



# HM Revenue & Customs

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**Indv and Small Business Compliance**  
HM Revenue and Customs  
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**Email** ccgrdci336b@hmrc.gov.uk

**Date** 16 December 2023  
**Our Ref** WMBC/IGR/CFSS-6751155  
**Case Ref** CFSS-6751155

**Web** [www.gov.uk](http://www.gov.uk)

Dear Wayside Care Limited,

Thank you for contacting the R&D Tax Credits Compliance Team on 18 September 2023 with further information.

Where this letter refers to 'you', we mean the company.

I am writing to confirm that I have finished my evaluation of Wayside Care Limited for the accounting periods ending 31 March 2022.

Thank you for providing the information in relation to your Research & Development (R&D) claim.

R&D has a specific statutory definition for the purposes of R&D tax relief, which is not the same as the commercial definition. For expenditure to be treated as being on an R&D project, the project must satisfy certain statutory tests in accordance with the published guidelines and legislation on the meaning of R&D. The definition of R&D for tax purposes is contained within HMRC CIRD81900.

## My understanding of your claim

At present, it is my view that there is insufficient evidence to support the company's claim for R&D relief.

I know this will be very disappointing for you as you have clearly worked hard on all the projects which the company has undertaken. I have summarised the points at issue below with my view of the matter.

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If you need extra support, for example if you have a disability, a mental health condition, or do not speak English/Welsh, go to [www.gov.uk](http://www.gov.uk) and search for 'get help from HMRC'.  
Text Relay service prefix number – 18001



## Legislation Underpinning my decision.

Having reviewed the documentation provided in relation to your projects and closely following the R&D legislation and criteria set out in HMRC's Corporate Intangibles Research and Development Manual (CIRD81900), I have determined that this project does not meet the criteria for R&D relief.

It is important to note that the guidelines should be considered as a whole rather than as separate parts. The BEIS Guidelines start with the core definition of R&D in paragraphs 3 to 5.

It is clear from the structure of the BEIS Guidelines that all of the following paragraphs are intended to provide further explanation, but they have to be read in the context of

- (i) The document as a whole and
- (ii) The core definition of R&D given in paragraphs 3 to 5. Paragraph 3 states that R&D for tax purposes takes place when a project seeks to achieve an advance in science or technology. Paragraph 4 states that the activities that directly contribute to achieving this advance in science or technology through the resolution of scientific or technological uncertainties are R&D. Paragraph 5 states that certain qualifying indirect activities ('QIAs') related to the project are also R&D. The term QIAs is specifically defined in Paragraphs 31 to 32. Paragraph 31 states that QIAs are activities which form part of a project.

A valid R&D claim must include the elements listed below.

1. Advance in science or technology
2. That presented scientific or technological uncertainty
3. That was not readily deducible by a competent professional

### **Project 1: Extending Knowledge and Treatment Capabilities Surrounding Dermatological Problems**

Having reviewed the information provided for Project 1, the narrative states the following:

The R&D project was undertaken to create an end-to-end process to prevent and treat dermatological problems for care home residents who suffer from neurological conditions such as dementia, Parkinson's, and health conditions such as diabetes.

Due to this and closely following the R&D legislation and criteria set out in HMRC's Corporate Intangibles Research and Development Manual (CIRD81900), I have determined that this project does not meet the criteria for R&D relief.

A degree of testing and learning is required with the adoption of any product which is new to a company. In the absence of the demonstrable pursuit of a genuine and material scientific or technological advance, such work will fall within Paragraph 12 of the BEIS guideline as routine adaptation and will therefore be prohibited from inclusion in a claim for research and development relief and should be disallowed.

CIRD81900 paragraph 12 states the routine analysis, copying or adaptation of an existing product, process, service, or material, will not be an advance in science or technology.

Paragraph 6 of the BEIS guideline states, '*An advance in science or technology means an advance in overall knowledge or capability in a field of science or technology (not a company's own state of knowledge or capability alone). This includes the adaptation of knowledge or capability from another field of science or technology to make such an advance where this adaptation was not readily deducible*'.

