



Value Added Tax Act 1994

1994 CHAPTER 23

PART IV

ADMINISTRATION, COLLECTION AND ENFORCEMENT

Default surcharges and other penalties and criminal offences

59 The default surcharge.

- (1) [^{F1}Subject to subsection (1A) below] if, by the last day on which a taxable person is required in accordance with regulations under this Act to furnish a return for a prescribed accounting period—
- (a) the Commissioners have not received that return, or
 - (b) the Commissioners have received that return but have not received the amount of VAT 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.

[^{F2}(1A) A person shall not be regarded for the purposes of this section as being in default in respect of any prescribed accounting period if that period is one in respect of which he is required by virtue of any order under section 28 to make any payment on account of VAT.]

- (2) Subject to subsections (9) and (10) below, subsection (4) below applies in any case where—
- (a) a taxable person is in default in respect of a prescribed accounting period; and
 - (b) the Commissioners serve notice on the taxable person (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 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 a default in respect of a prescribed accounting period and that period ends at or before the expiry of an existing surcharge

Status: Point in time view as at 01/04/2012.

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Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)*

period already notified to the taxable person concerned, the surcharge period 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.

(4) Subject to subsections (7) to (10) 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 VAT 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 VAT for that prescribed accounting period and £30.

(5) Subject to subsections (7) to (10) below, the specified percentage referred to in 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 and for which he has outstanding VAT, so that—

- (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; and
- (d) in relation to each such period after the third, the specified percentage is 15 per cent.

(6) For the purposes of subsections (4) and (5) above a person has outstanding VAT for a prescribed accounting period if some or all of the VAT 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 VAT for a prescribed accounting period is to so much of the VAT for which he is so liable as has not been paid by that day.

(7) 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 tribunal that, in the case of a default which is material to the surcharge—

- (a) the return or, as the case may be, the VAT 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 VAT 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).

(8) For the purposes of subsection (7) 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

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

has not previously been liable to a surcharge in respect of a prescribed accounting period ending within the surcharge period specified in or extended by that notice.

- (9) 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 section 69(1), 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.

- (10) 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.

[^{F3}(11) For the purposes of this section references to a thing's being done by any day include references to its being done on that day.]

Textual Amendments

- F1** Words in s. 59(1) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(3)
- F2** S. 59(1A) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(3)
- F3** S. 59(11) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(4)

Modifications etc. (not altering text)

- C1** S. 59 modified by S.I. 1995/2518, reg. 40(5) (as inserted (22.7.2004) by The Value Added Tax (Amendment) (No. 3) Regulations 2004 (S.I. 2004/1675), regs. 1(1), 5)

[^{F4}59A Default surcharge: payments on account.

- (1) For the purposes of this section a taxable person shall be regarded as in default in respect of any prescribed accounting period if the period is one in respect of which he is required, by virtue of an order under section 28, to make any payment on account of VAT and either—

- (a) a payment which he is so required to make in respect of that period has not been received in full by the Commissioners by the day on which it became due; or
- (b) he would, but for section 59(1A), be in default in respect of that period for the purposes of section 59.

- (2) Subject to subsections (10) and (11) below, subsection (4) below applies in any case where—

- (a) a taxable person is in default in respect of a prescribed accounting period; and
- (b) the Commissioners serve notice on the taxable person (a “surcharge liability notice”) specifying as a surcharge period for the purposes of this section a period which—

- (i) begins, subject to subsection (3) below, on the date of the notice; and

Status: Point in time view as at 01/04/2012.

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 Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)*

(ii) ends on the first anniversary of the last day of the period referred to in paragraph (a) above.

(3) If—

- (a) a surcharge liability notice is served by reason of a default in respect of a prescribed accounting period, and
- (b) that period ends at or before the expiry of an existing surcharge period already notified to the taxable person concerned,

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

(4) Subject to subsections (7) to (11) below, if—

- (a) a taxable person on whom a surcharge liability notice has been served is in default in respect of a prescribed accounting period,
- (b) that prescribed accounting period is one ending within the surcharge period specified in (or extended by) that notice, and
- (c) the aggregate value of his defaults in respect of that prescribed accounting period is more than nil,

that person shall be liable to a surcharge equal to whichever is the greater of £30 and the specified percentage of the aggregate value of his defaults in respect of that prescribed accounting period.

