HMRC - OT18760 - PRT: Penalties - Chargeable Periods Ending Before 30 June 2010

The guidance in the following sections applies to incorrect returns and claims in respect of chargeable periods ending before 30 June 2010. For guidance on incorrect returns and claims in respect of chargeable periods ending on or after 30 June 2010 see OT18755.

OT18795 deals with failure to deliver various returns within the time limit allowed and these rules will also continue to apply to chargeable periods ending on or after 30 June 2010.

When incorrect claims or returns, duplicate claims, or claims to expenditure prohibited by the legislation etc, are made HMRC needs to establish all the facts before a view on culpability can be formed.

In all such cases it will be necessary to investigate how errors arose, to establish whether they are systematic or not, and whether other incorrect claims have been made by the Responsible Person or participator. HMRC will seek the company’s co-operation with a view to establishing all the relevant facts, including any relevant PRT/accounts reconciliations that have not yet been submitted. If a substantial amount of work is necessary, or if the circumstances otherwise warrant, HMRC will want to be certain that senior managers of the company, including where appropriate Board members, are fully committed to providing resources to identify and investigate any other errors.

As soon as it appears to the PRT tax specialist in consultation with the CRM that a culpable error or errors may have arisen, the company should be given leaflet IR160. Where appropriate the implications of Article 6 of HRA should also be conveyed (see EM1363). It should be ascertained that the company is aware of the basis for settlement set out in IR160, and particularly in relation to disclosure and co- operation. This sets out HMRC’s policy on mitigation of penalties. In every case where errors are determined to have been made negligently, the company will be given the opportunity, once all the facts have been established, to enter into a contract with HMRC. Under the contract the company offers to pay a sum of money to HMRC, and in return HMRC agrees not to exercise its right to take penalty proceedings.

In arriving at the amount which HMRC is prepared to accept in any case, HMRC’s policy on mitigation of penalties set out in leaflet IR160 is applied to PRT as to other taxes. Mitigation of penalties in a negotiated settlement will therefore take account of disclosure, co- operation, and gravity as explained in IR160. Account will also be taken of the level of PRT charged: in general the tax on any error plus the penalty will not exceed 100% of the amount of the error. Where a company wishes to make an offer in settlement, the CRM will put the facts before the Sector Leader with a recommendation as to the appropriate level of settlement. Where the culpable tax on which the penalty is based exceeds £5 million the Sector Leader will forward the recommendation to the LB Culpability Review Panel. The Sector Leader’s or the Panel’s decision on the acceptable settlement will be communicated to the company.

The tax to which the penalty calculation is applied, and to which the percentage mitigation applies, is the tax in respect of which HMRC can take proceedings. Where an incorrect claim is made, and that claim also appears in a statement required by PRTA80\S1(1)(a), a penalty will be due in respect of each of these acts: HMRC will not normally take proceedings for both penalties. They will accordingly accept a contract offer which includes only the larger penalty.

In any case where a company indicates that it does not intend to make an offer to HMRC, or in any case where the time limit for proceedings is within one year (see OT18820), a report should be made to the Sector Leader or LB Culpability Review Panel to consider formal proceedings.

Various penalty provisions apply to PRT:

Cases where penalties are being considered should be referred initially to the CRM for review.

Previous page

Next page