

SCHEDULE 41**PENALTIES: FAILURE TO NOTIFY AND CERTAIN VAT AND EXCISE WRONGDOING****Section 123*****Failure to notify etc***

1

A penalty is payable by a person (P) where P fails to comply with an obligation specified in the Table below (a "relevant obligation").

<i>Tax to which obligation relates</i>	<i>Obligation</i>
Income tax and capital gains tax	Obligation under section 7 of TMA 1970 (obligation to give notice of liability to income tax or capital gains tax).
Corporation tax	Obligation under paragraph 2 of Schedule 18 to FA 1998 (obligation to give notice of chargeability to corporation tax).
Diverted profits tax	Obligation under section 92 of FA 2015 (duty to notify if within scope of diverted profits tax)
Value added tax	Obligations under paragraphs 5, 6, 7 and 14(2) and (3) of Schedule 1 to VATA 1994 (obligations to notify liability to register and notify material change in nature of supplies made by person exempted from registration).
Value added tax	Obligation under paragraph 3 of Schedule 2 to VATA 1994 (obligation to notify liability to register).
Value added tax	Obligations under paragraphs 3 and 8(2) of Schedule 3 to VATA 1994 (obligations to notify liability to register and notify acquisition affecting exemption from registration).
Value added tax	Obligations under paragraphs 3, 4 and 7(2) and (3) of Schedule 3A to VATA 1994 (obligations to notify liability to register and notify relevant change in supplies made by person exempted from registration).
Value added tax	Obligation under regulations under paragraph 2(4) of Schedule 11 to VATA 1994 (obligation to give notification of acquisition of goods from another member State).
[Value added tax	Obligations under paragraphs 5, 6 and 13(3) of Schedule 1A to VATA 1994 (obligations to notify liability to register and notify material change in nature of supplies made by person exempted from registration).]
Insurance premium tax	Obligations under section 53(1) and (2) of FA 1994 (obligations to register in respect of receipt of premiums in course of taxable business and notify intended receipt of premiums in course of taxable business).
Insurance premium tax	Obligations under section 53AA(1) and (3) of FA 1994 (obligations to register as taxable intermediary and notify intention to charge taxable intermediary's fees).
Soft Drinks Industry Levy	Obligation under section 44 of FA 2017 (obligation to give notice of liability to be registered)

Aggregates levy	Obligations under section 24(2) of, and paragraph 1 of Schedule 4 to, FA 2001 (obligations to register in respect of carrying out of taxable activities and notify intention of carrying out such activities).
Climate change levy	Obligations under paragraphs 53 and 55 of Schedule 6 to FA 2000 (obligations to register in respect of taxable supplies and notify intention to make, or have made, taxable supply).
Landfill tax	Obligations under section 47(2) and (3) and (3A) of FA 1996 (obligations to register in respect of carrying out of taxable activities and notify intention of carrying out such activities).
Air passenger duty	Obligation under section 33(4) [or 33A(4)] of FA 1994 (obligation to give notice of liability to register to operate chargeable aircraft).
Alcohol liquor duties	Obligation to be authorised and registered to obtain and use duty stamps under regulations under paragraph 4 of Schedule 2A to ALDA 1979 (duty stamps).
Alcohol liquor duties	Obligations under sections 12(1), 47(1), 54(2), 55(2) and 62(2) of ALDA 1979 (obligations to hold licence to manufacture spirits, register to brew beer, hold licence to produce wine or made-wine and register to make cider).
Alcohol liquor duties	Obligation to have plant and processes approved for the manufacture of spirits under regulations under section 15(6) of ALDA 1979 (distillers' warehouses).
Tobacco products duty	Obligation to manufacture tobacco products only on premises registered under regulations under section 7 of TPDA 1979 (management of tobacco products duty).
Hydrocarbon oil duties	Obligation to make entry of premises intended to be used for production of oil under regulations under section 21 of HODA 1979 (administration and enforcement).
Excise duties	Obligation to receive, deposit or hold duty suspended excise goods only in premises approved under regulations under section 92 of CEMA 1979 (approval of warehouses).
Excise duties	Obligation to receive duty suspended excise goods only if approved or registered (or approved and registered) as a [Registered Consignee] under regulations under section 100G or 100H of CEMA 1979 (registered excise dealers and shippers etc).
Excise duties	Obligation to receive, deposit or hold duty suspended excise goods only if approved or registered (or approved and registered) as a registered owner, a duty representative, a registered mobile operator or a fiscal representative of a registered mobile operator or an authorised warehousekeeper under regulations under section 100G or 100H of CEMA 1979 (registered excise dealers and shippers etc).
Excise duties	Obligation to dispatch excise goods under duty suspension arrangements upon their release for free circulation in accordance with Article 79 of Council Regu-