(5) Subject to subsections (7) to (11) below, the specified percentage referred to in subsection (4) above shall be determined in relation to a prescribed accounting period by reference to the number of such periods during the surcharge period which are periods in respect of which the taxable person is in default and in respect of which the value of his defaults is more than nil, so that—

- (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.; and
- (d) in relation to each such period after the third, the specified percentage is 15 per cent.

(6) For the purposes of this section the aggregate value of a person's defaults in respect of a prescribed accounting period shall be calculated as follows—

- (a) where the whole or any part of a payment in respect of that period on account of VAT was not received by the Commissioners by the day on which it became due, an amount equal to that payment or, as the case may be, to that part of it shall be taken to be the value of the default relating to that payment;
- (b) if there is more than one default with a value given by paragraph (a) above, those values shall be aggregated;
- (c) the total given by paragraph (b) above, or (where there is only one default) the value of the default under paragraph (a) above, shall be taken to be the value for that period of that person's defaults on payments on account;
- (d) the value of any default by that person which is a default falling within subsection (1)(b) above shall be taken to be equal to the amount of any outstanding VAT less the amount of unpaid payments on account; and
- (e) the aggregate value of a person's defaults in respect of that period shall be taken to be the aggregate of—

Status: Point in time view as at 01/04/2012.

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- (i) the value for that period of that person's defaults (if any) on payments on account; and
 - (ii) the value of any default of his in respect of that period that falls within subsection (1)(b) above.
- (7) In the application of subsection (6) above for the calculation of the aggregate value of a person's defaults in respect of a prescribed accounting period—
 - (a) the amount of outstanding VAT referred to in paragraph (d) of that subsection is the amount (if any) which would be the amount of that person's outstanding VAT for that period for the purposes of section 59(4); and
 - (b) the amount of unpaid payments on account referred to in that paragraph is the amount (if any) equal to so much of any payments on account of VAT (being payments in respect of that period) as has not been received by the Commissioners by the last day on which that person is required (as mentioned in section 59(1)) to make a return for that period.
- (8) 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 tribunal—
 - (a) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(a) above—
 - (i) that the payment on account of VAT 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 by the day on which it became due, or
 - (ii) that there is a reasonable excuse for the payment not having been so despatched,
 - or
 - (b) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(b) above, that the condition specified in section 59(7)(a) or (b) is satisfied as respects the default,

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).
- (9) For the purposes of subsection (8) 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 accounting period ending within the surcharge period specified in or extended by that notice.
- (10) 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 section 69(1), and
 - (b) by reason of that conduct, the person concerned is assessed to a penalty under section 69,

the default shall be left out of account for the purposes of subsections (2) to (5) above.

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994,
Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

- (11) 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.
- (12) For the purposes of this section the Commissioners shall be taken not to receive a payment by the day on which it becomes due unless it is made in such a manner as secures (in a case where the payment is made otherwise than in cash) that, by the last day for the payment of that amount, all the transactions can be completed that need to be completed before the whole amount of the payment becomes available to the Commissioners.
- (13) In determining for the purposes of this section whether any person would, but for section 59(1A), be in default in respect of any period for the purposes of section 59, subsection (12) above shall be deemed to apply for the purposes of section 59 as it applies for the purposes of this section.
- (14) For the purposes of this section references to a thing's being done by any day include references to its being done on that day.]

Textual Amendments

- F4** S. 59A inserted (29.4.1996 with application as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(2)

[^{F5}59B Relationship between sections 59 and 59A.

