



# Finance Act 1985

## 1985 CHAPTER 54

### PART I

#### CUSTOMS AND EXCISE AND VALUE ADDED TAX

### CHAPTER II

#### VALUE ADDED TAX

**Modifications etc. (not altering text)**

**C1** Pt. I Chapter II (ss. 11-13) modified by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), s. 21(a)

*Newspaper advertisements*

**11 Newspaper advertisements.**

With respect to supplies made on or after 1st May 1985, Schedule 5 to the principal Act shall have effect with the omission of Group 5 (newspaper advertisements).

*Offences etc.*

**12 Offences and penalties in criminal proceedings.**

(1) Section 39 of the principal Act (offences and penalties) shall be amended in accordance with the following provisions of this section; but any increased penalty provided for by those provisions does not apply to an offence committed on or before the date this Act is passed.

(2) In subsections (1)(b), (2)(ii) and (3)(b) (maximum of 2 years imprisonment on indictment) for “2” there shall be substituted “7”.

*Status: Point in time view as at 01/10/1993.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1985, Chapter II. (See end of Document for details)*

(3) After subsection (1) there shall be inserted the following subsection:—

“(1A) Any reference in subsection (1) above or subsection (3) below to the evasion of tax includes a reference to the obtaining of—

- (a) a payment under section 14(5) above; or
- (b) a refund under section 21 or section 22 above; or
- (c) a repayment under section 23 above;

and any reference in those subsections to the amount of the tax shall be construed,—

- (i) in relation to tax itself or a payment falling within paragraph (a) above, as a reference to the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated; and
- (ii) in relation to a refund or repayment falling within paragraph (b) or paragraph (c) above, as a reference to the amount falsely claimed by way of refund or repayment.”

(4) In subsection (2)(i) (penalty on summary conviction for certain offences relating to false documents or false information) after the words “statutory maximum” there shall be inserted “or, where subsection (2A) or subsection (2B) below applies, to the alternative penalty specified in that subsection if it is greater”.

(5) After subsection (2) there shall be inserted the following subsections:—

“(2A) In any case where—

- (a) the document referred to in subsection (2)(a) above is a return required under this Act, or
- (b) the information referred to in subsection (2)(b) above is contained in or otherwise relevant to such a return,

the alternative penalty referred to in subsection (2)(i) above is a penalty equal to three times the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated.

(2B) In any case where—

- (a) the document referred to in subsection (2)(a) above is a claim for a refund under section 21 or section 22 above or for a repayment under section 23 above, or
- (b) the information referred to in subsection (2)(b) above is contained in or otherwise relevant to such a claim,

the alternative penalty referred to in subsection (2)(i) above is a penalty equal to three times the amount falsely claimed.

(2C) The reference in subsection (2)(a) above to furnishing, sending or otherwise making use of a document which is false in a material particular, with intent to deceive, includes a reference to furnishing, sending or otherwise making use of such a document, with intent to secure that a machine will respond to the document as if it were a true document.

(2D) Any reference in subsection (2)(a) or subsection (2C) above to producing, furnishing or sending a document includes a reference to causing a document to be produced, furnished or sent.”

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(6) After subsection (3) there shall be inserted the following subsection:—

“(3A) Where an authorised person has reasonable grounds for suspecting that an offence has been committed under the preceding provisions of this section, he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.”

(7) The following provisions shall cease to have effect—

- (a) in subsection (5), paragraph (a) and the words from “or, if greater” onwards;
- (b) subsection (6); and
- (c) subsection (7).

(8) In subsection (8)—

- (a) for the words “the failure referred to in subsection (7) above” there shall be substituted “a person’s failure to comply with any regulations made under this Act”; and
- (b) for the words from “that subsection” to “(if it is greater)” there shall be substituted “that person shall be liable on summary conviction to a penalty of level 3 on the standard scale, together with a penalty of whichever is the greater of £10 and”;

but that subsection, as so amended, shall not apply to a failure which begins on or after such day as the Treasury may by order made by statutory instrument appoint.

(9) In accordance with the provisions of subsections (1) to (7) above, section 39 of the principal Act, excluding subsection (8), shall have effect as set out in Schedule 6 to this Act.

**Modifications etc. (not altering text)**

**C2** Power of appointment conferred by s. 12(8) fully exercised (1.10.1986): [S.I. 1986/969, art. 2](#)

*Civil penalties*

**13 Tax evasion: conduct involving dishonesty.**

(1) In any case where,—

- (a) for the purpose of evading tax, a person does any act or omits to take any action, and
- (b) his conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),

he shall be liable, subject to <sup>[F1]</sup>subsection (7)] below, to a penalty equal to the amount of tax evaded or, as the case may be, sought to be evaded, by his conduct.

(2) The reference in subsection (1)(a) above to evading tax includes a reference to obtaining any of the following sums,—

- (a) a payment under section 14(5) of the principal Act,
- (b) a refund under <sup>[F2]</sup>section 20A,] section 21 or section 22 of that Act, . . . <sup>F3</sup>
- <sup>[F4]</sup>(ba) a refund under any regulations made by virtue of section 8C(5) of that Act;]
- (c) a repayment under section 23 of that Act, <sup>[F5]</sup>and]
- <sup>[F5]</sup>(d) a refund under section 11 of the Finance Act 1990,]

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in circumstances where the person concerned is not entitled to that sum.

(3) The reference in subsection (1) above to the amount of the tax evaded or sought to be evaded by a person's conduct shall be construed,—

- (a) in relation to tax itself or a payment under section 14(5) of the principal Act, as a reference to the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated; and
- (b) in relation to the sums referred to in paragraphs (b), [<sup>F6</sup>(ba)] and (c) of subsection (2) above, as a reference to the amount falsely claimed by way of refund or repayment.

<sup>F7</sup>(4) .....

(5) Statements made or documents produced by or on behalf of a person shall not be inadmissible in any such proceedings as are mentioned in subsection (6) below by reason only that it has been drawn to his attention—

- (a) that, in relation to tax, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings and, though no undertaking can be given as to whether the Commissioners will make such an assessment in the case of any person, it is their practice to be influenced by the fact that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for investigation, and
- (b) that the Commissioners or, on appeal, a value added tax tribunal [<sup>F8</sup>have power under section 15A below to reduce a penalty under this section,]

and that he was or may have been induced thereby to make the statements or produce the documents.

(6) The proceedings mentioned in subsection (5) above are—

- (a) any criminal proceedings against the person concerned in respect of any offence in connection with or in relation to tax, and
- (b) any proceedings against him for the recovery of any sum due from him in connection with or in relation to tax.

(7) Where, by reason of conduct falling within subsection (1) above, a person is convicted of an offence (whether under the principal Act or otherwise), that conduct shall not also give rise to liability to a penalty under this section.

#### Textual Amendments

- F1** Words in s. 13(1) substituted (27.7.1993 with effect as mentioned in s. 3(3) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2, para. 3(2)(a)(3)**
- F2** Words in s. 13(2)(b) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 77(1)(a)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F3** Word repealed by Finance Act 1990 (c. 26, SIF 40:2), ss. 11(12), 132, **Sch. 19 Pt. III**
- F4** S. 13(2)(ba) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 77(1)(b)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F5** Word “and” and s. 13(2)(d) inserted by Finance Act 1990 (c. 29, SIF 40:2), s. 11(12)
- F6** Words in S. 13(3)(b) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 77(2)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art.3, **Sch.**

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- F7** S. 13(4) repealed (27.7.1993 with effect as mentioned in ss. 3(3), 44(4) of the amending Act) by 1993 c. 34, ss. 49, 213, Sch. 2, para. 3(2)(3), Sch. 23, Pt. II
- F8** Words in s. 13(5) substituted (27.7.1993 with effect as mentioned in s. 3(3) of the amending Act) by 1993 c. 34, s. 49, Sch. 2, para. 3(2)(b)(3)

**Modifications etc. (not altering text)**

- C3** S. 13 applied by Finance Act 1986 (c. 41, SIF 40:2), s. 14(3)

**[<sup>F9</sup>13A Incorrect certificates as to zero-rating etc.**

- (1) Subject to subsections (3) and (4) below, where—
- (a) a person to whom one or more supplies are, or are to be, made gives to the supplier—
- (i) a certificate that the supply or supplies fall, or will fall, wholly or partly within Group 7, 8 or 8A of Schedule 5, or Group 1 of Schedule 6, to the principal Act; or
- (ii) a certificate such as is mentioned in paragraph 13(4)(f) of Schedule 3 to the Finance Act 1989 relating to the supply or supplies; and
- (b) the certificate is incorrect,
- the person giving the certificate shall be liable to a penalty.
- (2) The amount of the penalty shall be equal to the difference between the amount of the tax which would have been chargeable on the supply or supplies if the certificate had been correct and the amount of tax actually so chargeable.
- (3) The giving of a certificate shall not give rise to a penalty under this section if the person who gave it satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for his having given it.
- (4) Where by reason of giving a certificate a person is convicted of an offence (whether under the principal Act or otherwise), the giving of the certificate shall not also give rise to a penalty under this section.]

