

## Who and what late payment penalties apply to

The late payment penalties apply to all employers and contractors - whether you employ one or several hundred employees or subcontractors. They apply to monthly, quarterly and annual periods of PAYE starting on or after 6 April 2010.

HM Revenue & Customs (HMRC) charges late payment penalties on PAYE amounts due that are not paid in full on time, including:

- monthly, quarterly or annual PAYE (Pay As You Earn)
- student loan deductions
- Construction Industry Scheme (CIS) deductions
- Class 1 National Insurance contributions (NICs)
- annual payments of employers' Class 1A and Class 1B NICs
- determinations made by HMRC where it appears that there may be further tax payable - for example under Regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003
- decisions under Section 8 of the Social Security Contributions (Transfer of Functions, Etc) Act 1999 - for example about a person's liability to pay NICs and the amount payable

## Late payment penalty warning letters

HMRC may send you a warning letter if you do not pay on time. They may do this the first time in the tax year they think your PAYE payment is late. The letter is issued about two weeks after the payment date.

The letter is only to let you know that HMRC think you have made a PAYE payment late and that a penalty could be charged. It is not a penalty notice and you can't appeal against it.

It also:

- explains how to avoid a penalty in the future
- reminds you to pay - if you have not already paid by the time you receive the letter

Importantly, it does not mean a penalty will definitely be charged, and you may get a penalty even if you do not get a letter.

### **No PAYE/NICs to pay – how to avoid warning letters and payment reminders**

If you have no PAYE/NICs payment to make for a month or quarter, you can avoid an unnecessary warning letter or payment reminder by simply telling HMRC on or before your normal payment date that no payment is due.

You can do this quickly and easily using HMRC's online notification service.

### **What to do if you get a warning letter**

If you agree that you have made a late payment, you should make sure you pay on time and in full in future.

The next time you pay late you may become liable to a penalty. HMRC will contact you before a penalty is charged. If they charge a penalty they will send you a penalty notice. The section 'Notification of a late payment penalty' gives more information.

If you believe you have received a letter in error, perhaps because you have already paid, have a time to pay agreement or have a 'reasonable excuse' you don't need to contact HMRC yet. But you may find it helpful make a note of why you don't think a penalty is chargeable in case HMRC contact you about penalty action in future.

## Notification of a late payment penalty

If a penalty is due, HMRC will send you a late payment penalty letter telling you how much you owe and when you have to pay it by. It will also tell you what to do if you think the penalty is wrong, including how to appeal.

For penalties relating to late payments that occurred in the 2010-11 tax year, HMRC will send notifications of late payment penalty charges after the end of the year. HMRC has up to two years after the late payment occurred to issue a penalty letter.

It is your responsibility to make sure that you pay on time. HMRC does not issue reminder letters.

## Penalty rates and how they will apply

Penalties will be charged on each PAYE reference number (also called a 'PAYE scheme') independently. Therefore, if you operate more than one PAYE scheme you need to make sure that amounts due for each individual PAYE scheme reference is paid in full on time.

The rest of this section explains how the penalties apply for different types of payment.

### Monthly or quarterly PAYE payments

You will not be charged a penalty if only one PAYE amount is late in a tax year - unless that payment is over six months late.

The amount of the penalty will depend on how much is late and how many times your payments are late in a tax year. So if you pay part of what is due on time then any penalty will only be charged on the part that is late. The table below shows how the penalties are calculated.

### Penalty charges for late monthly and quarterly PAYE payments

| No. of times payments are late in a tax year | Penalty percentage   | Amount to which penalty percentages apply  |
|--|--|--|
| 1  | No penalty (as long as the payment is less than six months late) | Total amount that is late in the tax year (ignoring the first late payment in that tax year) |
| 2-4  | 1%   |  |
| 5-7  | 2%   |  |
| 8-10   | 3%   |  |
| 11 or more                                   | 4%   |  |

### Additional penalties for monthly and quarterly payments over six months late

If you have still not paid a monthly or quarterly amount in full, after six months you may have to pay a penalty of 5 per cent. A further penalty of 5 per cent may be charged if you have not paid after 12 months. These penalties may be charged in addition to the penalties for monthly and quarterly payments described in the previous section and apply even where only one payment in the tax year is late.

### End of year adjustments

You may be charged a late payment penalty if you pay less than is actually due. This applies even where you pay roughly the right amount each month and then make an end of year adjustment. You should therefore make sure you pay in full each month, rather than estimate the amounts you need to pay.

