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SCHEDULES

SCHEDULE 6

Section 28.

AGGREGATES LEVY: EVASION, MISDECLARATION AND NEGLECT

PART 1

CRIMINAL OFFENCES

Evasion

- 1 (1) A person is guilty of an offence if he is knowingly concerned in, or in the taking of steps with a view to—
- (a) the fraudulent evasion by that person of any aggregates levy with which he is charged; or
 - (b) the fraudulent evasion by any other person of any aggregates levy with which that other person is charged.
- (2) The references in sub-paragraph (1) above to the evasion of aggregates levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment of aggregates levy.
- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4) below)—
- (a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
 - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (4) In the case of any offence under this paragraph, where the statutory maximum is less than three times the sum of the amounts of aggregates levy which are shown to be amounts that were or were intended to be evaded, the penalty on summary conviction shall be the amount equal to three times that sum (instead of the statutory maximum).
- (5) For the purposes of sub-paragraph (4) above the amounts of levy that were or were intended to be evaded shall be taken to include—
- (a) the amount of any tax credit, and
 - (b) the amount of any repayment of aggregates levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (6) In determining for the purposes of sub-paragraph (4) above how much aggregates levy (in addition to any amount falling within sub-paragraph (5) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced

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by the amount of any tax credit or repayment of aggregates levy to which he was, or would have been, entitled.

Misstatements

- 2 (1) A person is guilty of an offence if, with the requisite intent and for purposes connected with aggregates levy—
- (a) he produces or provides, or causes to be produced or provided, any document which is false in a material particular; or
 - (b) he otherwise makes use of such a document;
- and in this sub-paragraph “the requisite intent” means the intent to deceive any person or to secure that a machine will respond to the document as if it were a true document.
- (2) A person is guilty of an offence if, in providing any information under any provision made by or under this Part of this Act—
- (a) he makes a statement which he knows to be false in a material particular; or
 - (b) he recklessly makes a statement which is false in a material particular.
- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4) below)—
- (a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
 - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (4) In the case of any offence under this paragraph, where—
- (a) the document referred to in sub-paragraph (1) above is a return required under any provision made by or under this Part of this Act, or
 - (b) the information referred to in sub-paragraph (2) above is contained in or otherwise relevant to such a return,
- the amount of the penalty on summary conviction shall be whichever is the greater of the statutory maximum and the amount equal to three times the sum of the amounts (if any) by which the return understates any person’s liability to aggregates levy.
- (5) In sub-paragraph (4) above the reference to the amount by which any person’s liability to aggregates levy is understated shall be taken to be equal to the sum of—
- (a) the amount (if any) by which his gross liability was understated; and
 - (b) the amount (if any) by which any entitlements of his to tax credits and repayments of aggregates levy were overstated.
- (6) In sub-paragraph (5) above “gross liability” means liability to aggregates levy before any deduction is made in respect of any entitlement to any tax credit or repayments of aggregates levy.

Conduct involving evasions or misstatements

- 3 (1) A person is guilty of an offence under this paragraph if his conduct during any particular period must have involved the commission by him of one or more offences under the preceding provisions of this Schedule.
- (2) For the purposes of any proceedings for an offence under this paragraph it shall be immaterial whether the particulars of the offence or offences that must have been committed are known.

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- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4) below)—
- (a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;
 - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (4) In the case of any offence under this paragraph, where the statutory maximum is less than three times the sum of the amounts of aggregates levy which are shown to be amounts that were or were intended to be evaded by the conduct in question, the penalty on summary conviction shall be the amount equal to three times that sum (instead of the statutory maximum).
- (5) For the purposes of sub-paragraph (4) above the amounts of levy that were or were intended to be evaded by any conduct shall be taken to include—
- (a) the amount of any tax credit, and
 - (b) the amount of any repayment of aggregates levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (6) In determining for the purposes of sub-paragraph (4) above how much aggregates levy (in addition to any amount falling within sub-paragraph (5) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of aggregates levy to which he was, or would have been, entitled.