**Textual Amendments**

- F9** S. 13A inserted by Finance Act 1989 (c. 26, SIF 40:2), s. 23(1)(2)

**14 Serious misdeclaration or neglect resulting in understatements or overclaims.**

- (1) In any case where, for a prescribed accounting period beginning after the day appointed under subsection (8) below,—
- (a) a return is made which understates a person's liability to tax or overstates his entitlement to a payment under section 14(5) of the principal Act, or
- (b) an assessment is made which understates a person's liability to tax and, at the end of the period of thirty days beginning on the date of the assessment, he has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioners,
- and the circumstances are as set out in . . . <sup>F10</sup> subsection (2) below, the person concerned shall be liable, subject to subsections (6) and (7) below, to a penalty equal to [<sup>F11</sup>15 per cent.] of the tax which would have been lost if the inaccuracy had not been discovered.

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[<sup>F12</sup>(2) The circumstances referred to in subsection (1) above are that the tax for the period concerned which would have been lost if the inaccuracy had not been discovered—

- (a) equals or exceeds 30 per cent. of the true amount of tax for that period, or
- (b) equals or exceeds whichever is the greater of £10,000 and 5 per cent. of the true amount of tax for that period.]

(4) [<sup>F13</sup>Any reference in this section] to the tax for a prescribed accounting period which would have been lost if an inaccuracy had not been discovered is a reference to the aggregate of—

- (a) the amount (if any) by which credit for input tax for that period was overstated; and
- (b) the amount (if any) by which output tax for that period was understated;

but if for any period there is an understatement of credit for input tax or an overstatement of output tax, allowance shall be made for that error in determining the tax for that period which would have been so lost.

(5) In [<sup>F14</sup>this section]“the true amount of tax”, in relation to a prescribed accounting period, means the amount of tax which was due from the person concerned for that period or, as the case may be, the amount of the payment (if any) to which he was entitled under section 14(5) of the principal Act for that period.

[<sup>F15</sup>(5A) Where—

- (a) a return for any prescribed accounting period overstates or understates to any extent a person’s liability to tax or his entitlement to a payment under section 14(5) of the principal Act, and
- (b) that return is corrected, in such circumstances and in accordance with such conditions as may be prescribed, by a return for a later such period which understates or overstates, to the corresponding extent, that liability or entitlement,

it shall be assumed for the purposes of subsection (5) above that the statement made by each of those returns is a correct statement for the accounting period to which it relates.

(5B) This section shall have effect in relation to a body which is registered and to which section 20 of the principal Act applies as if—

- (a) any reference to a payment under section 14(5) of that Act included a reference to a refund under the said section 20, and
- (b) any reference to credit for input tax included a reference to tax chargeable on supplies, [<sup>F16</sup>acquisitions] or importations which were not for the purposes of any business carried on by the body.]

(6) Conduct falling within subsection (1) above shall not give rise to liability to a penalty under this section . . . <sup>F17</sup> if—

- (a) the person concerned satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the conduct, or
- (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, so far as they relate to tax, the person concerned furnished to the Commissioners full information with respect to the inaccuracy concerned.

(7) Where, by reason of conduct falling within subsection (1) above,—

- (a) a person is convicted of an offence (whether under the principal Act or otherwise), or

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(b) a person is assessed to a penalty under section 13 above,  
that conduct shall not also give rise to liability to a penalty under this section . . . <sup>F17</sup>.

(8) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint.

#### Textual Amendments

- F10** Words repealed by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), s. 148, [Sch. 14 Pt. III](#)
- F11** Words in [s. 14\(1\)](#) substituted (16.3.1992 with effect as mentioned in [s. 7\(3\)\(4\)](#) of the amending Act) by [Finance Act 1992 \(c. 20\)](#), [s. 7\(1\)](#)
- F12** [S. 14\(2\)](#) substituted for [s. 14\(2\)\(3\)](#) by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 16\(2\)](#)
- F13** Words substituted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 16\(3\)](#)
- F14** Words substituted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 16\(4\)](#)
- F15** [S. 14\(5A\)\(5B\)](#) inserted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 16\(5\)](#)
- F16** Word in [s. 14\(5B\)\(b\)](#) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 14(2), [Sch. 3 Pt. II para.78](#); [S.I. 1992/2979](#), [art.4](#), [Sch. Pt. II](#) and [S.I. 1992/3261](#), [art.3](#), [Sch.](#)
- F17** Words repealed by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), s. 148, [Sch. 14 Pt. III](#)

#### Modifications etc. (not altering text)

- C4** Power of appointment conferred by [s. 14\(8\)](#) fully exercised (31.3.1990): [S.I. 1989/2270](#), [art. 2](#)

### <sup>F18</sup>14A Persistent misdeclaration resulting in understatements or overclaims.

- (1) In any case where—
- for a prescribed accounting period (including one beginning before the commencement of this section), a return has been made which understates a person's liability to tax or overstates his entitlement to a payment under section 14(5) of the principal Act; and
  - the tax for that period which would have been lost if the inaccuracy had not been discovered equals or exceeds whichever is the greater of £100 and 1 per cent. of the true amount of tax for that period,
- the inaccuracy shall be regarded, subject to subsections (5) and (6) below, as material for the purposes of this section.
- (2) Subsection (3) below applies in any case where—
- there is a material inaccuracy in respect of any two prescribed accounting periods; and
  - the last day of the later one of those periods falls on or before the second anniversary of the last day of the earlier one; and
  - after the coming into operation of this section, the Commissioners serve notice on the person concerned (in this section referred to as “a penalty liability notice”) specifying as a penalty period for the purposes of this section a period beginning on the date of the notice and ending on the second anniversary of that date.
- (3) If there is a material inaccuracy in respect of a prescribed accounting period ending within the penalty period specified in a penalty liability notice served on the person concerned, that person shall be liable to a penalty equal to 15 per cent. of the tax for that period which would have been lost if the inaccuracy had not been discovered.

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- (4) Subsections (4) to (5B) of section 14 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) An inaccuracy shall not be regarded as material for the purposes of this section if—
- (a) the person concerned satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the inaccuracy; or
  - (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, so far as they relate to tax, the person concerned furnished to the Commissioners full information with respect to the inaccuracy.
- (6) Where by reason of conduct falling within subsection (1) above—
- (a) a person is convicted of an offence (whether under the principal Act or otherwise); or
  - (b) a person is assessed to a penalty under section 13 or 14 above,
- the inaccuracy concerned shall not be regarded as material for the purposes of this section.
- (7) In any case where subsection (5) or (6) above applies, any penalty liability notice the service of which depended upon the inaccuracy concerned shall be deemed not to have been served.]

#### **Textual Amendments**

**F18** S. 14A inserted by [Finance Act 1988 \(c. 39, SIF, 40:2\)](#), s. 17

#### **[14B] <sup>F19</sup>Inaccuracies in EC sales statements.**

- (1) Where—
- (a) an EC sales statement containing a material inaccuracy has been submitted by any person to the Commissioners;
  - (b) the Commissioners have, within six months of discovering the inaccuracy, issued that person with a written warning identifying that statement and stating that future inaccuracies might result in the service of a notice for the purposes of this section;
  - (c) another EC sales statement containing a material inaccuracy (“the second inaccurate statement”) has been submitted by that person to the Commissioners;
  - (d) the submission date for the second inaccurate statement fell within the period of two years beginning with the day after the warning was issued;
  - (e) the Commissioners have, within six months of discovering the inaccuracy in the second inaccurate statement, served that person with a notice identifying that statement and stating that future inaccuracies will attract a penalty under this section;
  - (f) yet another EC sales statement containing a material inaccuracy is submitted by that person to the Commissioners; and
  - (g) the submission date for the statement falling within paragraph (f) above is not more than two years after the service of the notice or the date on which any previous statement attracting a penalty was submitted by that person to the Commissioners,



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that person shall be liable to a penalty of £100 in respect of the statement so falling.

- (2) Subject to subsections (3) and (4) below, an EC sales statement shall be regarded for the purposes of this section as containing a material inaccuracy if, having regard to the matters required to be included in the statement, the inclusion or omission of any information from the statement is misleading in any material respect.
- (3) An inaccuracy contained in an EC sales statement shall not be regarded as material for the purposes of this section if—
  - (a) the person who submitted the statement satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the inaccuracy; or
  - (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, that person furnished the Commissioners with full information with respect to the inaccuracy.
- (4) Where, by reason of the submission of a statement containing a material inaccuracy by any person, that person is convicted of an offence (whether under the principal Act or otherwise), the inaccuracy to which the conviction relates shall be regarded for the purposes of this section as not being material.
- (5) Where the only statement identified in a warning or notice served for the purposes of subsection (1)(b) or (e) above is one which (whether by virtue of either or both of subsections (3) and (4) above or otherwise) is regarded as containing no material inaccuracies, that warning or notice shall be deemed not to have been issued or served for those purposes.
- (6) In this section—

“EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(2A) of Schedule 7 to the principal Act; and

“submission date”, in relation to such a statement, means whichever is the earlier of the last day for the submission of the statement to the Commissioners in accordance with those regulations and the day on which it was in fact submitted to the Commissioners.]

#### Textual Amendments

**F19** S. 14B inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 79; S.I. 1992/2979, art.4, Sch. Pt. II and S.I. 1992/3261, art.3, Sch.