- (1) This section applies in each of the following cases, namely—
- (a) where a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person (whether before or after the coming into force of section 59A) of a surcharge liability notice under section 59; and
 - (b) where a prescribed accounting period which is not a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person of a surcharge liability notice under section 59A.
- (2) In a case falling within subsection (1)(a) above section 59A shall have effect as if—
- (a) subject to paragraph (b) below, the section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59A; but
 - (b) any question—
 - (i) whether a surcharge period was begun or extended by the notice, or
 - (ii) whether the taxable person was in default in respect of any prescribed accounting period which was not a section 28 accounting period but ended within the surcharge period begun or extended by that notice, were to be determined as it would be determined for the purposes of section 59.
- (3) In a case falling within subsection (1)(b) above section 59 shall have effect as if—
- (a) subject to paragraph (b) below, the prescribed accounting period that is not a section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59;

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

- (b) any question—
 - (i) whether a surcharge period was begun or extended by the notice, or
 - (ii) whether the taxable person was in default in respect of any prescribed accounting period which was a section 28 accounting period but ended within the surcharge period begun or extended by that notice,were to be determined as it would be determined for the purposes of section 59A; and
 - (c) that person were to be treated as having had outstanding VAT for a section 28 accounting period in any case where the aggregate value of his defaults in respect of that period was, for the purposes of section 59A, more than nil.
- (4) In this section “ a section 28 accounting period ”, in relation to a taxable person, means any prescribed accounting period ending on or after the day on which the Finance Act 1996 was passed in respect of which that person is liable by virtue of an order under section 28 to make any payment on account of VAT.]

Textual Amendments

F5 S. 59B inserted (29.4.1996 with effect as mentioned in [s. 35\(8\)](#) of the amending Act) by [1996 c. 8, s. 35\(5\)](#)

^{F6}60 VAT evasion: conduct involving dishonesty.

Textual Amendments

F6 S. 60 repealed (1.4.2008 for specified purposes, 1.7.2008 for specified purposes, 1.1.2009 for specified purposes, 1.4.2009 in so far as not already in force) by [Finance Act 2007 \(c. 11\), s. 97\(2\), Sch. 24 para. 29\(d\), Sch. 27 Pt. 5\(5\)](#) (with transitional provisions in [S.I. 2009/511](#), art. 4(a)(i) and [S.I. 2009/571](#), art. 7); [S.I. 2008/568](#), art. 2(a)(b)(c)(d)(e)(f) (with arts. 3, 4)

^{F7}61 VAT evasion: liability of directors etc.

Textual Amendments

F7 S. 61 repealed (1.4.2008 for specified purposes, 1.7.2008 for specified purposes, 1.1.2009 for specified purposes, 1.4.2009 in so far as not already in force) by [Finance Act 2007 \(c. 11\), s. 97\(2\), Sch. 24 para. 29\(d\), Sch. 27 Pt. 5\(5\)](#) (with transitional provisions in [S.I. 2009/511](#), art. 4(a)(i) and [S.I. 2009/571](#), art. 7); [S.I. 2008/568](#), art. 2(a)(b)(c)(d)(e)(f) (with arts. 3, 4)

62 Incorrect certificates as to zero-rating etc.

^{F8}[(1) Subject to subsections (3) and (4) below, where—

- (a) a person to whom one or more supplies are, or are to be, made—

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

- (i) gives to the supplier a certificate that the supply or supplies fall, or will fall, wholly or partly within^[F9] any of the Groups of Schedule 7A,], Group 5 or 6 of Schedule 8 or Group 1 of Schedule 9, or
 - (ii) gives to the supplier a certificate for the purposes of section 18B(2)(d) or 18C(1)(c),
- and
- (b) the certificate is incorrect,
- the person giving the certificate shall be liable to a penalty.
- (1A) Subject to subsections (3) and (4) below, where—
- (a) a person who makes, or is to make, an acquisition of goods from another member State prepares a certificate for the purposes of section 18B(1)(d), and
 - (b) the certificate is incorrect,
- the person preparing the certificate shall be liable to a penalty.
- (2) The amount of the penalty shall be equal to—
- (a) in a case where the penalty is imposed by virtue of subsection (1) above, the difference between—
 - (i) the amount of the VAT which would have been chargeable on the supply or supplies if the certificate had been correct; and
 - (ii) the amount of VAT actually chargeable;
 - (b) in a case where it is imposed by virtue of subsection (1A) above, the amount of VAT actually chargeable on the acquisition.]
- (2) The amount of the penalty shall be equal to the difference between the amount of the VAT which would have been chargeable on the supply or supplies if the certificate had been correct and the amount of VAT actually so chargeable.
- (3) The giving ^[F10] or preparing] of a certificate shall not give rise to a penalty under this section if the person who gave ^[F11] or prepared] it satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for his having given ^[F11] or prepared] it.
- (4) Where by reason of giving ^[F10] or preparing] a certificate a person is convicted of an offence (whether under this Act or otherwise), the giving of the certificate shall not also give rise to a penalty under this section.