	lation 2913/92/EEC only if approved and registered (or approved and registered) as a Registered Consignor under regulations under section 100G or 100H of CE-MA 1979 (registered excise dealers and shippers etc).]
General betting duty	Obligations under [paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraph 4(1) to (3) of Schedule 1 to that Act] (obligation to notify intention to carry on general betting business and make entry of, or notify, premises).
Pool betting duty	Obligations under [paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraphs 4(2) and 5(1) of Schedule 1 to that Act] (obligation to make entry and hold permit for carrying on pool betting business).
Bingo duty	Obligations under paragraph 10(1) and (1A) of Schedule 3 to BGDA 1981 (obligation to notify and register in respect of bingo- promotion).
Lottery duty	Obligation under section 29(1) of FA 1993 (obligation to register in respect of promotion of lotteries).
Gaming duty	Obligations under paragraphs 3 and 6 of Schedule 1 to FA 1997 (obligations to register in respect of gaming and to notify premises).
Remote gaming duty	Obligation [to notify under paragraph 8(2) of Schedule 4B to BGDA 1981 (reduction etc in qualifying foreign tax) and obligation to register under regulations under section 26J of that Act] (facilities for remote gaming).
Machine games duty	Obligation under paragraph 20(3) of Schedule 24 to FA 2012 (obligation to register in respect of premises)
Amusement machine licence duty	Obligation under section 21 of BGDA 1981 (obligation to licence amusement machine or premises on which amusement machine is provided for play).

Issue of invoice showing VAT by unauthorised person

2

- (1) A penalty is payable by a person (P) where P makes an unauthorised issue of an invoice showing VAT.
- (2) P makes an unauthorised issue of an invoice showing VAT if P--
- (a) is an unauthorised person, and
 - (b) issues an invoice showing an amount as being value added tax or as including an amount attributable to value added tax.
- (3) In sub-paragraph (2)(a) "an unauthorised person" means anyone other than--
- (a) a person registered under VATA 1994,
 - (b) a body corporate treated for the purposes of section 43 of that Act as a member of a group,
 - (c) a person treated as a taxable person under regulations under section 46(4) of that Act,

(d) a person authorised to issue an invoice under regulations under paragraph 2(12) of Schedule 11 to that Act, or

(e) a person acting on behalf of the Crown.

(4) This paragraph has effect in relation to any invoice which--

(a) for the purposes of any provision made under subsection (3) of section 54 of VATA 1994 shows an amount as included in the consideration for any supply, and

(b) either fails to comply with the requirements of any regulations under that section or is issued by a person who is not for the time being authorised to do so for the purposes of that section,

as if the person issuing the invoice were an unauthorised person and that amount were shown on the invoice as an amount attributable to value added tax.

Putting product to use that attracts higher duty

3

(1) A penalty is payable by a person ("P") where P does an act which enables HMRC to assess an amount as duty due from P under any of the provisions in the Table below (a "relevant excise provision").

<i>Provision under which assessment may be made</i>	<i>Subject-matter of provision</i>
ALDA 1979 section 8(4)	Spirits for use for medical or scientific purposes.
ALDA 1979 section 10(4)	Spirits for use in art or manufacture.
ALDA 1979 section 11(3)	Imported goods not for human consumption containing spirits.
HODA 1979 section 10(3)	Duty-free oil.
HODA 1979 section 13(1A)	Rebated heavy oil.
HODA 1979 section 13AB(1)(a) or (2)(a)	Kerosene.
HODA 1979 section 13AD(2)	Kerosene.
HODA 1979 section 13ZB(1)	Heating oil etc
HODA 1979 section 14(4)	Light oil for use as furnace oil.
HODA 1979 section 14D(1)	Rebated biodiesel or bioblend.
HODA 1979 section 14F(2)	Rebated heavy oil or bioblend.
HODA 1979 section 23(1B)	Road fuel gas on which no duty paid.
HODA 1979 section 24(4A)	Duty-free and rebated oil.

(2) A penalty is payable by a person ("P") where P supplies a product knowing that it will be used in a way which enables HMRC to assess an amount as duty due from another person under a relevant excise provision.

Involvement in landfill disposal by unregistered person

3A A penalty is payable by a person ("P") where P does an act which enables HMRC to assess an amount as landfill tax due from P under section 50A of FA 1996.

Handling goods subject to unpaid excise duty etc

4

(1) A penalty is payable by a person (P) where--

- (a) after the excise duty point for any goods which are chargeable with a duty of excise, P acquires possession of the goods or is concerned in carrying, removing, depositing, keeping or otherwise dealing with the goods, and
- (b) at the time when P acquires possession of the goods or is so concerned, a payment of duty on the goods is outstanding and has not been deferred.

(1A) A penalty is payable by a person (P) where—

- (a) after a charge to soft drinks industry levy has arisen in respect of chargeable soft drinks, P acquires possession of them or is concerned with carrying, removing, depositing, keeping or otherwise dealing with them, and
- (b) at the time when P acquires possession of the chargeable soft drinks or is so concerned, a payment of soft drinks industry levy in respect of the chargeable soft drinks is due or payable and has not been paid.”

(2) In this paragraph--

"excise duty point" has the meaning given by section 1 of F(No 2)A 1992, and

"goods" has the meaning given by section 1(1) of CEMA 1979.

"chargeable soft drinks" has the same meaning as in Part 2 of FA 2017.

Degrees of culpability

5

(1) A failure by P to comply with a relevant obligation is--

- (a) "deliberate and concealed" if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the obligation, and
- (b) "deliberate but not concealed" if the failure is deliberate but P does not make arrangements to conceal the situation giving rise to the obligation.

(2) The making by P of an unauthorised issue of an invoice showing VAT is--

- (a) "deliberate and concealed" if it is done deliberately and P makes arrangements to conceal it, and
- (b) "deliberate but not concealed" if it is done deliberately but P does not make arrangements to conceal it.

