HMRC - CFM99054 - Administration: Penalties: Reductions In Penalty Levels For Special Circumstances - General

TIOPA10/SCH7A/PARA33(5), (6)

Under TIOPA10/SCH7A/PARA33(5), an officer of Revenue and Customs may, if considered appropriate due to special circumstances,

reduce a penalty under PARAS 30 or 32; or

stay (stop or postpone the enforcement of) the penalty, or agree a compromise or settlement.

Staying a penalty means stopping or postponing enforcement of a penalty. Agreeing a compromise or settlement allows HMRC to forego all or part of a penalty.

Under the Corporate Interest Restriction legislation, the matters that may be taken into account are extended by PARA33(7) to include consideration of whether and to what extent the notional tax, computed in accordance with PARA30(5) exceeds, or is likely to exceed any actual loss to the Crown.

As in the equivalent provision in the general penalties legislation, FA07/SCH24/PARA11, “special circumstances” do not include an inability to pay.

Guidance on “special reduction” in relation to penalties generally is found at CH170000 et sq. This guidance is applicable to all matters other than notional tax exceeding the likely actual loss of tax.

Such special circumstances will be unusual see CH170600 and CH170900. In particular they do not include

the level of disclosure, which is dealt with under PARA33(4), see CFM99050, or

whether the taxpayer took reasonable care - if that is the case no penalty will be due.

The officer dealing with the case should not enter into discussions regarding the amount of any special reduction - see CH170500. If it is right to reduce a penalty because of special circumstances (other than a difference between the likely loss of tax to the Crown and the notional tax), TALA (Tax Administration Litigation and Advice: Process Design & Excellence) will calculate the level of the reduction, see CH175000.

It is unlikely that a reduction for special circumstances will apply to a penalty where behaviour is considered to be deliberate, whether or not concealed. In that situation it would not normally be enough for the reporting company to claim that an error or failure was caused solely by exceptional circumstances, see CH170900.

For cases where the notional tax exceeds or is likely to exceed any actual loss of tax to the crown.

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