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SCHEDULES

SCHEDULE 17

Section 114.

STAMP DUTY: PENALTIES OTHER THAN ON LATE STAMPING

PART I

AMENDMENTS OF PENALTIES

Introduction

- 1 The amendments in this Part of this Schedule—
- (a) replace administrative fines by penalties;
 - (b) amend provisions imposing a fine or penalty of a specified amount so as to impose a penalty not exceeding a specified amount;
 - (c) increase or modernise in certain cases the maximum penalty.

Stamp Duties Management Act 1891 (c.38)

- 2 (1) The Stamp Duties Management Act 1891 is amended as follows.
- (2) In section 12A (lost or spoiled instruments), in subsection (2)(b) for “, fine or penalty” (twice) substitute “ or penalty ”.
 - (3) In section 21 (penalty for frauds in relation to duties), for “a fine of fifty pounds” substitute “ a penalty not exceeding £3,000 ”.

Stamp Act 1891 (c.39)

- 3 (1) The Stamp Act 1891 is amended as follows.
- (2) In section 5 (failure to set out in instrument facts and circumstances affecting duty), for “a fine of ten pounds” substitute “ a penalty not exceeding £3,000 ”.
 - (3) In section 9(1) (penalty for frauds in relation to instrument bearing adhesive stamp), for the words from “he shall” to the end substitute “ he is liable to a penalty not exceeding £3,000 ”.
 - (4) In section 16 (rolls, books, etc. to be open to inspection), for “a fine of ten pounds” substitute “ a penalty not exceeding £300 ”.
 - (5) In section 17 (penalty for enrolling, etc. instrument not duly stamped), for “a fine of ten pounds” substitute “ a penalty not exceeding £300 ”.
 - (6) In section 83 (penalty on issuing etc. foreign etc. security not duly stamped), for “a fine of twenty pounds” substitute “ a penalty not exceeding £300 ”.

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Finance Act 1946 (c.64)

F14

Textual Amendments

- F1** [Sch. 17 para. 4](#) repealed (with effect as mentioned in Sch. 20 Pt. V(5), Notes 1, 2) by [1999 c. 16, s. 139, Sch. 20 Pt. V\(5\)](#), Notes

Finance (No. 2) Act (Northern Ireland) 1946 (c.17 (N.I.))

F25

Textual Amendments

- F2** [Sch. 17 para. 5](#) repealed (with effect as mentioned in Sch. 20 Pt. V(5), Notes 1, 2) by [1999 c. 16, ss. 123\(3\)\(4\), 139, Sch. 20 Pt. V\(5\)](#)

Finance Act 1963 (c.25)

- 6 In section 67(1) of the Finance Act 1963 (prohibition of circulation of blank transfers), for “fine” substitute “ penalty ” and for “£50” substitute “ £300 ”.

Finance Act (Northern Ireland) 1963 (c.22 (N.I.))

- 7 In section 16(1) of the Finance Act (Northern Ireland) 1963 (prohibition of circulation of blank transfers), for “fine” substitute “ penalty ” and for “fifty pounds” substitute “ £300 ”.

Finance Act 1986 (c.41)

- 8 In section 68(4) and (5) and section 71(4) and (5) of the Finance Act 1986 (depository receipts and clearance services: failure to comply with requirements as to notification), for “fine” substitute “ penalty ”.

PART II

[^{F3}DETERMINATION OF PENALTY, REVIEWS AND APPEALS]

Textual Amendments

- F3** [Sch. 17 Pt. II heading](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 279](#)

Introduction

- 9 (1) This Part of this Schedule applies to penalties under the enactments relating to stamp duty, other than penalties under section 15B of the ^{M1}Stamp Act 1891 (penalty on late stamping).

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(2) Nothing in this Part of this Schedule affects criminal proceedings for an offence.

[^{F4}(3) For the purposes of this Part “tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.]

Textual Amendments

F4 Sch. 17 para. 9(3) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 280**

Marginal Citations

M1 1891 c.39.

