

Status: Point in time view as at 06/04/2018.

Changes to legislation: Finance Act 2008, SCHEDULE 41 is up to date with all changes known to be in force on or before 13 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 41 **U.K.**

Section 123

PENALTIES: FAILURE TO NOTIFY AND CERTAIN VAT AND EXCISE WRONGDOING

Modifications etc. (not altering text)

- C1** [Sch. 41](#) modified (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 paras. 33, 34](#)

Failure to notify etc

- 1 A penalty is payable by a person (P) where P fails to comply with an obligation specified in the Table below (a “relevant obligation”).

<i>Tax to which obligation relates</i>	<i>Obligation</i>
Income tax and capital gains tax	Obligation under section 7 of TMA 1970 (obligation to give notice of liability to income tax or capital gains tax).
Corporation tax	Obligation under paragraph 2 of Schedule 18 to FA 1998 (obligation to give notice of chargeability to corporation tax).
[^{F1} Diverted profits tax	Obligation under section 92 of FA 2015 (duty to notify if within scope of diverted profits tax).]
Value added tax	Obligations under paragraphs 5, 6, 7 and 14(2) and (3) of Schedule 1 to VATA 1994 (obligations to notify liability to register and notify material change in nature of supplies made by person exempted from registration).
[^{F2} Value added tax	Obligations under paragraphs 5, 6 and 13(3) of Schedule 1A to VATA 1994 (obligations to notify liability to register and notify material change in nature of supplies made by person exempted from registration).]
Value added tax	Obligation under paragraph 3 of Schedule 2 to VATA 1994 (obligation to notify liability to register).

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Value added tax	Obligations under paragraphs 3 and 8(2) of Schedule 3 to VATA 1994 (obligations to notify liability to register and notify acquisition affecting exemption from registration).
Value added tax	Obligations under paragraphs 3, 4 and 7(2) and (3) of Schedule 3A to VATA 1994 (obligations to notify liability to register and notify relevant change in supplies made by person exempted from registration).
Value added tax	Obligation under regulations under paragraph 2(4) of Schedule 11 to VATA 1994 (obligation to give notification of acquisition of goods from another member State).
Insurance premium tax	Obligations under section 53(1) and (2) of FA 1994 (obligations to register in respect of receipt of premiums in course of taxable business and notify intended receipt of premiums in course of taxable business).
Insurance premium tax	Obligations under section 53AA(1) and (3) of FA 1994 (obligations to register as taxable intermediary and notify intention to charge taxable intermediary's fees).
^{F3} Soft drinks industry levy	Obligation under section 44 of FA 2017 (obligation to give notice of liability to be registered).]
Aggregates levy	Obligations under section 24(2) of, and paragraph 1 of Schedule 4 to, FA 2001 (obligations to register in respect of carrying out of taxable activities and notify intention of carrying out such activities).
Climate change levy	Obligations under paragraphs 53 and 55 of Schedule 6 to FA 2000 (obligations to register in respect of taxable supplies and notify intention to make, or have made, taxable supply).
Landfill tax	Obligations under [^{F4} section 47(2), (3) and (3A)] of FA 1996 (obligations to register in respect of carrying out of taxable activities and notify intention of carrying out such activities).
Air passenger duty	Obligation under section 33(4) [^{F5} or 33A(4)] of FA 1994 (obligation to give