However if you pay an adjustment after the end of the year under a special arrangement such as applying the Intermediaries' rules (these are often referred to as IR35) or a formal modified PAYE arrangement known as Employment Procedures Appendix 6, HMRC will not charge late payment penalties providing the terms of the arrangement are kept.

To avoid receiving a penalty you must make certain that you pay the right amount on time each month.

### Amounts due annually or occasionally

You may have to pay a penalty of 5 per cent of the amount that is late if you have not paid the full amount by the date known as the 'penalty date'. There's more information about the different '**penalty dates**' later in the section.

You may have to pay an additional 5 per cent penalty if you have still not paid the full amount within five months of the penalty date.

You may have to pay further 5 per cent penalty if you have still not paid the full amount within 11 months of the penalty date.

### **Penalty dates**

The penalty date varies according to the type of payment.

For payments such as Class 1A and 1B NICs; HMRC determinations and assessments; and amendments or corrections to returns the 'penalty date' is 30 days after the due date. This means that for these payments you may have to pay:

- a 5 per cent penalty if you have not paid the full amount within 30 days of the due date
- an additional 5 per cent penalty if you have not paid the full amount within six months of the due date
- a further 5 per cent penalty if you have not paid the full amount within 12 months of the due date

In most other cases, the penalty date is the day after the due date.

## **If there's a good reason for not paying in full on time**

You won't have to pay a penalty if HMRC agrees that there is a reasonable excuse for it being late and you paid as soon as you reasonably could after the reason for lateness ended.

What is reasonable will be different from person to person depending on their individual circumstances. However, it is normally something exceptional that you could not have predicted and that is outside your control. It is not possible to give a precise list of what is reasonable.

### **Some excuses that may count as a reasonable excuse**

These can include:

- The death of a close relative or domestic partner around the time that payment was due.
- The payment is lost or delayed because of an unforeseen event. For example, a fire or flood at the sorting office where the payment would be held.
- Serious illness of the person or of a close relative around the time the person should have made payment.

### **Some excuses HMRC would not usually accept as reasonable**

These can include:

- pressure of work
- lack of information
- HMRC did not remind you to pay
- ignorance of basic law

In addition, the law says that HMRC cannot usually accept as reasonable:

- Lack of money. HMRC cannot treat lack of funds as reasonable unless the shortage is due to unforeseeable events outside your control. If you are having difficulty paying there's information in the next section 'What to do if you can't pay'.
- Relying on someone else. HMRC cannot normally accept that you have a reasonable excuse just because you asked someone else to make the payment and they did not. Exceptionally if you have done all you reasonably can to make sure the person does make the payment on time, you may have a reasonable excuse.

For example, you may have explained carefully to the person what they have to do, and by when. You may have checked on their progress and reminded them.

### **If you think you have a reasonable excuse**

If you think you have a reasonable excuse you should contact the office that notifies you of the penalty. If HMRC decides you do not have a reasonable excuse, and you do not agree, you can appeal.

## **What to do if you can't pay**

HMRC expects payments to be made on time. However if you are experiencing any problems in paying what you owe you can find out what to do by following the link at the end of this section.

You should contact HMRC before any payment is due if you think you will have difficulty paying on time. If HMRC agrees to allow you time to pay and you contact them before the payment is due they will not charge penalties on those payments covered by that agreement, providing you stick to the agreement.

## **What to do if you disagree with a penalty**

If you disagree with the penalty, you have the right to appeal. You can appeal if:

- you don't think a penalty is due
- you disagree with the amount of the penalty

You can also appeal against HMRC's decision not to accept your reasonable excuse if you still think you have a reasonable excuse.

You can read more about how to appeal against a decision you disagree with in the guide 'How to appeal against an HMRC decision - direct tax'.

## **Late tax codes 2010–11**

At the start of the tax year 2010–11 some tax code notifications, form P9, were sent out later than usual. If the tax code notification for any of your employees was not received by 6 April HMRC asked employers to use the same code they operated in March 2010. HMRC asked that all notifications, once received, be processed without unreasonable delay.

Employers who followed this guidance, and paid all PAYE monthly payments on time, have met their obligations.

In addition, there is no liability to a penalty if employers have a reasonable excuse. Whether an excuse is reasonable will depend on the merits of the case. Read the previous section 'If there's good reason for not paying in full on time'.