## 15 Failures to notify and unauthorised issue of invoices.

- (1) In any case where—
  - (a) a person fails to comply with any of paragraphs 3, 4 and 11(2) [<sup>F20</sup> and (3)] of Schedule 1 to the principal Act [<sup>F21</sup> with paragraph 3 of Schedule 1A to that Act or with paragraph 3 or 8(2) of Schedule 1B to that Act] (duty to notify liability for registration or change in nature of supplies etc. by a person exempted from registration), or

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- [<sup>F22</sup>(aa) a person fails to comply with a requirement of regulations under paragraph 2(2B) of Schedule 7 to the principal Act (notification of acquisition of excise duty goods or new means of transport), or]
- (b) an unauthorised person issues [<sup>F23</sup>one or more invoices] showing an amount as being tax or as including an amount attributable to tax.

he shall be liable, subject to subsections (4) and (5) below, to a penalty equal to [<sup>F24</sup>the specified percentage] of the relevant tax or, if it is greater or the circumstances are such that there is no relevant tax, to a penalty of £50.

- (2) In subsection (1)(b) above, “an unauthorised person” means anyone other than—
- (a) a person registered under the principal Act; or
  - (b) a body corporate treated for the purposes of section 29 of that Act as a member of a group; or
  - (c) a person treated as a taxable person under regulations made under section 31(4) of that Act; or
  - (d) a person authorised to issue an invoice under regulations made under paragraph 2(6) of Schedule 7 to that Act; or
  - (e) a person acting on behalf of the Crown.
- (3) In subsection (1) above “relevant tax” means [<sup>F25</sup>(subject to subsections (3B) and (3C) below)],—
- (a) in relation to a person’s failure to comply with paragraph 3 or paragraph 4 of Schedule 1 to the principal Act [<sup>F26</sup>with paragraph 3 of Schedule 1A to that Act or with paragraph 3 of Schedule 1B to that Act], the tax (if any) for which he is liable for the period beginning on the date with effect from which he is, in accordance with that paragraph, required to be registered and ending on that date on which the Commissioners received notification of, or otherwise [<sup>F27</sup>became fully aware of], his liability to be registered; and
  - (b) in relation to a person’s failure to comply with subparagraph (2) [<sup>F28</sup>or (3)] of paragraph 11 of Schedule 1 to the principal Act [<sup>F26</sup>or with sub-paragraph (2) of paragraph 8 of Schedule 1B to that Act], the tax (if any) for which, but for any exemption from registration, he would be liable for the period beginning on the date of the change or alteration referred to in that subparagraph and ending on the date on which the Commissioners received notification of, or otherwise [<sup>F29</sup>became fully aware of], that change or alteration; and
- [<sup>F30</sup>(ba) in relation to a person’s failure to comply with a requirement of regulations under paragraph 2(2B) of Schedule 7 to the principal Act, the tax on the acquisition to which the failure relates; and]
- (c) in relation to the issue of [<sup>F31</sup>one or more such invoices as are] referred to in subsection (1)(b) above, [<sup>F32</sup>the amount which is, or the aggregate of the amounts which are—
    - (i) shown on the invoice or invoices as tax, or
    - (ii) to be taken as representing tax].

[<sup>F33</sup>(3A) For the purposes of subsection (1) above the specified percentage is—

- (a) 10 per cent. where the relevant tax is given by paragraph (a) or (b) of subsection (3) above and the period referred to in that paragraph does not exceed nine months [<sup>F34</sup>or where the relevant tax is given by paragraph (ba) of that subsection and the failure in question did not continue for more than three months];

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- (b) 20 per cent. where that tax is [<sup>F35</sup>given by paragraph (a) or (b) of subsection (3) above] and the period so referred to exceeds nine months but does not exceed eighteen months [<sup>F34</sup>or where that tax is given by paragraph (ba) of that subsection and the failure in question continued for more than three months but did not continue for more than six months]; and
- (c) 30 per cent. in any other case.]

[<sup>F36</sup>(3B) Where—

- (a) the amount of tax which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant tax in relation to a failure mentioned in subsection (3)(a) above includes tax on an acquisition of goods from another member State; and
- (b) the Commissioners are satisfied that value added tax has been paid under the law of another member State on the supply in pursuance of which those goods were acquired,

then, in the determination of the amount of the relevant tax in relation to that failure, an allowance shall be made for the value added tax paid under the law of that member State; and the amount of the allowance shall not exceed the amount of tax due on the acquisition but shall otherwise be equal to the amount of value added tax which the Commissioners are satisfied has been paid on that supply under the law of that member State.

(3C) Where—

- (a) the amount of tax which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant tax in relation to a failure mentioned in subsection (3)(a) above includes tax chargeable by virtue of section 6(2B) of the principal Act on any supply; and
- (b) the Commissioners are satisfied that value added tax has been paid under the law of another member State on that supply,

then, in the determination of the amount of the relevant tax in relation to that failure, an allowance shall be made for the tax paid under the law of the other member State; and the amount of the allowance shall not exceed the amount of tax chargeable by virtue of section 6(2B) on that supply but shall otherwise be equal to the amount of tax which the Commissioners are satisfied has been paid on that supply under the law of that other member State.]

[<sup>F37</sup>(3D) This section shall have effect in relation to any invoice which—

- (a) for the purposes of any provision made under subsection (3) of section 37B of the principal Act shows an amount as included in the consideration for any supply; and
- (b) either—
  - (i) fails to comply with the requirements of any regulations under that section; or
  - (ii) 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 tax.]

- (4) Conduct falling within subsection (1) above shall not give rise to liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for his conduct.

*Status: Point in time view as at 01/10/1993.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1985, Chapter II. (See end of Document for details)*

- (5) Where, by reason of conduct falling within subsection (1) above,—
- (a) a person is convicted of an offence (whether under the principal Act or otherwise), or
  - (b) a person is assessed to a penalty under section 13 above,
- that conduct shall not also give rise to liability to a penalty under this section.
- (6) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order made by statutory instrument substitute for the sum for the time being specified in subsection (1) above such other sum as appears to them to be justified by the change.
- (7) An order under subsection (6) above shall not apply in relation to a failure to comply which ended on or before the date on which the order comes into force.
- (8) A statutory instrument under subsection (6) above shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.

#### Textual Amendments

- F20** Words inserted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(1)(a)
- F21** Words in s. 15(1)(a) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 80(1)(a); S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3, Sch.
- F22** S. 15(1)(aa) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 80(1)(b); S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3, Sch.
- F23** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(1)(b)(6)
- F24** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(1)(c)(6)
- F25** Words in s. 15(3) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 80(2)(a); S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3, Sch.
- F26** Words in s. 15(3)(a)(b) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 80(2)(b)(c); S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3 Sch.
- F27** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(a)
- F28** Words inserted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(b)
- F29** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(b)
- F30** S. 15(3)(ba) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 80(2)(d); S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3 Sch.
- F31** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(c)
- F32** Words and s. 15(3)(c)(i)(ii) substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(c)
- F33** S. 15(3A) inserted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(3)
- F34** Words in s. 15(3A)(a)(b) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 80(3)(a)(b); S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3 Sch.
- F35** Words in s. 15(3A)(b) substituted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 80(3)(b); S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3 Sch.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1985, Chapter II. (See end of Document for details)*

- F36** S. 15(3B)(3C) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 80(4)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F37** S. 15(3D) inserted (1.1.1993) by Finance (No. 2) Act 1992 (c. 48), s. 16(5); S.I. 1992/3261, art. 3, **Sch.**

**[<sup>F38</sup>15A Mitigation of penalties under sections 13, 14, 14A and 15.**

- (1) Where a person is liable to a penalty under any of sections 13, 14, 14A and 15 above, the Commissioners or, on appeal, a value added tax tribunal may reduce the penalty to such amount (including nil) as they think proper.
- (2) In the case of a penalty reduced by the Commissioners under subsection (1) above, a value added tax tribunal, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Commissioners.
- (3) None of the matters specified in subsection (4) below shall be matters which the Commissioners or any value added tax tribunal shall be entitled to take into account in exercising their powers under this section.
- (4) Those matters are—
  - (a) the insufficiency of the funds available to any person for paying any tax due or for paying the amount of the penalty;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of tax;
  - (c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.]

**Textual Amendments**

- F38** S. 15A inserted (27.7.1993 with effect as mentioned in **Sch. 2 para. 3(3)** of the amending Act ) by 1993 c. 34, s. 49, **Sch. 2**, para. 3(1)

**16 Breaches of walking possession agreements.**

- (1) This section applies where—
  - (a) in accordance with regulations under paragraph 6(4) of Schedule 7 to the principal Act, a distress is authorised to be levied on the goods and chattels of a person (in this section referred to as a “person in default”) who has refused or neglected to pay any tax due or any amount recoverable as if it were tax due; and
  - (b) the person levying the distress and the person in default have entered into a walking possession agreement, as defined in subsection (2) below.
- (2) In this section a “walking possession agreement” means an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—
  - (a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and
  - (b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1985, Chapter II. (See end of Document for details)*

- (3) Subject to subsection (4) below, if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to half of the tax or other amount referred to in subsection (1)(a) above.
- (4) The person in default shall not be liable to a penalty under subsection (3) above if he satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the breach in question.
- (5) This section does not extend to Scotland.

