

2009 No. xxx (C. xx)

REVENUE AND CUSTOMS

**The Finance Act 2008, Schedule 41 (Appointed Day, Savings,
Transitional Provision and Consequential Amendments) 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 123 of the Finance Act 2008(a):

Citation and interpretation

1.—(1) This Order may be cited as the Finance Act 2008, Schedule 41 (Appointed Day, Savings, Transitional Provision and Consequential Amendments) Order 2009.

(2) In this Order a reference to a paragraph (without more) is a reference to that paragraph of Schedule 41 to the Finance Act 2008.

(3) In this Order—

“relevant obligation” means an obligation specified in the Table in paragraph 1;

“relevant excise provision” has the meaning given in paragraph 3(1);

“unauthorised issue of an invoice” has the meaning given in paragraph 2(2).

Appointed day

2. The day appointed for the coming into force of Schedule 41 is 1st April 2010—

- (a) where a relevant obligation arises on or after that date;
- (b) where an unauthorised issue of an invoice takes place on or after that date;
- (c) where an act which enables HMRC to assess an amount as duty under a relevant excise provision is performed on or after that date; and
- (d) where a person’s actions giving rise to a penalty under paragraph 4 (handling goods subject to unpaid excise duty) arise on or after that date.

Savings

3. Notwithstanding paragraph 25 (consequential repeals), the following provisions shall continue to have effect with respect to conduct involving dishonesty which does not give rise to a penalty under Schedule 41—

(a) 2008 c. 9.

- (a) sections 60 and 61 of the Value Added Tax Act 1994(a) (VAT evasion) ;
- (b) in the Finance Act 1994(b)—
 - (i) section 8 (penalty for evasion of excise duty), and
 - (ii) paragraphs 12 and 13 of Schedule 7 (insurance premium tax: civil penalties);
- (c) paragraphs 18 and 19 of Schedule 5 to the Finance Act 1996(c) (landfill tax: civil penalties: evasion and misdeclaration or neglect);
- (d) paragraphs 98 and 99 of Schedule 6 to the Finance Act 2000(d) (climate change levy: civil penalties: evasion, liability of directors and misdeclaration or neglect);
- (e) in Schedule 6 to the Finance Act 2001(e)—
 - (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);and
- (f) section 133(2) to (4) of the Finance Act 2002(f) (aggregates levy: amendments to provisions about civil penalties).

Transitional provision

4. Notwithstanding article 2, a person shall not be liable to a penalty under Schedule 41 in respect of any tax period in respect of which a relevant obligation arises before 1st April 2010.

Consequential amendments to enactments

5. Schedule 1 has effect and contains amendments of enactments in consequence of the provisions omitted by paragraph 25.

SCHEDULE 1

Consequential Amendments – Primary Legislation Article 5

Taxes Management Act 1970

6. The Taxes Management Act 1970(g) is amended as follows.

7. In section 59C(4)(h) (surcharges on unpaid income tax and capital gains tax)—

- (a) omit “7,” and the comma after “93(5)”;
- (b) omit the “or” before “Schedule 24 to the Finance Act 2007” and after that expression insert “or Schedule 41 to the Finance Act 2008”.

- (a) 1994 c. 23; sections 60 and 61 were omitted by section 97 of and paragraph 29(d) of Schedule 24 to the Finance Act 2007 (c. 11) and repealed by section 114 of and Part 5(5) to Schedule 27 to that Act.
- (b) 1994 c. 9; section 8 and paragraphs 12 and 13 of Schedule 7 were omitted by section 112 of and paragraph 21(d) of Schedule 40 to the Finance Act 2008 (c. 9).
- (c) 1996 c. 8.
- (d) 2000 c. 17; paragraphs 98 to 100 of Schedule 6 were omitted by paragraph 21(h) of Schedule 40 to the Finance Act 2008 (c. 9).
- (e) 2001 c. 9; paragraph 9A of Schedule 6 was inserted by section 133(5) and (6) of the Finance Act 2002 (c. 33). Paragraphs 7 to 9 and paragraph 9A(5)(b) of Schedule 6 were omitted by paragraph 21(i) of Schedule 40 to the Finance Act 2008 (c. 9).
- (f) 2002 c. 33; sections 133(2) to (4) were omitted by paragraph 21(j) of Schedule 40 to the Finance Act 2008.
- (g) 1970 c. 9. Sections 95 and 95A were omitted by section 97 of and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c. 11) and repealed by section 114 of and Part 5(5) of Schedule 27 to that Act. Section 7(8) was omitted by section 123 of and paragraph 25(a)(i) to the Finance Act 2008 (c.9).
- (h) Section 59C was inserted by sections 194 and 199(1) and (2)(a) of the Finance Act 1994 (c. 9). Subsection (4) was amended by section 109(1) of the Finance Act 1995 (c. 4). The reference to “94 or 95A” was omitted by S.I. 2009/XXX; the reference to “Schedule 24 to the Finance Act 2007” was inserted by S.I. 2009.