Paragraph 8 of the BEIS guidance states 'A process, material, device, product, service, or source of knowledge does not become an advance in science or technology simply because science or technology is used in its creation. Work which uses science or technology, but which does not advance scientific or technological capability as a whole is not an advance in science or technology'.

Paragraph 22 of the BEIS guidelines explains that within R&D projects, the routine analysis, copying or adaptation of an existing process, material, device, product, or service will not advance overall knowledge or capability, even though it may be completely new to the company or the company's trade.

Paragraph 23 of the BEIS guidelines explains that within R&D projects, the improvement should be more than a minor or routine upgrading and should represent something that would generally be acknowledged by a competent professional working in the field as genuine and non-trivial.

Furthermore, Paragraph 24 of the BEIS guidelines state, 'Improvements which arise from taking existing science or technology and deploying it in a new context (e.g. a different trade) with only minor or routine changes are not appreciable improvements. A process, material, device, product, or service will not be appreciably improved if it simply brings a company into line with overall knowledge or capability in science or technology, even though it may be completely new to the company or the company's trade'.

For these projects to qualify as R&D for tax purposes, we need proof that said technology had been advanced to such a degree that it.

- a. extended overall knowledge or capability in the technological field of digital network targeting or
- b. creates a process, material, device, product, or service which incorporates or represents an increase in overall knowledge or capability in a technological field or
- c. makes an appreciable improvement to an existing process, material, device, product, or service through scientific or technological changes or
- d. uses science or technology to duplicate the effect of an existing process, material, device, product, or service in a new or appreciably improved way (e.g. a product that has exactly the same performance characteristics as existing models but is built in a fundamentally different manner) would be required.

There is no evidence that a, b, c, or d has been achieved for these projects within the subsequent narrative provided by the company.

An advance in science or technology means an advance in **overall knowledge or capability** in a field of **science or technology** (not a company's own state of knowledge or capability alone). This includes the adaptation of knowledge or capability from another field of science or technology in order to make such an advance where this adaptation was not readily deducible.

### Knowledge Baseline

The information provided does not provide any objective measure of how the company's project objectives differ from products available on the market at the commencement of the R&D, nor how these objectives would make an advance in the overall field.

For a valid claim, a claimant must be able to explain what the state of technology as a whole field was prior to the project.



## Uncertainty

You not have not explained what the scientific or technological uncertainties involved in the project were.

For a valid claim, a claimant must be able to explain what the scientific or technological uncertainties were that cannot be readily deducible by a competent professional working in the field.

I refer to CIRD81900 para 13 and 14 which states 'Scientific or technological uncertainty exists when knowledge of whether something is scientifically possible or technologically feasible, or how to achieve it in practice, is not readily available or deducible by a competent professional working in the field' and 'uncertainties that can readily be resolved by a competent professional working in the field are not scientific or technological uncertainties. Similarly, improvements, optimisations and fine-tuning which do not materially affect the underlying science or technology do not constitute work to resolve scientific or technological uncertainty'.

Paragraph 8 of the BEIS guidance states 'A process, material, device, product, service, or source of knowledge does not become an advance in science or technology simply because science or technology is used in its creation. Work which uses science or technology, but which does not advance scientific or technological capability as a whole is not an advance in science or technology'.

## Staffing & Other Costs

As I am considering removing the claim in full based on the evidence presented, I have not substantively considered or evaluated the accuracy of the costs claimed against eligible direct and indirect activities. Should you not agree with my view and are able to provide evidence to overcome the other barriers to agreeing your claim qualifies, I may then need to seek additional information and evidence to validate the costs claimed.

## Conclusion

It is my view that the R&D claim should be rejected in its entirety. As explained above, the activities undertaken by Wayside Care Limited does not show any appreciable improvement.