## 17 Breaches of regulatory provisions.

- (1) If any person fails to comply with a requirement imposed under—
  - (a) paragraph 7 [<sup>F39</sup>or 7A] of Schedule 1 to the principal Act [<sup>F40</sup>paragraph 5 of Schedule 1A to that Act or paragraph 5 of Schedule 1B to that Act][<sup>F41</sup>(notification of end of liability or entitlement to be registered etc.)], or
  - <sup>F42</sup>(aa) any regulations made under section 32A of the principal Act requiring a tax representative, for the purposes of registration, to notify the Commissioners that his appointment has taken effect or has ceased to have effect, or]
  - (b) paragraph 7(1) or paragraph 8 of Schedule 7 to that Act (records and information, etc.), or
  - (c) any regulations or rules made under that Act, other than rules made under paragraph 9 of Schedule 8 thereto (procedural rules for tribunals), [<sup>F43</sup>or]
  - <sup>F43</sup>(d) any order made by the Treasury under that Act; or
  - (e) any regulations made under the European Communities Act 1972 and relating to value added tax]

he shall be liable, subject to subsections (9) and (10) and section 21(6) below, [<sup>F44</sup>to a penalty equal to the prescribed rate multiplied by the number of days on which the failure continues (up to a maximum of 100) or, if it is greater, to a penalty of £50.]
- (2) If any person fails to comply with a requirement to preserve records imposed under paragraph 7(2) of Schedule 7 to the principal Act, he shall be liable, subject to the following provisions of this section, to a penalty of £500.
- (3) Subject to subsection (4) below, in relation to a failure to comply with any such requirement as is referred to in subsection (1) above, the prescribed rate shall be determined by reference to the number of occasions in the period of two years preceding the beginning of the failure in question on which the person concerned has previously failed to comply with that requirement and, subject to the following provisions of this section, the prescribed rate shall be,—
  - (a) if there has been no such previous occasion in that period, [<sup>F45</sup>£5];
  - (b) if there has been only one such occasion in that period, [<sup>F45</sup>£10]; and
  - (c) in any other case, [<sup>F45</sup>£15].
- (4) For the purposes of subsection (3) above—
  - (a) a failure to comply with any such requirement as is referred to in subsection (1) above shall be disregarded if, as a result of the failure, the person concerned became liable for a surcharge under section 19 below;
  - (b) a previous failure to comply with any such requirement shall be disregarded if it occurred before the passing of this Act [<sup>F46</sup>or, in the case of a requirement falling within paragraph (d) or paragraph (e) of subsection (1) above, before the passing of the Finance Act 1986];

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- (c) a continuing failure to comply with any such requirement shall be regarded as one occasion of failure occurring on the date on which the failure began;
  - (d) if the same omission gives rise to a failure to comply with more than one such requirement, it shall nevertheless be regarded as the occasion of only one failure; and
  - (e) in relation to a failure to comply with a requirement imposed by regulations as to the furnishing of a return or as to the payment of tax, a previous failure to comply with such a requirement as to either of those matters shall be regarded as a previous failure to comply with the requirement in question.
- (5) Where the failure referred to in subsection (1) above consists—
- (a) in not paying the tax due in respect of any period within the time required by regulations under section 14(1) of the principal Act, or
  - (b) in not furnishing a return in respect of any period within the time required by regulations under paragraph 2(1) of Schedule 7 to that Act,
- the failure shall be disregarded for the purposes of that subsection and subsections (3) and (4) above unless it begins on or after the day appointed under section 12(8) above but, subject to that, in relation to such a failure the prescribed rate shall be whichever is the greater of that which is appropriate under paragraphs (a) to (c) of subsection (3) above and an amount equal to onesixth, onethird or onehalf of 1 per cent. of the tax due in respect of that period, the appropriate fraction being determined according to whether paragraph (a), paragraph (b) or paragraph (c) of subsection (3) above is applicable.
- (6) For the purposes of subsection (5) above, the tax due,—
- (a) if the person concerned has furnished a return, shall be taken to be the tax shown in the return as that for which he is accountable in respect of the period in question, and
  - (b) in any other case, shall be taken to be such tax as has been assessed for that period and notified to him under paragraph 4(1) of Schedule 7 to the principal Act.
- (7) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order made by statutory instrument substitute for the sums for the time being specified in subsection (2) and paragraphs (a) to (c) of subsection (3) above such other sums as appear to them to be justified by the change; but an order under this subsection shall not apply to a failure which began before the date on which the order comes into force.
- (8) A statutory instrument made under subsection (7) above shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.
- (9) A failure by any person to comply with any such requirement as is referred to in subsection (1) or subsection (2) above shall not give rise to liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the failure; and a failure in respect of which the Commissioners or tribunal have been so satisfied shall be disregarded for the purposes of subsection (3) above.
- (10) Where, by reason of conduct falling within subsection (1) or subsection (2) above,—
- (a) a person is convicted of an offence (whether under the principal Act or otherwise), or

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- (b) a person is assessed to a penalty under section 13 or section 14 above, or
  - (c) a person is assessed to a surcharge under section 19 below,
- that conduct shall not also give rise to liability to a penalty under this section.

#### Textual Amendments

- F39** Words inserted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 19\(1\)\(a\)](#)
- F40** Words in [s. 17\(1\)\(a\)](#) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), [s. 14\(2\)](#), [Sch. 3 Pt. II para. 81\(a\)](#); [S.I. 1992/2979](#), [art. 4](#), [Sch. Pt. II](#) and [S.I. 1992/3261](#), [art. 3](#), [Sch.](#)
- F41** Words substituted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 19\(1\)\(a\)](#)
- F42** [S. 17\(1\)\(aa\)](#) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by [Finance Act \(No. 2\) 1992 \(c. 48\)](#), [s. 14\(2\)](#), [Sch. 3 Pt. II para. 81\(b\)](#); [S.I. 1992/2979](#), [art.4](#), [Sch. Pt. II](#) and [S.I. 1992/3261](#), [art. 3](#), [Sch.](#)
- F43** Word “or” and [s. 17\(1\)\(d\)\(e\)](#) inserted by [Finance Act 1986 \(c. 41, SIF 40:2\)](#), [s. 15\(1\)](#)
- F44** Words substituted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 19\(1\)\(b\)\(5\)](#)
- F45** “£5”, “£10” and “£15” substituted respectively for “£10”, “£20” and “£30” by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 19\(2\)\(4\)\(5\)](#)
- F46** Words added by [Finance Act 1986 \(c. 41, SIF 40:2\)](#), [s. 15\(2\)](#)

#### [17A] <sup>F47</sup> Penalties for failure to submit EC sales statement.

- (1) If by the last day on which a person is required in accordance with regulations under the principal Act to submit an EC sales statement for any prescribed period to the Commissioners, the Commissioners have not received that statement, that person shall be regarded for the purposes of this section as being in default in relation to that statement until it is submitted.
- (2) Where any person is in default in respect of any EC sales statement the Commissioners may serve notice on him stating—
  - (a) that he is in default in relation to the statement specified in the notice;
  - (b) that (subject to the liability mentioned in paragraph (d) below) no action will be taken if he remedies the default before the end of the period of fourteen days beginning with the day after the service of the notice;
  - (c) that if the default is not so remedied, that person will become liable in respect of his default to penalties calculated on a daily basis from the end of that period in accordance with the following provisions of this section; and
  - (d) that that person will become liable, without any further notices being served under this section, to penalties under this section if he commits any more defaults before a period of twelve months has elapsed without his being in default.
- (3) Where a person has been served with a notice under subsection (2) above, he shall become liable under this section—
  - (a) if the statement to which the notice relates is not submitted before the end of the period of fourteen days beginning with the day after the service of the notice, to a penalty in respect of that statement; and
  - (b) whether or not that statement is so submitted, to a penalty in respect of any EC sales statement the last day for the submission of which is after the service and before the expiry of the notice and in relation to which he is in default.



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- (4) For the purposes of this section a notice served on any person under subsection (2) above shall continue in force—
- (a) except in a case falling within paragraph (b) below, until the end of the period of twelve months beginning with the day after the service of the notice; and
  - (b) where at any time in that period of twelve months that person is in default in relation to any EC sales statement other than one in relation to which he was in default when the notice was served, until a period of twelve months has elapsed without that person becoming liable to a penalty under this section in respect of any EC sales statement.
- (5) The amount of any penalty to which a person who has been served with a notice under subsection (2) above is liable under this section shall be whichever is the greater of £50 and—
- (a) in the case of a liability in respect of the statement to which the notice relates, a penalty of £5 for every day for which the default continues after the end of the period of fourteen days mentioned in subsection (3)(a) above, up to a maximum of one hundred days; and
  - (b) in the case of a liability in respect of any other statement, a penalty of the relevant amount for every day for which the default continues, up to a maximum of one hundred days.
- (6) In subsection (5)(b) above “the relevant amount”, in relation to a person served with a notice under subsection (2) above, means—
- (a) £5, where (that person not having been liable to a penalty under this section in respect of the statement to which the notice relates) the statement in question is the first statement in respect of which that person has become liable to a penalty while the notice has been in force;
  - (b) £10, where the statement in question is the second statement in respect of which he has become so liable while the notice has been in force (counting the statement to which the notice relates where he has become liable in respect of that statement); and
  - (c) £15, in any other case.
- (7) If a person who, apart from this subsection, would be liable to a penalty under this section satisfies the Commissioners or, on appeal a value added tax tribunal, that—
- (a) an EC sales statement has been submitted at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit; or
  - (b) there is a reasonable excuse for such a statement not having been dispatched,
- he shall be treated for the purposes of this Act as not having been in default in relation to that statement and, accordingly, he shall not be liable to any penalty under this section in respect of that statement and any notice served under subsection (2) above exclusively in relation to the failure to submit that statement shall have no effect for the purposes of this section.
- (8) If it appears to the Treasury that there has been a change in the value of money since the coming into force of this section or, as the case may be, the last occasion when the sums specified in subsections (5) and (6) above were varied, they may by order substitute for the sums for the time being specified in those subsections such other sums as appear to them to be justified by the change; but an order under this section shall not apply to any default in relation to a statement the last day for the submission of which was before the order comes into force.

