

## CHAPTER 10

### CTSA PENALTY REGIME

The legislation is very useful for this chapter. It is worth taking the time to highlight the detail included in this chapter in the legislation using the various references provided.

#### 10.1 Introduction

The CTSA penalty regime ensures compliance with the various CTSA administrative requirements. The penalty regime aims to penalise various misdemeanours including the **failure to notify** chargeability to tax, the **late filing** of returns, **record-keeping** failures, **incorrect returns** and the **late payment of tax**.

#### 10.2 Penalties for failure to notify chargeability

Companies have an obligation to notify HMRC when their first chargeable accounting period begins or when they come back within the charge to tax.

[FA 2004, s.55](#)

The company must give **written notice** to HMRC **within three months of the start of the accounting period**. The notice must state when the chargeable accounting period began.

[FA 2004, s.55 \(2\)](#)

Once HMRC are aware that a company is chargeable to UK corporation tax they will normally send out a notice (CT603) requiring a company to submit a corporation tax return within a few weeks of the end of the period of account.

[FA 1998, Sch 18  
Para 2\(1\) & \(2\)](#)

If a company has not received a notice (CT603) from HMRC to file a tax return it must notify HMRC **within 12 months of the end of the chargeable accounting period** that it is chargeable to tax.

If the company misses this deadline, HMRC will charge a **penalty**.

[FA 2008, Sch 41](#)

The penalty will be based on the behaviour of the company and is a **percentage of the 'potential lost revenue'**. The potential lost revenue to which any penalty will apply is the **amount of corporation tax which is unpaid 12 months after the end of the chargeable accounting period** as a result of the failure to notify.

[FA 2008,  
Sch 41 Para](#)

For a **deliberate and concealed failure**, the penalty will be a maximum of 100% of the potential lost revenue; for a **deliberate but not concealed failure**, the **maximum penalty will be 70%** of the potential lost revenue; and for any other case - eg due to lack of care, the **maximum penalty will be 30%** of the potential lost revenue.

[FA 2008, Sch 41 Para 6](#)

A failure is deliberate and concealed where the failure is deliberate and the company **makes arrangements to conceal the situation** giving rise to the obligation. This would include creating false evidence of a non-taxable source of income to explain undisclosed income; creating false invoices to support inaccurate turnover figures or destroying books and records.

[FA 2008, Sch 41 Para 5\(1\)](#)

A failure is deliberate but not concealed where the failure is deliberate but no arrangements are made to conceal the situation giving rise to the obligation.

Reductions in the amount of the penalty are available for both '**unprompted**' and '**'prompted' disclosures**'.

The table below details the maximum and minimum penalties that could apply. Note that where the company is simply careless in not making the necessary notification, the reduction in the penalty also depends on how long has elapsed since the time when any tax first becomes unpaid as a result of the failure.

Behaviour	Maximum penalty	Min penalty with unprompted disclosure		Min penalty with prompted disclosure		<a href="#">FA 2008, Sch 41 Para 13</a>
Deliberate and concealed	100%		30%		50%	
Deliberate but not concealed	70%		20%		35%	
		<12m	≥12m	<12m	≥12m	
Any other case	30%	Nil	10%	10%	20%	

Disclosure is unprompted if the company has no reason to believe HMRC have discovered, or are about to discover, the failure.

Disclosure takes place where a company **tells HMRC** about the failure, gives HMRC **reasonable help** in calculating the resulting unpaid tax and **allows HMRC access to records** to check the amount of unpaid tax.

[FA 2008, Sch 41 Para 12](#)

The actual reduction in the penalty depends on the quality of the elements of disclosure, including **timing, nature and extent**.

### Illustration 1

Bridge Ltd's first chargeable accounting period began on 1 January 2010. The directors were unaware of the need to notify HMRC that Bridge Ltd was chargeable to tax for the year ended 31 December 2010.

Consequently HMRC did not send Bridge Ltd a notice (CT603) requiring the company to submit a corporation tax return for its year ended 31 December 2010. The directors failed to notify HMRC of the company's chargeability to tax by 31 December 2011.

The company appointed a tax adviser in August 2012 and HMRC were immediately notified of the company's chargeability to tax. The corporation tax return for the year ended 31 December 2010 was filed in September 2012 showing a corporation tax liability of £58,000 which was paid on that date.

It would appear that the company's failure to notify HMRC of its chargeability to tax by 31 December 2011 was due to carelessness, as Bridge Ltd did not deliberately decide to fail to notify HMRC.

