

If you're naughty and you know it, clap your hands

Our regular financial expert **Priya Kotecha** explains the ins and outs of HMRC's penalty regime

I was going to open this article on HMRC's penalty regime with a joke, but then decided this is definitely no laughing matter. Instead, I am going to present you with four shocking, but true, facts:

1. If you have additional tax to pay after an HMRC inquiry, HMRC can charge you a penalty of up to 100% of the unpaid tax in addition to that. So unpaid tax of £25,000, say, could turn into £50,000 with penalties.

2. If you do not file your tax return when you are due to, you could face fines of up to £1,600 even if you do not have any tax to pay or are owed a refund.

3. For undeclared income or gains hidden in an offshore bank account, HMRC could issue you with a penalty of up to 200% the outstanding tax paid – so tax to pay of £25,000 could result in tax including penalties of up to £75,000.

4. If you deliberately evade tax resulting in tax due of more than £25,000, HMRC can publically name and shame you on their website on an 'evaders list'. That's one to tell the grandchildren about.

I think I probably have your attention now, so let's go through each of those facts in a little more detail. . .



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Behaviour giving rise to error	Penalty as a percentage of lost revenue (i.e tax)	
	Voluntary disclosure	Prompted disclosure
Mistake or misrepresentation	0	10
Failure to take reasonable care (careless inaccuracy)	0-30	15-30
Deliberate understatement or overclaim	20-70	35-70
Deliberate understatement aggravated by concealment.	30-100	50-100

Table 1

Category	Membership	Penalties
Category 1	-UK -Territories with automatic exchange of information on savings income with the UK	Penalties unchanged - up to 100%
Category 2	-Territories which exchange information on request with the UK	Penalties increased by a factor of 1.5 - up to 150%
Category 3	-Territories which don't exchange information with the UK	Penalties increased by a factor of 2 - up to 200%

Table 2

1. Penalties on unpaid tax

(See Table 1)

Clearly, the penalty depends on what you did wrong and whether you owned up or waited for HMRC to approach you.

The penalties are much lower where you have owned up of your own accord (voluntary disclosure). That's quite straightforward but the types of behaviour are a little more subjective:

A. Mistake or misrepresentation – completely unintentional and nothing to do with your underlying records. You just made a mistake – pure and simple. We are all human and so if you do make a mistake, and own up to it, HMRC will not charge you any penalties at all.

B. Careless inaccuracy – essentially – you did not take reasonable care. For example, you

do not keep sufficient record of how much income you receive so when your tax return is completed, you have no way of knowing whether your income is correctly reflected or not. You haven't just made a mistake – you physically did not take reasonable care to ensure you could correctly disclose your income.

C. Deliberate understatement or over-claim – in other words – you are naughty and you don't try to hide it. An example would be paying wages without accounting for PAYE.

D. Deliberate and concealed – you are naughty but you try and make it look like you are not. An example would be creating false invoices.

Let's suppose you own a practice and you normally bank all of your takings. However, every Friday, you put £100 cash

from unbanked cash patient charges in your pocket and failed to keep a note of this for your accountant, to whom you only supply your bank statements. Your accounts and tax return will show income as being understated by £50*52 = £2,600. If you just stopped there, you would have been deliberately naughty and so your prompted penalty would be between 35%-70%.

However, if when HMRC approach you, you go back to your computer system which records income and try to manipulate this so it agrees with the lower amount shown in your accounts – that is you trying to conceal the fact you have deliberately understated your income, so the penalty increases to 50%-100%.

2. Penalties for late tax returns

The regime has four elements, which mount up if the tax return isn't filed:

I. £100 fine from 3 February (after 31 January deadline was extended due to HMRC strikes)

II. £10 a day fine from 1 May for 90 days –

'You will have the opportunity to make representations as to why they should not publish your details – but you will need a good reason'

a maximum of £900

III. £300 fine on 1 August (or 5% of the tax due if that is more)

IV. £300 fine on 1 February the following year (or 5% of the tax due if that is more).

These fines are also no longer capped at the tax owed, so taxpayers could face fines of up to £1,600 – even if they owe nothing or if HMRC owes them a refund.

3. Hiding undeclared income or gains offshore

If you channel income or gains into an offshore account and you do not declare this income

in the UK, you could be fined up to 200% of unpaid tax. See Table 2.

4. Public naming and shaming

If you have deliberately evaded (evasion is illegal and involves deliberately understating your profit, for example) tax of £25,000 or more, HMRC can publish your name on its website. However you will be spared from this if you either make a full unprompted disclosure or you make an immediate disclosure when HMRC first challenge you. Also, even if HMRC want to publish your details, they will let you know beforehand and you will have the opportunity to make representations as to why they should not publish your details – but you will need a good reason. Simply saying it will tarnish your reputation will not help.

In one of the *Hitchhikers Guide to the Galaxy* books (Douglas Adams), Ford Perfect said: 'He is spending a year dead for tax reasons'.

And that was before public naming and shaming.

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