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	notice of liability to register to operate chargeable aircraft).
Alcohol liquor duties	Obligation to be authorised and registered to obtain and use duty stamps under regulations under paragraph 4 of Schedule 2A to ALDA 1979 (duty stamps).
Alcohol liquor duties	Obligations under sections 12(1), 47(1), 54(2), 55(2) and 62(2) of ALDA 1979 (obligations to hold licence to manufacture spirits, register to brew beer, hold licence to produce wine or made-wine and register to make cider).
Alcohol liquor duties	Obligation to have plant and processes approved for the manufacture of spirits under regulations under section 15(6) of ALDA 1979 (distillers' warehouses).
Tobacco products duty	Obligation to manufacture tobacco products only on premises registered under regulations under section 7 of TPDA 1979 (management of tobacco products duty).
Hydrocarbon oil duties	Obligation to make entry of premises intended to be used for production of oil under regulations under section 21 of HODA 1979 (administration and enforcement).
Excise duties	Obligation to receive, deposit or hold duty suspended excise goods only in premises approved under regulations under section 92 of CEMA 1979 (approval of warehouses).
Excise duties	Obligation to receive duty suspended excise goods only if approved or registered (or approved and registered) as a [^{F6} Registered Consignee] under regulations under section 100G or 100H of CEMA 1979 (registered excise dealers and shippers etc).
Excise duties	Obligation to receive, deposit or hold duty suspended excise goods only if approved or registered (or approved and registered) as a registered owner, a duty representative, a registered mobile operator or a fiscal representative of a registered mobile operator or an authorised warehousekeeper under regulations under section 100G or

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	100H of CEMA 1979 (registered excise dealers and shippers etc).
[^{F7} Excise duties	Obligation to dispatch excise goods under duty suspension arrangements upon their release for free circulation in accordance with Article 79 of Council Regulation 2913/92/EEC only if approved and registered (or approved and registered) as a Registered Consignor under regulations under section 100G or 100H of CEMA 1979 (registered excise dealers and shippers etc).]
[^{F8} General betting duty	Obligation to register under section 164(2) of FA 2014 (registration of persons liable etc for general betting duty).
Pool betting duty	Obligation to register under section 164(2) of FA 2014 (registration of persons liable etc for pool betting duty).]
Bingo duty	Obligations under paragraph 10(1) and (1A) of Schedule 3 to BGDA 1981 (obligation to notify and register in respect of bingo-promotion).
Lottery duty	Obligation under section 29(1) of FA 1993 (obligation to register in respect of promotion of lotteries).
Gaming duty	Obligations under paragraphs 3 and 6 of Schedule 1 to FA 1997 (obligations to register in respect of gaming and to notify premises).
[^{F9} Remote gaming duty	Obligation to register under section 164(2) of FA 2014 (registration of persons liable etc for remote gaming duty).]
[^{F10} Machine games duty	Obligation under paragraph 20(3) of Schedule 24 to FA 2012 (obligation to register in respect of premises).]
F11	F11
...	...

Textual Amendments

- F1** Words in [Sch. 41 para. 1](#) Table inserted (with effect in accordance with s. 116(1) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 104\(5\)](#)
- F2** [Sch. 41 para. 1](#) Table entry inserted (with effect in accordance with [Sch. 28 para. 19](#) of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 28 para. 18](#)

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- F3** Words in Sch. 41 para. 1 Table inserted (6.4.2018) by Finance Act 2017 (c. 10), s. 61(1), **Sch. 11 para. 2(2)**; S.I. 2018/464, art. 2(e)
- F4** Words in Sch. 41 para. 1 Table substituted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 12 para. 27(2)**
- F5** Words in Sch. 41 para. 1 Table inserted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 23 para. 15**
- F6** Words in Sch. 41 para. 1 substituted (1.4.2010) by The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593), reg. 2, **Sch. 2 para. 22(a)**
- F7** Words in Sch. 41 para. 1 inserted (1.4.2010) by The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (S.I. 2010/593), reg. 2, **Sch. 2 para. 22(b)**
- F8** Words in Sch. 41 para. 1 Table substituted (1.12.2014) by Finance Act 2014 (c. 26), s. 198(2)(c), **Sch. 28 para. 27(2)** (with Sch. 29)
- F9** Words in Sch. 41 para. 1 Table substituted (1.12.2014) by Finance Act 2014 (c. 26), s. 198(2)(c), **Sch. 28 para. 27(3)** (with Sch. 29)
- F10** Sch. 41 para. 1 Table entry inserted (with effect in accordance with Sch. 24 para. 66(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 24 para. 30**
- F11** Sch. 41 para. 1 Table entry omitted (with effect in accordance with Sch. 24 para. 66(3) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 24 para. 57** (with Sch. 24 para. 62)

