

Voluntary disclosures

Revenue and Customs Brief 38/08 concludes that HMRC's present policy of only charging default interest on Voluntary Disclosures of underdeclared VAT that are over the return correction threshold is unlawful, following the Wilkinson case (which concerned whether widowers should be allowed a similar bereavement allowance to widows, the taxpayer lost). This policy was applied because errors corrected on returns are not subject to any interest charge, so it ensured that an error under the threshold was subject to the same interest rules no matter how the error was dealt with.

With effect from 1 Sept 2008 HMRC advise that they may charge interest on all Voluntary Disclosures of underdeclared VAT whether they are above or below the threshold, but underdeclaration errors corrected on a return will still be exempt from interest.

This creates an anomaly, as identical errors will be treated differently for interest purposes depending on how they are corrected. From next April, when the new penalty regime arrives for VAT returns, will this create a tension as taxpayers will be torn between the advantage of disclosing an error that is under the threshold, so as to obtain certainty on the penalty front immediately, and the mitigation that comes from an unprompted disclosure, and the disadvantage that by disclosing they risk an interest charge that would not arise if they simply corrected the return.

This is also a timely reminder that HMRC has recently increased the threshold for self-correcting errors from £2,000 for accounting periods commencing on or after 1 July 2008. The new limit below which an error can be adjusted on a return is the greater of £10,000 or 1% of turnover (turnover is defined as the figure in box six of the VAT return, 'net VAT sales and all other outputs' for the period in which the error is discovered). This is, however, subject to an upper limit of £50,000, above which all errors must be notified to HMRC in writing.

HMRC has also stated that voluntary disclosures will not be penalty free after 1 April 2009 under the new penalty regime. A "failure to take reasonable care" could leave a business exposed to a penalty of up to 30% of the VAT due.

Interest should only be charged when recompense for loss is due, and not all errors lead to a loss for HMRC. It is always worth checking an interest calculation as mistakes can happen.