(3) The doing by P of an act which enables HMRC to assess an amount of duty as due from P under a relevant excise provision, or to assess an amount of landfill tax as due from P under section 50A of FA 1996,

- (a) "deliberate and concealed" if it is done deliberately and P makes arrangements to conceal it, and

(b) "deliberate but not concealed" if it is done deliberately but P does not make arrangements to conceal it.

(4) P's acquiring possession of, or being concerned in dealing with, goods on which a payment of duty is outstanding and has not been deferred or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid is--

- (a) "deliberate and concealed" if it is done deliberately and P makes arrangements to conceal it, and
- (b) "deliberate but not concealed" if it is done deliberately but P does not make arrangements to conceal it.

Amount of penalty: standard amount

6

- (1) This paragraph sets out the penalty payable under paragraph 1.
- (2) If the failure is in category 1, the penalty is--
 - (a) for a deliberate and concealed failure, 100% of the potential lost revenue,
 - (b) for a deliberate but not concealed failure, 70% of the potential lost revenue, and
 - (c) for any other case, 30% of the potential lost revenue.
- (3) If the failure is in category 2, the penalty is--
 - (a) for a deliberate and concealed failure, 150% of the potential lost revenue,
 - (b) for a deliberate but not concealed failure, 105% of the potential lost revenue, and
 - (c) for any other case, 45% of the potential lost revenue.
- (4) If the failure is in category 3, the penalty is--
 - (a) for a deliberate and concealed failure, 200% of the potential lost revenue,
 - (b) for a deliberate but not concealed failure, 140% of the potential lost revenue, and
 - (c) for any other case, 60% of the potential lost revenue.
- (5) Paragraph 6A explains the 3 categories of failure.

6A

- (1) A failure is in category 1 if--
 - (a) it involves a domestic matter, or
 - (b) it involves an offshore matter and--
 - (i) the territory in question is a category 1 territory, or
 - (ii) the tax at stake is a tax other than income tax or capital gains tax.
- (2) A failure is in category 2 if--
 - (a) it involves an offshore matter,
 - (b) the territory in question is a category 2 territory, and

- (c) the tax at stake is income tax or capital gains tax.
- (3) A failure is in category 3 if--
- (a) it involves an offshore matter,
 - (b) the territory in question is a category 3 territory, and
 - (c) the tax at stake is income tax or capital gains tax.
- (4) A failure "involves an offshore matter" if it results in a potential loss of revenue that is charged on or by reference to--
- (a) income arising from a source in a territory outside the UK,
 - (b) assets situated or held in a territory outside the UK,
 - (c) activities carried on wholly or mainly in a territory outside the UK, or
 - (d) anything having effect as if it were income, assets or activities of a kind described above.
- (5) A failure "involves a domestic matter" if it results in a potential loss of revenue that is charged on or by reference to anything not mentioned in sub-paragraph (4)(a) to (d).
- (6) If a single failure is in more than one category (each referred to as a "relevant category")--
- (a) it is to be treated for the purposes of this Schedule as if it were separate failures, one in each relevant category according to the matters that it involves, and
 - (b) the potential lost revenue in respect of each separate failure is taken to be such share of the potential lost revenue in respect of the single failure (see paragraphs 7 and 11) as is just and reasonable.
- (7) For the purposes of this Schedule--
- (a) paragraph 21A of Schedule 24 to FA 2007 (classification of territories) has effect, but
 - (b) an order under that paragraph does not apply to relevant obligations that are to be complied with by a date before the date on which the order comes into force.
- (8) Regulations under paragraph 21B of Schedule 24 to FA 2007 (location of assets etc) apply for the purposes of paragraph 6A of this Schedule as they apply for the purposes of paragraph 4A of that Schedule.
- (9) In this paragraph--
- "assets" has the meaning given in section 21(1) of TCGA 1992, but also includes sterling;
 - "UK" means the United Kingdom, including the territorial sea of the United Kingdom.

6B

The penalty payable under any of paragraphs 2, 3(1) and 4 is--

- (a) for a deliberate and concealed act or failure, 100% of the potential lost revenue,
- (b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue, and
- (c) for any other case, 30% of the potential lost revenue.

6C

The penalty payable under paragraph 3(2) is 100% of the potential lost revenue.

6CA(1)

The penalty payable under paragraph 3A is—

- (a) for a deliberate and concealed act or failure, 100% of the potential lost revenue, and
 - (b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue.
- (2) No penalty is payable under paragraph 3A in any other case.

6D

Paragraphs 7 to 11 define "potential lost revenue".