Commencement Information

- I1** Sch. 41 para. 1 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, **art. 2**

Issue of invoice showing VAT by unauthorised person

- 2 (1) A penalty is payable by a person (P) where P makes an unauthorised issue of an invoice showing VAT.
- (2) P makes an unauthorised issue of an invoice showing VAT if P—
- is an unauthorised person, and
 - issues an invoice showing an amount as being value added tax or as including an amount attributable to value added tax.
- (3) In sub-paragraph (2)(a) “an unauthorised person” means anyone other than—
- a person registered under VATA 1994,
 - a body corporate treated for the purposes of section 43 of that Act as a member of a group,
 - a person treated as a taxable person under regulations under section 46(4) of that Act,
 - a person authorised to issue an invoice under regulations under paragraph 2(12) of Schedule 11 to that Act, or
 - a person acting on behalf of the Crown.
- (4) This paragraph has effect in relation to any invoice which—
- for the purposes of any provision made under subsection (3) of section 54 of VATA 1994 shows an amount as included in the consideration for any supply, and
 - either fails to comply with the requirements of any regulations under that section or is issued by a person who is not for the time being authorised to do so for the purposes of that section,
- as if the person issuing the invoice were an unauthorised person and that amount were shown on the invoice as an amount attributable to value added tax.

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Commencement Information

I2 Sch. 41 para. 2 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

Putting product to use that attracts higher duty

- 3 (1) A penalty is payable by a person (“P”) where P does an act which enables HMRC to assess an amount as duty due from P under any of the provisions in the Table below (a “relevant excise provision”).

<i>Provision under which assessment may be made</i>	<i>Subject-matter of provision</i>
ALDA 1979 section 8(4)	Spirits for use for medical or scientific purposes.
ALDA 1979 section 10(4)	Spirits for use in art or manufacture.
ALDA 1979 section 11(3)	Imported goods not for human consumption containing spirits.
HODA 1979 section 10(3)	Duty-free oil.
HODA 1979 section 13(1A)	Rebated heavy oil.
HODA 1979 section 13AB(1)(a) or (2) (a)	Kerosene.
HODA 1979 section 13AD(2)	Kerosene.
HODA 1979 section 13ZB(1)	Heating oil etc.
HODA 1979 section 14(4)	Light oil for use as furnace oil.
HODA 1979 section 14D(1)	Rebated biodiesel or bioblend.
HODA 1979 section 14F(2)	Rebated heavy oil or bioblend.
[^{F12} HODA 1979 section 20AAD(5)]	Mixtures containing aqua methanol.]
HODA 1979 section 23(1B)	Road fuel gas on which no duty paid.
HODA 1979 section 24(4A)	Duty-free and rebated oil.

- (2) A penalty is payable by a person (“P”) where P supplies a product knowing that it will be used in a way which enables HMRC to assess an amount as duty due from another person under a relevant excise provision.

Textual Amendments

F12 Words in Sch. 41 para. 3(1) Table inserted (15.9.2016 for specified purposes, 14.11.2016 in so far as not already in force) by Finance Act 2016 (c. 24), Sch. 16 para. 14, Sch. 17 para. 11

Commencement Information

I3 Sch. 41 para. 3 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

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[^{F13}Involvement in landfill disposal by unregistered person

Textual Amendments

F13 Sch. 41 para. 3A and cross-heading inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 para. 27(3)

3A A penalty is payable by a person (“P”) where P does an act which enables HMRC to assess an amount as landfill tax due from P under section 50A of FA 1996.]

Handling goods subject to unpaid excise duty [^{F14} etc]

Textual Amendments

F14 Word in Sch. 41 para. 4 cross-heading inserted (6.4.2018) by Finance Act 2017 (c. 10), s. 61(1), Sch. 11 para. 2(3); S.I. 2018/464, art. 2(e)

4 (1) A penalty is payable by a person (P) where—
(a) after the excise duty point for any goods which are chargeable with a duty of excise, P acquires possession of the goods or is concerned in carrying, removing, depositing, keeping or otherwise dealing with the goods, and
(b) at the time when P acquires possession of the goods or is so concerned, a payment of duty on the goods is outstanding and has not been deferred.

