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Don't be caught out by new penalty regime on VAT errors

Liz Needham, Partner and VAT specialist at leading Worcester, Malvern and Hereford-based firm of chartered accountants and business advisers, Kendall Wadley LLP is warning businesses not to fall foul of the new VAT regimes implemented by HM Revenue & Customs

HM Revenue and Customs (HMRC) are introducing a new penalty regime for errors made on tax returns or other documents, for periods start on or after 1 April 2008, that are due to be filed on or after 1 April 2009.

The new penalties apply to Income Tax, VAT, PAYE, National Insurance Contributions, Corporation Tax and Capital Gains Tax. Many businesses could find that they become liable for penalties for errors that under the current penalty regimes would not trigger a penalty.

In this article we focus on some of the proposed changes to the regime for VAT errors.

Under the current system a business could become liable to a penalty for an error made on a return under the following circumstances:

- If an assessment has been issued because a return has not been submitted and the actual VAT due is more than the assessed amount.
- If the amount of the error exceeds £1M or 30% or more of the proper amount of VAT due on the return (misdeclaration penalty).
- If the business makes persistent errors above certain limits (persistent misdeclaration penalty).

In all cases the penalty rate is 15% which can be mitigated.

Although many businesses make errors that are discovered by HMRC when they visit, in the majority of cases a penalty will not be triggered because the amount is not sufficiently large. Also by making a voluntary disclosure a liability to a misdeclaration penalty is avoided.

However, the tests applied under the new regime will focus on the behaviour of the business which led to the inaccuracy and even in cases where a business makes voluntary disclosure they may still be penalised.

Under the new regime HMRC will apply different tests to determine if a penalty is to be charged and at what rate.

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First of all HMRC will consider if the business applied reasonable care. If yes, then a penalty will not be charged (currently a penalty would still be charged if the amount exceeded certain limits).

If reasonable care was not exercised the standard penalty will be 30% of the amount of the error. This will apply to errors on returns and if the business fails to notify HMRC that an assessment issued in the absence of a return is too low.

If the business discloses the error the penalty is reduced to 15% if it was prompted and to nil if unprompted.

If the business deliberately makes an incorrect return but does not conceal it the penalty rate will be 70% with a reduction available for disclosures.

In its recently published consultation document HMRC introduced the concept of suspended penalties for failing to take reasonable care which could be used in certain circumstances and give an incentive to the business to put things right for the future.

If you need assistance with any Tax or VAT issues, contact Kendall Wadley on Tel: 01684 892666 or visit www.kwca.co.uk

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