The maximum penalty is therefore 30% of the potential lost revenue of £58,000, which is the unpaid corporation tax 12 months after the end of the chargeable accounting period.

However, Bridge Ltd made an unprompted disclosure within 12 months of the tax becoming unpaid (ie. within 12 months of 1 October 2011), so the penalty may be reduced to a minimum of nil.

Failure to notify penalties must be paid within 30 days of the date the notice assessing the penalty is issued, or interest will be charged.

[FA 2008, Sch 41](#)  
[Para 16](#)

The decision to issue a penalty, or the amount of the penalty, can be appealed against.

[FA 2008, Sch 41](#)  
[Para 17 & 18](#)

Penalties will not be charged if the company has a reasonable excuse for the failure and the failure is not deliberate.

[FA 2008, Sch 41](#)  
[Para 20](#)

### 10.3 Penalties for late returns

Schedule 55 FA 2009 contains new penalty provisions in respect of failure to make a return. Although these rules have not yet been implemented in respect of corporation tax returns, for the purposes of the examinations you are **only required to know the new rules**. You will NOT be examined on the old rules.

[FA 2009, Sch 55](#)  
[Para 3](#)

Under the FA 2009 rules, an **initial penalty of £100** will apply if a return is late, even where there are no amounts of tax outstanding.

[FA 2009, Sch 55](#)  
[Para 4](#)

Additional daily penalties of £10 per day may be levied in respect of returns which are more than 3 months late. The daily penalty can be imposed for a maximum of 90 days.

If a return is **more than 6 months late**, there will be an additional penalty of **5% of any liability to tax** which would have been shown in the return (i.e. the amount which would have been shown as due and payable by the company), or **£300 if greater**.

[FA 2009, Sch 55 Para 5](#)

An additional penalty of **5% of any liability to tax** (or £300 if greater) will also be levied if the return is **more than 12 months late**. If the return has not been submitted within 12 months and by failing to make the return the company is deliberately withholding, but not concealing information, which would enable HMRC to assess the tax liability, the maximum amount of the penalty increases to **70%** (or £300 if greater). If the withholding of information is deliberate and concealed, the maximum amount of the penalty is **100% of the tax liability** (or £300 if greater).

[FA 2009, Sch 55 Para 6](#)

## Illustration 2

Delhomme Ltd was due to file the tax return in respect of the year ended 31 March 2011 on 31 March 2012. The return was actually submitted on 15 October 2012, showing a liability to tax of £40,000.

As the return was not filed by 31 March 2012 a fixed £100 penalty will be levied.

HMRC could decide to impose daily penalties of £10 per day for a maximum of 90 days as the return was outstanding for more than 3 months.

Finally, as the return was outstanding for more than 6 months, a penalty of  $\text{£}40,000 \times 5\% = \text{£}2,000$  will be charged.

Penalties that apply where a company has deliberately withheld information, can be reduced for both prompted and unprompted disclosure of the information.

[FA 2009, Sch 55 Para 14](#)

The table below details the maximum and minimum penalties that could apply:

Behaviour	Maximum penalty	Minimum penalty with unprompted disclosure	Minimum penalty with prompted disclosure	<a href="#">FA 2009, Sch 55 Para 15</a>
Deliberate but not concealed	70%	20%	35%	
Deliberate and concealed	100%	30%	50%	

The minimum penalty is £300 if greater.

Disclosure takes place where a company **tells HMRC** about the relevant information, **gives HMRC reasonable help** in quantifying the tax unpaid as a result of the information being withheld and **allows HMRC access to records** to check the amount of unpaid tax.

Disclosure is unprompted if it is made when there is no reason to believe that HMRC have discovered or are about to discover the information.

The actual reduction in the penalty depends on the quality of the disclosure, including timing, nature and extent.

HMRC have the power to reduce the penalty if there are special circumstances.

The maximum aggregate penalty (calculated as a percentage of the liability to tax) that can be charged in respect of the late filing of a return is **100% of the liability to tax**.

[FA 2009, Sch 55 Para 17\(3\)](#)

Where a penalty for a late return is calculated based on a tax liability, the amount of the penalty is **reduced by any other penalty calculated in relation to the same liability**, for example a failure to notify penalty. However, the penalty is not reduced by a penalty for late payment of tax. In other words, if a return is filed late and the tax liability is paid late, **the company will incur both late filing and late payment penalties**.

Late payment penalties must be **paid within 30 days** of the date the notice of assessing the penalty is issued, or interest will be charged.

[FA 2009, Sch 55 Para 18](#)

The decision to issue a penalty, or the amount of the penalty payable, **can be appealed against** by the company.