*Status: Point in time view as at 01/10/1993.*

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- (9) A statutory instrument containing an order under subsection (8) above shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section “EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(2A) of Schedule 7 to the principal Act.]

#### Textual Amendments

**F47** S. 17A inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para.82; S.I. 1992/2979, art.4, Sch. Pt. II and S.I. 1992/3261, art.3, Sch.

#### *Interest, surcharges and supplements*

### 18 Interest on tax etc. recovered or recoverable by assessment.

- (1) Subject to section 21(6) below, where an assessment is made under any provision of paragraph 4 of Schedule 7 to the principal Act and, in the case of an assessment under subparagraph (1) of that paragraph, at least one of the following conditions is fulfilled, namely,—
- (a) the assessment relates to a prescribed accounting period in respect of which either—
    - (i) a return has previously been made, or
    - (ii) an earlier assessment has already been notified to the person concerned,
  - (b) the assessment relates to a prescribed accounting period which exceeds three months and begins on the date with effect from which the person concerned was, or was required to be, registered,
  - (c) the assessment relates to a prescribed accounting period at the beginning of which the person concerned was, but should no longer have been, exempted from registration under [F48 paragraph 11(1)] of Schedule 1 to the principal Act [F49 or under paragraph 8 of Schedule 1B to that Act],
- the [F50 whole of the amount assessed shall [F51 (subject to subsection (3A) below)] carry interest at the prescribed rate from the reckonable date] until payment.
- (2) ..... F52
- (3) [F53 In any case where]—
- (a) the circumstances are such that an assessment falling within subsection (1) above could have been made, but
  - (b) before such an assessment was made the tax due or other amount concerned was paid (so that no such assessment was necessary),
- [F54 the whole of the amount paid shall [F51 (subject to subsection (3A) below)] carry interest at the prescribed rate from the reckonable date] until the date on which it was paid.
- [F55 (3A) Where (apart from this subsection)—
- (a) the period before the assessment in question for which any amount would carry interest under subsection (1) above; or

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- (b) the period for which any amount would carry interest under subsection (3) above,  
would exceed three years, the part of that period for which that amount shall carry interest under that subsection shall be confined to the last three years of that period.]
- (4) ..... F56
- (6) Where an unauthorised person, as defined in section 15(2) above, issues an invoice showing an amount as being tax or as including an amount attributable to tax, the amount which is shown as tax or, as the case may be, is to be taken as representing tax shall carry interest at the prescribed rate from the date of the invoice until payment.
- (7) The references in subsections [F57(1) and (3)] above to the reckonable date shall be construed as follows—
- (a) where the amount assessed or paid is such an amount as is referred to in subparagraph (2)(a) or subparagraph (2)(b) of paragraph 4 of Schedule 7 to the principal Act (incorrect repayment of tax or payment in respect of excess credit), the reckonable date is the seventh day after the day on which a written instruction was issued by the Commissioners directing the making of the payment of the amount which ought not to have been repaid or paid to the person concerned; and
  - (b) in all other cases the reckonable date is the latest date on which (in accordance with regulations under the principal Act) a return is required to be made for the prescribed accounting period to which the amount assessed or paid relates; and
  - (c) in the case of an amount assessed under paragraph 4(6) of Schedule 7 to the principal Act (assessments in respect of goods which cannot be accounted for) the sum assessed shall be taken for the purposes of paragraph (b) above to relate to the period for which the assessment was made;
- and interest under this section shall run from the reckonable date even if that date is a nonbusiness day, within the meaning of section 92 of the <sup>M1</sup>Bills of Exchange Act 1882.
- (8) In this section “the prescribed rate” means such rate as may be prescribed by order made by the Treasury; and such an order—
- (a) may prescribe different rates for different purposes;
  - (b) shall apply to interest for periods beginning on or after the date when the order is expressed to come into force, whether or not interest runs from before that date; and
  - (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.
- (9) Interest under this section shall be paid without any deduction of income tax.
- (10) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint and any reference in this section to a prescribed accounting period is a reference to a period which begins on or after the day so appointed.

**Subordinate Legislation Made**

- P1 S. 18 : for previous exercises of this power see Index to Government Orders  
P2 S. 18(8): s. 18(8) power exercised by S.I. 1991/348

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- S. 18(8): s. 18(8) power exercised by S.I. 1991/1078  
 S. 18(8): s. 18(8) power exercised by S.I. 1991/1472.  
 S. 18(8): S. 18(8) power exercised by S.I. 1991/2195

#### Textual Amendments

- F48** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 14(8)(b)  
**F49** Words in s. 18(1)(c) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 83; S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3, Sch.  
**F50** Words substituted by Finance Act 1990 (c. 29, SIF 40:2), s. 16(2)(6)  
**F51** Words in s. 18(1)(3) inserted (with effect in relation to any prescribed accounting period beginning on or after 1.10.1993) by 1993 c. 34, s. 49, Sch. 2, para. 4(1)(3); S.I. 1993/2214, art.2  
**F52** S. 18(2) repealed by Finance Act 1988 (c. 39, SIF 40:2), ss. 18(4)(a), 148, Sch. 14 Pt. III  
**F53** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(4)(b)  
**F54** Words substituted by Finance Act 1990 (c. 29, SIF 40:2), s. 16(3)(6)  
**F55** S. 18(3A) inserted (with effect in relation to any prescribed accounting period beginning on or after 1.10.1993) by 1993 c. 34, s. 49, Sch. 2, para. 4(2)(3); S.I. 1993/2214, art.2  
**F56** S. 18(4)(5) repealed by Finance Act 1990 (c. 29, SIF 40:2), ss. 16(4)(6), 132, Sch. 19 Pt. III Note 2  
**F57** Words substituted by Finance Act 1990 (c. 29, SIF 40:2), s. 16(5)(6)

#### Modifications etc. (not altering text)

- C5** Power of appointment conferred by s. 18(10) fully exercised (1.4.1990): S.I. 1989/2270, art. 3

#### Marginal Citations

- M1** 1882 c. 61.

## 19 The default surcharge.

- (1) If, by the last day on which a taxable person is required in accordance with regulations under the principal Act to furnish a return for the prescribed accounting period, being a day falling on or after the day appointed under subsection (10) below,—
- (a) the Commissioners have not received that return, or
  - (b) the Commissioners have received that return but have not received the amount of tax shown on the return as payable by him in respect of that period,
- then that person shall be regarded for the purposes of this section as being in default in respect of that period.
- (2) Subject to subsections (8) and (9) below, subsection (4) below applies in any case where—
- (a) a taxable person is in default in respect of [<sup>F58</sup>a prescribed accounting period]; and
  - <sup>F59</sup>(b) .....
  - (c) the Commissioners serve notice on the taxable person (in this section referred to as a “surcharge liability notice”) specifying as a surcharge period for the purposes of this section a period ending on the first anniversary of the last day of the [<sup>F60</sup>period referred to in paragraph (a)] above and beginning, subject to subsection (3) below, on the date of the notice.
- (3) If a surcharge liability notice is served by reason of [<sup>F61</sup>a default in respect of a prescribed accounting period and that period] ends at or before the expiry of an existing surcharge period already notified to the taxable person concerned, the surcharge period

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specified in that notice shall be expressed as a continuation of the existing surcharge period and, accordingly, for the purposes of this section, that existing period and its extension shall be regarded as a single surcharge period.

[<sup>F62</sup>(4) Subject to subsections (6) to (9) below, if a taxable person on whom a surcharge liability notice has been served—

- (a) is in default in respect of a prescribed accounting period ending within the surcharge period specified in (or extended by) that notice, and
- (b) has outstanding tax for that prescribed accounting period,

he shall be liable to a surcharge equal to whichever is the greater of the following, namely, the specified percentage of his outstanding tax for that prescribed accounting period and £30.]

(5) Subject to subsections (6) to (9) below, the specified percentage referred to in [<sup>F63</sup>subsection (4) above] shall be determined in relation to a prescribed accounting period by reference to the number of such periods in respect of which the taxable person is in default during the surcharge period [<sup>F64</sup>and for which he has outstanding tax], so that,—

- [<sup>F65</sup>(a) in relation to the first such prescribed accounting period, the specified percentage is 2 per cent.;
- (b) in relation to the second such period, the specified percentage is 5 per cent.;
- (c) in relation to the third such period, the specified percentage is 10 per cent.;
- (d) in relation to each such period after the third, the specified percentage is 15 per cent.]

[<sup>F66</sup>(5A) For the purposes of subsections (4) and (5) above a person has outstanding tax for a prescribed accounting period if some or all of the tax for which he is liable in respect of that period has not been paid by the last day on which he is required (as mentioned in subsection (1) above) to make a return for that period; and the reference in subsection (4) above to a person's outstanding tax for a prescribed accounting period is to so much of the tax for which he is so liable as has not been paid by that day.]