Potential lost revenue

7

- (1) "The potential lost revenue" in respect of a failure to comply with a relevant obligation is as follows.
- (2) In the case of a relevant obligation relating to income tax or capital gains tax and a tax year, the potential lost revenue is so much of any income tax or capital gains tax to which P is liable in respect of the tax year as by reason of the failure is unpaid on 31 January following the tax year.
- (3) In the case of a relevant obligation relating to corporation tax and an accounting period, the potential lost revenue is (subject to sub-paragraph (4)) so much of any corporation tax to which P is liable in respect of the accounting period as by reason of the failure is unpaid 12 months after the end of the accounting period.
- (4) In computing the amount of that tax no account shall be taken of any relief under [section 458 of CTA 2010] (relief in respect of repayment etc of loan) which is deferred under [subsection (5)] of that section.
- (5) In any case where the failure is a failure to comply with the obligation under paragraph 2(4) of Schedule 11 to VATA 1994, the potential lost revenue is the value added tax on the acquisition to which the failure relates.
- (6) In the case of any other relevant obligation relating to value added tax, the potential lost revenue is the amount of the value added tax (if any) for which P is, or but for any exemption from registration would be, liable for the relevant period (see sub-paragraph (7)), but subject to sub-paragraph (8).
- (7) "The relevant period" is--
 - (a) in relation to a failure to comply with paragraph 14(2) or (3) of Schedule 1 to VATA 1994, paragraph 8(2) of Schedule 3 to that Act or paragraph 7(2) or (3) of Schedule 3A to that Act, the period beginning on the date of the change or alteration concerned and ending on the date on which HMRC received notification of, or otherwise became fully aware of, that change or alteration, and
 - (b) in relation to a failure to comply with an obligation under any other provision, the period beginning on the date with effect from which P is required in accordance with that provision to be registered and ending on the date on which HMRC received notification of, or otherwise became fully aware of, P's liability to be registered.
- (8) But the amount mentioned in sub-paragraph (6) is reduced--

- (a) if the amount of the tax mentioned in that sub-paragraph includes tax on an acquisition of goods from another member State, by the amount of any VAT which HMRC are satisfied has been paid on the supply in pursuance of which the goods were acquired under the law of that member State, and
- (b) if the amount of that tax includes tax chargeable by virtue of section 7(4) of VATA 1994 on a supply, by the amount of any VAT which HMRC are satisfied has been paid on that supply under the law of another member State.

(8A) In the case of a relevant obligation under section 47 of FA 1996 (which relates to landfill tax), the potential lost revenue is the amount of tax (if any) for which P is liable for the period—

- (a) beginning with the date with effect from which P is required in accordance with that section to be registered or (as the case may be) from which the Commissioners may register P under that section, and
- (b) ending with the day on which HMRC received notification of, or otherwise became fully aware of, P's liability to be registered or (as the case may be) the Commissioners' power to register P.”;

(9) In the case of a relevant obligation under any provision relating to insurance premium tax, aggregates levy, climate change levy, or air passenger duty, the potential lost revenue is the amount of the tax (if any) for which P is liable for the period--

- (a) beginning on the date with effect from which P is required in accordance with that provision to be registered, and
- (b) ending on the date on which HMRC received notification of, or otherwise became fully aware of, P's liability to be registered.

(10) In the case of a failure to comply with a relevant obligation relating to any other tax, the potential lost revenue is the amount of any tax which is unpaid by reason of the failure.

8

In the case of the making of an unauthorised issue of an invoice showing VAT, the potential lost revenue is the amount shown on the invoice as value added tax or the amount to be taken as representing value added tax.

9

In the case of--

- (a) the doing of an act which enables HMRC to assess an amount of duty as due under a relevant excise provision, or
- (b) supplying a product knowing that it will be used in a way which enables HMRC to assess an amount as duty due from another person under a relevant excise provision,

the potential lost revenue is the amount of the duty which may be assessed as due.

9A

In the case of the doing of an act which enables HMRC to assess an amount of landfill tax as due under section 50A of FA 1996, the potential lost revenue is the amount of the tax which may be assessed as due.

10

In the case of acquiring possession of, or being concerned in dealing with, goods the payment of duty on which is outstanding and has not been deferred, or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid the potential lost revenue is an amount equal to the amount of duty due on the goods.

11

- (1) In calculating potential lost revenue in respect of a relevant act or failure on the part of P no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential overpayment by another person (except to the extent that an enactment requires or permits a person's tax liability to be adjusted by reference to P's).
- (2) In this Schedule "a relevant act or failure" means--
- (a) a failure to comply with a relevant obligation,
 - (b) the making of an unauthorised issue of an invoice showing VAT,
 - (c) the doing of an act which enables HMRC to assess an amount of duty as due under a relevant excise provision or supplying a product knowing that it will be used in a way which enables HMRC to assess an amount as duty due from another person under a relevant excise provision, or
 - (d) acquiring possession of, or being concerned in dealing with, goods the payment of duty on which is outstanding and has not been deferred or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid.

Reductions for disclosure

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- (1) Paragraph 13 provides for reductions in penalties under paragraphs 1 to 4 where P discloses a relevant act or failure
- (2) P discloses a relevant act or failure by--
- (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it, and
 - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.
- (3) Disclosure of a relevant act or failure--
- (a) is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the relevant act or failure, and
 - (b) otherwise, is "prompted".
- (4) In relation to disclosure "quality" includes timing, nature and extent.

