Penalties for late non-resident Capital Gains Tax (NRCGT) returns

Personal tax

01 September 2017

HMRC are no longer issuing daily penalties for late NRCGT returns and are withdrawing those already issued.

We have been in discussion with HMRC following recent reports from members of substantial penalties being levied for late submission of NRCGT returns.

The penalty regime that applies to the NRCGT return is part of the unified penalty regime in FA 2009 Schedule 55 that also applies to other types of return such as the self-assessment income tax return: that is an initial penalty of £100 in all cases, plus a further penalty of 5% of the tax due or £300 if greater for returns over 6 months late and a further penalty of 5% of the tax due or £300 if greater for returns over 12 months late. Additionally, HMRC have discretion to charge penalties of £10 per day for returns that are filed between 3 and 6 months late. These penalties can be appealed if the taxpayer has a reasonable excuse for the return being late.

Following representations from taxpayers and agents, HMRC have advised us that they have reviewed their position with regard to the £10 daily penalties and have confirmed that they will no longer issue these penalties for late NRCGT returns and that past penalties will be withdrawn. We understand that this decision has been made after considering the scheme of NRCGT returns and the aims of the penalty regime. The decision has only been taken with regard to daily penalties issued for late NRCGT returns and not to other types of return. HMRC has no discretion over the other late filing penalties which will continue to be issued where a NRCGT return is filed late.

HMRC are in the process of writing to affected taxpayers and making repayments and adjustments. We understand that there are over two thousand cases so this exercise may take a little time to complete. HMRC have advised us that they

currently have no plans to change their decision.

HMRC have also updated their guidance on GOV.UK and it no longer refers to daily penalties only late filing and late payment penalties and interest.