Income and Corporation Taxes Act 1988

8. Section 827 of the Income and Corporation Taxes Act 1988(a) (VAT penalties etc) is amended as follows.

9.—(1) In section 827(1)(a) (b) (insurance premium tax) for “14 to 19” substitute “15 to 19”.

(2) In section 827(1B)(b)(c) at the end omit “or” and at the end of sub-paragraph (c) insert “or” and after insert—

“(d) penalty under Schedule 41 to the Finance Act 2008 (penalties: failure to notify and certain VAT and excise wrongdoing),”.

(3) In section 827(1C)(b)(d) (landfill tax) at the end omit “or” and at the end of sub-paragraph (c) insert “or” and after insert—

“(d) penalty under Schedule 41 to the Finance Act 2008 (penalties: failure to notify and certain VAT and excise wrongdoing),”.

(4) In section 827(1D)(d)(e) (climate change levy) at the end omit “or” and at the end of sub-paragraph (e) insert “or” and after insert—

“(f) penalty under Schedule 41 to the Finance Act 2008 (penalties: failure to notify and certain VAT and excise wrongdoing),”.

(5) In section 827(1E)(d)(f) (aggregates levy) at the end omit “or” and at the end of sub-paragraph (e) insert “or” and after insert—

“(f) penalty under Schedule 41 to the Finance Act 2008 (penalties: failure to notify and certain VAT and excise wrongdoing),”.

(6) In section 827(1F)(b)(g) (stamp duty land tax) at the end omit “or” and after sub-paragraph (c) insert “or” and after insert—

“(d) penalty under Schedule 41 to the Finance Act 2008 (penalties: failure to notify and certain VAT and excise wrongdoing),”.

Value Added Tax Act 1994

10. The Value Added Tax Act(h) is amended as follows.

11. In section 49(3)(a)(i) after “Schedule 24 to the Finance Act 2007” insert “and Schedule 41 to the Finance Act 2008”.

12. In section 66(7) for “67” substitute “68”.

13. In section 70(1)(j) omit “67”.

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- (a) 1988 c. 1.
- (b) Paragraphs 12 and 13 of Schedule 7 to the Finance Act 1994 were omitted by paragraph 21(d)(i) of Schedule 40 to the Finance Act 2008 (c. 9) and paragraph 14 was omitted by paragraph 25(e)(iii) of Schedule 41 to the Finance Act 2008; paragraph “14 to 19” was substituted for “12 to 19” by S.I. 2009/XXX.
- (c) Subsection 827(1B) was inserted by section 64 of and paragraph 31 of Schedule 7 to the Finance Act 1994 (c. 9). Paragraphs 12 and 13 of Schedule 7 to the Finance Act 1994 were omitted by paragraph 21(d)(i) of Schedule 40 to the Finance Act 2008 (c. 9); paragraph 827(1B)(c) was inserted by S.I. 2009/xxx.
- (d) Subsection 827(1C) was inserted by section 60 of and paragraph 40 of Schedule 5 to the Finance Act 1996 (c. 8); subsection 827(1C)(c) was inserted by S.I. 2009/XXX.
- (e) Subsection 827(1D) was inserted by section 30(2) and paragraph 4 of Schedule 7 to the Finance Act 2000 (c. 17); subsection 827(1D)(d) was inserted by S.I. 2009/XXX.
- (f) Subsection 827(1E) was inserted by section 49(3) of the Finance Act 2001 (c. 9); subsection 827(1E)(d) was inserted by S.I. 2009/XXX.
- (g) Subsection 827(1F) was inserted by section 123 of and paragraph 3(6) of Schedule 18 to the Finance Act 2003 (c. 14); subsection 827(1F)(c) was inserted by S.I. 2009/XXX.
- (h) 1994 c. 23; section 67 was omitted by paragraph 25(f) of Schedule 41 to the Finance Act 2008.
- (i) Section 49(3)(a) was amended by section 100(5) of the Finance Act 2007 (c. 9); the reference to “Schedule 24 to the Finance Act 2007” was inserted by S.I. 2009/XXX.
- (j) Section 70(1) was amended by section 137(1) and (3) of the Finance Act 2000 (c. 17) and by section 19 of and paragraph 3 of Schedule 19 to the Finance Act 2004 (c. 12).

