

Compensatory interest and late payment penalties

Operational Policy

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About this policy

Introduction

1. This policy outlines the situations in which compensatory interest and late payment penalties are applied.

Definitions

Term	Definition
Late payment	When duty is not fully paid by the due date on the duty assessment.
Shortfall payment	When duty is not fully paid because a duty assessment was either incorrect or not made.
Incorrect refund/drawback	When a person provides incorrect information to Customs that results in the duty payer receiving a refund or drawback that they are not entitled to.

Related documents

2. Use this operational policy in conjunction with the following documents:

Document name	Document type
Charge compensatory interest and late payment penalties (late payments)	Process and procedures
Charge compensatory interest (audits and multiple entries)	Process and procedures
Charge compensatory interest (work queue)	Process and procedures
Compensatory interest and late payment penalties – remissions, refunds and exemptions	Operational policy
Administrative penalties	Operational policy
Infringement offences	Operational policy
Provisional values	Operational policy
Intervention guidelines	Guidelines

Overview

3. Compensatory interest and late payment penalties are charges for importers and excise licensees who have not paid the right amount of duty at the right time, and exporters who have claimed a drawback they are not entitled to. Interest and penalties have distinct purposes.
4. The purpose of compensatory interest is to compensate the Crown for loss of use of money. Compensatory interest is charged whenever duty is underpaid. This includes late payments, shortfall payments and incorrect refunds and drawbacks.
5. The purpose of penalties is to deter and punish the non-compliant behaviour that leads to duty not being paid. The type of penalty applied depends on the type of incorrect payment. Late payments attract a late payment penalty, while shortfall payments and incorrect refunds and drawbacks may attract administrative penalties, infringement notices, or other sanctions.
6. Compensatory interest and late payment penalties apply to the following charges:
 - import duties
 - GST
 - excise
 - Petroleum or Engine Fuel Monitoring Levy
 - Synthetic Greenhouse Gas Levy
 - anti-dumping and countervailing duties.
7. All legislative references, unless otherwise stated, refer to the Customs and Excise Act 2018.

Compensatory interest

8. Compensatory interest is charged whenever duty has not been paid in full. This includes late payments, shortfall payments and incorrect refunds and drawbacks. Interest is calculated and payable in accordance with sections 154 and 161.
9. The purpose of compensatory interest is to compensate the Crown for the interest that the Crown could have earned, had the correct amount of duty been paid on time.
10. Compensatory interest is calculated on a daily basis, and charged for the entire period the duty is outstanding:
 - For late payments and shortfall payments, interest is charged from the date on which the duty should have been paid, until the date the duty is paid

- For incorrect refunds and drawbacks, interest is charged from the date the refund or drawback was paid to the duty payer, until the date it is repaid to Customs.

Interest rate

11. The compensatory interest rate is the taxpayer's paying rate, set by Inland Revenue, in accordance with Part 7 of the Tax Administration Act 1994.
12. For practicality, Inland Revenue usually fixes the rate for a period of 12 months, starting on 8 May. However, the interest rate can be reset at any time according to the formula in the Taxation (Use of Money Interest Rates Setting Process) Regulations 1997.
13. The formula sets a rate based on how much it costs a business to borrow money. This is a higher rate than is necessary to compensate the Crown for loss of use of money. The higher rate ensures that businesses cannot put off paying their duty as a cheap way of financing their business. It should not be viewed as a way to punish non-compliance – this is the role of penalties.

Interest and provisional values

14. No compensatory interest is charged on the difference between provisional duty and final duty, as long as the importer has approval to lodge the provisional value as part of the provisional values scheme.
15. Exempting provisional value updates from compensatory interest encourages eligible importers to join the provisional values scheme, and reduces the risk that importers may choose not to disclose value updates to Customs.
16. Value updates that have not been approved as part of the provisional values scheme are treated as shortfall payments and are subject to compensatory interest.
17. There is a prescribed timeframe for updating a provisional value to a final value. If an importer does not update a provisional value within this timeframe, the outstanding duty will be treated as a shortfall payment, with compensatory interest accruing from the date that the duty would have been payable, had the provisional value been updated on time (i.e. the 20th working day after the expiry of the prescribed timeframe for making the update).