Determination of penalty by officer of Commissioners

- 10 (1) An officer of the Commissioners authorised by the Commissioners for the purposes of this paragraph may make a determination—
- (a) imposing the penalty, and
 - (b) setting it at such amount as in the officer’s opinion is correct or appropriate.
- (2) Notice of the determination must be served on the person liable to the penalty.
- The notice must also state—
- (a) the date on which the notice is issued, and
 - (b) the time within which an appeal against the determination may be made.
- (3) After notice of the determination has been served, the determination cannot be altered except—
- (a) in accordance with sub-paragraph (4),
 - (b) by agreement in writing, or
 - (c) on appeal.
- (4) If it is discovered by an officer of the Commissioners authorised by the Commissioners for the purposes of this paragraph that the amount of a penalty determined under this paragraph is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which in the officer’s opinion is correct or appropriate.
- (5) If a person liable to a penalty has died—
- (a) any determination which could have been made in relation to that person may be made in relation to his personal representatives, and
 - (b) any penalty imposed on them is a debt due from and payable out of the person’s estate.
- (6) A penalty determined under this paragraph is due and payable at the end of the period of 30 days beginning with the date of the issue of the notice of determination.
- 11 (1) An appeal [^{F5}may be made] against a determination under paragraph 10.
- (2) Notice of appeal must be given in writing to the officer of the Commissioners by whom the determination was made within 30 days of the date of the notice of the determination.

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^{F6}(3)

[^{F7}(4) The notice of appeal must specify the grounds of appeal.]

[^{F8}(4A) Sections 49A to 49I of the Taxes Management Act 1970 shall apply to appeals under this paragraph, subject to the modifications in sub-paragraphs (4B) to (4E).

(4B) In the application of section 49C(4) for “contained in an agreement in writing under section 54(1) for the settlement of the matter” there is to be substituted “a written agreement under paragraph 10(3)(b) of Schedule 17 to the Finance Act 1999”.

(4C) Section 49C(5) and (6) are not to apply.

(4D) In the application of section 49F(2) for “an agreement in writing under section 54(1) for the settlement of the matter in question” there is to be substituted “a written agreement under paragraph 10(3)(b) of Schedule 17 to the Finance Act 1999”,

(4E) Sections 49F(3) and (4) are not to apply.

(4F) References to “the tribunal” are to be taken to be references to the “First-tier Tribunal.]

^{F9}(5)

(6) On an appeal under this paragraph the [^{F10}First-tier Tribunal] may—

- (a) if it appears ^{F11}... that no penalty has been incurred, set the determination aside;
- (b) if the amount determined appears ^{F11}... to be appropriate, confirm the determination;
- (c) if the amount determined appears ^{F11}... to be excessive, reduce it to such other amount (including nil) as [^{F12}the First-tier Tribunal considers] appropriate;
- (d) if the amount determined appears ^{F11}... to be insufficient, increase it to such amount not exceeding the permitted maximum as [^{F12}the First-tier Tribunal considers] appropriate.

Textual Amendments

- F5** Words in Sch. 17 para. 11(1) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 281(2)**
- F6** Sch. 17 para. 11(3) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 281(3)**
- F7** Sch. 17 para. 11(4) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 281(4)**
- F8** Sch. 17 para. 11(4A)-(4F) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 281(5)**
- F9** Sch. 17 para. 11(5) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 281(6)**
- F10** Words in Sch. 17 para. 11(6) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 281(7)(a)**
- F11** Words in Sch. 17 para. 11(6) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 281(7)(b)**

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F12 Words in Sch. 17 para. 11(6) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 281\(7\)\(c\)](#)

- [^{F13}11A(1) This paragraph applies in a case where—
- (a) notice of appeal may be given to HMRC, but
 - (b) no notice is given before the relevant time limit.
- (2) Notice may be given after the relevant time limit if—
- (a) HMRC agree, or
 - (b) where HMRC do not agree, the tribunal gives permission.
- (3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.
- (4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.
- (5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.
- (6) Condition C is that HMRC are satisfied that the request under sub-paragraph (4) was made without unreasonable delay after the reasonable excuse ceased.
- (7) If a request of the kind referred to in sub-paragraph (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.
- (8) In this paragraph “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this paragraph).]