13

- (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a "standard percentage") has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

- (2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it--
- (a) for a prompted disclosure, in column 2 of the Table, and
 - (b) for an unprompted disclosure, in column 3 of the Table.
- (3) Where the Table shows a different minimum for case A and case B--
- (a) the case A minimum applies if--
 - (i) the penalty is one under paragraph 1, and
 - (ii) HMRC become aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure, and
 - (b) otherwise, the case B minimum applies.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
45%	case A: 15% case B: 30%	case A: 0% case B: 15%
60%	case A: 20% case B: 40%	case A: 0% case B: 20%
70%	35%	20%
105%	52.5%	30%
140%	70%	40%
100%	50%	30%
150%	75%	45%
200%	100%	60%]

Special reduction

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- (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any of paragraphs 1 to 4.
- (2) In sub-paragraph (1) "special circumstances" does not include--
- (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to--
- (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

Interaction with other penalties and late payment surcharges

15

- (1) The amount of a penalty for which P is liable under any of paragraphs 1 to 4 shall be reduced by the amount of any other penalty incurred by P, or any surcharge for late payment of tax imposed on P, if the amount of the penalty or surcharge is determined by reference to the same tax liability.
- (2) If P is liable to a penalty under section 9 of FA 1994 in respect of a failure to comply with a relevant obligation, the amount of any penalty payable under paragraph 1 in respect of the failure is to be reduced by the amount of the penalty under that section.
- (3) Where penalties are imposed under paragraph 3(1) and (2) in respect of the same act or use, the aggregate of the amounts of the penalties must not exceed 100% of the potential lost revenue.

Assessment**16**

- (1) Where P becomes liable for a penalty under any of paragraphs 1 to 4 HMRC shall--
 - (a) assess the penalty,
 - (b) notify P, and
 - (c) state in the notice the period in respect of which the penalty is assessed.
- (2) A penalty under any of paragraphs 1 to 4 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment--
 - (a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.
- (4) An assessment of a penalty under any of paragraphs 1 to 4 must be made before the end of the period of 12 months beginning with--
 - (a) the end of the appeal period for the assessment of tax unpaid by reason of the relevant act or failure in respect of which the penalty is imposed, or
 - (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the relevant act or failure is ascertained.
- (5) In sub-paragraph (4)(a) "appeal period" means the period during which--
 - (a) an appeal could be brought, or
 - (b) an appeal that has been brought has not been determined or withdrawn.
- (6) Subject to sub-paragraph (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.
- (7) The references in this paragraph to "an assessment to tax" are, in relation to a penalty under paragraph 2, a demand for recovery.

Appeal

17

- (1) P may appeal against a decision of HMRC that a penalty is payable by P.
- (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

18

(1) An appeal shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or the Upper Tribunal).]

[(2) Sub-paragraph (1) does not apply--

- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
- (b) in respect of any other matter expressly provided for by this Act.]

19

- (1) On an appeal under paragraph 17(1) the [tribunal] may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 17(2) the [tribunal] may--
 - (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the [tribunal] substitutes its decision for HMRC's, the [tribunal] may rely on paragraph 14--
 - (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
 - (b) to a different extent, but only if the [tribunal] thinks that HMRC's decision in respect of the application of paragraph 14 was flawed.
- (4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (5) In this paragraph, "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 18(1)).]

Reasonable excuse**20**

- (1) Liability to a penalty under any of paragraphs 1, 2, 3(1) and 4 does not arise in relation to an act or failure which is not deliberate if P satisfies HMRC or [(on an appeal notified to the tribunal) the tribunal] that there is a reasonable excuse for the act or failure.
- (2) For the purposes of sub-paragraph (1)--
 - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant act or failure, and

(c) where P had a reasonable excuse for the relevant act or failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the relevant act or failure is remedied without unreasonable delay after the excuse ceased.

Agency

21

(1) In paragraph 1 the reference to a failure by P includes a failure by a person who acts on P's behalf; but P is not liable to a penalty in respect of any failure by P's agent where P satisfies HMRC or [(on an appeal notified to the tribunal) the tribunal] that P took reasonable care to avoid the failure.

(2) In paragraph 2 the reference to the making by P of an unauthorised issue of an invoice showing VAT includes the making of such an unauthorised issue by a person who acts on P's behalf; but P is not liable to a penalty in respect of any action by P's agent where P satisfies HMRC or [(on an appeal notified to the tribunal) the tribunal] that P took reasonable care to avoid it.

(3) In paragraph 3(1) the reference to the doing by P of an act which enables HMRC to assess an amount as duty due from P under a relevant excise provision includes the doing of such an act by a person who acts on P's behalf; but P is not liable to a penalty in respect of any action by P's agent where P satisfies HMRC or [(on an appeal notified to the tribunal) the tribunal] that P took reasonable care to avoid it.

(4) In paragraph 4 the reference to P acquiring possession of, or being concerned in dealing with, goods the payment of duty on which is outstanding and has not been deferred includes a person who acts on P's behalf doing so; but P is not liable to a penalty in respect of any action by P's agent where P satisfies HMRC or [(on an appeal notified to the tribunal) the tribunal] that P took reasonable care to avoid it.

(5) In paragraph 4(1A) the reference to P acquiring possession of, or being concerned in dealing with, chargeable soft drinks in respect of which a payment of soft drinks industry levy is payable but has not been paid includes a person who acts on P's behalf in doing so; but P is not liable to a penalty in respect of any action by P's agent where P satisfies HMRC or (on appeal) the First-tier Tribunal that P took reasonable care to avoid it.

Companies: officers' liability

22

(1) Where a penalty under any of paragraphs 1, 2, 3(1) and 4 is payable by a company for a deliberate act or failure which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer.

(2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate [other than a limited liability partnership] "officer" means--

(a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006 (c 46)), . . .

[(aa) a manager, and]

(b) a secretary.