[FA 2009, Sch 55 Para 20](#)

Penalties will not be charged if the company has a reasonable excuse for the failure. An insufficiency of funds is not a **reasonable excuse** (unless due to events outside the company's control). Relying on a third party is also not a reasonable excuse, unless the company took reasonable care.

[FA 2009, Sch 55 Para 23](#)

The term "reasonable excuse" is not defined in the legislation and HMRC's view is that each claim should be considered on its own unique merits.

#### 10.4 Record keeping failures

Companies are normally required to **keep certain records for at least 6 years** from the end of the chargeable accounting period. These are the same as the Companies Act requirements and will include:

- (i) records of receipts and expenses and the matters to which they relate;
- (ii) details of all sales and purchases made in the course of trade, where the trade involves dealing in goods; and
- (iii) supporting documents, such as accounts, books, vouchers, contracts, deeds etc.

[FA 1998, Sch 18 Para 21](#)

The penalty for failing to keep these records is £3,000 per chargeable accounting period.

[FA 1998, Sch 18](#)  
[Para 23](#)

The duty to keep records can be reduced from 6 years by notification in writing from HMRC.

[FA 1998, Sch 18](#)  
[Para 21\(2A\)](#)

## 10.5 Not producing documents

With effect from 1 April 2009, a company failing to produce documents for the purpose of an enquiry is liable to a penalty of £300. If the failure continues after the initial penalty has been imposed further penalties of up to £60 per day will be imposed.

[FA 2008, Sch 36](#)  
[Para 39 & 40](#)

## 10.6 Penalties for incorrect returns - introduction

Penalties will apply where a tax return, or claim for a relief, contains an inaccuracy which leads to an understatement of tax; or a false or inflated statement of a loss; or a false or inflated claim to a tax repayment.

[FA2007, Sch 24](#)  
[Para 1\(2\)](#)

Penalties will be charged if the error occurred due to a careless action i.e. failure by the company to **take reasonable care**. This would apply, for example, if insufficient records were maintained or if a company estimated figures rather than obtaining accurate information.

In addition, greater penalties will be charged if the error is **deliberate** i.e. the company knowingly and intentionally submits an incorrect document but does not take steps to hide the error, for example deliberately including an incorrect turnover figure on a return but without creating false records to conceal the inaccuracy. Another example of a deliberate but not concealed error would be deliberately describing transactions inaccurately or in a way likely to mislead.

Finally, an even greater penalty will be levied if the error is **deliberate and concealed** i.e. an incorrect document was sent knowingly and intentionally and active steps were taken to hide the error, such as creating false invoices or destroying books and records so that they are not available.

If a return contains more than one error, a **penalty is charged for each error**.

The penalty charged will be a percentage of the potential lost revenue.

The table below details the maximum and minimum penalties that could apply.

Behaviour	Maximum penalty	Min penalty with unprompted disclosure	Min penalty with prompted disclosure	
Deliberate and concealed	100%	30%	50%	<a href="#">FA 2007, Sch 24 Para 4</a>
Deliberate but not concealed	70%	20%	35%	<a href="#">FA 2007, Sch 24 Para 10</a>
Careless	30%	0%	15%	

**Reductions are available for both 'unprompted' and 'prompted' disclosures.**

Disclosure is unprompted if the company has no reason to believe HMRC have discovered or are about to discover the failure.

Disclosure takes place where a company **tells HMRC** about the failure, gives HMRC **reasonable help** in calculating the resulting unpaid tax and **allows HMRC access to records** to check the amount of unpaid tax.

[FA 2007, Sch 24 Para 9](#)

The actual reduction in the penalty depends on the quality of the elements of the disclosure, including timing, nature and extent.

### Illustration 3

Jordan Ltd files a corporation tax return for the year ended 31 May 2010 on 20 May 2011. The return shows taxable total profits to be £240,000. Due to carelessness on Jordan Ltd's part, the taxable total profits should have been declared to be £290,000.

We will calculate the maximum penalty that Jordan Ltd could be charged by HMRC for this error.

The potential lost revenue as a result of Jordan Ltd's error is:

$$\text{£}(290,000 - 240,000) = \text{£}50,000 \times 21\% \text{ corporation tax} \quad \underline{\text{£}10,500}$$

The company's error is careless so the maximum penalty for the error is:

$$\text{£}10,500 \times 30\% \quad \underline{\text{£}3,150}$$

This penalty will be charged in addition to the extra tax of £10,500 and in addition to any interest Jordan Ltd will have to pay if the tax is paid after the normal due date for payment.