(6) If a person who, apart from this subsection, would be liable to a surcharge under subsection (4) above satisfies the Commissioners or, on appeal, a value added tax tribunal that, in the case of a default which is material to the surcharge,—

- (a) the return or, as the case may be, the tax shown on the return was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit, or
- (b) there is a reasonable excuse for the return or tax not having been so despatched,

he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question (and, accordingly, any surcharge liability notice the service of which depended upon that default shall be deemed not to have been served).

(7) For the purposes of subsection (6) above, a default is material to a surcharge if—

- (a) it is the default which, by virtue of subsection (4) above, gives rise to the surcharge; or
- (b) it is a default which was taken into account in the service of the surcharge liability notice upon which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a prescribed

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accounting period ending within the surcharge period specified in or extended by that notice.

- (8) In any case where—
- (a) the conduct by virtue of which a person is in default in respect of a prescribed accounting period is also conduct falling within subsection (1) of section 17 above, and
  - (b) by reason of that conduct, the person concerned is assessed to a penalty under that section,
- the default shall be left out of account for the purposes of subsections (2) to (5) above.
- (9) If the Commissioners, after consultation with the Treasury, so direct, a default in respect of a prescribed accounting period specified in the direction shall be left out of account for the purposes of subsections (2) to (5) above.
- (10) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint.

#### Textual Amendments

- F58** Words in s. 19(2)(a) substituted (1.10.1993 with effect as mentioned in Sch. 2 para. 5(3) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 5(1)(a)(3)**
- F59** S. 19(2)(b) repealed (1.10.1993 with effect as mentioned in Sch. 2 paras. 5(3) of the amending Act) by 1993 c. 34, ss. 49, 213, Sch. 2 para. 5(1)(b)(3), **Sch. 23 Pt. II**
- F60** Words in s. 19(2)(c) substituted (1.10.1993 with effect as mentioned in Sch. 2 para. 5(3) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 5(1)(c)(3)**
- F61** Words in s. 19(3) substituted (1.10.1993 with effect as mentioned in Sch. 2 para. 5(3) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 5(2)(3)**
- F62** S. 19(4) substituted (30.9.1993 with effect as mentioned in Sch. 2 para. 6(4)(b) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 6(1)(4)**
- F63** Words in s. 19(5) substituted (30.9.1993 with effect as mentioned in Sch. 2 para. 6(4)(b) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 6(2)(a)(4)**
- F64** Words in s. 19(5) inserted (30.9.1993 with effect as mentioned in Sch. 2 para. 6(4)(b) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 6(2)(b)(4)**
- F65** S. 19(5)(a)-(d) substituted for s. 19(a)-(c) (1.10.1993 with effect as mentioned in Sch. 2 para. 7(4) of the amending Act) by virtue of 1993 c. 34, s. 49, **Sch. 2 para. 7(3)**
- F66** S. 19(5A) inserted (30.9.1993 with effect as mentioned in Sch. 2 para. 6(4)(b) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 6(3)(4)**

#### Modifications etc. (not altering text)

- C6** Power of appointment conferred by s. 19(10) fully exercised (1.10.1986): **S.I. 1986/968, art. 2**

### <sup>F67</sup>20 Repayment supplement in respect of certain delayed payments or refunds.

- (1) In any case where—
- (a) a person is entitled to a payment under section 14(5) of the principal Act, or
  - (b) a body which is registered and to which section 20 of that Act applies is entitled to a refund under that section,
- and the conditions mentioned in subsection (2) below are satisfied, the amount which, apart from this section, would be due by way of that payment or refund shall be increased by the addition of a supplement equal to 5 per cent. of that amount or £30, whichever is the greater.

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- (2) The said conditions are—
- (a) that the requisite return or claim is received by the Commissioners not later than one month after the last day on which it is required to be furnished or made, and
  - (b) that a written instruction directing the making of the payment or refund is not issued by the Commissioners within the period of thirty days beginning on the date of the receipt by the Commissioners of that return or claim, and
  - (c) that the amount shown on that return or claim as due by way of payment or refund does not exceed the payment or refund which was in fact due by more than 5 per cent. of that payment or refund or £250, whichever is the greater.
- (3) Regulations may provide that, in computing the period of thirty days referred to in subsection (2)(b) above, there shall be left out of account periods determined in accordance with the regulations and referable to—
- (a) the raising and answering of any reasonable inquiry relating to the requisite return or claim,
  - (b) the correction by the Commissioners of any errors or omissions in that return or claim, and
  - (c) in the case of a payment, the following matters, namely—
    - (i) any such continuing failure to submit returns as is referred to in section 14(7) of the principal Act, and
    - (ii) compliance with any such condition as is referred to in paragraph 5(1) of Schedule 7 to that Act (production of documents or giving of security as a condition of payment).
- <sup>F68</sup> [ In determining for the purposes of regulations under subsection (3) above whether any (3A) period is referable to the raising and answering of such an inquiry as is mentioned in that subsection, there shall be taken to be so referable any period which—
- (a) begins with the date on which the Commissioners first consider it necessary to make such an inquiry, and
  - (b) ends with the date on which the Commissioners—
    - (i) satisfy themselves that they have received a complete answer to the inquiry, or
    - (ii) determine not to make the inquiry or, if they have made it, not to pursue it further,
- but excluding so much of that period as may be prescribed; and it is immaterial whether any inquiry is in fact made or whether it is or might have been made of the person or body making the requisite return or claim or of an authorised person or of some other person.]
- (4) Except for the purpose of determining the amount of the supplement—
- (a) a supplement paid to any person under subsection (1)(a) above shall be treated as an amount due to him by way of credit under section 14(5) of the principal Act, and
  - (b) a supplement paid to any body under subsection (1)(b) above shall be treated as an amount due to it by way of refund under section 20 of that Act.
- (5) In this section “requisite return or claim” means—
- (a) in relation to a payment, the return for the prescribed accounting period concerned which is required to be furnished in accordance with regulations under the principal Act, and

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- (b) in relation to a refund, the claim for that refund which is required to be made in accordance with the Commissioners' determination under section 20 of that Act.
- (6) Subsection (1)(a) above shall have effect with respect to any prescribed accounting period ending, and subsection (1)(b) above shall have effect with respect to any claim made, on or after such day as the Treasury may by order made by statutory instrument appoint.
- (7) If the Treasury by order made by statutory instrument so direct, any period specified in the order shall be disregarded for the purpose of calculating the period of thirty days referred to in subsection (2)(b) above.]

#### Textual Amendments

**F67** S. 20 substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 20

**F68** S. 20(3A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 15(1)(3).

#### Modifications etc. (not altering text)

**C7** Power of appointment conferred by s. 20(6) fully exercised (29.7.1988): S.I. 1988/354, arts. 2, 3

### *Assessments, records and information*

## 21 Assessment of amounts due by way of penalty, interest or surcharge.

- (1) Where any person is liable—
- (a) to a penalty under any of sections 13 to [F69]17A] above, or
  - (b) for interest under section 18 above, or
  - (c) to a surcharge under section 19 above,
- the Commissioners may [F70]subject to subsection (1A) below] assess the amount due by way of penalty, interest or surcharge, as the case may be, and notify it to him accordingly; and the fact that any conduct giving rise to a penalty under any of sections 13 to [F69]17A] above may have ceased before an assessment is made under this section shall not affect the power of the Commissioners to make such an assessment.
- [F71(1A) Where a person is liable to a penalty under section 17 above for any failure to comply with such a requirement as is referred to in subsection (1)(b) to (e) of that section, no assessment shall be made under this section of the amount due from him by way of such penalty unless, within the period of two years preceding the assessment, the Commissioners have issued him with a written warning of the consequences of a continuing failure to comply with that requirement.]
- (2) In the case of the penalties, interest and surcharge referred to in the following paragraphs, the assessment under this section shall be of an amount due in respect of the prescribed accounting period which in the paragraph concerned is referred to as “the relevant period”,—
- (a) in the case of a penalty under section 13 above relating to the evasion of tax, the relevant period is the prescribed accounting period for which the tax evaded was due;



