HMRC - CH62220 - Behaviour - Examples

This page currently only applies to returns required for income tax, capital gains tax, bank payroll tax, the registered pension schemes legislation, annual tax on enveloped dwellings and stamp duty reserve tax. It does not apply to the Construction Industry Scheme (CIS), see CH62300+.

The following scenarios provide examples of different behaviours leading to withholding information.

Example 1 - deliberate but not concealed withholding of information - ITSA return received

Example 1 - deliberate but not concealed withholding of information - ITSA return received

James is given notice to file a tax return each year because he gives art lessons to private clients as well as being a school teacher under PAYE. In November 2016, as a result of a data notice under Schedule 23 Finance Act 2011 information came to the attention of HMRC that James had received a substantial amount of money from an auction house in June 2013. James however had not filed his 2013/14 return.

A compliance check was opened and as a result James filed the tax return in February 2017. This showed a capital gain on an artwork he sold and the continuing check established that this did relate to some money received from the auction house. From the documents and information retained by James it could be seen that the capital gain was correctly calculated. The information included in his bank account, showed the sum received from the auction house.

It was further established that James had used this money to fund a significant holiday and at the filing date for the return he would not have the funds to pay the capital gains tax and decided not to submit the return.

By failing to file his 2013/14 return on time James deliberately withheld information but had not concealed this withholding and is liable to a maximum penalty of 70% of all the liability to tax shown in the return.

NOTE - It is likely that 6 and 12 month penalties, whether the £300 minimum or a percentage based on an estimate of the liability, see CH63560, will have been automatically charged by this stage. For the purpose of this example it is assumed that the liability and behaviour that is eventually established will result in these penalties being increased.

Example 2 - deliberate but not concealed withholding of information - ITSA no return

During the course of a compliance check made during November 2014 we discover that Maria has failed to file her 2011/12 return. Rather than complete a return she provides documents and information sufficient to enable HMRC to assess her liability to tax for 2011/12. We establish that Maria had been informed by her employer that she was required to include details of a large termination payment on her return and that there would be some further tax to pay and that she had decided not to submit her 2011/12 return in an attempt to avoid paying the correct amount of tax

By failing to file her 2011/12 return before 31 January 2014, Maria deliberately withheld information and is liable to a maximum penalty of 70% of the liability to tax that would have been shown in the return. The fact that Maria chose to remedy the failure by providing documents and information, rather than by filing a return, does not affect the penalty position.

NOTE - It is likely that 6 and 12 month penalties, whether the £300 minimum or a percentage based on an estimate of the liability, see CH63560, will have been automatically charged by this stage. For the purpose of this example it is assumed that the liability and behaviour that is eventually established will result in these penalties being increased.

Example 3 - deliberate but not concealed withholding of information - ITSA no return

Malcolm is issued with a notice to file his 2019/20 personal return. He receives the notice because he has some benefits that arise from his employment as an engineer. The return is not forthcoming and over time he is charged the initial, daily 6 and 12 month late filing penalties (the latter being the automatic £300 fixed sum).

In August 2023 HMRC received information from a foreign tax authority that Malcolm is in receipt of patent royalties for an orange peeling machine that he invented. The machine patent is licensed to a Spanish company, which manufactures it for use in resort cafés and bars in that country. The enquiry that HMRC commences establishes the correct tax position and also that the withholding of the information that would have been shown on his return was deliberate. The liability to tax is reconstructed from Malcolm’s records, which are made available to HMRC.

As the information was deliberately withheld through non provision of the return but was not concealed, Malcolm is liable to a maximum 70% penalty on all the income that would have been shown on the return.

NOTE - It is likely that 6 and 12 month penalties, whether the £300 minimum or a percentage based on an estimate of the liability, see CH63560, will have been automatically charged by this stage. For the purpose of this example it is assumed that the liability and behaviour that is eventually established will result in these penalties being increased.

Example 4 - deliberate but not concealed witholding of information - ITSA no return - holding offshore assets

John is given notice to file a tax return each year because he is paid for consultancy work as well as being an investment manager under PAYE. He knows he should pay tax on consultancy income and that this will have a material effect on his tax liability. In November 2016, as a result of third party data recieved, it came to the attention of HMRC that John had recieved a substantial amount of money into an offshore bank account between 2011 and 2014. John however had not filed his 2011-2012, 2012-2013 0r 2013-2014 returns.

