

Penalty for errors (practical examples) – (Lecture P1320 – 12.37 minutes)

In other articles I have covered various aspects of penalty mitigation. This article will consider the calculation of penalties (as they relate to errors in a return or document submitted to HMRC), under the provisions of Finance Act 2007. This will assist advisers who are involved in cases where these penalties are in point.

Penalty calculation

It is important to consider the various elements of the penalty calculation in the correct order, and these are noted below:

1. Work out the potential lost revenue (“PLR”), which can arise from
 - a. Correcting an inaccuracy in a return or document;
 - b. An incorrect repayment;
 - c. An incorrect claim;
2. Determine the category of behaviour;
 - a. Reasonable care;
 - b. Careless;
 - c. Deliberate but not concealed;
 - d. Deliberate and concealed;
3. Establish whether the disclosure was unprompted or prompted;
4. Determine the penalty range;
5. Apply the reduction of the quality of disclosure; Advisers should note that HMRC will usually seek to restrict the maximum reduction they give for the quality of the disclosure to 10 percentage points above the minimum of the penalty range where the taxpayer has taken a significant time (typically three years or more) to make the disclosure. This is not a statutory reduction in relation to onshore liabilities;
6. Work out the penalty (as a percentage);
7. Work out the penalty (in financial terms);
8. Consider other reductions;
9. Consider the suspension of the penalty (only for careless behaviour).

Advisers need to remember that the above process must be followed for each offence. There may, for example, be different categories of behaviour that apply, and only one part of a disclosure may be unprompted.

Example 1

The relevant information regarding the error is as follows:

- PLR £3,000
- Careless behaviour
- Unprompted disclosure
- Abatement for quality of disclosure
 - Telling 30%
 - Helping 40%
 - Giving 30%

Applying the various elements of the penalty calculation, as above, we get the following:

1. PLR £3,000
2. Careless behaviour
3. Unprompted disclosure
4. Penalty range is 0% to 30%
5. The penalty abatement for the quality of the disclosure is 100% (30% + 40% + 30%)
6. The resulting penalty is 0%
7. The resulting penalty is £0
8. It is not necessary to consider other reductions (as the penalty cannot be reduced below 0%)
9. It is not necessary to consider suspension of the penalty (as the penalty is £0)

Example 2

This example relates to multiple errors.

The relevant information regarding the errors is as follows:

Error 1

- PLR £600
- Careless behaviour
- Prompted disclosure
- Abatement for quality of disclosure
 - Telling 20%
 - Helping 40%
 - Giving 30%

- Calculation
 1. Penalty range is 15% to 30%
 2. The penalty abatement for the quality of the disclosure is 90% (20% + 40% + 30%)
 3. The resulting penalty is 16.5%
 4. The resulting penalty is £99
 5. Subject to potential suspension

Error 2

- PLR £800
- Deliberate behaviour without concealment
- Prompted disclosure
- Abatement for quality of disclosure

– Telling	20%	
– Helping	40%	
– Giving	30%	
- Calculation
 1. Penalty range is 35% to 70%
 2. The penalty abatement for the quality of the disclosure is 90% (20% + 40% + 30%)
 3. The resulting penalty is 38.5%
 4. The resulting penalty is £308

Error 3

- PLR £1,600
- Careless behaviour
- Unprompted disclosure
- Abatement for quality of disclosure

– Telling	30%
– Helping	40%
– Giving	30%

- Calculation
 1. Penalty range is 0% to 30%
 2. The penalty abatement for the quality of the disclosure is 100% (30% + 40% + 30%)
 3. The resulting penalty is 0%
 4. The resulting penalty is £0
 5. No need to consider suspension of penalty

Error 4

- PLR £24,000
- Deliberate behaviour
- Unprompted disclosure
- Abatement for quality of disclosure
 - Telling 30%
 - Helping 40%
 - Giving 30%
- Calculation
 1. Penalty range is 20% to 70%
 2. The penalty abatement for the quality of the disclosure is 100% (30% + 40% + 30%)
 3. The resulting penalty is 20%
 4. The resulting penalty is £4,800

Practical points

Some penalty calculations will be relatively straight-forward. Where there are multiple errors, it is important to ensure that each one is considered separately, as there may be different relevant mitigating factors for each error, which will impact on the penalty due.

HMRC will issue a penalty calculation letter, which sets out their view of the various aspects, as noted above. Advisers should ensure that the content of the letter is consistent with any discussions held with HMRC regarding penalty abatement. In particular, it is important to ensure that any comments provided by HMRC in relation to the quality of disclosure reflect the facts of the case and are represented in the resulting percentage reductions shown in the calculation letter.

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