Preparations for evasion

- 4 (1) Where a person—
- (a) becomes a party to any agreement under or by means of which a quantity of taxable aggregate is or is to be subjected to commercial exploitation in the United Kingdom, or
 - (b) makes arrangements for any other person to become a party to such an agreement,
- he is guilty of an offence if he does so in the belief that aggregates levy chargeable on the aggregate in question will be evaded.
- (2) Subject to sub-paragraph (3) below, a person guilty of an offence under this paragraph shall be liable, on summary conviction, to a penalty of level 5 on the standard scale.
- (3) In the case of any offence under this paragraph, where level 5 on the standard scale is less than three times the sum of the amounts of aggregates levy which are shown to be amounts that were or were intended to be evaded in respect of the aggregate in question, the penalty shall be the amount equal to three times that sum (instead of level 5 on the standard scale).
- (4) For the purposes of sub-paragraph (3) above the amounts of levy that were or were intended to be evaded shall be taken to include—
- (a) the amount of any tax credit, and
 - (b) the amount of any repayment of aggregates levy,

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which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

- (5) In determining for the purposes of sub-paragraph (3) above how much aggregates levy (in addition to any amount falling within sub-paragraph (4) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of aggregates levy to which he was, or would have been, entitled.

Criminal proceedings etc.

- 5 Sections 145 to 155 of the Customs and Excise Management Act 1979 (c. 2) (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences and penalties under this Part of this Schedule as they apply in relation to offences and penalties under the customs and excise Acts.

Arrest

- 6 (1) Where an authorised person has reasonable grounds for suspecting that a fraud offence has been committed he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.
- (2) In this paragraph—
 “authorised person” means any person acting under the authority of the Commissioners; and
 “a fraud offence” means an offence under any of paragraphs 1 to 3 above.

PART 2

CIVIL PENALTIES

Evasion

- 7 (1) Subject to sub-paragraph (5) below, where—
- (a) any person engages in any conduct for the purpose of evading aggregates levy,
 - (b) at the time when that person engages in that conduct he is a person who is or is required to be registered, or would be so required but for an exemption by virtue of regulations under section 24(4) of this Act, and
 - (c) that conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),
- that person shall be liable to a penalty equal to the amount of the levy evaded, or (as the case may be) intended to be evaded, by his conduct.
- (2) The references in sub-paragraph (1) above to evading aggregates levy include references to obtaining, in circumstances where there is no entitlement to it, either—
- (a) a tax credit; or
 - (b) a repayment of aggregates levy.

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- (3) For the purposes of sub-paragraph (1) above the amount of levy that was or was intended to be evaded by any conduct shall be taken to include—
- (a) the amount of any tax credit, and
 - (b) the amount of any repayment of aggregates levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (4) In determining for the purposes of sub-paragraph (1) above how much aggregates levy (in addition to any amount falling within sub-paragraph (3) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of aggregates levy to which he was, or would have been, entitled.
- (5) Where, by reason of conduct falling within sub-paragraph (1) above, a person is convicted of an offence (whether under this Act or otherwise) that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

Liability of directors etc. for civil penalties

- 8 (1) Where it appears to the Commissioners—
- (a) that a body corporate is liable to a penalty under paragraph 7 above, and
 - (b) that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a “named officer”),
- the Commissioners may serve a notice under this paragraph on the body corporate and on the named officer.
- (2) A notice under this paragraph shall state—
- (a) the amount of the penalty referred to in sub-paragraph (1)(a) above (“the basic penalty”); and
 - (b) that the Commissioners propose, in accordance with this paragraph, to recover from the named officer such portion of the basic penalty (which may be the whole of it) as is specified in the notice.
- (3) Where a notice is served under this paragraph, the portion of the basic penalty specified in the notice shall be recoverable from the named officer as if he were personally liable under paragraph 7 above to a penalty which corresponds to that portion.
- (4) Where a notice is served under this paragraph—
- (a) the amount which may be assessed under Schedule 10 to this Act as the amount due by way of penalty from the body corporate shall be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer; and
 - (b) the body corporate shall be treated as discharged from liability for so much of the basic penalty as is so assessed and notified.
- (5) Subject to the following provisions of this paragraph, the giving of a notice under this paragraph as such shall not be a decision which may be reviewed under section 40 of this Act.