Textual Amendments

- F8** S. 62(1)(1A)(2) substituted (27.7.1999 with effect as mentioned in s. 17(2) of the amending Act) for s. 62(1)(2) by 1999 c. 16, s. 17(1)
- F9** Words in s. 62(1)(a)(i) substituted (11.5.2001 with effect as mentioned in s. 99(9)(b) of the amending Act) by 2001 c. 9, s. 99, Sch. 31 para. 3
- F10** Words in s. 62(1)(3)(4) inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, Sch. 3 para. 8(3); S.I. 1996/1249, art. 2
- F11** Words in s. 62(3) inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, Sch. 3 para. 8(4); S.I. 1996/1249, art. 2

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Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

F12 63 Penalty for misdeclaration or neglect resulting in VAT loss for one accounting period equalling or exceeding certain amounts.

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Textual Amendments

F12 S. 63 repealed (1.4.2008 for specified purposes, 1.7.2008 for specified purposes, 1.1.2009 for specified purposes, 1.4.2009 in so far as not already in force) by [Finance Act 2007 \(c. 11\), s. 97\(2\), Sch. 24 para. 29\(d\), Sch. 27 Pt. 5\(5\)](#) (with transitional provisions in [S.I. 2009/511](#), art. 4(a)(i) and [S.I. 2009/571](#), art. 7); [S.I. 2008/568](#), art. 2(a)(b)(c)(d)(e)(f) (with arts. 3, 4)

F13 64 Repeated misdeclarations.

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Textual Amendments

F13 S. 64 repealed (1.4.2008 for specified purposes, 1.7.2008 for specified purposes, 1.1.2009 for specified purposes, 1.4.2009 in so far as not already in force) by [Finance Act 2007 \(c. 11\), s. 97\(2\), Sch. 24 para. 29\(d\), Sch. 27 Pt. 5\(5\)](#) (with transitional provisions in [S.I. 2009/511](#), art. 4(a)(i) and [S.I. 2009/571](#), art. 7); [S.I. 2008/568](#), art. 2(a)(b)(c)(d)(e)(f) (with arts. 3, 4)

65 [F14 Inaccuracies in EC sales statements or in statements relating to section 55A.]

(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 6 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 2 years beginning with the day after the warning was issued;
- (e) the Commissioners have, within 6 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 2 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,

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

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

- (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 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 this 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(3) of Schedule 11; 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.

[^{F15}(7) This section applies in relation to a statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3A) of Schedule 11 as it applies in relation to an EC sales statement.]

Textual Amendments

F14 S. 65 heading substituted (1.6.2007) by [Finance Act 2006 \(c. 25\), s. 19\(3\)\(b\)\(8\)](#); S.I. 2007/1419, art. 2

F15 S. 65(7) inserted (1.6.2007) by [Finance Act 2006 \(c. 25\), s. 19\(3\)\(a\)\(8\)](#); S.I. 2007/1419, art. 2

66 [^{F16}Failure to submit EC sales statement or statement relating to section 55A.]

- (1) If, by the last day on which a person is required in accordance with regulations under this 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—

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

- (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 14 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 12 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 14 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.
- (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 12 months beginning with the day after the service of the notice; and
 - (b) where at any time in that period of 12 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 12 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 14 days mentioned in subsection (3)(a) above, up to a maximum of 100 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 100 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.