**Project 1**, the activities undertaken by Wayside Care Limited do does not show any appreciable improvement. I believe that the information relates to business as usual, copying, adapting, or updating existing product, material, or knowledge.

I do not believe that the advance sought is more than improving the company's knowledge/trade and that it is not an appreciable advance in the overall field of science or technology.

CIRD81900 paragraph 12 states the routine analysis, copying or adaptation of an existing-product, process, service, or material, will not be an advance in science or technology.

Based on the information provided thus far, I cannot agree that the company qualify for R&D relief as they do not satisfy paragraphs 6, 8, 9, 22, 23 and 24 of the BEIS guidelines, by advancing overall knowledge or capability in a field of science or technology.

CIRD81900 paragraph 12 states the routine analysis, copying or adaptation of an existing product, process, service, or material, will not be an advance in science or technology.

Paragraph 22 of the BEIS guidelines explains that within R&D projects, the routine analysis, copying or adaptation of an existing process, material, device, product, or service will not advance overall knowledge or capability, even though it may be completely new to the company or the company's trade.

Paragraph 23 of the BEIS guidelines explains that within R&D projects, the improvement should be more than a minor or routine upgrading and should represent something that would generally be acknowledged by a competent professional working in the field as genuine and non-trivial.

Furthermore, Paragraph 24 of the BEIS guidelines state, 'Improvements which arise from taking existing science or technology and deploying it in a new context (e.g. a different trade) with only minor or routine changes are not appreciable improvements. A process, material, device, product, or service will not be appreciably improved if it simply brings a company into line with overall knowledge or capability in science or technology, even though it may be completely new to the company or the company's trade'.

It is my view that constant evolution and upgrading of the company's materials and platforms on pre-existing and readily available products does not satisfy a scientific or technological advance under the R&D criteria outlined in CIRD81900. Therefore, Research and Development for tax purposes has not taken place.

In conclusion, there is no evidence to suggest that either of the project meets the definition for R&D for tax purposes.

### **Next steps**

If you are not in agreement with my conclusions, then I ask that you respond with clear counterarguments in support of your position. I would also ask that you reference the BEIS guidelines within your response and provide a clear demonstration of how the projects sought advances in science or technology through the resolution of clearly defined scientific or technological uncertainty.

Please also provide any documentary evidence in support. As previously noted, work undertaken which does not meet this description, is not R&D for tax relief purposes.

Should the company agree with my present view, I will move immediately to amend R&D entries within the company tax return.

### **Penalties**

At this point, we are obliged to consider penalties for inaccuracies within the company tax return. This is routine towards the conclusion of all enquiries and does not automatically mean that a penalty will be charged. Please can a director or official of the company answer the following questions and we enclose fact sheets CC/FS7a and CC/FS9 for further information about penalties.

1. Please confirm in writing that you have read and understood your rights as per the factsheet CC/FS9 (The Human Rights Act and Penalties). If you do not understand your rights, please contact us before answering the questions below.
2. At the time of submitting your claim to R&D relief, did the company read and understand the R&D guidelines at CIRD80000 within HMRC's Corporate Intangibles R&D Manual? What steps did you take to clarify anything you did not understand?
3. Why did the company believe that the project(s) would qualify for R&D?
4. Did the company seek any advice from a Tax Professional regarding their claim? If not, why not?
5. If the company did seek advice, please answer the following questions:
  - Who was the specialist and what steps did you take to verify their credentials and their competence to provide advice on R&D for tax purposes?



- What advice did you obtain? Please provide a copy of this advice if possible.
- What process did you follow to ensure your advisor had access to all the relevant facts they needed to provide accurate advice?
- Did you follow the advice fully and correctly? If not, why not?
- What steps did the company take to check the advisor's work and R&D claim before submission?

Please respond by 14 January 2024. If you cannot meet this deadline, please let me know as soon as possible.