[(3A) In the application of sub-paragraph (1) to a limited liability partnership, "officer" means a member.]

(4) In the application of sub-paragraph (1) in any other case "officer" means--

(a) a director,

- (b) a manager,
- (c) a secretary, and
- (d) any other person managing or purporting to manage any of the company's affairs.

(5) Where HMRC have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)--

- (a) paragraph 14 applies to the specified portion as to a penalty,
- (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
- (c) paragraph 16(3) to (5) and (7) apply as if the notice were an assessment of a penalty,
- (d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 16(6),
- (e) paragraphs 17 to 19 apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer, and
- (f) paragraph 23 applies as if the officer were liable to a penalty.

[(6) In this paragraph "company" means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.]

Double jeopardy

23

P is not liable to a penalty under any of paragraphs 1 to 4 in respect of a failure or action in respect of which P has been convicted of an offence.

Interpretation

24

- (1) This paragraph applies for the construction of this Schedule
- (2) "HMRC" means Her Majesty's Revenue and Customs.
- (3) "Tax", without more, includes duty.
- (4) An expression used in relation to value added tax has the same meaning as in VATA 1994.

Consequential repeals

25

In consequence of this Schedule the following provisions are omitted--

- (a) in TMA 1970--
 - (i) section 7(8), and
 - (ii) in the table in section 98, in the second column, the entry relating to section 55 of FA 2004,
- (b) section 170A of CEMA 1979,
- (c) in ALDA 1979--

- (i) in section 47(5), "which shall be calculated by reference to the amount of duty charged on the beer produced",
 - (ii) in section 54(5), "which shall be calculated by reference to the amount of duty charged on the wine produced",
 - (iii) in section 55(6), "which shall be calculated by reference to the amount of duty charged on the made-wine produced", and
 - (iv) in section 62(4), "which shall be calculated by reference to the amount of duty charged on the cider made",
- (d) in HODA 1979--
- (i) section 13AD(4)(a) and (b), and
 - (ii) section 14F(4)(a) and (b),
- (e) in FA 1994--
- (i) section 33(6),
 - (ii) paragraph 13 of Schedule 4, and
 - (iii) paragraph 14 of Schedule 7,
- (f) section 67 of VATA 1994,
- (g) section 32 of FA 1995,
- (h) in FA 1996--
- (i) section 37, and
 - (ii) paragraph 21(1), (2) and (4) of Schedule 5,
- (i) section 27(11) of FA 1997,
- (j) paragraph 2(3) and (4) of Schedule 18 to FA 1998,
- (k) in FA 2000--
- (i) section 136(2), and
 - (ii) paragraph 55(2) to (6) of Schedule 6, and
- (l) paragraph 1(2) to (6) of Schedule 4 to FA 2001.

NOTES

Initial Commencement

Royal Assent

This Act received Royal Assent on 21 July 2008: for provision as to the commencement of this Schedule see s 123(2) hereof.

Appointment

Appointment: 1 April 2010: see SI 2009/511, art 2; for effect and transitional provisions see arts 3, 4 thereof.

Amendment

Para 1: Table: sixth entry "Value added tax" inserted by the Finance Act 2012, s 203, Sch 28, para 18.

Date in force: this amendment has effect in relation to supplies made or to be made on or after 1 December 2012: see the Finance Act 2012, s 203, Sch 28, para 19.

Para 1: Table: in second entry "Excise duties" in column 2 words "Registered Consignee" in square brackets substituted by SI 2010/593, reg 90, Sch 2, para 22(a).

Date in force: 1 April 2010: see SI 2010/593, reg 2.

Para 1: Table: fourth entry "Excise duties" inserted by SI 2010/593, reg 90, Sch 2, para 22(b).

Date in force: 1 April 2010: see SI 2010/593, reg 2.

Para 1: Table: in entry "Air passenger duty" in column 2 words "or 33A(4)" in square brackets inserted by the Finance Act 2012, s 190, Sch 23, Pt 3, para 15.

Date in force: this amendment came into force on 17 July 2012 (date of Royal Assent of the Finance Act 2012) in the absence of any specific commencement provision.

Para 1: Table: in entry "General betting duty" in column 2 words from "paragraph 8(2) of" to "to that Act" in square brackets substituted by the Finance Act 2012, s 194, Sch 25, para 11(1), (2).

Date in force: this amendment has effect in relation to accounting periods ending on or after 1 April 2012: see the Finance Act 2012, s 194, Sch 25, para 12.

Para 1: Table: in entry "Pool betting duty" in column 2 words from "paragraph 8(2) of" to "to that Act" in square brackets substituted by the Finance Act 2012, s 194, Sch 25, para 11(1), (3).

Date in force: this amendment has effect in relation to accounting periods ending on or after 1 April 2012: see the Finance Act 2012, s 194, Sch 25, para 12.

Para 1: Table: in entry "Remote gaming duty" in column 2 words from "to notify under" to "of that Act" in square brackets substituted by the Finance Act 2012, s 194, Sch 25, para 11(1), (4).

Date in force: this amendment has effect in relation to accounting periods ending on or after 1 April 2012: see the Finance Act 2012, s 194, Sch 25, para 12.

Para 1: Table: entry "Machine games duty" inserted by the Finance Act 2012, s 191, Sch 24, Pt 1, para 30.

