Inaccuracy penalties: a new trend?

Technical

01 April 2015

LITRG have heard about taxpayers receiving inaccuracy penalty notices for mistakes they have made in their tax returns. These penalties typically amount to 15% of the tax alleged to have been understated. However, a penalty for inaccuracy can only be levied if a mistake is careless or deliberate, not if it is a genuine error despite taking reasonable care. This itself is judged according to the circumstances and abilities of the individual taxpayer.

We do not know whether this is the start of a worrying trend towards deeming all inaccuracies to be careless or deliberate until proved otherwise and we would be interested to hear members' views and experiences.

This article will provide an update on inaccuracy penalties charged under FA 2007 Sch 24. As noted above, for such a penalty to be chargeable, it is necessary not only that a mistake should made; but that it should be 'careless' or deliberate. 'Careless' means failure to take 'reasonable care'.

On what level of care may be 'reasonable', HMRC's official guidance says:

'Whilst each person has a responsibility to take reasonable care, what is necessary for each person to discharge that responsibility has to be viewed in the light of that person's abilities and circumstances. For example, we do not expect the same level of knowledge or expertise from a self-employed unrepresented individual as we do from a large multinational company…'

So, before making a judgment about a taxpayer having failed to take reasonable care, HMRC should consider matters such as the individual's personal circumstances and background, their experience with tax matters and how they prepared and checked their return. If a penalty notice is sent out indicating that HMRC deem the taxpayer to have been careless but there is no sign of the department having considered the taxpayer's circumstances or abilities, the penalty may be open to challenge.

The level of penalty is normally worked out as a percentage of the ‘potential lost revenue’ (PLR) – that is, the extra tax that becomes due and payable as a result of correcting the inaccuracy. The percentage depends on the level of culpability. A penalty of 15% of PLR indicates a careless error where the level of the penalty has been reduced to the minimum permitted in the case of ‘prompted’ disclosure. A disclosure is ‘unprompted’ if made at a time when the taxpayer has no reason to believe that HMRC have discovered it or are about to do so; otherwise it is ‘prompted’.

But – to reiterate the basic rule – unless the mistake is caused by ‘failure to take reasonable care’, no penalty is chargeable. Taxpayers can and do make genuine errors while taking reasonable care. Even if the mistake was careless, HMRC have discretion to reduce a penalty or not enforce it ‘if they think it right because of special circumstances’, or they may suspend all or part of the penalty for up to two years. If HMRC do not offer special reduction, or suspension, the taxpayer may still ask for it. Ultimately the taxpayer can ask for statutory review of the decision imposing the penalty, or appeal against it to the First-tier Tribunal.

For more detailed information, see Penalties for errors in tax returns – what should I do? on LITRG’s website.