You can do this by either:

- emailing [ccgrdci366b@hmrc.gov.uk](mailto:ccgrdci366b@hmrc.gov.uk) or,
- writing to the address at the top of this letter ]

### **Using references and sending us documentation**

If you send us any original documents or records, you must tell us that they are originals. You must also tell us, in writing, if you agree that we can securely destroy any documents or records you send us. We securely destroy documents and records 50 working days after we have digitally scanned them. This applies to copies of documents or records as well as originals. If you do not tell us that you agree, we will return everything to you.

If you tell us that you agree, you have the right to change your mind. If you do, you must tell us this in writing within 40 working days of the date that you sent us those documents or records.

Our standard policy is to destroy any memory sticks or other removable digital media you send us. We strongly recommend that you encrypt the data you send us, to make it more secure. Whichever method you choose to contact us, you need to quote the case reference CFSS-6751155.

Yours faithfully

### **R&D Tax Credits Compliance Team**

Join the millions of taxpayers already using their Personal Tax Account to access a range of services. It takes just a few minutes to get started, go to [www.gov.uk/personal-tax-account](http://www.gov.uk/personal-tax-account) Or you can use the HMRC app.

To find out about the service and standard of behaviour you can expect from us, go to [www.gov.uk](http://www.gov.uk) and search 'HMRC Charter'.



# Penalties for inaccuracies in returns and documents

This factsheet tells you about penalties we may charge if you have sent us an inaccurate return or other document. It's one of a series of compliance checks factsheets. For the full list, go to [www.gov.uk](http://www.gov.uk) and search for 'HMRC compliance checks factsheets'.

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## If you need help

If you have any health or personal circumstances that may make it difficult for you to deal with us, please tell the officer that's contacted you. We'll help you in whatever way we can. For more details, go to [www.gov.uk/get-help-hmrc-extra-support](http://www.gov.uk/get-help-hmrc-extra-support)

You can also ask someone else to deal with us on your behalf, for example, a professional adviser, friend or relative. We may however still need to talk or write to you directly about some things. If we need to write to you, we'll send a copy to the person you've asked us to deal with. If we need to talk to you, they can be with you when we do, if you prefer.

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## When we may charge you a penalty for an inaccuracy

We may charge you a penalty if you send us a return or other document that contains an inaccuracy, and the inaccuracy:

- results in tax being unpaid, understated or over-claimed
- was careless, deliberate or deliberate and concealed (we refer to these as 'behaviours' which are explained later in this factsheet)

If you ask someone else, such as an employee or adviser, to do something on your behalf, you must do as much as you can to make sure that an inaccuracy does not occur. If you do not do this, we may charge you a penalty.

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## When we will not charge you a penalty for an inaccuracy

We will not charge you a penalty for an inaccuracy if you took reasonable care to get things right, but your return or document was still wrong. Some of the ways you can show that you took reasonable care include:

- keeping accurate records
- checking with a tax adviser or with us if you're not sure about anything

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## Disclosing an inaccuracy before we find it

If you tell us about an inaccuracy before you have any reason to believe that we've discovered, or about to discover the inaccuracy, we call this an 'unprompted disclosure'. If you tell us about an inaccuracy at any other time, we call it a 'prompted disclosure'.

Once we've started a check, a disclosure can only be unprompted if, exceptionally:

- it's about an unrelated inaccuracy
- you had no reason to believe that we could have found it during our check

The minimum penalty for an unprompted disclosure is lower than the minimum penalty for a prompted one.

If you send us a return or document that you believe is correct and you later find that it contains a careless inaccuracy, we may be able to reduce the penalty to nil if you make an unprompted disclosure.



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## What you can do to reduce any penalty we may charge

We can reduce the amount of any penalty we charge you depending on our view of how much assistance you gave us when you make a disclosure. We refer to this assistance as the 'quality of disclosure' or as 'telling, helping and giving'.