Note here that if Jordan Ltd discovers the error before HMRC and voluntarily discloses its mistake, the penalty can be reduced, potentially to nil.

HMRC have the power to reduce the penalty if there are special circumstances.

You will see that these penalty provisions are very similar to the failure to notify penalties we have already looked at.

One difference to note is that **there are no penalties for inaccuracies where the company has taken reasonable care**. For example, an inaccuracy resulting from an arithmetical or transposition error, which is not large in either absolute terms or in relation to the overall liability such that it would be identified in a review, would not result in a penalty. So, reporting an expense as £5,210 instead of £5,120 would not incur a penalty, but reporting interest income of £100 instead of £100,000 would!

However, an inaccuracy which was not careless or deliberate at the time the return was submitted will be treated as careless if the company discovers the inaccuracy at a later date, but does not take reasonable steps to inform HMRC.

[FA 2007, Sch 24  
Para 3\(2\)](#)

One other difference to the late notification penalty is that the reduction in a penalty for a careless error does not depend on when HMRC discover the inaccuracy.

Penalties can also be charged if an assessment issued by HMRC understates the liability and the company fails to take reasonable steps to notify HMRC within 30 days from the date of issue of the assessment. The rate of the penalty is the same as for a careless error.

[FA 2007, Sch 24  
Para 2](#)

## 10.7 Penalties for incorrect returns – potential lost revenue

[FA 2007, Sch 24  
Para 5\(1\)](#)

The potential lost revenue is generally **the extra tax due as a result of the discovery of the error**.

[FA 2007, Sch 24  
Para 7](#)

Where an inaccuracy has the result that a loss is wrongly recorded and the loss has been wholly used, then the potential lost revenue is the amount of tax due or payable as a result of correcting the inaccuracy.

In cases where the loss has not been wholly used, it is the sum of:

- a) The potential lost revenue in respect of the amount of the loss used to reduce the tax due or payable; plus
- b) 10% of any part that has not been so used.

[FA 2007, Sch 24  
Para 8](#)

Where the inaccuracy results in tax being declared later than it should have been, the potential lost revenue is 5% per annum of the delayed tax.

If the calculation of the potential lost revenue in respect of more than one inaccuracy depends on the order in which they are corrected, a "careless inaccuracy" is taken to be corrected before a "deliberate inaccuracy". Similarly a "deliberate but not concealed" inaccuracy, is taken to be corrected before a "deliberate and concealed" inaccuracy.

[FA 2007, Sch 24](#)  
[Para 6](#)

## 10.8 Penalties for incorrect returns - Other points

If a penalty is charged due to failure to take reasonable care, it may be **suspended for two years** provided the suspension conditions agreed with HMRC are kept and no further penalties are incurred in the suspension period. If the conditions are met throughout the suspension period, the penalty will be cancelled.

[FA 2007, Sch 24](#)  
[Para 14](#)

The ability to suspend a penalty is intended to support those who try to meet their obligations by giving them time to improve their systems, which help them to avoid penalties for inaccuracies in the future.

Suspension of a penalty is not possible where it relates to an error that was deliberate or deliberate and concealed.

A penalty in respect of an inaccuracy must be **paid within 30 days** of the date the notice of assessing the penalty is issued, or interest will be charged.

[FA 2007, Sch 24](#)  
[Para 13](#)

The decision to issue a penalty, or the amount of the penalty payable, **can be appealed against** by the company.

[FA 2007, Sch 24](#)  
[Para 15](#)

The company will not be liable for actions taken on its behalf by an agent where the company can show that it took reasonable care to avoid an inaccuracy or failure.

[FA 2007, Sch 24](#)  
[Para 18](#)

Where a return is incorrect because a third party has deliberately provided false information, or deliberately withheld information from the company with the intention of the return being incorrect, a penalty can be charged on the third party, whether or not the company is charged a penalty in respect of the same inaccuracy.

[FA 2007, Sch 24](#)  
[Para 1A](#)

The company may be charged a penalty for the same inaccuracy if it did not take reasonable care to ensure the information supplied by the third party was correct. However, the total of the penalties charged cannot exceed 100% of the potential lost revenue.

[FA 2007, Sch 24](#)  
[Para 12\(4\)](#)

It is possible to collect a corporate penalty from an officer of the company for a deliberate understatement if it was attributable to that officer's actions.

[FA 2007, Sch 24](#)  
[Para 19](#)

There is a "double jeopardy" rule preventing a penalty being charged in respect of an inaccuracy or failure where there has already been a criminal conviction.

