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DON'T GET CAUGHT OUT BY THE TAXMAN! A round-up of new HMRC penalties and powers



HM Revenue and Customs (HMRC) recently unveiled a plethora of changes to its penalties and regulations, as well as proposed increases in its powers and capabilities. This factsheet provides a round-up of some of the most significant changes affecting businesses and individuals, including the new penalties for late filing.

INCREASED PENALTIES FOR LATE FILING

A new penalty regime for late filing and late payment of Income Tax through Self Assessment has now come into effect.

Under the new framework, which first applies to 2010/11 tax returns, the penalties for submitting tax returns late have risen significantly. It means that a return filed six months after the deadline could attract a fine of at least £1,300.

Previously, filing the returns after the annual 31 January deadline would lead to a £100 fine. However, HMRC claims that this failed to act as a deterrent. It hopes the new harsher penalty system will therefore encourage people to 'submit returns as soon as possible'.

Another big change to the penalty regime is that the fines will no longer be cancelled if the taxpayer owes no money to HMRC, because there was no extra tax to pay or because it had been paid.

The new penalties for filing tax returns late are as follows:

- **Day one** – Individuals will be charged an initial penalty of £100, even if they have no tax to pay or have already paid all the tax owed
- **Over three months late** – Individuals will be charged an automatic daily penalty of £10 per day, up to a maximum of £900
- **Over six months late** – Individuals will be charged further penalties, which are the greater of 5% of the tax due or £300
- **Over 12 months late** – Individuals will be charged yet more penalties, which are the greater of 5% of the tax due or £300. In serious cases people face a higher penalty of up to 100% of the tax due.

Meanwhile, the penalties for paying tax late are:

- **30 days late** – Individuals will be charged an initial late payment penalty of 5% of the tax unpaid at that date
- **Six months late** – Individuals will be charged a further late payment penalty of 5% of the tax that is still unpaid
- **12 months late** – Individuals will be charged a further late payment penalty of 5% of the tax that is still unpaid.

The above penalties are levied on top of the interest that HMRC will charge on all outstanding amounts, including unpaid penalties, until payment is received.

RECORD CHECKS

Following a period of consultation, HMRC is proceeding with its plans to carry out spot checks on small businesses. The visits were not due to start until July 2011 but HMRC decided to introduce what it describes as a 'test and learn' trial.

However, following protests from some professional organisations, HMRC subsequently released a Briefing Paper explaining the status and extent of the Business Records Checks (BRC), which are already being undertaken in some parts of the country.

It confirms that HMRC is testing BRC in a limited way between 4 April and 15 July 2011, involving 30 HMRC staff in eight locations (Edinburgh, Irvine, Manchester, Liverpool, Stockport, Sunderland, Sheffield and Portsmouth). It estimates that around 1,200 businesses will be targeted during this initial phase of the programme.



HMRC said it has ‘no intention’ of charging penalties for record-keeping failures during this testing period, adding that it will continue to review its long-term planning around the introduction of such charges in the future.

MANAGING DELIBERATE DEFAULTERS

After conducting a series of campaigns to encourage the disclosure of undeclared income or gains abroad, HMRC has introduced new measures to clamp down on tax evasion. Changes include increased levels of scrutiny and harsher penalties for those who deliberately evade tax.

Under the Managing Deliberate Defaulters (MDD) programme, individuals who deliberately evade tax will now be subject to detailed inspection for up to five years. The level and term of monitoring will depend on the seriousness of the offence, but HMRC does not envisage that anyone will be released from the scheme within two years.

There are a variety of ways that HMRC can now monitor a deliberate defaulter’s tax affairs. These may include:

- making announced or unannounced inspection visits to carry out pre-return checks of their books and records
- asking for certain records and additional information to be sent in with the individual’s tax return
- conducting in-depth compliance checks into all or any part of the person’s tax affairs
- observing and recording the person’s business activities and cross-checking details in their accounts
- requiring more frequent VAT returns or withdrawing certain favourable VAT schemes such as cash accounting, annual accounting, the flat-rate scheme and retail schemes.