Date in force: this amendment has effect in relation to the playing of machine games on or after 1 February 2013: see the Finance Act 2012, s 191, Sch 24, Pt 4, para 66(1), (2).

Para 1: Table: entry "Amusement machine licence duty" repealed by the Finance Act 2012, s 191, Sch 24, Pt 2, para 57.

Date in force: this repeal has effect in relation to the provision of amusement machines on or after 1 February 2013: see the Finance Act 2012, s 191, Sch 24, Pt 4, para 66(1), (3).

Paras 6, 6A-6D: substituted, for para 6 as originally enacted, by the Finance Act 2010, s 35(1), Sch 10, paras 7, 8.

Date in force: 6 April 2011: see SI 2011/975, art 2(1); for transitional provisions see art 4 thereof.

Para 7: in sub-para (4) words "section 458 of CTA 2010" in square brackets substituted by the Corporation Tax Act 2010, s 1177, Sch 1, Pt 2, paras 576, 583(a).

Date in force: this amendment has effect for corporation tax purposes for accounting periods ending on or after 1 April 2010: see the Corporation Tax Act 2010, s 1184(1)(a).

Date in force: this amendment has effect for income tax and capital gains tax purposes for the tax year 2010-11 and subsequent tax years: see the Corporation Tax Act 2010, s 1184(1)(b).

Para 7: in sub-para (4) words "subsection (5)" in square brackets substituted by the Corporation Tax Act 2010, s 1177, Sch 1, Pt 2, paras 576, 583(b).

Date in force: this amendment has effect for corporation tax purposes for accounting periods ending on or after 1 April 2010: see the Corporation Tax Act 2010, s 1184(1)(a).

Date in force: this amendment has effect for income tax and capital gains tax purposes for the tax year 2010-11 and subsequent tax years: see the Corporation Tax Act 2010, s 1184(1)(b).

Para 13: substituted by the Finance Act 2010, s 35(1), Sch 10, paras 7, 9.

Date in force: 6 April 2011: see SI 2011/975, art 2(1); for transitional provisions see art 4 thereof.

Para 18: substituted by SI 2009/56, art 3(1), Sch 1, paras 468, 473(1), (2).

Date in force: 1 April 2009: see SI 2009/56, art 1(2); for transitional and savings provisions see art 6, Sch 3, paras 1, 6-8, 12, 13 thereto.

Para 18: sub-para (2) substituted by the Finance Act 2009, s 109, Sch 57, Pt 2, paras 10, 11.

Date in force: this amendment came into force on 21 July 2009 (date of Royal Assent of the Finance Act 2009) in the absence of any specific commencement provision.

Para 19: in sub-para (1) word "tribunal" in square brackets substituted by SI 2009/56, art 3(1), Sch 1, paras 468, 473(1), (3)(a).

Date in force: 1 April 2009: see SI 2009/56, art 1(2); for transitional and savings provisions see art 6, Sch 3, paras 1, 6-8, 12, 13 thereto.

Para 19: in sub-para (2) word "tribunal" in square brackets substituted by SI 2009/56, art 3(1), Sch 1, paras 468, 473(1), (3)(a).

Date in force: 1 April 2009: see SI 2009/56, art 1(2); for transitional and savings provisions see art 6, Sch 3, paras 1, 6-8, 12, 13 thereto.

Para 19: in sub-para (3) word "tribunal" in square brackets in the first place it occurs substituted by SI 2009/56, art 3(1), Sch 1, paras 468, 473(1), (3)(a).

Date in force: 1 April 2009: see SI 2009/56, art 1(2); for transitional and savings provisions see art 6, Sch 3, paras 1, 6-8, 12, 13 thereto.

Para 19: in sub-para (3) word "tribunal" in square brackets in the second and final places it occurs substituted by SI 2009/56, art 3(1), Sch 1, paras 468, 473(1), (3)(b).

Date in force: 1 April 2009: see SI 2009/56, art 1(2); for transitional and savings provisions see art 6, Sch 3, paras 1, 6-8, 12, 13 thereto.

Para 19: sub-para (5) inserted by SI 2009/56, art 3(1), Sch 1, paras 468, 473(1), (3)(c).

Date in force: 1 April 2009: see SI 2009/56, art 1(2); for transitional and savings provisions see art 6, Sch 3, paras 1, 6-8, 12, 13 thereto.

Para 20: in sub-para (1) words "(on an appeal notified to the tribunal) the tribunal" in square brackets substituted by SI 2009/56, art 3(1), Sch 1, paras 468, 473(1), (4).

Date in force: 1 April 2009: see SI 2009/56, art 1(2); for transitional and savings provisions see art 6, Sch 3, paras 1, 6-8, 12, 13 thereto.

Para 21: words "(on an appeal notified to the tribunal) the tribunal" in square brackets in each place they occur substituted by SI 2009/56, art 3(1), Sch 1, paras 468, 473(1), (4).

Date in force: 1 April 2009: see SI 2009/56, art 1(2); for transitional and savings provisions see art 6, Sch 3, paras 1, 6-8, 12, 13 thereto.

Para 22: in sub-para (3) words "other than a limited liability partnership" in square brackets inserted by the Finance Act 2009, s 109, Sch 57, Pt 2, paras 10, 12(1), (2)(a).

