

2009 No. xxx (C. xx)

REVENUE AND CUSTOMS

The Finance Act 2008, Schedule 40 [(Appointed Day, Savings and Transitional Provision)] Order 2009

Made - - - - *xxx 2009*

Laid before the House of Commons

Coming into force

The Treasury make the following Order in exercise of the powers conferred by section 122 of the Finance Act 2008(a):

Citation and interpretation

1.—(1) This Order may be cited as the Finance Act 2008, Schedule 40 [(Appointed Day, Savings and Transitional Provisions)] Order 2009.

(2) In this Order “Schedule 40” means Schedule 40 to the Finance Act 2008 and a reference to a paragraph (without more) is a reference to that paragraph of Schedule 40.

(3) In this Order—

“HMRC” means Her Majesty’s Revenue and Customs(b);

“relevant documents” means documents given to HMRC of a kind inserted in the Table in paragraph 1 of Schedule 24 by paragraph 2(4) and (5);

“relevant tax” means any tax inserted in the Table in paragraph 1 of Schedule 24 by paragraph 2(4) and (5);

“Schedule 24” means Schedule 24 to the Finance Act 2007(c) and

“tax period” has the meaning given in paragraph 28(g) of Schedule 24.

Appointed day

2. The day appointed for the coming into force of Schedule 40 is 1st April 2009.

3. In so far as they amend Schedule 24, the entries inserted by paragraph 2 (4) and (5), shall have effect in relation to—

(a) relevant documents relating to tax periods commencing on or after 1st April 2009, where the due date for the return is on or after 1st April 2010;

(b) assessments falling within paragraph 2 of Schedule 24 (under-assessment by HMRC) for tax periods commencing on or after 1st April 2009;

(a) 2008 c. 9.

(b) Section 4(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) provides that the Commissioners and the officers of Revenue and Customs may together be referred to as Her Majesty’s Revenue and Customs.

(c) 2007 c. 11.

- (c) relevant documents relating to all other claims for repayments of relevant tax made on or after 1st April 2010 which are not related to a tax period;
- (d) relevant documents produced under regulations under section 256 of IHTA 1984 (regulations about accounts, etc), where the information or document is produced on or after 1st April 2009 and where the date of death was on or after 1st April 2009; and
- (e) in any other case, relevant documents given where a person's liability to pay relevant tax arises on or after 1st April 2010.

4. In its application in relation to the Table in Schedule 24, as amended by the entries inserted by paragraph 2 (4) and (5), paragraph 1A of Schedule 24 (error in taxpayer's document attributable to another person) has effect in respect of—

- (a) relevant documents relating to tax periods commencing on or after 1st April 2009, where the due date for the return is on or after 1st April 2010;
- (b) relevant documents relating to all other claims for repayments of relevant tax made on or after 1st April 2010 which are not related to a tax period;
- (c) relevant documents produced under regulations under section 256 of IHTA 1984 (regulations about accounts, etc), where the information or document is produced on or after 1st April 2009 where the date of death was on or after 1st April 2009; and
- (d) in any other case, relevant documents given where a person's liability to pay relevant tax arises on or after 1st April 2010.

Savings

5. Notwithstanding paragraph 21 (consequential repeals), the following provisions shall continue to have effect with respect to conduct involving dishonesty which does not relate to an inaccuracy in a document or a failure to notify HMRC of an under-assessment by HMRC—

- (a) in FA 1994—
 - (i) section 8 (penalty for evasion of excise duty), and
 - (ii) paragraphs 12 and 13 of Schedule 7 (insurance premium tax: civil penalties),
- (b) paragraphs 18 and 19 of Schedule 5 to FA 1996 (landfill tax: civil penalties: evasion and misdeclaration or neglect),
- (c) paragraphs 98 and 99 of Schedule 6 to FA 2000 (climate change levy: civil penalties: evasion, liability of directors and misdeclaration or neglect),
- (d) in Schedule 6 to FA 2001—
 - (i) paragraphs 7 and 8 (aggregates levy: civil penalties: evasion, liability of directors and misdeclaration or neglect), and
 - (ii) paragraph 9A(5)(b) (penalty under paragraph 7 above),
- (e) section 133(2) to (4) of FA 2002 (aggregates levy: amendments to provisions about civil penalties).

6. Notwithstanding paragraph 29(d) of Schedule 24 (consequential amendments), sections 60 and 61 of the Value Added Tax Act 1994^(a) (VAT evasion) shall continue to have effect with respect to conduct involving dishonesty which does not relate to an inaccuracy in a document or a failure to notify HMRC of an under-assessment by HMRC.

Transitional provision

7. Notwithstanding articles 2 to 4, a person shall not be liable to a penalty under Schedule 40 in respect of any tax period for which a return is required to be made before 1st April 2010.

(a) 1994 c. 23.

March 2009

Two of the Lords Commissioners of Her Majesty's Treasury

Name
Name

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the provisions of Schedule 40 to the Finance Act 2008 (c. 9) ("Schedule 40"). It also contains savings and transitional provisions. Schedule 40 extended the penalty regime for incorrect returns contained in Schedule 24 to the Finance Act 2007 (c. 11) to cover the additional taxes and duties it inserts into the Table in Schedule 24. It also introduced a new penalty where an error in a taxpayer's document is attributable to a third party, as well as making other amendments.

Article 2 brings Schedule 40 into force on 1 April 2009.

Article 3 brings into force on the dates specified, and in relation to the tax periods, claims or other liabilities to pay tax specified, the penalties for making incorrect returns and failure to notify an under-assessment in relation to the new taxes and duties.

Article 4 brings into force on the dates specified, and in relation to the tax periods, claims or other liabilities to pay tax specified, the penalty in relation to all the taxes and duties now covered by Schedule 24 where an error in a taxpayer's document is attributable to a third party .

Article 5 preserves the existing penalty provisions for evasion within the stated regimes where the dishonest conduct does not relate to inaccurate returns to, or under-assessments by, HMRC.

Article 6 preserves the existing penalty provisions for VAT evasion involving dishonest conduct which does not relate to inaccuracy in a document or a failure to notify HMRC of an under-assessment by HMRC.

Article 7 provides that Schedule 40 shall not apply in relation to any tax period for which a return is required to be made before 1 April 2010.