Examples of making a disclosure include:

- telling us about, or agreeing that there's something wrong and how and why it happened
- telling us everything you can about the extent of what is wrong as soon as you know about it
- telling and helping us by answering our questions in full
- helping us to understand your accounts or records
- helping us by replying to our letters quickly
- helping us by agreeing to attend any meetings, or visits at a mutually convenient time
- helping us by checking your own records to identify the extent of the inaccuracy
- helping us by using your private records to identify sales or income not included in your tax return
- giving us access to documents we've asked for without unnecessary delay
- giving us access to documents we may not know about, as well as those that we ask to see

We'll reduce the penalty by the maximum amount possible if you:

- tell us everything you can about any inaccuracy as soon as you know about it or you believe we're about to find it
- do everything you can to help us correct it

If you delay in making a disclosure, you may still be entitled to a reduction, but it will be smaller.

If we do not need any extra assistance from you, we'll give you some reduction for telling, helping and giving.

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## Letting us know about any special circumstances

If there are any special circumstances that you believe the officer dealing with the check should consider when working out the penalty, you should let them know straightaway.

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## How we work out the amount of a penalty

There are 8 stages in working out the amount of any penalty. Each stage is explained in more detail below.

### 1 Working out the amount of the potential lost revenue (PLR)

The penalty is a percentage of the PLR. PLR is the amount that arises as:

- a result of correcting an inaccuracy in a return or document
- an incorrect repayment
- an incorrect claim

The officer dealing with the check will explain how this is worked out. There are different rules about calculating the PLR where there are group relief, losses, repayments, or accounting timing issues resulting in delayed tax. If you need to know more, please ask the officer dealing with the check.

### 2 Determining our view of the 'behaviour'

When there's an inaccuracy, we'll work with you to find out what caused it. We refer to this as the 'behaviour'. The type of behaviour will affect whether we charge a penalty and the amount of the penalty. There are 4 different types of behaviour.

#### Reasonable care

Everyone has a responsibility to take reasonable care over their tax affairs. What 'reasonable care' is will depend on each customer's abilities and circumstances.

If there was anything about your health or personal circumstances that made it difficult for you to take reasonable care, please tell the officer that is carrying out the check. Telling them will mean that they can take this into account when considering whether you took reasonable care.



If you took reasonable care to get things right but your return or document still contained an inaccuracy, we will not charge you a penalty.

Some of the ways you can take reasonable care include:

- keeping enough records to make accurate tax returns
- keeping those records safe
- asking us or a tax adviser if you're not sure about anything and following any advice given

### **Careless**

This is where you failed to take reasonable care to get things right.

### **Deliberate**

This is where you knew that a return or document was inaccurate when you sent it to us. Examples of deliberate inaccuracies include deliberately:

- overstating your business expenses
- understating your income
- paying wages without accounting for Pay As You Earn and National Insurance contributions

### **Deliberate and concealed inaccuracies**

This is where you knew that a return or document was inaccurate and you took active steps to hide the inaccuracy from us, either before or after you sent it to us. An example of taking active steps to conceal an inaccuracy is where you create a false invoice to cover a non-existent stock purchase.

## **3 Deciding whether the disclosure was unprompted or prompted**

This determines the minimum penalty percentage that we can charge. This is explained in more detail in the section of this factsheet titled 'Disclosing an inaccuracy before we find it'.

## **4 Deciding the range that the penalty falls within**

The penalty percentage falls into one of 6 ranges. The range it falls into depends on the type of behaviour and whether it was a 'prompted' or 'unprompted' disclosure. The following table shows the 6 penalty ranges.

Type of behaviour	Unprompted disclosure	Prompted disclosure
Reasonable care	No penalty	No penalty
Careless	0% to 30%	15% to 30%
Deliberate	20% to 70%	35% to 70%
Deliberate and concealed	30% to 100%	50% to 100%

## **5 Working out the reductions for the quality of disclosure (also referred to as 'telling, helping and giving')**

The reduction we give depends on how much assistance you give us. For:

- telling we give up to 30%
- helping we give up to 40%
- giving access to records we give up to 30%

When we work out the quality of disclosure, we'll also consider how long it's taken you to disclose the inaccuracy. If it's taken you a long time, (such as 3 years or more), to make a disclosure, we'll usually restrict the maximum reduction we give for the quality of disclosure to 10 percentage points above the minimum of the penalty range. This means you will not benefit from the lowest penalty percentage that's normally available.