Textual Amendments

F13 Sch. 17 para. 11A inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 282](#)

12 ^{F14}(1)

[^{F15}(2) In addition to any right of appeal on a point of law under section 11(2) of the Tribunals, Courts and Enforcement Act 2007, the person liable to the penalty may appeal to the Upper Tribunal against the amount of the penalty which had been determined under paragraph 11(6) above, but not against any decision which falls under section 11(5)(d) or (e) of that Act and was made in connection with the determination of the amount of the penalty.

(2A) Section 11(3) and (4) of the Tribunals, Courts and Enforcement Act 2007 applies to the right of appeal under sub-paragraph (2) as it applies to the right of appeal under section 11(2) of that Act.]

(3) On an appeal under sub-paragraph (2) the [^{F16}Upper Tribunal] has the same powers as are conferred on the [^{F17}First-tier Tribunal] by paragraph 11(6) above.

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Textual Amendments

- F14** Sch. 17 para. 12(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 283(2)**
- F15** Sch. 17 para. 12(2)(2A) substituted for Sch. 17 para. 12(2) (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 283(3)**
- F16** Words in Sch. 17 para. 12(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 283(4)(a)**
- F17** Words in Sch. 17 para. 12(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 283(4)(b)**

Penalty proceedings before the court

- 13 (1) Where in the opinion of the Commissioners the liability of a person for a penalty arises by reason of his fraud or the fraud of another person, proceedings for the penalty may be brought—
- (a) in the High Court, or
 - (b) in Scotland, in the Court of Session sitting as the Court of Exchequer.
- (2) Proceedings under this paragraph in England and Wales shall be brought—
- (a) by and in the name of the Commissioners as an authorised department for the purposes of the ^{M2}Crown Proceedings Act 1947, or
 - (b) in the name of the Attorney General.
- Any such proceedings shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947.
- (3) Proceedings under this paragraph in Scotland shall be brought in the name of the Advocate General for Scotland.
- (4) Proceedings under this paragraph in Northern Ireland shall be brought—
- (a) by and in the name of the Commissioners as an authorised department for the purposes of the Crown Proceedings Act 1947 as for the time being in force in Northern Ireland, or
 - (b) in the name of the Attorney General for Northern Ireland.
- Any such proceedings shall be deemed to be civil proceedings within the meaning of Part II of the Crown Proceedings Act 1947 as for the time being in force in Northern Ireland.
- (5) If in proceedings under this paragraph the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Commissioners as to fraud, the penalty would not have been a matter for the court.
- (6) Paragraph 10 above (determination of penalty by officer of Commissioners) does not apply where proceedings are brought under this paragraph.

Marginal Citations

M2 1947 c.44.

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Supplementary provisions

- 14 (1) The Commissioners may in their discretion mitigate any penalty, or stay or compound any proceedings for the recovery of a penalty.
- (2) They may also, after judgment, further mitigate or entirely remit the penalty.
- 15 A penalty may be determined under paragraph 10, or proceedings for a penalty brought under paragraph 13, at any time within six years after the date on which the penalty was incurred.

PART III

POWER TO APPLY PROVISIONS AS TO COLLECTION AND RECOVERY ETC

- 16 (1) The Treasury may make regulations applying in relation to penalties to which Part II of this Schedule applies such provisions of the ^{M3}Taxes Management Act 1970 as they think fit.
- (2) The regulations may apply the provisions of that Act with such modifications as the Treasury think fit.
- (3) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

Marginal Citations

M3 1970 c.9.

- 17 Without prejudice to the generality of the power conferred by paragraph 16, regulations under that paragraph may apply—
- (a) any of the provisions of Part VI of the Taxes ^{M4}Management Act 1970 (collection and recovery), and
- (b) such of the provisions of Part XI of that Act (miscellaneous and supplemental provisions) as appear to the Treasury to be appropriate.

Marginal Citations

M4 1970 c.9.

- 18 Sections 21, 22 and 35 of the ^{M5}Inland Revenue Regulation Act 1890 (proceedings for fines, etc.) do not apply in relation to penalties to which Part II of this Schedule applies.

Marginal Citations

M5 1890 c.21.

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