

# A guide to

# The New Penalties Regime

## A SIMPLE GUIDE TO THE NEW PENALTIES REGIME

This is a basic guide prepared by the Technical Advisory service for members and their clients. It is an introduction only and should not be used as a definitive guide, since individual circumstances may vary. Specific advice should be obtained, where necessary.

### The New Penalties Regime

The aim of the new penalties regime is to provide a simpler and more consistent approach by HM Revenue & Customs (HMRC).

## UNDERSTANDING THE NEW PENALTIES REGIME

HMRC is introducing a new penalties regime applying to documents due to be filed on or after 1 April 2009. The new regime covers the following the taxes:

- VAT
- PAYE
- National Insurance contributions
- Capital Gains Tax
- Income Tax
- Corporation Tax
- Construction Industry Scheme

The proposal is to extend it to other taxes, levies and duties though it has been stated that it will not apply to any benefits or credits like tax credits, nor will it apply to the national minimum wage.

The general approach of the new regime is designed to be fairer, helping those that are compliant and punishing those who are not. The reason underlying an error will now be looked into and they have coined the term 'reasonable care' as key to determining the amount of penalty charged.

### Reasonable care

The definition of 'reasonable care' varies from person to person and their unique circumstances and abilities. It is a behavioural change and tax payers and their advisors must demonstrate in their everyday work reasonable care can be demonstrated. HMRC has provided the following examples of reasonable care:

- keeping accurate records to make sure your tax returns are correct
- saving your records in case you need them later
- checking what the correct position is when you don't understand something
- telling HMRC promptly about any error you discover in a tax return or document after you've sent it.

It stands to reason that a person with simple tax affairs will have a simple system of records and that a person with complicated tax affairs may have a complicated system of records.

For example, reasonable care is where a person who enters a transaction not encountered in their usual activity, takes steps to make sure the correct treatment is realised. That could be by seeking advice or checking the treatment is correct and would be similar to the reasonable steps taken once an error is discovered.

HMRC states that if reasonable care is taken to get things right and still an error occurs then there will be no penalty. In addition, once an error is discovered reasonable steps must be taken to promptly disclose it. Reasonable steps include:

- consulting with an accountant or agent to discuss the position so they can inform HMRC
- ringing HMRC to discuss it
- discussing it with one of HMRC's officers if there is an ongoing compliance check
- e-mailing, faxing or writing to an HMRC office with details.