## **6 Working out the penalty percentage rate**

The penalty percentage rate is determined by the penalty range and the reduction for the quality of disclosure.



### Example

We found a careless inaccuracy that the customer had not told us about before we started our check. When we told them about the inaccuracy, they agreed with us. This was a prompted disclosure.

The penalty range for a careless inaccuracy with a prompted disclosure is 15% to 30% of the PLR.

The reduction for quality of disclosure (telling, helping and giving) was 70%.

#### Steps

To work out the penalty percentage rate, we first work out the difference between the minimum and maximum penalty percentages.

We then take off the percentage reduction from the maximum penalty percentage we can charge.

This gives us the penalty percentage rate.

#### Calculation example

$$30\% \text{ minus } 15\% = 15$$

$$15 \times 70\% = 10.5\%$$

$$30\% \text{ minus } 10.5\% = 19.5\%$$

## 7 Working out the amount of the penalty

To work out the amount of the penalty, we multiply the PLR by the penalty percentage rate. In the example above, the PLR is £3,000. This means the penalty is £585 (£3,000 x 19.5% = £585).

## 8 Considering other reductions

After working out the amount of the penalty, we then take into account any other reductions that are necessary. This then gives the amount of penalty that we'll charge.

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## How we can suspend a penalty

We can suspend a penalty for a careless inaccuracy if we:

- can set conditions to help you avoid penalties in the future
- believe you can meet these conditions

We can suspend a penalty for up to a maximum of 2 years. Normally the suspension period will be as short as possible to allow you to meet the conditions. If we suspend your penalty, you'll not have to pay it if you meet the conditions, unless you become liable to another inaccuracy penalty during the suspension period.

During the suspension period you must make sure you do not send us any other returns that contain inaccuracies. If you do, this may make you liable to another inaccurate penalty during the suspension period. If you become liable to another inaccuracy penalty during the suspension period, you'll have to pay the previously suspended penalty.

You can find more information about this in factsheet CC/FS10, 'Suspending penalties for careless inaccuracies in returns or documents'. Go to [www.gov.uk](http://www.gov.uk) and search 'CC/FS10'. We cannot suspend penalties for any other type of behaviour.

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## How we tell you about a penalty

We'll write to you to tell you how much the penalty is and how we've worked it out. If there's anything about the penalty that you do not agree with, or if you think there is any information we have not already taken into account, you should tell us straightaway.

After taking account of anything you have told us, we'll then either:

- send you a penalty assessment notice
- invite you to enter into a contract with us to pay the penalty, together with the tax and interest

In certain circumstances you may also have to pay interest on the penalty if you do not pay it on time.

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## When a company officer may have to pay some or all of a company's penalty for a deliberate inaccuracy

A company officer may have to pay some or all of the company's penalty if the penalty is due to their actions, and one or more of the following applies:

- they have gained, or attempted to gain, personally from a deliberate inaccuracy
- the company is, or we believe it's, about to become insolvent - even if the officer did not gain personally from the deliberate inaccuracy

If the company pays the penalty, we'll not ask the individual officers to pay.

A company officer is a director, shadow director, company secretary or manager of a company, or a member of a limited liability partnership.

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## If you have deliberately done something wrong

We may carry out a criminal investigation with a view to prosecution if you have deliberately done something wrong, such as:

- given us information that you know is not true, whether verbally or in a document
- dishonestly misrepresented how much tax you owe, or claimed payments you're not entitled to

### Managing serious defaulters

If you deliberately got your tax affairs wrong, and we find this during the check, we may monitor your tax affairs more closely. We have an enhanced monitoring programme called 'managing serious defaulters'. For more information, read factsheet CC/FS14, 'Managing serious defaulters'. Go to [www.gov.uk](http://www.gov.uk) and search for 'CC/FS14'.