Penalties

18. The purpose of penalties is to punish and deter non-compliance. Penalties are targeted to the specific non-compliant behaviour that has led to an incorrect payment. As such, different penalties are applied to different types of incorrect payments.

Late payment penalties

19. Late payment penalties are calculated and payable in accordance with section 159. They are calculated as follows:

- One percent of the outstanding duty is charged on the first day after the due date.
 - No late payment penalties are charged from the second to the seventh day after the due date, however compensatory interest continues to accrue on these days.
 - A further penalty of four percent of any duty still outstanding is charged on the eighth day after the due date.
20. Late payment penalties are intended to encourage duty payers, who know that they have to pay duty, to pay it by the due date.
21. The higher penalty on day eight recognises that duty outstanding for a week is less likely to be due to low-level non-compliance.
22. After the eighth day, no further penalties are applied; however compensatory interest will continue to accrue until the late duty is paid. Late payment penalties are an effective incentive to pay in the first few weeks after the due date, but are less effective beyond this. If duty is still outstanding after several weeks, alternative interventions should be considered (refer to intervention guidelines).
23. Late payment penalties are not applied to shortfall payments and incorrect refunds/drawbacks. In these cases, duty payers are generally unaware that they are not paying the right amount of duty, meaning that late payment penalties would not have any effect on compliance. However, once a shortfall payment or incorrect refund/drawback is discovered, a new duty assessment will be issued. If the outstanding duty is not paid within the timeframe, it is treated as a late payment, and late payment penalties are applied.

Penalties for shortfall payments and incorrect refunds and drawbacks

24. Shortfall payments and incorrect repayments are caused by a failure to provide full and correct information to Customs about the amount of duty payable on goods.
25. The intervention guidelines should be consulted to determine the appropriate penalty for not providing full and correct information about duty liability. The appropriate penalty will often be an administrative penalty (see Administrative Penalties operational policy) or an infringement notice (see Infringement Offences operational policy).
26. Note that there will often be no penalty when a shortfall payment or incorrect refund/drawback is voluntarily disclosed. This is because administrative penalties cannot be issued in cases of voluntary disclosure, in order to encourage voluntary compliance.

Statements of liability and appeal rights

27. An invoice for compensatory interest and late payment penalties is issued in the form of a statement of liability. Under section 164(2), the statement of liability must set out:

- the calculation of the interest or penalties payable as at the date of the statement
- the method for calculating the interest or penalties that will accrue if the duty remains unpaid after the date of the statement.

28. If the duty payer is dissatisfied with the charges on the statement, section 164(5) allows them to apply for an administrative review or appeal to the Customs Appeal Authority within 20 working days of receiving the statement.

REFERENCES

Inland Revenue's current and past debit [interest rates](#).

Customs and Excise Act 2018

- Section 154: Interest payable for late or incorrect payments of duty in certain cases
- Section 155: Cases involving late payment of duty
- Section 156: Cases involving correction of self-assessed duty
- Section 157: Cases where no entry or amendment under section 112 made
- Section 158: Other cases involving assessments or demands by chief executive
- Section 159: Penalties payable for late payments of duty in certain cases
- Section 160: Cases in which penalties may be payable
- Section 161: Interest payable for incorrect refunds of duty or drawback incorrectly allowed in certain cases
- Section 162: Refunds of duty made because of error attributable to recipient, etc
- Section 163: Drawback allowed because of error attributable to recipient, etc
- Section 164: Statements of liability for interest and penalties
- Section 174: Interest and penalties are debt due to Crown, etc

Customs and Excise Regulations 1996

- Regulation 71A: Interest rate for late payment etc.