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- (b) in the case of a penalty under section 13 above relating to the obtaining of a payment under section 14(5) of the principal Act, the relevant period is the prescribed accounting period in respect of which the payment was obtained;
  - (c) in the case of a penalty under section 14 above, the relevant period is the prescribed accounting period for which liability to tax was understated or, as the case may be, for which entitlement to a payment under section 14(5) of the principal Act was overstated;
  - (d) in the case of interest under section 18 above, the relevant period is the prescribed accounting period in respect of which the tax (or amount assessed as tax) was due; and
  - (e) in the case of a surcharge under section 19 above, the relevant period is the prescribed accounting period in respect of which the taxable person is in default and in respect of which the surcharge arises.
- (3) In any case where the amount of any penalty, interest or surcharge falls to be calculated by reference to tax which was not paid at the time it should have been and that tax (or the supply which gives rise to it) cannot be readily attributed to any one or more prescribed accounting periods, it shall be treated for the purposes of the principal Act and this Part of this Act as tax due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the tax and penalty, interest or surcharge.
- (4) Where a person is assessed under this section to an amount due by way of any penalty, interest or surcharge falling within subsection (2) above and is also assessed under subparagraph (1), subparagraph (2) or subparagraph (6) of paragraph 4 of Schedule 7 to the principal Act for the prescribed accounting period which is the relevant period under subsection (2) above, the assessments may be combined and notified to him as one assessment, but the amount of the penalty, interest or surcharge shall be separately identified in the notice.
- [<sup>F72</sup>(4A) An assessment to a penalty under section 15 above by virtue of subsection (1)(aa) of that section may be combined with an assessment under paragraph 4A of Schedule 7 to the principal Act and the two assessments notified together but the amount of the penalty shall be separately identified in the notice.]
- (5) In the case of an amount due by way of penalty under section 17 [<sup>F73</sup>or section 17A] or interest under section 18 above—
- (a) a notice of assessment under this section shall specify a date, being not later than the date of the notice, to which the aggregate amount of the penalty or, as the case may be, the amount of interest which is assessed is calculated; and
  - (b) if the penalty or interest continues to accrue after that date, a further assessment or assessments may be made under this section in respect of amounts which so accrue.
- (6) If, within such period as may be notified by the Commissioners to the person liable to a penalty under section 17 [<sup>F74</sup>or section 17A] above or for interest under section 18 above,—
- (a) a failure [<sup>F75</sup>or default falling within section 17(1) or section 17A(1) above] is remedied, or
  - (b) the tax or other amount referred to in section 18(1) above is paid,
- it shall be treated for the purposes of section 17 [<sup>F74</sup>section 17A] or, as the case may be, section 18 above is remedied or paid on the date specified as mentioned in subsection (5)(a) above.

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- (7) If an amount is assessed and notified to any person under this section, then unless, or except to the extent that, the assessment is withdrawn or reduced, that amount shall be recoverable as if it were tax due from him.
- (8) Subparagraph (10) of paragraph 4 of Schedule 7 to the principal Act (notification to personal representatives etc.) shall apply for the purposes of this section as it applies for the purposes of that paragraph.

#### Textual Amendments

- F69** Words in s. 21(1) substituted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 84(1)**; S.I. 1992/2979, art.4, **Sch. Pt. II** and S.I. 1992/3261, art.3, **Sch.**
- F70** Words inserted by Finance Act 1988 (c. 39, SIF 40:2), **s. 19(3)(5)**
- F71** S. 21(1A) inserted by Finance Act 1988 (c. 39, SIF, 40:2), **s. 19(3)(5)**
- F72** S. 21(4A) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 84(2)**; S.I. 1992/2979, art.4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F73** Words in s. 21(5) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 84(3)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art.3, **Sch.**
- F74** Words in s. 21(6) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 84(4)(a)(c)**; S.I. 1992/2979, art.4, **Sch. Pt. II** and S.I. 1992/3261, art.3, **Sch.**
- F75** Words in 21(6)(a) substituted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 84(4)(b)**; S.I. 1992/2979, art.4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**

#### Modifications etc. (not altering text)

- C8** S. 21 extended by Finance Act 1986 (c. 41, SIF 40:2), **s. 14(3)**

## 22 Assessments: time limits and supplementary assessments.

- (1) Subject to the following provisions of this section, an assessment—
- (a) under any provision of paragraph 4 [<sup>F76</sup>or paragraph 4A] of Schedule 7 to the principal Act, or
  - (b) under section 21 above,
- shall not be made more than six years after the end of the prescribed accounting period or importation [<sup>F76</sup>or acquisition] concerned or, in the case of an assessment under section 21 above of an amount due by way of a penalty which is not among those referred to in subsection (2) of that section, six years after the event giving rise to the penalty.
- (2) Subject to subsection (5) below, an assessment under section 21 above of an amount due by way of any penalty, interest or surcharge referred to in subsection (2) of that section may be made at any time before the expiry of the period of two years beginning
- <sup>F77</sup>(a) in the case of a penalty under section 14B or section 17A above, with the time when facts sufficient in the opinion of the Commissioners to indicate, as the case may be—
    - (i) that the statement in question contained a material inaccuracy; or

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- (ii) that there had been a default within the meaning of section 17A(1) above,  
came to the Commissioners knowledge; and  
(b) in any other case, with the time]
- when the amount of tax due for the prescribed accounting period concerned has been finally determined.
- (4) Subject to subsection (5) below, if tax has been lost—
- (a) as a result of conduct falling within section 13(1) above or for which a person has been convicted of fraud, or  
(b) in circumstances giving rise to liability to a penalty under section 15 above, an assessment may be made as if, in subsection (1) above, each reference to six years were a reference to twenty years.
- (5) Where, after a person's death, the Commissioners propose to assess a sum as due by reason of some conduct (howsoever described) of the deceased, including a sum due by way of penalty, interest or surcharge,—
- (a) the assessment shall not be made more than three years after the death; and  
(b) if the circumstances are as set out in subsection (4) above, the modification of subsection (1) above contained in that subsection shall not apply but any assessment which (from the point of view of time limits) could have been made immediately after the death may be made at any time within three years after it.
- (6) Subparagraphs (7) and (8) of paragraph 4 of Schedule 7 to the principal Act (which are superseded by the preceding provisions of this section) shall cease to have effect.
- (7) If, otherwise than in circumstances falling within subparagraph (5)(b) of paragraph 4 [F78 or sub-paragraph (2)(b) of paragraph 4A] of Schedule 7 to the principal Act (further evidence relating to an assessment under F79 . . . that paragraph), it appears to the Commissioners that the amount which ought to have been assessed in an assessment under any provision of that paragraph or under section 21 above exceeds the amount which was so assessed, then,—
- (a) under the like provision as that assessment was made, and  
(b) on or before the last day on which that assessment could have been made, the Commissioners may make a supplementary assessment of the amount of the excess and shall notify the person concerned accordingly.

#### Textual Amendments

- F76** Words in s. 22(1)(a) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 85(1)(a)(b)**; S.I. 1992/2979, art.4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F77** S. 22(2)(a)(b) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance Act (No. 2) 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 85(2)**; S.I. 1992/2979, art.4, **Sch. Pt. II** and S.I. 1992/3261, art.3, **Sch.**
- F78** Words in s. 22(7) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 85(3)**; S.I. 1992/2979, art.4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**

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**F79** Words in s. 22(7) repealed (16.7.1992 subject as mentioned below) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 14\(3\), Sch. 18 Pt.V](#) (by the note at the end of Sch. 18 Pt. V it is provided that the repeals in Pt. V come into force in accordance with s. 14(3) of that 1992 Act).

### **23 Amendments of Schedule 7 to the principal Act.**

Schedule 7 to the principal Act (administration, collection and enforcement) shall be amended in accordance with Schedule 7 to this Act.

#### *Appeals*

### **24 Amendments of section 40 of the principal Act.**

- (1) In section 40 of the principal Act (appeals), at the end of subsection (1) (decisions which are appealable) there shall be added the following paragraphs—
  - “(o) any liability to a penalty or surcharge by virtue of any of sections 13 to 17 and 19 of the Finance Act 1985;
  - (p) the amount of any penalty, interest or surcharge specified in an assessment under section 21 of that Act;
  - (q) the making of an assessment on the basis set out in section 22(4) of that Act.”
- (2) After subsection (1) of that section there shall be inserted the following subsection—
 

“(1A) Without prejudice to section 13(4) of the Finance Act 1985, nothing in subsection (1)(p) above shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty, interest or surcharge except in so far as it is necessary to reduce it to the amount which is appropriate under sections 13 to 19 of that Act.”
- (3) In subsection (2) of that section (appeals not to be entertained unless all required returns have been made and the amounts payable have been paid) after the word “and” there shall be inserted “except in the case of an appeal against a decision with respect to the matter mentioned in subsection (1)(n) above, unless he”.
- (4) In subsection (3) of that section, for the words “paragraph (b) or (m)” there shall be substituted “any of paragraphs (b), (m), (o) and (p)”.
- (5) After subsection (3) of that section there shall be inserted the following subsection—
 

“(3A) Where, on an appeal against a decision with respect to any of the matters mentioned in paragraph (m) above,—

  - (a) it is found that the amount specified in the assessment is less than it ought to have been, and
  - (b) the tribunal gives a direction specifying the correct amount,

the assessment shall have effect as an assessment of the amount specified in the direction and that amount shall be deemed to have been notified to the appellant.”

*Status: Point in time view as at 01/10/1993.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1985, Chapter II. (See end of Document for details)*

## 25 Settling appeals by agreement.

- (1) Subject to the provisions of this section, where a person gives notice of appeal under section 40 of the principal Act and, before the appeal is determined by a value added tax tribunal, the Commissioners and the appellant come to an agreement (whether in writing or otherwise) under the terms of which the decision under appeal is to be treated—
- (a) as upheld without variation, or
  - (b) as varied in a particular manner, or
  - (c) as discharged or cancelled,
- the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, a tribunal had determined the appeal in accordance with the terms of the agreement (including any terms as to costs).
- (2) Subsection (1) above shall not apply where, within thirty days from the date when the agreement was come to, the appellant gives notice in writing to the Commissioners that he desires to repudiate or resile from the agreement.
- (3) Where an agreement is not in writing—
- (a) the preceding provisions of this section shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the Commissioners to the appellant or by the appellant to the Commissioners; and
  - (b) references in those provisions to the time when the agreement was come to shall be construed as references to the time of the giving of that notice of confirmation.
- (4) Where—
- (a) a person who has given a notice of appeal notifies the Commissioners, whether orally or in writing, that he desires not to proceed with the appeal; and
  - (b) thirty days have elapsed since the giving of the notification without the Commissioners giving to the appellant notice in writing indicating that they are unwilling that the appeal should be treated as withdrawn,
- the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and the Commissioners had come to an agreement, orally or in writing, as the case may be, that the decision under appeal should be upheld without variation.
- (5) References in this section to an agreement being come to with an appellant and the giving of notice or notification to or by an appellant include references to an agreement being come to with, and the giving of notice or notification to or by, a person acting on behalf of the appellant in relation to the appeal.