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

- (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 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 section and sections 59 to 65 and 67 to 71, 73, 75 and 76 [^{F17}and Schedule 24 to the Finance Act 2007] as not having been in default in relation to that statement and, accordingly, he shall not be liable to any penalty under this section [^{F18}or that Schedule] 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 1st January 1993 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.
- (9) 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(3) of Schedule 11.
- [^{F19}(10) This section applies in relation to a statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3A) of Schedule 11 as it applies in relation to an EC sales statement.]

Textual Amendments

- F16** S. 66 heading substituted (1.6.2007) by [Finance Act 2006 \(c. 25\), s. 19\(4\)\(b\)\(8\)](#); S.I. 2007/1419, art. 2
- F17** Words in s. 66(7) inserted (1.4.2009) by [The Finance Act 2008, Schedule 40 \(Appointed Day, Transitional Provisions and Consequential Amendments\) Order 2009 \(S.I. 2009/571\)](#), art. 1(1), [Sch. 1 para. 13\(a\)](#)
- F18** Words in s. 66(7) inserted (1.4.2009) by [The Finance Act 2008, Schedule 40 \(Appointed Day, Transitional Provisions and Consequential Amendments\) Order 2009 \(S.I. 2009/571\)](#), art. 1(1), [Sch. 1 para. 13\(b\)](#)
- F19** S. 66(10) inserted (1.6.2007) by [Finance Act 2006 \(c. 25\), s. 19\(4\)\(a\)\(8\)](#); S.I. 2007/1419, art. 2

^{F20}67 Failure to notify and unauthorised issue of invoices.

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Textual Amendments

- F20** S. 67 omitted (with effect in accordance with art. 3 of the commencing S.I.) by virtue of [Finance Act 2008 \(c. 9\), s. 123\(2\), Sch. 41 para. 25\(f\)](#) (with transitional provisions in [S.I. 2009/511](#), art. 4(a)(ii)); [S.I. 2009/511](#), art. 2 (with art. 4)

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

68 Breaches of walking possession agreements.

- (1) This section applies where—
 - (a) in accordance with regulations under [^{F21}section 51 of the Finance Act 1997 (enforcement by distress)], a distress is authorised to be levied on the goods and chattels of a person (a “person in default”) who has refused or neglected to pay any VAT due or any amount recoverable as if it were VAT 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.
- (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 VAT 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 tribunal that there is a reasonable excuse for the breach in question.
- (5) This section does not extend to Scotland.

Textual Amendments

F21 Words in s. 68(1)(a) substituted (1.7.1997) by 1997 c. 16, s. 53(7)(9); S.I. 1997/1432, art. 2

69 Breaches of regulatory provisions.

- (1) If any person fails to comply with a regulatory requirement, that is to say, a requirement imposed under—
 - (a) paragraph 11 or 12 of Schedule 1, paragraph 5 of Schedule 2 [^{F22}, paragraph 5 of Schedule 3 or paragraph 5 of Schedule 3A]; or
 - (b) any regulations made under section 48 requiring a VAT representative, for the purposes of registration, to notify the Commissioners that his appointment has taken effect or has ceased to have effect; or
 - [^{F23}(ba) paragraph 2(3B) of Schedule 11; or]
 - (c) paragraph 6(1) or 7 of Schedule 11; or
 - (d) any regulations or rules made under this Act, other than rules made under paragraph 9 of Schedule 12; or
 - (e) any order made by the Treasury under this Act; or
 - (f) any regulations made under the ^{M1}European Communities Act 1972 and relating to VAT, [^{F24}; or
 - (g) section 18A in the form of a condition imposed by the Commissioners under subsection (1) or (6) of that section,]

