

# Compensatory interest and late payment penalties – remission, refunds and exemptions

## Operational Policy

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## About this policy

### Introduction

1. This policy outlines the conditions and criteria for granting remission of compensatory interest and late payment penalties.

### 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.
Remission	Waiving of liability for compensatory interest or late payment penalties.
Refund	A return of previously paid compensatory interest or late payment penalty.

### 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
Remit or refund compensatory interest and late payment penalties	Process and procedures
Compensatory interest and late payment penalties	Operational policy

### Overview

3. The Customs and Excise Act 2018 and Customs and Excise Regulations 1996 provide for limited grounds for remission or refund of compensatory interest and late payment

penalties. Remissions and refunds must be applied consistently and according to the legislation.

4. The grounds for remitting compensatory interest are limited compared to the grounds for remitting late payment penalties, because the purpose of compensatory interest is to compensate the Crown for loss of use of money, while penalties punish and deter non-compliance.
5. All legislative references, unless otherwise stated, refer to the Customs and Excise Act 2018.

### **De minimis threshold for collection of interest and penalties**

6. Interest and penalties need not be charged if the amount subject to interest and penalties is less than \$1000.
7. For duty payers who are not deferred account importers, the \$1000 threshold applies to the unpaid duty on each entry. If no entry was made, the threshold applies to each assessment, or amendment of an assessment, made by Customs.
8. For deferred account importers, the \$1000 threshold applies to the total amount of unpaid duty on the deferred account for that accounting period.
9. For importers finalising a provisional value, the \$1000 threshold applies to the amount of unpaid duty in relation to the amendment of the provisional value.
10. These provisions ensure that Customs does not collect interest and penalties where it is uneconomical to do so. Refer to section 174(6) of the Act and Regulation 71D.

### **Interest: remissions and refunds for emergency events**

11. Under section 165, compensatory interest can be fully remitted, if an emergency event physically prevents a person from paying duty, and a number of other legislative requirements are met.
12. All relevant emergency events (e.g. earthquake or flood) will be prescribed in an Order in Council made at the time of the event.
13. This remission recognises that it would not be fair to charge interest on late payments caused by an emergency event beyond the duty payer's control. Application of this remission is intended to be granted only in situations where it truly would not have been possible for the duty payer to have paid on time.

### **Interest: remissions and refunds where inadvertent error by duty payer**

14. Under section 166 and Regulation 71B, compensatory interest may be partially remitted to the 90-day bank bill rate for incorrect payments, if:
  - the incorrect payment relates to an error in an entry (or a provisional value update), and

- the shortfall payment was voluntarily disclosed, and
  - Customs is satisfied that the error was inadvertent, and
  - the unpaid duty is paid in full by its due date under section 124 of the Act.
15. The term “inadvertent” in this context means that the error was not made knowingly. It is the duty payer’s responsibility to demonstrate that neither the broker nor the duty payer was aware of the error at the time it was made.
  16. The purpose of this remission is to allow Customs to charge an interest rate that is equal to the Crown’s cost of loss of use of money, when the higher, standard rate, will not have any positive effect on compliance (see Interest rate, in Compensatory interest and late payment penalties operational policy).
  17. The purpose of this provision is not to punish duty payers or brokers for lack of reasonable care in ensuring that the information submitted was correct. Punishing non-compliant behaviour is the role of penalties, such as administrative penalties.
  18. Shortfall payments caused by a failure to make a duty assessment are excluded from this remission. This recognises that failing to make a duty assessment is more serious non-compliance than making an error within a duty assessment, and is less likely to be inadvertent.
  19. The conditions on the application of this remission ensure that there are incentives for duty payers to voluntarily disclose errors and settle their debt as soon as possible.

### **Penalties: remissions and refunds where reasonable excuse for late payment of duty**

20. Under section 167, late payment penalties can be fully remitted if the duty payer has a reasonable excuse for late payment. This recognises that late payment penalties are unlikely to incentivise prompt payment where other factors prevent someone from paying their duty.
21. A reasonable excuse must be an event or circumstances that were beyond the duty payer’s control, and that could not reasonably have been anticipated or avoided by the duty payer. This could include accidents, natural disasters, illness or emotional distress.
22. Remission is also subject to the duty payer fully paying the outstanding duty as soon as practicable.

### **Penalties: remissions and refunds for good payment record**

23. Under section 168, a late payment penalty must be fully remitted if the late duty has been fully paid and the duty payer has made no other late payments in the previous two years. This is also known as a grace period.
24. This remission recognises that even compliant duty payers can make occasional genuine mistakes. Recognising this can promote good faith and voluntary compliance.

## **Interest and penalties: remissions and refunds if duty determined not to be payable, etc**

25. If core duty is remitted or refunded, or legal proceedings determine that duty should not have been charged (or, in the case of an incorrect refund/drawback, that the refund/drawback was in fact made correctly), any interest and late payment penalties charged on that duty must be remitted. Refer to section 169.

## **Interest and penalties: remissions and refunds if consistent with collection of highest net revenue over time**

26. Under section 170, compensatory interest and late payment penalties may be remitted, in full or in part, as long as it is consistent with the chief executive's obligation to secure the collection of the highest net revenue over time. This recognises that, in some circumstances, pursuing interest and penalties may not be consistent with the aim of promoting voluntary compliance.
27. This remission is intended to be used in exceptional circumstances, where the incorrect payment is due to a one-off situation. There is no requirement to remit any of the late payment penalties and compensatory interest, and each case will be considered on its merits.
28. Remission should not undermine the purpose of compensatory interest and late payment penalties.

## **Remission of interest between notification and payment**

29. In principle, liability for compensatory interest and late payment penalties arises immediately. However, when a statement of liability is issued to a duty payer, the duty payer is given 20 working days to pay the balance on the statement.
30. Under Regulation 71C, if the balance, including core duty, interest and penalties, is paid in full within this period, the interest incurred between the issue date of the statement and the date of payment is remitted. If payment is not received within 20 working days, the interest amount will recalculate.
31. This remission exists for practical reasons. In the absence of remission, the amount of interest owing would continue to increase after Customs issues a statement of liability to the duty payer. This would make it difficult for duty payers to know how much interest they are required to pay, and lead to small outstanding interest balances, which could be costly for Customs to pursue.

## **Appeal rights**

32. If the duty payer is dissatisfied with a decision not to remit or refund any interest or penalty, section 173 allows them to apply for an administrative review or appeal to a Customs Appeal Authority within 20 working days of the date on which the notice of decision is given.

## REFERENCES

### **Customs and Excise Act 2018**

- Section 165: Interest: remissions and refunds for emergency events
- Section 166: Interest: remissions and refunds where inadvertent error by duty payer
- Section 167: Penalties: remissions and refunds where reasonable excuse for late payment of duty
- Section 168: Penalties: remissions and refunds for good payment record
- Section 169: Interest and penalties: remissions and refunds if duty determined not to be payable, etc
- Section 170: Interest and penalties: remissions and refunds if consistent with collection of highest net revenue over time
- Section 171: Interest and penalties: remissions and refunds in prescribed circumstances
- Section 172: Power to apply refunds towards payment of other amounts payable
- Section 173: Administrative reviews and appeals in respect of decisions not to remit or refund

### **Customs and Excise Regulations 1996**

- Regulation 71B: Remission or refund where inadvertent error by duty payer
- Regulation 71C: Remission of interest accruing after statement of liability issued
- Regulation 71D: Minimum amount of interest or penalty collectable