



Tax Collection and Management (Wales) Act 2016

2016 anaw 6

PART 5

PENALTIES

CHAPTER 3

PENALTIES FOR INACCURACIES

Penalties for inaccuracies in documents

129 Penalty for inaccuracy in document given to WRA

- (1) A person is liable to a penalty where—
 - (a) the person gives WRA a document, and
 - (b) conditions 1 and 2 are satisfied.
- (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
 - (a) an understatement of a liability to a devolved tax,
 - (b) a false or inflated statement of a loss relating to a devolved tax, or
 - (c) a false or inflated claim to repayment of devolved tax.
- (3) Condition 2 is that the inaccuracy was deliberate or careless on the person's part.
- (4) An inaccuracy is careless on a person's part if it is due to the person's failure to take reasonable care.
- (5) An inaccuracy which was neither deliberate nor careless on a person's part when the document was given is to be treated as careless if the person—
 - (a) discovered the inaccuracy at some later time, and

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(b) did not take reasonable steps to inform WRA.

(6) Where a document contains more than one inaccuracy in respect of which conditions 1 and 2 are satisfied, the person is liable to a penalty for each such inaccuracy.

130 Amount of penalty for inaccuracy in document given to WRA

(1) The penalty for a deliberate inaccuracy is 100% of the potential lost revenue.

(2) The penalty for a careless inaccuracy is 30% of the potential lost revenue.

131 Suspension of penalty for careless inaccuracy

(1) WRA may suspend all or part of a penalty for a careless inaccuracy under section 129 by issuing a notice to the person liable to the penalty.

(2) The notice must specify—

- (a) what part of the penalty is to be suspended,
- (b) a period of suspension not exceeding 2 years, and
- (c) conditions of suspension to be complied with by the person.

(3) WRA may suspend all or part of a penalty only if compliance with a condition of suspension would help the person to avoid becoming liable to further penalties under section 129 for careless inaccuracy.

(4) A condition of suspension may specify—

- (a) action to be taken, and
- (b) a period within which it must be taken.

(5) At the end of the period of suspension—

- (a) if the person satisfies WRA that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and
- (b) otherwise, the suspended penalty or part becomes payable.

(6) If, during the period of suspension of all or part of a penalty payable under section 129, the person becomes liable to another penalty under that section, the suspended penalty or part becomes payable.

132 Penalty for deliberate inaccuracy in document given to WRA by another person

(1) A person (referred to in this section as “person A”) is liable to a penalty where—

- (a) another person gives WRA a document,
- (b) the document contains a relevant inaccuracy, and
- (c) the inaccuracy was attributable—
 - (i) to person A deliberately supplying false information to the other person (whether directly or indirectly), or
 - (ii) to person A deliberately withholding information from the other person,

with the intention of the document containing the inaccuracy.

(2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—

- (a) an understatement of a liability to a devolved tax,

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- (b) a false or inflated statement of a loss relating to a devolved tax, or
 - (c) a false or inflated claim to repayment of devolved tax.
- (3) Person A is liable to a penalty under this section in respect of an inaccuracy whether or not the other person is liable to a penalty under section 129 in respect of the same inaccuracy.
- (4) The penalty payable under this section is 100% of the potential lost revenue.

Penalty for failure to notify under-assessment etc.

133 Penalty for failure to notify under-assessment or under-determination

- (1) A person is liable to a penalty where—
- (a) a WRA assessment understates the person’s liability to a devolved tax, and
 - (b) the person has failed to take reasonable steps to notify WRA, within the period of 30 days beginning with the day on which the notice of assessment is issued, that it is an under-assessment.
- (2) In deciding what steps (if any) were reasonable, WRA must consider whether the person knew, or should have known, about the under-assessment.
- (3) The penalty payable under this section is 30% of the potential lost revenue.
- (4) In this section—
- (a) “WRA assessment” includes a determination made by WRA under section 52, and
 - (b) accordingly, references in this Chapter to an under-assessment include references to an under-determination.

Potential lost revenue

134 Meaning of “potential lost revenue”

In this Chapter, “potential lost revenue” has the meaning given by sections 135 to 138.

135 Potential lost revenue: normal rule

- (1) The “potential lost revenue” in respect of—
- (a) an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information), or
 - (b) a failure to notify an under-assessment,
- is the additional amount payable in respect of a devolved tax as a result of correcting the inaccuracy or under-assessment.
- (2) The reference in subsection (1) to the additional amount payable includes a reference to—
- (a) an amount payable to WRA having been erroneously paid by way of repayment of devolved tax, and
 - (b) an amount which would have been repayable by WRA had the inaccuracy or under-assessment not been corrected.

136 Potential lost revenue: multiple errors

- (1) Where a person is liable to a penalty under section 129 in respect of more than one inaccuracy, and the calculation of potential lost revenue under section 135 in respect of each inaccuracy depends on the order in which they are corrected, careless inaccuracies are to be taken to be corrected before deliberate inaccuracies.
- (2) In calculating potential lost revenue where a person is liable to a penalty under section 129 in respect of one or more understatements in one or more documents relating to a tax period or transaction, account must be taken of any overstatements in any document given by the person which relate to the same tax period or transaction.
- (3) In subsection (2)—
 - (a) “understatement” means an inaccuracy that meets condition 1 in section 129, and
 - (b) “overstatement” means an inaccuracy that does not meet that condition.
- (4) For the purposes of subsection (2) overstatements are to be set against understatements in the following order—
 - (a) understatements in respect of which the person is not liable to a penalty,
 - (b) careless understatements, and
 - (c) deliberate understatements.
- (5) In calculating, for the purposes of a penalty under section 129, potential lost revenue in respect of a document given by or on behalf of a person, no account is to be taken of the fact that a potential loss of revenue from a person is or may be balanced by a potential overpayment by another person (except to the extent that an enactment requires a person’s liability to a devolved tax to be adjusted by reference to another person’s liability to a devolved tax).