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994.
Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

he shall be liable, subject to subsections (8) and (9) below and section 76(6), 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 6(3) of Schedule 11, 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 regulatory requirement, the prescribed rate shall be determined by reference to the number of occasions in the period of 2 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, £5;
 - (b) if there has been only one such occasion in that period, £10; and
 - (c) in any other case, £15.
- (4) For the purposes of subsection (3) above—
- (a) a failure to comply with any regulatory requirement shall be disregarded if, as a result of the failure, the person concerned became liable for a surcharge under section 59 ^{F25} or 59A;
 - (b) 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;
 - (c) 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
 - (d) 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 VAT, 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 VAT due in respect of any period within the time required by regulations under section 25(1), or
 - (b) in not furnishing a return in respect of any period within the time required by regulations under paragraph 2(1) of Schedule 11,
- the prescribed rate shall be whichever is the greater of that which is appropriate under subsection (3)(a) to (c) above and an amount equal to one-sixth, one-third or one-half of 1 per cent. of the VAT due in respect of that period, the appropriate fraction being determined according to whether subsection (3)(a), (b) or (c) above is applicable.
- (6) For the purposes of subsection (5) above, the VAT due—
- (a) if the person concerned has furnished a return, shall be taken to be the VAT 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 VAT as has been assessed for that period and notified to him under section 73(1).
- (7) If it appears to the Treasury that there has been a change in the value of money since 25th July 1985 or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order substitute for the sums for the time being specified in subsections (2) and (3)(a) to (c) above such other sums as appear to

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

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 failure by any person to comply with any regulatory requirement or the requirement referred to in 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 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.
- (9) Where, by reason of conduct falling within subsection (1) or (2) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
 - (b) a person is assessed to a surcharge under section 59 [^{F26}or 59A], or
 - (c) a person is assessed to a penalty under section 60 or 63 [^{F27}or a penalty under Schedule 24 to the Finance Act 2007],
- that conduct shall not also give rise to liability to a penalty under this section.
- (10) This section applies in relation to failures occurring before as well as after the commencement of this Act, and for that purpose any reference to any provision of this Act includes a reference to the corresponding provision of the enactments repealed by this Act.

Textual Amendments

- F22** Words in s. 69(1)(a) substituted (28.7.2000 with effect as mentioned in s. 136(10) of the amending Act) by 2000 c. 17, s. 136(3)
- F23** S. 69(1)(ba) inserted (1.6.2007) by Finance Act 2006 (c. 25), s. 19(5)(8); S.I. 2007/1419, art. 2
- F24** S. 69(1)(g) and word preceding it inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, Sch. 3 para. 9; S.I. 1996/1249, art. 2
- F25** Words in s. 69(4)(a) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(6)(8)
- F26** Words in s. 69(9)(b) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(6)(8)
- F27** Words in s. 69(9)(c) inserted (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), Sch. 1 para. 14

Marginal Citations

- M1** 1972 c. 68.

[^{F28}69A Breach of record-keeping requirements etc. in relation to transactions in gold.

- (1) This section applies where a person fails to comply with a requirement of regulations under section 13(5)(a) or (b) of the ^{M2}Finance Act 1999 (gold: duties to keep records or provide information).

Where this section applies, the provisions of section 69 do not apply.

- (2) A person who fails to comply with any such requirement is liable to a penalty not exceeding 17.5% of the value of the transactions to which the failure relates.

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

- (3) For the purposes of assessing the amount of any such penalty, the value of the transactions to which the failure relates shall be determined by the Commissioners to the best of their judgement and notified by them to the person liable.
- (4) No assessment of a penalty under this section shall be made more than 2 years after evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to their knowledge.
- (5) The reference in subsection (4) above to facts sufficient to justify the making of the assessment is to facts sufficient—
 - (a) to indicate that there had been a failure to comply with any such requirement as is referred to in subsection (1) above, and
 - (b) to determine the value of the transactions to which the failure relates.
- (6) A failure by any person to comply with any such requirement as is mentioned in subsection (1) above shall not give rise to a liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a tribunal, that there is a reasonable excuse for the failure.
- (7) Where by reason of conduct falling within subsection (1) above a person—
 - (a) is assessed to a penalty under section 60 [^{F29}or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007], or
 - (b) is convicted of an offence (whether under this Act or otherwise),
 that conduct shall not also give rise to a penalty under this section.]

