



*Following the merger of the Inland Revenue and Customs & Excise, HM Revenue & Customs (HMRC) has been keen to modernise and align the penalty regimes for incorrect returns. Due to the large amount of Government debt, there has been much speculation that HMRC will use the new penalty rules to widen its scope for charging penalties in order to collect more money from taxpayers. To assist you in navigating the changes, A&M Taxand UK has summarised the main points and the potential impact on you.*

## Penalties for Incorrect Returns

The primary aim of the new rules is not only to come down hard on those who seek unfair advantages through non-compliance, but also to support those who seek to comply. The new penalty rules will, therefore, be based on taxpayer behaviour and responsibility in causing the errors.

The new rules come into force for tax periods that started on 1 April 2008, but only applies to returns due to be filed from 1 April 2009. Under the new rules:

- **All of your returns will be subject to the same penalty rules.**

HMRC has inherited many different rules for the various taxes. The new legislation aligns the rules for the main taxes (Income Tax, Corporate Tax, Capital Gains Tax, VAT, PAYE, NIC and the Construction Industry Scheme). HMRC will apply a complicated formula to calculate your penalty.

*A&M Taxand UK professionals can advise you on the operation of the new rules. We can review your penalty calculations to ensure they are accurate. We can also undertake training sessions or prepare a manual / guide for you and your staff.*

- **Penalty levels will be based on your accountability for causing the error.**

The different categories of errors are subject to interpretation and vary according to the circumstances and the ability of the taxpayer. There is room for negotiation with HMRC.

- a) **“Innocent mistakes” will not be subject to a penalty.**

When taxpayers have taken “reasonable care” in preparing a return—such as having kept relevant records, implemented appropriate systems and checked figures on a return to the underlying records—HMRC will not charge a penalty. Innocent errors include small arithmetical errors and

reasonable views of the law that are disclosed on your tax return but challenged by HMRC.

- b) **“Careless errors” will be subject to a penalty of up to 30 per cent.**

When taxpayers have failed to take reasonable care in preparing a return—such as having failed to put appropriate systems in place, not having taken professional advice when required and not having checked that a return is consistent with the underlying records—then HMRC may charge a penalty of up to 30 per cent of the underpaid tax.

- c) **“Deliberate errors” will be subject to penalties between 20 and 100 per cent.**

When taxpayers have deliberately prepared an incorrect return, HMRC can charge penalties between 20 and 70 per cent of the underpaid tax. This includes knowingly failing to record all sales and describing transactions inaccurately.

When taxpayers have also tried to conceal their actions, HMRC can charge penalties of between 30 and 100 per cent. This includes examples of serious fraud such as backdating documents, creating false minutes of meetings or destroying books and records.

*A&M Taxand UK professionals can review your systems, procedures, records and returns to ensure that you prepare accurate returns and keep appropriate evidence of your actions. We can also assist if your tax affairs are subject to an in-depth enquiry by HMRC or if you have been charged large penalties.*

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Together with its affiliate in the US, Alvarez & Marsal Taxand UK is part of Alvarez & Marsal, a leading global professional services firm founded in 1983 to provide operational and financial leadership, problem solving and value creation to corporates and stakeholders around the world. Alvarez & Marsal Taxand is also a founding member of Taxand, the first global network of leading advisers from independent member firms operating in more than 45 countries with 300 partners and 2,000 tax professionals, serving the global business tax marketplace.

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- **You may incur a penalty even if you have not made a profit.**

Overstated losses will be liable to penalties. It is also no longer possible to use losses within the group to reduce the penalty charge.

*A&M Taxand UK professionals can review your systems, procedures, records and returns to ensure that you have prepared accurate returns and provided appropriate evidence of your actions. We can also assist your negotiations with HMRC in relation to large penalties where you feel you have taken reasonable care.*

- **If you report an error in your return to HMRC, they will reduce the maximum penalty level.**

If you disclose an error to HMRC before they contact you, HMRC will cap your penalty at 50 per cent of the set maximum level. In cases where no deliberate actions have been taken to prepare an inaccurate document, penalty rates may be reduced to nil.

HMRC will take into account the quality of the disclosure. They will look at three aspects—the nature and extent of your disclosure, the assistance to them in quantifying the size of the error and the access provided to your records.

*A&M Taxand UK professionals can assist you with your disclosure, your cooperation with HMRC and manage your relationship with HMRC.*

- **You can permanently defer certain penalties by improving systems.**

HMRC may suspend part or all of a penalty for systematic and careless errors for up to two years. You must meet certain conditions and must not commit any subsequent errors for any tax going forward.

*A&M Taxand UK professionals can assist you in suspending a penalty, and negotiating the terms and conditions, including the amount of tax and length of suspension.*

- **You will not receive a penalty if an agent acting on your behalf is responsible for the error on your return.**

You will not receive a penalty if an agent acting on your behalf is responsible for the error on your return. However, you must ensure that you provide the agent with accurate and complete information.

*A&M professionals can prepare your corporate tax returns on your behalf.*

- **Directors can be liable to a proportion of a penalty.**

HMRC can charge directors or company secretaries a proportion of the penalty, up to 100 per cent, when deliberate errors are specifically attributable to them.

*A&M Taxand UK professionals can assist you in negotiating with HMRC and protect you and your staff.*

- **You can appeal a penalty.**

There are safeguards in the legislation which allow taxpayers to appeal any penalty notice on the grounds of reasonableness to the First Tier Tribunal.

*A&M Taxand UK professionals can assist you in defending your case with HMRC.*

## Tax Risk and Disputes

A tax enquiry by HMRC—whether into a tax avoidance arrangement or an in-depth enquiry—can be stressful, expensive and time consuming for any taxpayer. Diverting key leaders from their crucial roles of running the business and keeping it profitable can adversely affect relationships with banks, customers and suppliers.

Alvarez & Marsal Taxand UK brings a dedicated Tax Risk and Disputes team to offer highly experienced support to you in quickly concluding enquiries or proactively minimising the risk of an enquiry. Our goal is to minimise the tax at risk and keep penalties and interest to an absolute minimum. Our professionals can handle an enquiry in its entirety, allowing you to focus on your existing day-to-day roles. We can also serve as advisers to you at crucial junctures in the enquiry and compliance process.

