIONS' AND 'SPECIAL CIRCUMSTANCES'

Very often it is more likely that HMRC will be able to provide a 'special reduction' to a penalty, as opposed to eliminating the penalty altogether. Compliance errors such as mistakes in tax returns, a failure to notify HMRC or a failure to submit a return can all be liable to 'special reductions', under the right circumstances.

Special reductions will be considered on a case-by-case basis, as HMRC's Compliance Handbook offers no solid definition of what constitutes 'special circumstances'.

A special reduction can include HMRC 'staying' a penalty, which will see the enforcement of a penalty postponed until a later date. This may involve the taxpayer having to 'agree a compromise' with the Revenue in order to forego part of the penalty.



SPECIAL REDUCTIONS BY A TAX TRIBUNAL

UK taxpayers have the right to appeal an HMRC decision that a disputed penalty should be payable. In instances where HMRC does not allow a special reduction in relation to a penalty, and the Revenue's decision is considered by the taxpayer to be 'flawed', the taxpayer may be able to challenge the decision at a Tribunal – which is independent of Government and will weigh up both sides of an argument prior to making a decision.

At a Tribunal, the taxpayers will have a chance to prove 'reasonable care', a 'reasonable excuse' or 'special circumstances'. However, as HMRC's Compliance Handbook offers such cloudy definitions of what constitutes each of the above, this may not always be easy to do. When it comes to such contentious matters, taxpayers will often consider alternative dispute resolution (ADR) before applying to the Tribunal.



HMRC'S VIEW IN BRIEF

HMRC says that, under all circumstances, it expects each taxpayer to be “a prudent person, exercising reasonable foresight and due diligence, having proper regard for their responsibilities under the tax Acts”.

WHAT DOES THIS MEAN FOR YOU?

Simply put, should you find yourself facing a penalty, i.e for submitting a late tax return, the onus will be on you to satisfy that you had a ‘reasonable excuse’ at the point the failure occurred, assuming you wish to seek out a ‘special reduction’ or exemption from that penalty.

If you are unable to define a ‘reasonable excuse’ in relation to your circumstances, HMRC will simply weigh up the unique circumstances of your case in order to determine whether the penalty you have been issued with is justified. However, at a later date, you are entitled to challenge a ‘flawed’ decision at a Tribunal or via alternative dispute resolution if you so wish.

“ It is worth keeping in mind that what is considered a reasonable excuse in one person’s case will not always constitute a reasonable excuse elsewhere. Therefore it is always best to seek specialist advice depending on your unique circumstances. ”

Or, even better, to appoint a specialist accountant or tax adviser to assist with all of your tax affairs from the outset in order to minimise the likelihood of any errors in your returns and HMRC correspondence.

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