Textual Amendments

F28 S. 69A inserted (28.7.2000) by 2000 c. 17, s. 137(2)

F29 Words in s. 69A(7)(a) inserted (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), Sch. 1 para. 15

Marginal Citations

M2 1999 c. 16.

[^{F30}69B Breach of record-keeping requirements imposed by directions

- (1) If any person fails to comply with a requirement imposed under paragraph 6A(1) of Schedule 11, the person is liable to a penalty.
- (2) The amount of the penalty is equal to £200 multiplied by the number of days on which the failure continues (up to a maximum of 30 days).
- (3) If any person fails to comply with a requirement to preserve records imposed under paragraph 6A(6) of Schedule 11, the person is liable to a penalty of £500.
- (4) If it appears to the Treasury that there has been a change in the value of money since—
 - (a) the day on which the Finance Act 2006 is passed, or
 - (b) (if later) the last occasion when the power conferred by this subsection was exercised,
 they may by order substitute for the sums for the time being specified in subsections (2) and (3) such other sums as appear to them to be justified by the change.

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

- (5) But any such order does not apply to a failure which began before the date on which the order comes into force.
- (6) A failure by any person to comply with any requirement mentioned in subsection (1) or (3) does not give rise to a liability to a penalty under this section if the person concerned satisfies—
 - (a) the Commissioners, or
 - (b) on appeal, a tribunal,that there is a reasonable excuse for the failure.
- (7) If by reason of conduct falling within subsection (1) or (3) a person—
 - (a) is assessed to a penalty under section 60 [^{F31}or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007], or
 - (b) is convicted of an offence (whether under this Act or otherwise),that conduct does not also give rise to a penalty under this section.]

Textual Amendments

- F30** S. 69B inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 21\(2\)](#)
- F31** Words in s. 69B(7)(a) inserted (1.4.2009) by [The Finance Act 2008, Schedule 40 \(Appointed Day, Transitional Provisions and Consequential Amendments\) Order 2009 \(S.I. 2009/571\), art. 1\(1\), Sch. 1 para. 16](#)

70 Mitigation of penalties under sections 60, 63, 64 and 67.

- (1) Where a person is liable to a penalty under section 60, 63, 64 [^{F32}, 67 or 69A]^{F33} or under paragraph 10 of Schedule 11A], the Commissioners or, on appeal, a 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 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 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 VAT 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 VAT;
 - (c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.

Textual Amendments

- F32** Words in s. 70(1) substituted (28.7.2000) by [2000 c. 17, s. 137\(3\)](#)
- F33** Words in s. 70(1) inserted (22.7.2004 for specified purposes, 1.8.2004 in so far as not already in force) by [Finance Act 2004 \(c. 12\), s. 19\(2\), Sch. 2 para. 3; S.I. 2004/1934, art. 2](#)

Status: Point in time view as at 01/04/2012.

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Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)*

71 Construction of sections 59 to 70.

- (1) For the purpose of any provision of sections 59 to 70 which refers to a reasonable excuse for any conduct—
 - (a) an insufficiency of funds to pay any VAT 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.
- (2) In relation to a prescribed accounting period, any reference in sections 59 to 69 to credit for input tax includes a reference to any sum which, in a return for that period, is claimed as a deduction from VAT due.

