

## The current VAT regime

The spectre of VAT penalties is present at all stages of business whether starting up, in full swing or preparing to exit.

### VAT registration

You must register for VAT if your supplies of goods and services made within the UK during the past 12 months is more than the current registration threshold of £79,000, or you expect it to go over that figure in the next 30 days.

If you are late telling HM Revenue & Customs (HMRC) that you should be VAT registered you will still have to pay all the VAT due from the time that you should have been registered even though you have not charged your customers VAT.

HMRC may also charge you a penalty.

You may be charged a late registration penalty and/or a failure to notify penalty if you fail to tell HMRC at the correct time that you should be VAT registered. In some circumstances you may be charged a civil evasion penalty.

For late registrations post 1 April 2010 the penalties are the same as those described below that relate to late payments of VAT.

### Late submission of VAT returns and/or payment of VAT due

Once you are VAT registered you have an obligation to submit VAT returns. VAT registered businesses are required by law to submit their return and make sure that payment of the VAT due has cleared to HMRC's bank account by the due date. The due date is shown on your VAT Return and is normally one calendar month after the end of the accounting period covered by the return. If you submit online returns the due date for your return is shown on screen.

You cannot rely on this being correct if the 7 day extension falls on a Bank Holiday or a weekend. You will be in default if by the due date:

- HMRC have not received your VAT Return (this applies even if your return is 'nil' or shows a repayment due from HMRC), and/or
- full payment of VAT as shown on your return has not cleared to the HMRC account.

Each time you default HMRC will send you a Surcharge Liability Notice, or a Surcharge Liability Notice Extension. These will warn you that if you default in respect of an accounting period (the surcharge period) you may be liable to a surcharge. The surcharge period begins on the date of the notice and ends twelve months from the end of the latest period in default.

If you default during a surcharge period and there is VAT outstanding for the period in default HMRC will charge you a default surcharge. They will send a Surcharge Liability Notice Extension which will extend the surcharge period. You will also be sent a surcharge assessment if a surcharge is due. If you make payments on account and default any payment, you will be sent a Surcharge Liability Notice or Surcharge Liability Notice Extension at the end of the quarterly accounting period. HMRC will not issue a penalty at the 2% and 5% rate if the penalty would be less than £400. It is therefore possible to make a part payment and leave an outstanding balance of less than £20,000 if you are at the 2% rate and £8000 if you are at the 5% rate without incurring a financial penalty. Any subsequent default will be at the next level.

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## Penalties for inaccuracies made on your VAT Returns

If you take reasonable care to complete your VAT Return but make an error despite this, you will not be liable to a penalty.

'Reasonable care' is a subjective concept and varies according to your circumstances but when taking reasonable care HMRC expect you to:

- make and keep sufficient records for you to provide a complete and accurate VAT Return
- update your records regularly
- take your VAT affairs seriously and take care to get it right

You won't be charged a penalty if you pay too much VAT because of an error! However, you may be liable to a penalty if:

- your VAT Return is inaccurate and correcting this means tax is unpaid, understated, over claimed or under-assessed
- you don't tell HMRC within 30 days that a tax assessment you have been sent is too low

Telling HMRC about inaccuracies as soon as you are aware of them may reduce any penalty that is due, in some cases to zero.

## The penalty rate for inaccurate VAT Returns

The penalty rate for an inaccurate VAT Return depends on why you made the error. The more serious the reason, the greater the penalty can be. The penalty is calculated as a percentage of the unpaid VAT, understated, over claimed or under-assessed, as a result of your errors.

You will also have to pay the VAT and any interest due in addition to the penalty.

REASON FOR ERROR	DISCLOSURE OF ERROR TO HMRC (1)	MINIMUM PENALTY (as % of the tax)	MAXIMUM PENALTY (as % of the Tax.)
Careless (2)	Unprompted	0%	30%
	Prompted	15%	30%
Deliberate (3)	Unprompted	20%	70%
	Prompted	35%	70%
Deliberate & concealed (4)	Unprompted	30%	100%
	Prompted	50%	100%

(1) A disclosure is unprompted if at the time you tell HMRC about it you have no reason to believe HMRC have discovered it, or are about to discover it

(2) Failure to take reasonable care

(3) You give HMRC a document which you know contains an inaccuracy

(4) You give HMRC a document which you know contains an inaccuracy and you have tried to hide that inaccuracy

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### How you might be able to reduce; suspend or cancel a penalty

HMRC can reduce a penalty within the maximum and minimum range if you:

- tell them as much as you can about any inaccuracies
- help them to work out what extra VAT is due
- give them access to your records to check your figures

Currently, errors on a VAT return do not amount to a disclosure capable of mitigating penalties and a separate letter is advisable.

If a penalty is a result of a 'careless' error, HMRC can sometimes suspend it for up to two years: If HMRC can suspend a penalty, they will impose certain conditions that will help you to avoid making the same error again. If it is not possible to set and agree these conditions a penalty cannot be suspended. If you meet all the conditions at the end of the suspension period HMRC will cancel the penalty provided you do not become liable to another penalty during this period. HMRC cannot suspend a penalty that comes from 'deliberate' or 'deliberate and concealed' errors.

It is worth reviewing all the circumstances when considering accepting a suspension of a penalty. If the potential penalty is small and the suspension conditions are particularly onerous on the business (enhanced HMRC visiting schedule for example) it may be worth paying the penalty rather than accepting the conditions of the suspension.

### De-registration

If your business ceases to trade completely or continued to trade but falls below the VAT de-registration threshold (£77,000) you can apply to cancel your VAT registration. You will be required to complete a 'final' VAT return and account for VAT on any stock or assets on hand at the time of de-registration, unless the VAT value is less than £1000. Failure to do so will result in the issue of a penalty from HMRC as it may be deemed that you have not taken 'reasonable care' completing the VAT return. The same penalties as outlined above apply to the completion of a final VAT return.

### Summary

Being VAT registered requires organisation and the ability to meet regular imposed deadlines. As a business you must ensure that you have the necessary systems and expertise to meet these deadlines and complete accurate VAT returns. If you need help or a bit of a reassurance to give you peace of mind we can carry out a VAT review to assess whether any issues are apparent and need further work. Don't delay getting in touch, that way we'll help you avoid those pitfalls and traps.