A compliance check was opened and as a result John filed the tax returns in February 2017. HMRC found regular income from consultancy work being paid into the offshore account. It was further established that John had not taken any advice on the tax treatment of his offshore investment since opening the account many years earlier for another purpose.

By failing to file his 2011-2012, 2012-2013 and 2013-2014 returns on time John deliberately witheld information but had not concealed this witholding and is liable to a maximum penalty of 70% of all the liability to tax shown in the returns.

NOTE - Where a person has taken a significant period to correct their non-compliance in relation to either an onshore or offshore matter, or they would previously have been able to make a disclosure through one of HMRC’s offshore disclosure facilities, they can no longer expect HMRC to give them the full reduction for the quality of disclosure. A ‘significant period‘ is normally considered to be over 3 years but may be less where the overall disclosure covers a longer period.

If you consider that this may apply to your case, see CH63310 for further guidance.

Example 5 - deliberate and concealed withholding of information - ITSA return received

The facts are as in Example 1, except that to avoid the chance of HMRC coming across the significant credit from the auction house in his bank account James arranged for the payment to be sent directly to the holiday company rather than his own bank account.

As James had taken an active step to assist in the withholding of information about the gain, that withholding will be deliberate and concealed, notwithstanding that he provided an accurate return after the 12 month point.

He will be liable to a maximum penalty of 100% of all the tax shown by the 2013/14 return.

NOTE - It is likely that 6 and 12 month penalties, whether the £300 minimum or a percentage based on an estimate of the liability, see CH63560, will have been automatically charged by this stage. For the purpose of this example it is assumed that the liability and behaviour that is eventually established will result in these penalties being increased.

Example 6 - deliberate withholding of information - ITSA no return received - deliberate and concealed inaccuracy

The facts are in example 2, except that, when asked to provide information in respect of the termination payment, Maria submitted a document that she had altered in order to reduce her tax liability. HMRC’s enquiries with both Maria and the employer revealed this action.

By failing to file her 2010/11 return on time Maria deliberately withheld information. As Maria has taken an active step in the withholding of information about the termination payment she is liable to a penalty of 100% of all the liability to tax that would have been shown in her return.

NOTE

It is likely that 6 and 12 month penalties, whether the £300 minimum or a percentage based on an estimate of the liability, see CH63560, will have been automatically charged by this stage. For the purpose of this example it is assumed that the liability and behaviour that is eventually established will result in these penalties being increased.

Maria may also be liable to a penalty under Schedule 24 FA 07 for the inaccuracy in the document she gave to HMRC in relation to the termination payment and if so the penalty interaction rules apply to that source of income, see CH65060.

Example 7 - deliberate withholding of information - ITSA no return - deliberate and concealed inaccuracy

The facts are the same as Example 3, except that Malcolm arranged to have the royalties paid into a Spanish bank account that he specially opened for this purpose. This was an attempt to try to reduce the chances of this source of income coming to the attention of HMRC.

As Malcolm had taken an active step in setting up the Spanish bank account to assist in the withholding of information about the royalties, that withholding will be deliberate and concealed. He will be liable to a maximum 100% penalty on all the tax that would have been shown by his return.

NOTE - It is likely that 6 and 12 month penalties, whether the £300 minimum or a percentage based on an estimate of the liability, see CH63560, will have been automatically charged by this stage. For the purpose of this example it is assumed that the liability and behaviour that is eventually established will result in these penalties being increased.

Example 8 - deliberate witholding of information - ITSA no return - deliberate and concealed inaccuracy - holding offshore assets

The facts are as in example 4 except that instead of making deposits to an account in his name John deposited consultancy income into an offshore company account which was specifically for this purpose.

As John as taken active steps in an attempt to reduce his chances of this source of income coming to the attention of HMRC the witholding of information will be deliberate and concealed.

By failing to file his 2011-2012, 2012-2013 and 2013-2014 returns on time John deliberately witheld information and had concealed this witholding and is liable to a maximum penalty of 100% of all the liability to tax shown in the return.

NOTE - It is likely that 6 and 12 months penalties, whether the £300 minimum or a percentage based on an estimate of the liability, see CH63560, will have been automatically charged by this stage. For the purpose of this example it is assumed that the liability and behaviour that is eventually established will result in these penalties being increased.

Previous page

Next page