### Modifications etc. (not altering text)

- C9 S. 25 amended (1.7.1994) by 1994 c. 9, s. 7(4) (with s. 19(3)); S.I. 1994/1690, art. 2  
S. 25 extended (1.10.1994) by 1994 c. 9, ss. 60(10), 61; S.I. 1994/1773, art. 2

## 26 Certain appeals to lie directly to the Court of Appeal.

- (1) The Lord Chancellor may by order provide that—
- (a) in such classes of appeal as may be prescribed by the order, and

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- (b) subject to the consent of the parties and to such other conditions as may be so prescribed,  
 an appeal from a value added tax tribunal shall lie to the Court of Appeal.
- (2) An order under this section—
- (a) may provide that [<sup>F80</sup>section 11 of the Tribunals and Inquiries Act 1992] (which provides for appeals to the High Court from, among other tribunals, a value added tax tribunal) shall have effect, in relation to any appeal to which the order applies, with such modifications as may be specified in the order; and
- (b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) This section does not extend to Scotland.

#### **Textual Amendments**

**F80** Words in s. 26(2)(a) substituted (1.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53\)](#), ss. 18(1), 19(2), [Sch. 3 para. 17](#)

## **27 Procedural rules governing appeals.**

- (1) On an appeal against an assessment to a penalty under section 13 above, the burden of proof as to the matters specified in paragraphs (a) and (b) of subsection (1) of that section shall lie upon the Commissioners.
- (2) Paragraph 9 of Schedule 8 to the principal Act (rules with respect to procedure to be followed on appeals to value added tax tribunals) shall be amended as follows—
- (a) after the words “on appeals to” there shall be inserted “and in other proceedings before”;
- (b) in paragraph (d) the words “and produce documents” shall be omitted;
- (c) at the end of paragraph (d) there shall be inserted the following paragraph—  
     “(dd) for discovery and for requiring persons to produce documents”, and
- (d) at the end of paragraph (e) there shall be added the words “or producing documents”.
- (3) On and after such day as the Lord Chancellor may by order made by statutory instrument appoint—
- (a) the power to make rules under paragraph 9 of Schedule 8 to the principal Act shall be exercisable by the Lord Chancellor, after consultation with the Lord Advocate, instead of by the Commissioners;
- (b) any rules under that paragraph which are in force immediately before the day appointed under this subsection shall have effect as if made as mentioned in paragraph (a) above; and
- (c) a statutory instrument by which the power referred to in paragraph (a) above is exercised shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In section 45 of the principal Act (orders, rules and regulations) in subsection (2) (statutory instruments to be subject to annulment by the Commons House of

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Parliament) after the words “subsection (3) below” there shall be inserted “and section 27(3)(c) of the Finance Act 1985”.

**Modifications etc. (not altering text)**

**C10** Power of appointment conferred by s. 27(3) fully exercised (1.7.1986): [S.I. 1986/934, art. 2](#)

*Miscellaneous*

**28 Penalty for failure to comply with directions etc. of tribunal.**

At the end of paragraph 9 of Schedule 8 to the principal Act (procedural rules for tribunals) there shall be added the following paragraph—

- “10 (1) A person who fails to comply with a direction or summons issued by a value added tax tribunal under rules made under paragraph 9 above shall be liable to a penalty not exceeding £1000.
- (2) A penalty for which a person is liable by virtue of subparagraph (1) above may be awarded summarily by a tribunal notwithstanding that no proceedings for its recovery have been commenced.
- (3) An appeal shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland, from the award of a penalty under this paragraph, and on such an appeal the court may either confirm or reverse the decision of the tribunal or reduce or increase the sum awarded.
- (4) A penalty awarded by virtue of this paragraph shall be recoverable as if it were tax due from the person liable for the penalty.”

**29 Enforcement of certain decisions of tribunal.**

- (1) If the decision of a value added tax tribunal in England and Wales on an appeal under section 40 of the principal Act is registered by the Commissioners in accordance with rules of court, payment of—
- (a) any amount which, as a result of the decision, is, or is recoverable as, tax due from any person, and
  - (b) any costs awarded to the Commissioners by the decision,
- may be enforced by the High Court as if that amount or, as the case may be, the amount of those costs were an amount due to the Commissioners in pursuance of a judgment or order of the High Court.
- (2) If the decision of a value added tax tribunal in Scotland on an appeal under section 40 of the principal Act—
- (a) confirms or varies an amount which is, or is recoverable as, tax due from any person, or
  - (b) awards costs to the Commissioners,
- the decision may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.

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- (3) Subsection (4) below shall apply in relation to the decision of a value added tax tribunal in Northern Ireland on an appeal under section 40 of the principal Act where—
- (a) any amount is, or is recoverable as, tax due from any person, as a result of the decision, whether with or without an award of costs to the Commissioners; or
  - (b) any costs are awarded to the Commissioners by the decision.
- (4) Where this subsection applies—
- (a) payment of the amount mentioned in paragraph (a) of subsection 3 above or, as the case may be, the amount of the costs mentioned in paragraph (b) of that subsection may be enforced by the Enforcement of Judgments Office; and
  - (b) a sum equal to any such amount shall be deemed to be payable under a money judgment within the meaning of Article 2(2) of the <sup>M2</sup>Judgments Enforcement (Northern Ireland) Order 1981, and the provisions of that order shall apply accordingly.
- (5) Any reference in this section to a decision of a value added tax tribunal includes a reference to an order (however described) made by a tribunal for giving effect to a decision.

**Modifications etc. (not altering text)**

- C11** S. 29 amended (1.7.1994) by 1994 c. 9, s. 7(4) (with s. 19(3)); S.I. 1994/1690, art. 2  
 S. 29 extended (1.10.1994) by 1994 c. 9, ss. 60(10), 61; S.I. 1994/1773, art. 2

**Marginal Citations**

- M2** S.I. 1981/226 (N.I. 6).

**30 Appointments to and administration of tribunals.**

- (1) Schedule 8 to this Act shall have effect with respect to appointments to and the administration of value added tax tribunals.
- (2) This section shall come into operation on such day as the Lord Chancellor may by order made by statutory instrument appoint.
- (3) No provision of Schedule 8 to this Act shall affect the appointment of any person who, immediately before that provision comes into operation, holds office as President, or as a chairman or other member of value added tax tribunals.

**Modifications etc. (not altering text)**

- C12** Power of appointment conferred by s. 30(2) fully exercised (1.4.1986): S.I. 1986/365, art. 2

**31 Insolvency.**

At the end of subsection (4) of section 31 of the principal Act (power by regulations to make provisions for persons who carry on a business of a taxable person who has become bankrupt or incapacitated etc.) there shall be added the following subsection—

- “(5) In relation to a company which is a taxable person, the reference in subsection (4) above to the taxable person having become bankrupt or



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incapacitated shall be construed as a reference to its being in liquidation or receivership or to an administration order being in force in relation to it.”

32 ..... F81

**Textual Amendments**

**F81** S. 32 repealed by Finance Act 1990 (c. 29, SIF 40:2), s. 132, Sch. 19 Pt. III Note 1 and is expressed to be repealed (1.9.1994 with effect as mentioned in s. 101(1) of the amending Act) by 1994 c. 23, ss. 100(2), Sch. 15

**33 Interpretation and construction of Chapter II.**

- (1) In this Chapter “the principal Act” means the <sup>M3</sup>Value Added Tax Act 1983.
- (2) For the purpose of any provision of this Chapter which refers to a reasonable excuse for any conduct,—
  - (a) an insufficiency of funds to pay any tax due is not a reasonable excuse; and
  - (b) where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse.
- (3) In relation to a prescribed accounting period, any reference in this Chapter to credit for input tax includes a reference to any sum which, in a return for that period, is claimed as a deduction from tax due.
- (4) ..... F82
- (5) This Chapter shall be construed as one with the principal Act except that—
  - (a) references in section 39(9) of that Act (application of certain provisions to offences and penalties) to penalties do not include references to penalties under sections 13 to [<sup>F83</sup>17A] above; and
  - (b) section 45 of that Act (orders, rules and regulations) does not apply in relation to orders under any provision of this Chapter.

**Textual Amendments**

**F82** S. 33(4) repealed by Finance Act 1988 (c. 39, SIF 40:2), s. 148, Sch. 14 Pt. III

**F83** Words in s. 33(5)(a) substituted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 86; S.I. 1992/2979, art.4, Sch. Pt. II and S.I. 1992/3261, art.3, Sch.

**Marginal Citations**

**M3** 1983 c. 55.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 1985, Chapter II.