137 Potential lost revenue: losses

- (1) Where an inaccuracy has the result that a loss is wrongly recorded for the purposes of a devolved tax and the loss has been wholly used to reduce the amount payable in respect of that tax, the potential lost revenue is calculated in accordance with section 135.
- (2) Where an inaccuracy has the result that a loss is wrongly recorded for the purposes of a devolved tax and the loss has not been wholly used to reduce the amount payable in respect of that tax, the potential lost revenue is—
 - (a) the potential lost revenue calculated in accordance with section 135 in respect of any part of the loss that has been used to reduce the amount payable in respect of that tax, plus
 - (b) 10% of any part that has not.
- (3) Subsections (1) and (2) apply both—
 - (a) to a case where no loss would have been recorded but for the inaccuracy, and
 - (b) to a case where a loss of a different amount would have been recorded (but in that case subsections (1) and (2) apply only to the difference between the amount recorded and the true amount).
- (4) The potential lost revenue in respect of a loss is nil where, because of the nature of the loss or the circumstances of the person chargeable to the devolved tax, there is no reasonable prospect of the loss being used to support a claim to reduce any person’s liability to that tax.

138 Potential lost revenue: delayed tax

- (1) Where an inaccuracy resulted in an amount of devolved tax being declared later than it should have been (“the delayed tax”), the potential lost revenue is—
 - (a) 5% of the delayed tax for each year of the delay;
 - (b) a percentage of the delayed tax, for each period of delay of less than a year, equating to 5% per year.
- (2) This section does not apply to a case to which section 137 applies.

Penalties under Chapter 3: general

139 Reduction in penalty under Chapter 3 for disclosure

- (1) WRA may reduce a penalty payable under this Chapter where a person makes a qualifying disclosure.
- (2) A “qualifying disclosure” means disclosure of—
 - (a) an inaccuracy which is relevant to a person’s liability to a devolved tax,
 - (b) a supply of false information, or withholding of information, which is relevant to a person’s liability to a devolved tax, or
 - (c) a failure to disclose an under-assessment in respect of a devolved tax.
- (3) A person makes a qualifying disclosure by—
 - (a) telling WRA about it,
 - (b) giving WRA reasonable help in quantifying—
 - (i) the inaccuracy,
 - (ii) the inaccuracy attributable to the supply of false information or withholding of information, or
 - (iii) the under-assessment, and
 - (c) allowing WRA access to records for the purpose of ensuring that—
 - (i) the inaccuracy,
 - (ii) the inaccuracy attributable to the supply of false information or withholding of information, or
 - (iii) the under-assessment,is fully corrected.
- (4) In reducing a penalty under this section, WRA may take account of—
 - (a) whether the disclosure was prompted or unprompted, and
 - (b) the quality of the disclosure.
- (5) Disclosure of relevant information—
 - (a) is “unprompted” if made at a time when the person making the disclosure has no reason to believe that WRA has discovered or is about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and
 - (b) otherwise, is “prompted”.
- (6) “Quality”, in relation to disclosure, includes timing, nature and extent.

140 Special reduction in penalty under Chapter 3

- (1) WRA may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.
- (2) In subsection (1), “special circumstances” does not include—
 - (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one person is balanced by a potential over-payment by another.
- (3) In subsection (1), the reference to reducing a penalty includes a reference to—
 - (a) remitting a penalty entirely,
 - (b) suspending a penalty, and
 - (c) agreeing a compromise in relation to proceedings for a penalty.
- (4) In this section, references to a penalty include references to any interest in relation to a penalty.

141 Assessment of penalties under Chapter 3

- (1) Where a person becomes liable to a penalty under this Chapter, WRA must—
 - (a) assess the penalty,
 - (b) issue a notice to the person of the penalty assessed, and
 - (c) state in the notice the period or transaction in relation to which the penalty has been assessed.
- (2) An assessment of a penalty under this Chapter may be combined with an assessment to devolved tax.
- (3) An assessment of a penalty under section 129 or 132 must be made before the end of the period of 12 months beginning with—
 - (a) the end of the appeal period for the decision correcting the inaccuracy, or
 - (b) if there is no assessment to the tax concerned as a result of that decision, the day on which the inaccuracy is corrected.
- (4) An assessment of a penalty under section 133 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 which corrected the understatement, or
 - (b) if there is no assessment correcting the understatement, the day on which the understatement is corrected.
- (5) In subsections (3) and (4), “appeal period” means the later of the following periods—
 - (a) if no appeal is made, the period during which an appeal could be made, and
 - (b) if an appeal is made, the period ending with its final determination or withdrawal.
- (6) Subject to subsections (3) and (4), a supplementary assessment may be made in respect of a penalty under this Chapter if an earlier assessment operated by reference to an underestimate of the potential lost revenue.

Interpretation

142 Interpretation of Chapter 3

In this Chapter—

- (a) a reference to giving a document to WRA includes—
 - (i) a reference to communicating information to WRA in any form and by any method (whether by post, fax, email, telephone or otherwise), and
 - (ii) a reference to making a statement or declaration in a document;
- (b) a reference to making a tax return or doing anything in relation to a tax return includes a reference to amending a tax return or doing anything in relation to an amended tax return;
- (c) a reference to a loss includes a reference to a charge, expense, deficit and any other amount which may be available for, or relied on to claim, a deduction or relief;
- (d) a reference to action includes a reference to omission.