72 Offences.

- (1) If any person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of VAT by him or any other person, he shall be liable—
 - (a) on summary conviction, to a penalty of the statutory maximum or of three times the amount of the VAT, whichever is the greater, or to imprisonment for a term not exceeding 6 months or to both; or
 - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.
- (2) Any reference in subsection (1) above or subsection (8) below to the evasion of VAT includes a reference to the obtaining of—
 - (a) the payment of a VAT credit; or
 - (b) a refund under section 35, 36 or 40 of this Act or section 22 of the 1983 Act; or
 - (c) a refund under any regulations made by virtue of section 13(5); or
 - (d) a repayment under section 39;
 and any reference in those subsections to the amount of the VAT shall be construed—
 - (i) in relation to VAT itself or a VAT credit, 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), (c) or (d) above, as a reference to the amount falsely claimed by way of refund or repayment.
- (3) If any person—
 - (a) with intent to deceive produces, furnishes or sends for the purposes of this Act or otherwise makes use for those purposes of any document which is false in a material particular; or
 - (b) in furnishing any information for the purposes of this Act makes any statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,
 he shall be liable—
 - (i) on summary conviction, to a penalty of the statutory maximum or, where subsection (4) or (5) below applies, to the alternative penalty specified in that subsection if it is greater, or to imprisonment for a term not exceeding 6 months or to both; or
 - (ii) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.

Status: Point in time view as at 01/04/2012.

Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)

- (4) In any case where—
- (a) the document referred to in subsection (3)(a) above is a return required under this Act, or
 - (b) the information referred to in subsection (3)(b) above is contained in or otherwise relevant to such a return,
- the alternative penalty referred to in subsection (3)(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.
- (5) In any case where—
- (a) the document referred to in subsection (3)(a) above is a claim for a refund under section 35, 36 or 40 of this Act or section 22 of the 1983 Act, for a refund under any regulations made by virtue of section 13(5) or for a repayment under section 39, or
 - (b) the information referred to in subsection (3)(b) above is contained in or otherwise relevant to such a claim,
- the alternative penalty referred to in subsection (3)(i) above is a penalty equal to 3 times the amount falsely claimed.
- (6) The reference in subsection (3)(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.
- (7) Any reference in subsection (3)(a) or (6) above to producing, furnishing or sending a document includes a reference to causing a document to be produced, furnished or sent.
- (8) Where a person’s conduct during any specified period must have involved the commission by him of one or more offences under the preceding provisions of this section, then, whether or not the particulars of that offence or those offences are known, he shall, by virtue of this subsection, be guilty of an offence and liable—
- (a) on summary conviction, to a penalty of the statutory maximum or, if greater, 3 times the amount of any VAT that was or was intended to be evaded by his conduct, or to imprisonment for a term not exceeding 6 months or to both, or
 - (b) on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.
- ^{F34}(9)
- (10) If any person acquires possession of or deals with any goods, or accepts the supply of any services, having reason to believe that VAT on the supply of the goods or services, on the acquisition of the goods from another member State or on the importation of the goods from a place outside the member States has been or will be evaded, he shall be liable on summary conviction to a penalty of level 5 on the standard scale or three times the amount of the VAT, whichever is the greater.
- (11) If any person supplies [^{F35}or is supplied with] goods or services in contravention of paragraph 4(2) of Schedule 11, he shall be liable on summary conviction to a penalty of level 5 on the standard scale.

Status: Point in time view as at 01/04/2012.

*Changes to legislation: There are currently no known outstanding effects for the Value Added Tax Act 1994,
Cross Heading: Default surcharges and other penalties and criminal offences. (See end of Document for details)*

- (12) Subject to subsection (13) below, sections 145 to 155 of the Management Act (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences under this Act (which include any act or omission in respect of which a penalty is imposed) and penalties imposed under this Act as they apply in relation to offences and penalties under the customs and excise Acts as defined in that Act; and accordingly in section 154(2) as it applies by virtue of this subsection the reference to duty shall be construed as a reference to VAT.
- (13) In subsection (12) above the references to penalties do not include references to penalties under sections 60 to 70.

Textual Amendments

- F34** S. 72(9) repealed (8.11.2007) by [Finance Act 2007 \(c. 11\)](#), s. 84(4)(5), Sch. 22 para. 8(a), **Sch. 27 Pt. 5(1)**; [S.I. 2007/3166](#), art. 2(c)
- F35** Words in s. 72(11) inserted (retrospective to 10.4.2003) by [Finance Act 2003 \(c. 14\)](#), s. 17(5)(8)

Status:

Point in time view as at 01/04/2012.

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