[FA 2007, Sch 24](#)  
[Para 21](#)

### 10.9 Penalties for late payment of tax

Schedule 56 FA 2009 contains new penalty provisions in respect of late payment of tax. Although these rules have not yet been implemented in respect of corporation tax, for the purposes of the examination you are **only required to know the new rules**. You will NOT be examined on the old rules.

Penalties are charged at a rate of 5% in respect of late payments of corporation tax.

The first penalty is due if tax in respect of an accounting period is outstanding **after the filing date for the return for that period**. Additional 5% penalties are levied in respect of tax still unpaid **more than 3 months and more than 9 months** after the filing date for the return.

[FA 2009, Sch 56 Para 1](#)

Late payments of quarterly instalments do not suffer separate late payment penalties.

[FA 2009, Sch 56 Para 4](#)

#### Illustration 4

Bengal Ltd had a corporation tax liability of £84,000 for the year ended 31 March 2011. Bengal Ltd is not required to make instalment payments.

It paid £60,000 on 10 July 2012 and the remaining £24,000 on 1 February 2013.

The due date for the **return** for the year ended 31 March 2011 is 31 March 2012. The full amount of the tax is outstanding at this point, resulting in a late payment penalty of  $\text{£84,000} \times 5\% = \text{£4,200}$ .

None of the tax has been paid within three months of the filing date (30 June 2012), therefore an additional 5% penalty of £4,200 is charged at this point.

9 months after the filing date (1 January 2013) £24,000 is still outstanding. A final penalty of  $\text{£24,000} \times 5\% = \text{£1,200}$  is charged.

#### Illustration 5

Patriot Ltd draws up accounts for the year to 31 December 2010. The liability for the year is £2.5 million and Patriot Ltd is required to pay tax by quarterly instalments. Payments are made as follows:

Amount due	Due date	Amount paid	Date of payment
£625,000	14.7.10	£625,000	14.7.10
£625,000	14.10.10	£500,000	14.12.10
£625,000	14.1.11	£500,000	14.1.11
£625,000	14.4.11	£500,000	14.6.11

The balance outstanding of £375,000 was paid on 1 May 2012.

Although two of the instalments were paid late, no penalties are charged in respect of this. However, tax of £375,000 is outstanding after the filing date for the return (31 December 2011), resulting in a penalty of £375,000 x 5% = £18,750. As the tax is still outstanding 3 months after the filing date, a further 5% penalty is charged.

Companies that fail to make payments of tax by the due date may request that **payment be deferred** for a period. If HMRC agree to the deferral request (known as '**an agreed time to pay arrangement**'), the company will not be charged any late payment penalties.

However, if the terms of the agreement are broken, for example if the company fails to pay the amount due at the end of the deferral period, HMRC can charge the late payment penalties.

Late payment penalties must be paid **within 30 days** of the date the notice assessing the penalty is issued, or interest will be charged.

[FA 2009, Sch 56](#)  
[Para 11](#)

The decision to issue a penalty, or the amount of the penalty payable, **can be appealed against** by the company.

[FA 2009, Sch 56](#)  
[Para 13](#)

Penalties will not be charged if the company has a reasonable excuse for the late payment. An insufficiency of funds is not a **reasonable excuse** (unless due to events outside the company's control). Relying on a third party is also not a reasonable excuse, unless the company took reasonable care.

[FA 2009, Sch 56](#)  
[Para 16](#)

HMRC have the power to reduce the penalties if there are special circumstances.

## 10.10 Publishing details of deliberate tax defaulters

[FA 2009, s.94](#)

Finance Act 2009 has made provision for HMRC to publish certain information on tax defaulters.

HMRC may publish information about any person who has incurred relevant tax penalties in consequence of an investigation by HMRC, where the potential lost revenue exceeds £25,000. It includes any penalties issued for inaccuracies in documents, such as inaccuracies attributable to supply of false information or withholding information by a person.

Relevant tax penalties in respect of incorrect returns are those incurred where the error is deliberate or concealed inaccuracies.

The definition of potential lost revenue is broadly the amount of tax unpaid or undeclared as a result of the default to which the penalty percentage is applied.

The information that may be published includes the person's name and address, the nature of any business carried on by the person, the amount of penalties and potential lost revenue, the period to which the penalty relates and such further information as may be required to make clear the person's identity.

The information is likely to be posted in quarterly lists on HMRC's website.

HMRC may not publish any information until the relevant tax penalties have become final.

If information is to be published it must be within one year of the day the penalties have become final.