



## HMRC Penalties – What you need to know

**No business wants to be under the spotlight of HM Revenue & Customs (HMRC) and yet on occasions, sometimes through no fault of their own, they find themselves subject to investigation and penalties.**

Penalties are imposed by HMRC in relation to a range of tax offences, such as late filing of tax return, errors or late payment of outstanding tax.

When preparing and submitting tax returns, even those sent on time or ahead of the deadline, there is always a risk of penalties arising.

In many instances, excuses such as “my dog ate my tax return” will inevitably not sit well with HMRC, but there are often ‘special circumstances’ in which you may be entitled to a reduction or exemption from an HMRC penalty.

McGills has put together this useful short guide to help shed some light on the world of HMRC penalties.

### Tax Errors

The penalty rules for errors in tax returns were originally introduced in Finance Act 2007. It states that a penalty arises if (for example) an individual submits a tax return that contains an error resulting in a tax liability being understated, where the error was ‘careless’ or ‘deliberate’.

A deliberate error is more serious than a careless error, and in general terms the level of penalties for deliberate errors is accordingly higher than for careless errors.

Tax return errors are relatively common and not every tax return error is subject to a penalty. Under the current penalty regime for errors the level of penalty broadly depends on the degree of culpability, whether the taxpayer’s disclosure of the error is ‘prompted’ or ‘unprompted’, and on the quality of the disclosure.

**The normal maximum penalty for a ‘careless’ error is 30% of the additional tax, whereas the maximum penalty is 70% for a ‘deliberate but not concealed’ error, or 100% if the error is ‘deliberate and concealed’.**

HMRC generally wants taxpayers to ‘do their best’ when completing their tax returns. Therefore, a penalty can only be charged if a tax return error arises because ‘reasonable care’ hasn’t been taken.

HMRC’s view on whether a person has taken ‘reasonable care’ depends on the person’s particular abilities and circumstances.

It is for HMRC to show that the tax return error was careless (or deliberate) on the balance of probabilities. Fortunately, in some cases penalties can be suspended and ultimately cancelled.

## Late Returns

Tax returns submitted after the deadline date, usually 31<sup>st</sup> October for paper returns and 31<sup>st</sup> January for online returns, will be subject to an automatic fine.

Continued failure to complete and file a tax return will see fines ramped up on a quarter-by-quarter basis, ultimately resulting in significant fines if the return is more than 12 months late.

However, in certain circumstances you may be able to prove you had a 'reasonable excuse' for late filing.

## On the defence

There is an exception from certain penalties if the taxpayer has a 'reasonable excuse' for the offence. HMRC defines a reasonable excuse by outlining two circumstances in which a reasonable excuse does not exist, these are:

- An insufficiency of funds - unless it is attributable to events outside the person's control.
- Reliance on another person - there is no reasonable excuse unless the original took reasonable care to avoid the compliance failure.

**Aside from the two statutory exceptions mentioned above, examples given by HMRC of what might constitute a reasonable excuse also include:**

- Bereavement
- Serious illness
- Unforeseen events

The onus is on late tax return filers to satisfy HMRC that they had a reasonable excuse at the time of the failure. Taxpayers should therefore present their case as best they can, supported by documentary evidence where possible.

## Suspension and reductions

The penalty regime contains possible exceptions and leniency in cases where a tax compliance failure has occurred.

One such example of this is special reductions, where HMRC can reduce or eliminate penalties in 'special circumstances'.

**The legislation does not clearly define 'special circumstances', but states what they do not include, such as the ability to pay or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.**

HMRC's powers include suspending a penalty or agreeing a compromise, such as foregoing all or part of a penalty.

Those who feel that their circumstances merit a reduction to their penalty have the right to appeal a decision through a tax tribunal review. This might include the right to appeal against HMRC's decision that a penalty is payable and the size of the penalty itself.

During any appeal the tribunal can apply a different special reduction due to special circumstances, but only if HMRC's original decision is considered to be flawed.

## Your response to a penalty

Should you find yourself facing a penalty the onus will be on you to satisfy that you had a 'reasonable excuse' at the point the failure occurred.

It is worth keeping in mind that what is considered a reasonable excuse in one person's case will not always constitute a reasonable excuse elsewhere. Therefore it is always best to seek specialist advice depending on your unique circumstances.

**At McGills our experienced tax advisors can assess your case and help you appeal a penalty if you feel that you could be due a reduction or exemption.**

If you are facing a penalty and would like help our help, please speak to our team today.



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