### Publishing details of deliberate defaulters

We may publish your details if you deliberately got your tax affairs wrong, but we'll not do this if we've given you the maximum penalty reduction. For more information, read factsheet CC/FS13, 'Publishing details of deliberate defaulters'. Go to [www.gov.uk](http://www.gov.uk) and search for 'CC/FS13'.

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## If you disagree

If there's something that you do not agree with, please tell us.

If we make a decision that you can appeal against, we'll write to you about the decision and tell you what to do if you disagree. You'll usually have 3 options. Within 30 days, you can:

- send new information to the officer dealing with the check and ask them to take it into account
- have your case reviewed by an HMRC officer who has not been involved in the matter
- arrange for an independent tribunal to hear your appeal and decide the matter

Whichever you choose, you may also be able to ask for an HMRC specialist officer to act as a neutral facilitator to help resolve the dispute. We call this 'Alternative Dispute Resolution' (ADR).

ADR is only available for disputes that relate to particular tax areas. The officer dealing with the check will tell you if ADR is available for your dispute. For more information about appeals and ADR, read factsheets:

- HMRC1, 'HM Revenue and Customs decisions – what to do if you disagree'
- CC/FS21, 'Alternative Dispute Resolution'

Go to [www.gov.uk](http://www.gov.uk) and search for 'HMRC1' or 'CC/FS21'.

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## Your rights if we're considering penalties

The European Convention on Human Rights gives you certain important rights. If we're considering penalties, we'll tell you. We'll also tell you that these rights apply and ask you to confirm that you understand them. These rights are that:

- if we ask you any questions to help us decide whether to charge you a penalty, you have the right not to answer them



- the amount of help that you give us when we're considering penalties is entirely a matter for you to decide
- when deciding whether to answer our questions, you may want to get advice from a professional adviser – particularly if you do not already have one
- if you disagree with us about any penalties we believe are due, you can appeal
- you have the right to apply for funded legal assistance for dealing with any appeal against certain penalties
- you're entitled to have the matter of penalties dealt with without unreasonable delay

You can find full details about these rights in factsheet CC/FS9 'The Human Rights Act and penalties'. Go to [www.gov.uk](http://www.gov.uk) and search for 'CC/FS9'.

## Which taxes and tax periods these penalty rules apply to

**These penalty rules apply to the following taxes for returns or documents that were due to be sent to us on or after 1 April 2009, and relate to a tax period beginning on or after 1 April 2008**

Capital Gains Tax	National Insurance Classes 1 and 4
Construction Industry Schemes	Pay As You Earn (PAYE)
Corporation Tax	VAT
Income Tax (including Self Assessment)	

**These penalty rules apply to the following taxes for returns or documents that were due to be sent to us on or after 1 April 2010, and relate to a tax period beginning on or after 1 April 2009**

Aggregates Levy	Insurance Premium Tax
Air Passenger Duty	Landfill Tax
Alcohol Duty	Lottery Duty
Amusement Machine Licence Duty (up to 31 January 2013)	Petroleum Revenue Tax
Bank Payroll Tax	Pool Betting Duty
Bingo Duty	Remote Gaming Duty
Climate Change Levy	Soft Drinks Industry Levy (from 6 April 2018)
Excise duties (Holding and Movements)	Stamp Duty Land Tax
Gaming Duty	Stamp Duty Reserve Tax
Hydrocarbon Oils Duty	Tobacco Duty
Inheritance Tax	

**These penalty rules apply to the following taxes for returns or documents that relate to the following periods**

National Insurance Class 1A for P11D(b) (returns for the tax year ended 5 April 2011 and later years).

Machine Games Duty (for tax periods beginning on or after 1 February 2013).

Annual Tax on Enveloped Dwellings (for tax periods beginning on or after 1 April 2013).