If HMRC finds that a person has continued to deliberately evade tax, it may instigate criminal proceedings against that person. From April 2010 where someone has deliberately evaded tax of more than £25,000 HMRC can also publish the person’s name and other details.

HARSHER PENALTIES FOR OFFSHORE TAX EVASION

On 6 April 2011 new penalties came into force for offshore non-compliance relating to income tax and capital gains tax (CGT). Under the new rules, penalties are linked to the tax transparency of the territory in which the income or gain arises. Where it is harder for HMRC to get information from another country, the penalties for failing to declare income or gains arising in that country will be higher.

All offshore jurisdictions are divided into three categories and the classification determines the level of the penalty that is applied, as shown in the table below.

Details of which territories are in ‘category 1’ and ‘category 3’ can be found at www.hmrc.gov.uk/news/territories-category.htm. All other territories (except the UK) are in ‘category 2’.

Category	Transparency of territory	Penalty (from 6 April 2011)
Category 1	UK and territories with automatic exchange of information on savings with the UK	The penalty remains the same – up to 100%
Category 2	Territories which exchange information on request with the UK. Least developed countries without information-sharing agreements with the UK	The penalty is now 1.5 times that due under the previous rules – up to 150%
Category 3	Territories which do not exchange information with the UK	The penalty is double that due under the previous rules – up to 200%

If a person can demonstrate that they have taken reasonable care to get their tax right, they may escape a penalty. Similarly, HMRC may not apply a penalty where an individual has a reasonable excuse for a failure to notify taxable income. Where penalties are due, HMRC can reduce them depending on how helpful the individual is in assisting it to establish the correct amount of tax due.

The first Self Assessment returns affected will be for the 2011/12 tax year, with paper returns due to be filed by 31 October 2012, and electronic returns by 31 January 2013.

SECURITY FOR PAYE AND NICs

HMRC estimates that the Exchequer lost between £600 million and £800 million per year between 2005/06 and 2008/09 in PAYE and NICs debts that had been built up by employers who then became insolvent.

To help prevent this, legislation in the Finance Bill 2011 introduces a power to allow HMRC to make regulations enabling them to require a security from employers for PAYE that is seriously at risk. The measure will also introduce a criminal offence for non-payment of a security.

Once the new power is in place, HMRC will use existing powers to make equivalent provision in respect of NICs.

OTHER CHANGES

Changes to payment dates – Class 2 national insurance contributions

From April 2011, HMRC will issue just two payment requests in the year in October and April, showing payments due by 31 January and 31 July, respectively.

This means that the due dates for payment of 2011/12 Class 2 national insurance contributions (NICs) will be 31 January 2012 and 31 July 2012.

Corporation tax filing

From 1 April 2011, company tax returns and accounts for accounting periods ending after 31 March 2010 must be filed online using the inline Extensible Business Reporting Language (iXBRL) format, the new standard designed for business financial reporting. Updated guidance on iXBRL tagging is available on the HMRC website.

Changes to PAYE procedures

From 6 April 2011 significant changes were made to the operation of PAYE on payments made to employees following

the termination of their employment and on the engagement of new employees who fail to provide a P45 and do not complete a form P46. In both cases, employers are now required to deduct tax using code 0T (zero T) on a non-cumulative basis. This will ensure that tax is deducted at the basic, higher and additional tax rates where necessary (without taking personal allowances into account).

Previously, employers were only required to deduct tax at the basic rate (using code BR).

Further information and advice can be found at www.hmrc.gov.uk.

If you would like more information on any of the matters raised here, please contact us. We have a wealth of experience in dealing with the tax authorities and can advise clients on strategies for mitigating tax whilst ensuring that they comply with HMRC regulations.

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