Date in force: this amendment came into force on 21 July 2009 (date of Royal Assent of the Finance Act 2009) in the absence of any specific commencement provision.

Para 22: in sub-para (3)(a) word omitted repealed by the Finance Act 2009, s 109, Sch 57, Pt 2, paras 10, 12(1), (2)(b).

Date in force: this amendment came into force on 21 July 2009 (date of Royal Assent of the Finance Act 2009) in the absence of any specific commencement provision.

Para 22: sub-para (3)(aa) inserted by the Finance Act 2009, s 109, Sch 57, Pt 2, paras 10, 12(1), (2)(c).

Date in force: this amendment came into force on 21 July 2009 (date of Royal Assent of the Finance Act 2009) in the absence of any specific commencement provision.

Para 22: sub-para (3A) inserted by the Finance Act 2009, s 109, Sch 57, Pt 2, paras 10, 12(1), (3).

Date in force: this amendment came into force on 21 July 2009 (date of Royal Assent of the Finance Act 2009) in the absence of any specific commencement provision.

Para 22: sub-para (6) inserted by the Finance Act 2009, s 109, Sch 57, Pt 2, paras 10, 12(1), (4).

Date in force: this amendment came into force on 21 July 2009 (date of Royal Assent of the Finance Act 2009) in the absence of any specific commencement provision.

Amendments made by Finance Act 2017 Sch 11.

(1) Schedule 41 to FA 2008 (penalties: failure to notify etc.) is amended as follows.

(2) In the Table in paragraph 1, after the entries relating to insurance premium tax, insert—

“Soft drinks industry levy	Obligation under section 44 of FA 2017 (obligation to give notice of liability to be registered).”
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(3) In the heading before paragraph 4, at the end insert “etc”.

(4) In paragraph 4, after sub-paragraph (1) insert—

“(1A)A penalty is payable by a person (P) where—

(a)after a charge to soft drinks industry levy has arisen in respect of chargeable soft drinks, P acquires possession of them or is concerned with carrying, removing, depositing, keeping or otherwise dealing with them, and

(b) at the time when P acquires possession of the chargeable soft drinks or is so concerned, a payment of soft drinks industry levy in respect of the chargeable soft drinks is due or payable and has not been paid.”

(5) In that paragraph, in sub-paragraph (2)—

(a) for “sub-paragraph (1)” substitute “this paragraph”;

(b) at the end insert—

“chargeable soft drinks” has the same meaning as in Part 2 of FA 2017.

(6) In paragraph 5(4), after “deferred” insert “or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid”.

(7) In paragraph 10, after “deferred” insert “or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid”.

(8) In paragraph 11(2)(d), after “deferred” insert “or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid”.

(9) In paragraph 21—

(a) in sub-paragraph (4), for “paragraph 4” substitute “paragraph 4(1)”;

(b) after that sub-paragraph insert—

“(5) In paragraph 4(1A) the reference to P acquiring possession of, or being concerned in dealing with, chargeable soft drinks in respect of which a payment of soft drinks industry levy is payable but has not been paid includes a person who acts on P’s behalf in doing so; but P is not liable to a penalty in respect of any action by P’s agent where P satisfies HMRC or (on appeal) the First-tier Tribunal that P took reasonable care to avoid it.”

Amendments made by Finance Act 2018 Sch 12

(1) Schedule 41 to that Act (penalties: failure to notify etc) is amended as follows.

(2) In the table in paragraph 1, in the entry for landfill tax, for “section 47(2) and (3)” substitute “section 47(2), (3) and (3A)”.

(3) After paragraph 3 insert—

“Involvement in landfill disposal by unregistered person

3AA penalty is payable by a person (“P”) where P does an act which enables HMRC to assess an amount as landfill tax due from P under section 50A of FA 1996.”

(4) In paragraph 5 (degrees of culpability), in sub-paragraph (3), after “a relevant excise provision” insert “, or to assess an amount of landfill tax as due from P under section 50A of FA 1996,”.

(5) After paragraph 6C insert—

“6CA(1)The penalty payable under paragraph 3A is—

- (a) for a deliberate and concealed act or failure, 100% of the potential lost revenue, and
- (b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue.

(2) No penalty is payable under paragraph 3A in any other case.”

(6) In paragraph 7 (potential lost revenue)—

(a) after sub-paragraph (8) insert—

“(8A) In the case of a relevant obligation under section 47 of FA 1996 (which relates to landfill tax), the potential lost revenue is the amount of tax (if any) for which P is liable for the period—

- (a) beginning with the date with effect from which P is required in accordance with that section to be registered or (as the case may be) from which the Commissioners may register P under that section, and
- (b) ending with the day on which HMRC received notification of, or otherwise became fully aware of, P’s liability to be registered or (as the case may be) the Commissioners’ power to register P.”;

(b) in sub-paragraph (9) omit “, landfill tax”.

(7) After paragraph 9 insert—

“9A In the case of the doing of an act which enables HMRC to assess an amount of landfill tax as due under section 50A of FA 1996, the potential lost revenue is the amount of the tax which may be assessed as due.”

See Further

See further, in relation to the application of para 4 above, with modifications, in so far as it applies to goods in a control zone: the Channel Tunnel (Alcoholic Liquor and Tobacco Products) Order 2010, SI 2010/594, arts 3, 5, Schedule, para 11.