

Points Make Penalties

A famous entertainer, Bruce Forsyth used to ask his audience, "What do points make?" and the unanimous response was "Prizes". If that same question was put to the tax profession, from 1st January 2023, the answer would be "Penalties". Financial ones at that too!!

From that date, if you are a VAT registered business and you submit your VAT Returns late, a new penalty regime will come to bite you on the posterior.

Likewise, from 6th April 2024, it will affect sole traders and/or a property landlords whose turnover exceeds £10,000 and will be required to comply with the new Making Tax Digital for Income Tax Self-Assessment.

Anybody else caught within the income tax self-assessment regime will be hit by the new penalty regulations from 6th April 2025 onwards. For example:

- ▶ Individuals who submit self-assessment tax returns.
- ▶ Trustees who file Trust returns.

Each time you fail to submit a return on time you will start to accumulate points until you reach a penalty threshold.

- ▶ Once that threshold has been met you will have to pay a penalty of £200.
- ▶ After that, if you continue to be late, no more points will be added, but a further penalty of £200 will be charged each and every time.
- ▶ The penalty threshold will depend on how frequently you will be required to submit that particular form – monthly, quarterly or annually.

FILING FREQUENCY	POINT THRESHOLD
Monthly	5
Quarterly	4
Annual	2

For example:

- ▶ Mary is VAT registered & submits her VAT returns quarterly.
 - ▶ Since April 2023, she has filed her VAT return late on 6 occasions.
 - ▶ Mary has amassed 4 penalty points and hit the quarterly filing threshold.
 - ▶ HMRC will impose two penalties on her totalling £400 due to the 5th and 6th late submissions.
- You can restart the clock on the penalty front as long as you demonstrate a period of compliance over an extended period of time.
- ▶ If you have not reached the threshold yet, then the points wash away after two years.
 - ▶ If you have already hit the threshold, those points will not expire after two years. You will have to endure a further period of compliance. That period will vary depending upon how often you are legally obliged to submit that return.

SUBMISSION FREQUENCY	PERIOD OF COMPLIANCE
Monthly	6 months
Quarterly	12 months
Annual	24 months

 **TIP...** We endeavour to forewarn our clients of fast approaching deadlines, whilst stressing the penalty risks for failing to comply. We would always advocate that you diarise these compliance dates and, where possible, submit your return well within the relevant timeframe. We can help you meet your compliance commitments.

150% - Land Remediation Relief (LRR)

If you are a UK company which has acquired a major interest in a brownfield site which is contaminated or derelict and you incur expenditure in carrying out remediation work on that land/property, you may be entitled to tax relief of up to 150% of the expenditure incurred.

Developers and property traders incurring revenue expenditure are already allowed their base costs as a business expense and thus LRR is given at 50% of the remediation expenditure. If you are an investor or an owner-occupier the LRR could be 150%.

If you are a company making a loss you can surrender the LRR for a tax credit equal to 16% of that amount.

The expenditure could be in respect of:

- ▶ The removal of asbestos. The treatment or containment of other pollutants, in or under the land, such as hydrocarbon, metals and metalloids.
- ▶ The treatment or containment of naturally occurring contaminants such as radon, arsenic and Japanese knotweed.

Example:

Shanahan Ltd purchase a building and need to replace the roof. A professional survey finds that the existing roof contains asbestos. The company engage a specialist firm to safely remove the asbestos.

The survey fees are £3,000 and the asbestos removal costs amount to £45,000.

Assuming all the conditions are met, the company would be entitled to LRR of £72,000 (£48,000 @ 150%).

This additional relief of £24,000 could result in a further corporation tax saving from £4,560 up to £6,000, depending upon the corporate tax rate applicable.

The election for LRR must be made within two years following the end of the accounting period in which the expenditure was incurred.

To be eligible to be able to make the claim:

- ▶ **The company cannot be the polluter** nor associated or connected with the polluter.
- ▶ The expenditure must relate to the remediation work carried out.
- ▶ **It must not be subsidised by a grant or by any other third party.** No relief is given for landfill tax costs.
- ▶ **The pollutant must be safely contained or disposed**

of. Evidence to that effect must be provided (e.g. safety certificates).

If you are intending to carry out work of this ilk, it is wise to obtain detailed project records setting out the nature of the work undertaken. Ensure that the invoices received are sufficiently detailed enough to support any LRR claim.



TIP...

With corporation tax rates set to go as high as 25% for accounting periods ending post 31st March 2023 this is a relief which ought not to be missed. Please do not hesitate to contact us if you believe you may be eligible to claim LRR.

A tip for a tip

If you operate within the hospitality or service sectors then tips and service charges are commonplace. When HMRC open up enquiries, within these sectors, they find many rich pickings as businesses can easily trip themselves up as they try to deal with the tax, national insurance (NI) and VAT complexities surrounding this subject.

A tip is an uncalled for, spontaneous payment by a customer.

A service charge is an amount added to the customer's bill before it is presented to them. It could be either discretionary or mandatory. A purely discretionary one is where the customer is not obliged to have to pay it. It should be clear to the customer that is the case.