Apprenticeship Levy (for tax years beginning on or after 6 April 2017).

Soft Drinks Industry Levy (for periods beginning on or after 6 April 2018).

Digital Services Tax (for periods beginning on or after 1 April 2020).

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## More information

### Our privacy notice

Our privacy notice sets out the standards that you can expect from us when we ask for information or hold information about you. Go to [www.gov.uk](http://www.gov.uk) and search for 'HMRC Privacy Notice'.

### If you are not happy with our service

Please tell the person or office you've been dealing with. They'll try to put things right. If you are still not happy, they'll tell you how to make a formal complaint.







## The Human Rights Act and penalties

Article 6 of the European Convention on Human Rights, which was incorporated into British law through the Human Rights Act 1998 gives you certain rights when we're considering whether to charge certain types of penalties.

We'll ask you to read this factsheet if we believe these rights may apply to you and we need your help to work out whether we may need to charge you a penalty.

This factsheet is one of a series. For the full list of factsheets in the series, go to [www.gov.uk](http://www.gov.uk) and search for 'Compliance checks factsheets'.

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### If you need help

If you have any health or personal circumstances that may make it difficult for you to deal with this check, please tell the officer that's contacted you. We'll help you in whatever way we can.

You can also ask someone else to deal with us on your behalf, for example, a professional adviser, friend or relative. We may however still need to talk or write to you directly about some things. If we need to write to you, we'll send a copy to the person you've asked us to deal with. If we need to talk to you, they can be with you when we do, if you prefer.

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### What your rights under Article 6 mean for you when we are considering penalties

We always welcome your co-operation with our compliance check and in establishing the right liabilities, including whether any penalties may be due. The extent to which you co-operate with us and provide us with information is entirely your choice.

When we're considering penalties you've the right under Article 6 not to answer our questions. This is sometimes called the right not to self-incriminate or the right to silence. This right does not cover information or documents that already exist. This means that you must give us the information or documents that already exist, if we've a legal right to ask for them.

In making a decision about how much you're going to co-operate with us, you've the right to get help from a professional adviser. If you do not already have an adviser, you may want to consider consulting one.

You've the right to have the matter of penalties dealt with without unreasonable delay. We'll normally tell you whether any penalties are due once we've agreed the tax position with you. If we cannot agree the tax position, we'll send you an amendment or assessment of any additional tax we believe is due. If we consider that a penalty is also due, we'll send you an assessment of the penalty, based on the additional tax.

If we charge you a penalty, you've the right to ask for a review or to appeal. You also have the right to ask for your review or appeal against both the tax and the penalty decisions to be considered together. Our factsheet HMRC1, 'HM Revenue and Customs decisions – what to do if you disagree', explains what to do if you want to ask for a review, or to appeal. You can find more information about tribunals on the tribunal's website. Go to [www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about](http://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about)

You've the right to apply for publicly funded legal assistance or Legal Aid. In some circumstances, funding may be available to help you bring certain appeals before the tribunal. If you're going to appeal against a penalty assessment, you may want to check whether your case qualifies and the type of help that may be available. We've no involvement in decisions about if your case will qualify. You can find details of where to get information below.

If there's anything you do not understand about these rights or what they mean for you, please tell the officer who is dealing with the compliance check straightaway.



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## Funded legal assistance

You can find out more details about funded legal assistance or Legal Aid in:

- England and Wales by going to the Civil Legal Advice website at [www.gov.uk/civil-legal-advice](http://www.gov.uk/civil-legal-advice) or by phoning 0345 345 4345
- Scotland by going to the Scottish Legal Aid Board website at [www.slabb.org.uk](http://www.slabb.org.uk) or by phoning 0131 226 7061
- Northern Ireland by contacting a solicitor who's a member of the Law Society of Northern Ireland, go to [www.lawsoc-ni.org](http://www.lawsoc-ni.org)

You can also get more details from Citizens Advice or you can apply for funded legal assistance or Legal Aid through a solicitor anywhere in the UK.