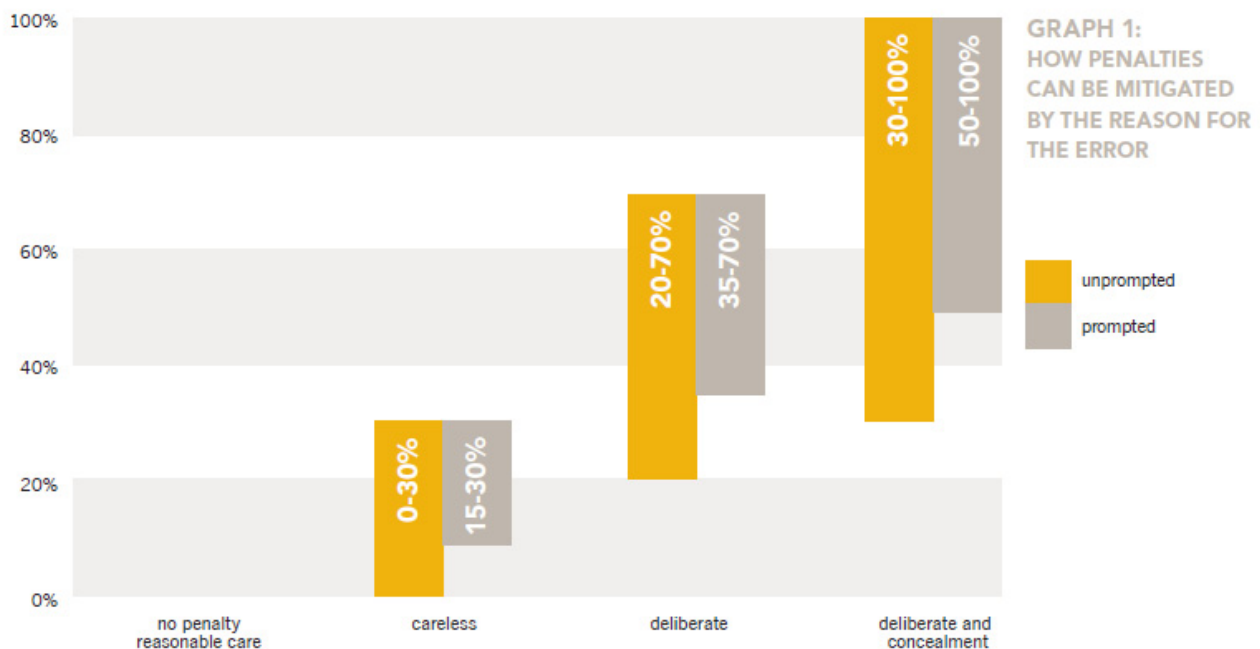
### Penalty suspension

There is also a new system of penalty suspension under this new regime. A penalty can be suspended for up to two years provided certain conditions are met and you do not become liable to any other penalties during the suspension period. If at the end of two years the conditions are met the penalty will be cancelled. The suspension cannot be applied where the error was deliberate. Further details can be found on the [HMRC website](#).

### Calculating the penalty

The penalties under the new regime are based on the extra tax due and the rates depend upon the reason underlying the error. In addition to the penalty, interest will also be charged on the extra tax due.

The four stage sliding scale of penalties apply to: a mistake **despite** reasonable care, a **careless** mistake, a **deliberate** mistake and a **deliberate and concealed** mistake. This is best demonstrated by graph 1, that clearly demonstrates the difference between prompted and unprompted disclosure.



It is clear that there is an option of reducing the potential penalty in all circumstances, what therefore can mitigate your penalty? There are three categories for mitigating your penalty, described as:

- Unprompted and prompted disclosures
- Behavioural

- Quality of disclosure

The first is clearly displayed in the diagram above, the second and third can be grouped together and are best demonstrated by looking at the definition of three terms.

- telling HMRC about any errors (can mitigate your penalty by **30%**)
- helping HMRC work out the extra tax that is due (can mitigate your penalty by **40%**)
- giving access to HMRC to check the figures (can mitigate your penalty by **30%**)

## FURTHER CONSIDERATION

HMRC has produced a number of useful guides about the new penalty regime:

- [www.hmrc.gov.uk/about/new-penalties/penalties-leaflet.pdf](http://www.hmrc.gov.uk/about/new-penalties/penalties-leaflet.pdf)
- [www.hmrc.gov.uk/about/new-penalties/faqs.htm](http://www.hmrc.gov.uk/about/new-penalties/faqs.htm).

The first is a simple guide to the new penalties regime. The second is a questions and answers document containing common questions on the new penalties regime.

Finally, as with most penalties, there is always a system in place to appeal against any penalty levied. Further details can be found on the HMRC website.

<http://www.hmrc.gov.uk/manuals/chmanual/CH84000.htm>

This is a guide for ACCA members to assist in understanding the new penalties regime and to provide assistance when dealing with clients or informing colleagues. This document has no regulatory status and provides an overview of the changes.

## COURTESY OF



ACCA LEGAL NOTICE

**This Guide is an example only. It may not address all of the issues for each specific client. You should undertake additional research into any client matters not dealt with in the examples and amend your advice accordingly.**

**While every care has been taken in the preparation of this Guide, neither the writer nor ACCA accept any responsibility for any loss occasioned by reliance on the Guide.**