HMRC - CFM99050 - Administration: Penalties: Factors Which May Reduce The Level Of Penalty On An Incorrect Return

TIOPA10/SCH7A/PARA33

Penalties for an incorrect interest restriction return under TIOPA10/SCH7A/PARA30 (and also penalties under PARA32) may be reduced to take into account the quality of the disclosure of the inaccuracy. In particular, the timing nature and extent of the disclosure are dealt with in PARA33. The approach is the same as that under the general penalty regime in FA07/SCH24.

Reductions in penalty levels for disclosure

A disclosure is made by informing an officer of Revenue and Customs of the inaccuracy, assisting HMRC in quantifying an inaccuracy, and allowing access to relevant records to ensure that it is fully corrected, PARA33(4).

The reduction in penalty in respect of disclosure cannot reduce the penalty below certain minimum levels, as follows.

For careless inaccuracy, the minimum level of penalty is 15% of the notional tax for a prompted disclosure, and nil for an unprompted disclosure. The distinction between prompted and unprompted disclosure is discussed at CH82420.

A disclosure is unprompted (PARA33(4)(b)) if it is made at a time when the person making it has no reason to believe that HMRC have discovered, or are about to discover, the inaccuracy or under-assessment. Otherwise a disclosure is prompted. It would be unusual for a disclosure to be unprompted if made after an enquiry into an interest restriction return has been opened, see CH82421. There is no halfway house between an unprompted and prompted disclosure; it is either one or the other.

A disclosure will be treated as unprompted even if at the time it is made the full extent of the disclosure is not known, as long as the full details are provided within a reasonable time.

Where a disclosure relates to a deliberate but not concealed inaccuracy, the lowest penalty level is 30% of the notional tax for an unprompted disclosure, and 45% otherwise. These levels rise to 40% and 60%, respectively, for concealed deliberate inaccuracies.

Reductions in penalties may also be made for special circumstances under Para 33(5) to (7), see CFM99054 and CFM99057.

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