

Changes to Penalties and Record Keeping

Penalties

There have been important changes to the penalties charged for late filing at Companies House and the penalty system for errors on tax returns that you should be aware of:

Late Filing Penalties for Companies House

Previously the Companies House late filing penalty for company and limited liability partnerships (LLP) accounts had not increased since 1992. However, a new higher penalty regime was introduced from 1 February 2009. The old and new rates are:

Length of period	Periods prior to 1 February 2009		Periods after 31 January 2009	
	Public company	Private company	Public company	Private company
Not more than 1 month	£500	£100	£750	£150
More than 1 month but not more than 3 months	£500	£100	£1,500	£375
More than 3 months but not more than 6 months	£1,000	£250	£3,000	£750
More than 6 months	£2,000	£500	£7,500	£1,500

The period allowed to file private company and LLP accounts was shortened to 9 months (from 10 months) after the accounting period ended. This applies to accounting periods starting after 6 April 2008. The filing period allowed for new companies and LLPs or those that have changed their accounting period during the year differs from the standard period mentioned above and so should be checked.

The decrease in filing time and increase in penalties are significant and emphasise the need to provide your records to us as early as possible. It should also be noted that the penalty amount will be doubled under the new regime where the previous set of accounts were also filed late.

Penalties for Errors on Tax Returns

There are new rules relating to penalties for tax returns. The main aim of the government was to come up with a fairer and more uniform system across the taxes. Therefore, initially the new system is to be applied to PAYE, VAT, income tax and corporation tax and will apply to all remaining taxes from 1 April 2010.

In theory the new system is fairer with penalties based on how the error arose. For instance, where the mistakes were made in good faith or where adequate care has been taken there will be no penalty. However, the definition of terms such as 'good faith' or 'adequate care' and how HMRC applies them is what matters.

Once the initial penalty has been set it can be mitigated to varying degrees by disclosing the error to HMRC. Disclosure can either be unprompted (which gives a larger discount) or prompted (i.e. by HMRC asking into the return).

The new regime will be applied for documents with a filing date of 1 April 2009 onwards and which relate to periods commencing on or after 1 April 2008. The penalty rates are as follows:

Culpability	Maximum penalty (no discount)	Unprompted (minimum penalty)	Prompted (minimum penalty)
Careless	30%	0%	15%
Deliberate	70%	20%	35%
Deliberate and concealed	100%	30%	50%

These percentages are applied to the amount of tax that has been underpaid due to the error. HMRC can apply further discounts or suspend the penalties in certain circumstances and there are various other issues that need to be taken into account so please discuss this with us if it becomes relevant to your situation.

Other Issues

As part of these reviews there are other changes in place or to come:

The powers of Revenue and Customs Officers have been brought in line and strengthened.

The tax appeals system and related tribunal system is to be changed.

The new “behaviour based” penalty system above will be applied to failure to notify/register penalties instead of the current system of generally £100 flat penalties.

There are to be new harsher penalties for failure to file returns on time or pay on time.

However, another important change you should be aware of are that there will be new tax laws in relation to the requirements of keeping records and there will be new compliance checks that HMRC will be applying from 1 April 2009 to cover the new laws.

Records & Compliance Visits

The new tax law requirement is similar to what HMRC required before i.e. that adequate records must be kept or penalties can be applied. However, the new laws will strengthen HMRC’s powers although full details of the new laws and what constitutes “adequate” is still vague and further guidance is expected.

In order to take advantage of the new rules HMRC are planning compliance visits, which can be unannounced, during the tax year they have chosen to look at (i.e. before the annual accounts and related tax returns are even prepared). Therefore we strongly advise you to keep your records up to date rather than leaving them to the year end.

If you require any help on what records you need to keep or our help in keeping your records up to date please contact us.

Please contact us now if you need any advice or assistance in respect of this fact sheet, or if you would like us to deal with your tax affairs on your behalf.

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