Finance Act 1996

14. The Finance Act 1996(a) is amended as follows.

15.—(1) In paragraph 27(9)(a) of Schedule 5 after “Part V of this Schedule” insert “or under Schedule 41 to the Finance Act 2008”.

(2) In paragraph 33(4)(b) after “paragraph 21 above” insert “or under Schedule 41 to the Finance Act 2008”.

Finance Act 2000

16. The Finance Act 2000(b) is amended as follows.

17. In paragraph 80(3)(b) and paragraph 108(2)(b) of Schedule 6 for “paragraph 55 (failure to notify of registrability etc)” substitute “Schedule 41 to the Finance Act 2008 (penalties: failure to notify and certain VAT and excise wrongdoing)”.

Finance Act 2001

18. The Finance Act 2001(c) is amended as follows.

19. In paragraph 4(3)(b) of Schedule 5 for “paragraph 1 of Schedule 4 to this Act (failure to notify of registrability etc)” substitute “Schedule 41 to the Finance Act 2008 (penalties: failure to notify and certain VAT and excise wrongdoing)”.

Income Tax (Trading and Other Income) Act 2005

20. The Income Tax (Trading and Other Income) Act 2005(d) is amended as follows.

21.—(1) In section 54(2) (exclusion of double relief for interest) in the sixth entry in the left hand column of the table(e) for “14” substitute “15”.

(2) In section 54(2), at the end of the table(f) add—

“Penalty under Schedule 41 to FA 2008

Income tax and capital gains tax, corporation tax, value added tax, insurance premium tax, aggregates levy, climate change levy, landfill tax, air passenger duty, alcohol liquor duties, tobacco products duty, hydrocarbon oil duties, excise duties, general betting duty, pool betting duty, bingo duty, lottery duty, gaming duty, remote gaming duty and amusement machine licence duty”

22.—(1) In section 869(4) (penalties, interest and VAT surcharges: non-traders etc.) in the sixth entry in the left hand column of the table(g) for “14” substitute “15”.

(2) In section 869(4), at the end of the table(h) add—

(a) 1996 c. 8.

(b) 2000 c. 17; paragraph 55(2) to (6) of Schedule 6 was omitted by paragraph 25(k) of Schedule 41 to the Finance Act 2008.

(c) 2001 c. 9; paragraph 1(2) to (6) of Schedule 4 was omitted by paragraph 25(l) of Schedule 41 to the Finance Act 2008.

(d) 2005 c. 9.

(e) Paragraphs 12 and 13 of Schedule 7 to the Finance Act 1994 were omitted by paragraph 21(d)(i) of Schedule 40 to the Finance Act 2008 (c. 9) and paragraph 14 was omitted by paragraph 25(e)(iii) of Schedule 41 to the Finance Act 2008; paragraph “14” was substituted for “12” by S.I. 2009/XXX. Paragraph 14 of Schedule 7.

(f) The table was amended by S.I. 2009/XXX.

(g) Paragraphs 12 and 13 of Schedule 7 to the Finance Act 1994 were omitted by paragraph 21(d)(i) of Schedule 40 to the Finance Act 2008 (c. 9) and paragraph 14 was omitted by paragraph 25(e)(iii) of Schedule 41 to the Finance Act 2008; paragraph “14” was substituted for “12” by S.I. 2009/XXX. Paragraph 14 of Schedule 7.

(h) The table was amended by S.I. 2009/XXX.