It is important to differentiate the two because, if mandatory, it will attract VAT at 20%, whilst discretionary will not.

Any mandatory service charge, which is then subsequently paid out to employees, will always incur a national insurance liability irrespective of what arrangements the employer might put in place to make that payment.

A national insurance liability on a pay out to an employee of a tip or a discretionary service charge can be avoided if one of the following two conditions are met:

a) The tip is not paid, directly or indirectly, to the staff member by the employer and does not represent monies previously paid to the employer, for example, by the customers.

b) The employer does not control, directly or indirectly, who receives the tip and the amounts involved.

A clear and obvious scenario would be where the customer pays the staff member direct, or leaves the tip on the table and the employee picks it up and keeps the monies for themselves. This will be taxable on them, but no national insurance will be due. The responsibility to notify HMRC of this taxable income would rest solely on the employee and not the employer.

Another way to potentially ensure that no national insurance arises is if a tronc scheme is set up correctly.

A tronc is a special arrangement used to distribute tips. A person or third party, other than the employer, agrees to be the troncmaster, who then becomes responsible for sharing out the tips to the employees. The troncmaster could be a member of staff within the business establishment itself or a Third-party organisation.

The employer would need to notify HMRC that a tronc had been created and who the troncmaster was. HMRC would then set up a Tronc PAYE scheme and the troncmaster would then be responsible for deducting the tax from the tips and paying it over to the Inland Revenue. **As long as the employer, or somebody connected to them, was not the troncmaster, nor did they dictate how the tips were allocated out, then no national insurance liability would arise on the payments made.** If the employer fails to adhere to those conditions national insurance would be due.

Example:

- ▶ Lewis is the owner of a restaurant.
- ▶ All tips cash, credit or debit card received by Lewis are paid across to Christine who is the troncmaster.
- ▶ **Lewis has devised a points system, based upon length of service and seniority, which Christine needs to follow when distributing the tips.**
- ▶ **All these tips paid out by the tronc will be liable to national insurance.** Why? Because Lewis, is indirectly allocating the tips through Christine as a result of the points system he has devised.
- ▶ **It is important to note here, that on the national insurance front, it is the owner's responsibility to account for the national insurance and not the troncmaster. Lewis should put the national insurance through the business payroll.**
- ▶ If, however, the points system had been independently worked out and agreed by say a staff committee, then national insurance would not be applicable.

It is also important to note that tips do not count towards complying with the national minimum wage criteria.



TIP... For any business, where tips and/or service charges are involved, it is wise to ensure that there is a clear policy as to how it all operates and that processes are correctly followed so that tax and NI issues do not come to bite the business on the posterior later. Please do not hesitate to contact us if you require any help on this matter.



Beware the Festive Cheer



It is fast approaching that time of year where employers may wish to celebrate the festive season with their employees, perhaps rewarding them with a Christmas get together.

But businesses need to be mindful that the yuletide spirit does not turn sour, inadvertently, for their workforce from a tax perspective. So what do employers need to do to avoid an unsuspecting tax burden?

► **A business can spend up to £150 per head for annual events such as a Christmas party.**

► **The event must be open to all employees or all those situated at one location.** It must be an annual not a one off occasion.

► This is an exemption not an allowance and covers the whole tax year. If the particular event costs more than £150, then the whole amount is taxable, not just the excess above that threshold.

► **The exemption is 'per head' and not 'per employee'** so can include partners and children.

► The cost includes:

a) The value of the event itself, for example the food, drink, hiring of any venue plus any accommodation or transport provided.

b) Any VAT in respect of those expenses.

Example:

► Valiants Ltd have a Christmas party costing £130 per head, plus a summer barbeque amounting to £60 per head.

► The company would be wise to use the exemption limit against the Christmas party otherwise the combined total of £190 per head would all be taxable.

► Potentially the employees would be taxable on the cost per head from the barbeque event, unless the employer opts to cover this on behalf of the staff by way of a Pay As You Earn Settlement Agreement (PSA).

A PSA allows employers to cover the tax and national insurance due on minor, irregular or impracticable benefits provided to employees. If the employer chooses this option they need to realise that it will cost them more as they will be covering the tax due, based on the employees rate of income tax.

The business owner may want to give their employees a Christmas gift. If so, they may be able to claim the trivial benefit tax exemption. The following conditions need to be met:

► **The gift cannot be cash or a cash voucher and must not exceed £50.**

► It cannot be a contractual obligation to provide this benefit.

► The benefit isn't provided in recognition of services performed, or anticipated to be performed, by the employee.

These trivial benefits can potentially be given as often as you like during the course of the tax year unless the person is a director of the company or connected to them (e.g. a spouse), in which case there is an annual restriction of £300.

TIP...

Please do not hesitate to contact us to see if any of these annual events or gifts fall within the exemption regimes or if you want to go down the PSA route.



We are here to help

We can help you by ensuring that you're aware of the changes that will affect you, your family and your business. To find out more about the ways that we can help you, do not hesitate to contact us.

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