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- (6) Where a body corporate is assessed as mentioned in sub-paragraph (4)(a) above, the decisions of the Commissioners that may be reviewed in accordance with section 40 of this Act shall include their decision—
- (a) as to the liability of the body corporate to a penalty; and
 - (b) as to the amount of the basic penalty that is specified in the assessment;
- and sections 41 and 42 of this Act shall apply accordingly.
- (7) Where an assessment is made on a named officer by virtue of this paragraph, the decisions which may be reviewed under section 40 of this Act at the request of the named officer shall include—
- (a) the Commissioners' decisions in the case of the body corporate as to the matters mentioned in sub-paragraph (6)(a) and (b) above;
 - (b) their decision that the conduct of the body corporate referred to in sub-paragraph (1)(b) above is, in whole or in part, attributable to the dishonesty of the named officer; and
 - (c) their decision as to the portion of the penalty which the Commissioners propose to recover from him;
- and sections 41 and 42 of this Act shall apply accordingly.
- (8) In this paragraph a “managing officer”, in relation to a body corporate, means—
- (a) any manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity or as a director.
- (9) Where the affairs of a body corporate are managed by its members, this paragraph shall apply in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

Misdeclaration or neglect

- 9 (1) Subject to sub-paragraphs (3) to (5) below, where for an accounting period—
- (a) a return is made which understates a person's liability to aggregates levy or overstates his entitlement to any tax credit or repayment of aggregates levy, or
 - (b) at the end of the period of 30 days beginning on the date of the making of any assessment which understates a person's liability to aggregates levy, that person has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioners,
- the person concerned shall be liable to a penalty equal to 5 per cent. of the amount of the understatement of liability or (as the case may be) overstatement of entitlement.
- (2) Where—
- (a) a return for an accounting period—
 - (i) overstates or understates to any extent a person's liability to aggregates levy, or
 - (ii) understates or overstates to any extent his entitlement to any tax credits or repayments of aggregates levy,
 and
 - (b) that return is corrected—
 - (i) in such circumstances as may be prescribed by regulations made by the Commissioners, and

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- (ii) in accordance with such conditions as may be so prescribed, by a return for a later accounting period which understates or overstates, to the corresponding extent, any liability or entitlement for the later period, it shall be assumed for the purposes of this paragraph that the statement made by each such return is a correct statement for the accounting period to which the return relates.
- (3) Conduct falling within sub-paragraph (1) above shall not give rise to liability to a penalty under this paragraph if the person concerned provides the Commissioners with full information with respect to the inaccuracy concerned—
- (a) at a time when he has no reason to believe that enquiries are being made by the Commissioners into his affairs, so far as they relate to aggregates levy; and
 - (b) in such form and manner as may be prescribed by regulations made by the Commissioners or specified by them in accordance with any such regulations.
- (4) Conduct falling within sub-paragraph (1) above shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for his conduct.
- (5) Where, by reason of conduct falling within sub-paragraph (1) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
 - (b) a person is assessed to a penalty under paragraph 7 above,
- that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

VALID FROM 01/05/2002

Incorrect records etc evidencing claim for tax credit

[^{F19A} (1) This paragraph applies where—

- (a) a claim is made for a tax credit in such a case as is mentioned in—
 - (i) section 30(1)(c) of this Act (aggregate used in a prescribed industrial or agricultural process), or
 - (ii) section 30A of this Act (transitional tax credit in Northern Ireland);
 - (b) a record or other document is provided to the Commissioners as evidence for the claim; and
 - (c) the record or document is incorrect.
- (2) The person who provided the document to the Commissioners, and any person who provided it to anyone else with a view to its being used as evidence for a claim for a tax credit, shall be liable to a penalty.
- (3) The amount of the penalty shall be equal to 105 per cent of the difference between—
- (a) the amount of tax credit that would have been due on the claim if the record or document had been correct, and
 - (b) the amount (if any) of tax credit actually due on the claim.
- (4) The providing of a record or other document shall not give rise to a penalty under this paragraph if the person who provided it satisfies the Commissioners or, on

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appeal, an appeal tribunal that there is a reasonable excuse for his having provided it.

- (5) Where by reason of providing a record or other document—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
 - (b) a person is assessed to a penalty under paragraph 7 or 9 above,
- that person shall not by reason of the providing of the record or document be liable also to a penalty under this paragraph.]

Textual Amendments

F1 Sch. 6 para. 9A inserted (*retrospective* from 1.5.2002) by [2002 c. 23](#), 133(5)(6)

PART 3

INTERPRETATION OF SCHEDULE

- 10 (1) References in this Schedule to obtaining a tax credit are references to bringing an amount into account as a tax credit for the purposes of aggregates levy on the basis that that amount is an amount which may be so brought into account in accordance with tax credit regulations.
- (2) References in this Schedule to obtaining a repayment of aggregates levy are references to obtaining either—
- (a) the payment or repayment of any amount, or
 - (b) the acknowledgement of a right to receive any amount,
- on the basis that that amount is the amount of a repayment of aggregates levy to which there is an entitlement.

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