[^{F15}(1A) A penalty is payable by a person (P) where—
(a) after a charge to soft drinks industry levy has arisen in respect of chargeable soft drinks, P acquires possession of them or is concerned with carrying, removing, depositing, keeping or otherwise dealing with them, and
(b) at the time when P acquires possession of the chargeable soft drinks or is so concerned, a payment of soft drinks industry levy in respect of the chargeable soft drinks is due or payable and has not been paid.]

(2) In [^{F16}this paragraph]—
“excise duty point” has the meaning given by section 1 of F(No.2)A 1992, and
“goods” has the meaning given by section 1(1) of CEMA 1979.
[^{F17}“chargeable soft drinks” has the same meaning as in Part 2 of FA 2017.]

Textual Amendments

F15 Sch. 41 para. 4(1A) inserted (6.4.2018) by Finance Act 2017 (c. 10), s. 61(1), Sch. 11 para. 2(4); S.I. 2018/464, art. 2(e)

F16 Words in Sch. 41 para. 4(2) substituted (6.4.2018) by Finance Act 2017 (c. 10), s. 61(1), Sch. 11 para. 2(5)(a); S.I. 2018/464, art. 2(e)

F17 Words in Sch. 41 para. 4(2) inserted (6.4.2018) by Finance Act 2017 (c. 10), s. 61(1), Sch. 11 para. 2(5)(b); S.I. 2018/464, art. 2(e)

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Modifications etc. (not altering text)

- C2** Sch. 41 para. 4 modified as it applies to control zones (1.4.2010) by [The Channel Tunnel \(Alcoholic Liquor and Tobacco Products\) Order 2010 \(S.I. 2010/594\)](#), arts. 1, 3, **Sch. para. 11** (as amended (31.12.2020) by S.I. 2019/474, regs. 1, **4(5)**, (with reg. 5) (as amended by S.I. 2020/1494, regs. 1, **5(3)**); S.I. 2020/1640, reg. 2, **Sch.**)

Commencement Information

- I4** Sch. 41 para. 4 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, **art. 2**

Degrees of culpability

- 5 (1) A failure by P to comply with a relevant obligation is—
- (a) “deliberate and concealed” if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the obligation, and
 - (b) “deliberate but not concealed” if the failure is deliberate but P does not make arrangements to conceal the situation giving rise to the obligation.
- (2) The making by P of an unauthorised issue of an invoice showing VAT is—
- (a) “deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and
 - (b) “deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.
- (3) The doing by P of an act which enables HMRC to assess an amount of duty as due from P under a relevant excise provision [^{F18}, or to assess an amount of landfill tax as due from P under section 50A of FA 1996,] is—
- (a) “deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and
 - (b) “deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.
- (4) P’s acquiring possession of, or being concerned in dealing with, goods on which a payment of duty is outstanding and has not been deferred [^{F19} or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid] is—
- (a) “deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and
 - (b) “deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.

Textual Amendments

- F18** Words in Sch. 41 para. 5(3) inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), **Sch. 12 para. 27(4)**
- F19** Words in Sch. 41 para. 5(4) inserted (6.4.2018) by [Finance Act 2017 \(c. 10\)](#), s. 61(1), **Sch. 11 para. 2(6)**; S.I. 2018/464, art. 2(e)

Commencement Information

- I5** Sch. 41 para. 5 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, **art. 2**

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Amount of penalty: standard amount

- [^{F20}6 (1) This paragraph sets out the penalty payable under paragraph 1.
- (2) If the failure is in category 1, the penalty is—
- (a) for a deliberate and concealed failure, 100% of the potential lost revenue,
 - (b) for a deliberate but not concealed failure, 70% of the potential lost revenue, and
 - (c) for any other case, 30% of the potential lost revenue.
- (3) If the failure is in category 2, the penalty is—
- (a) for a deliberate and concealed failure, 150% of the potential lost revenue,
 - (b) for a deliberate but not concealed failure, 105% of the potential lost revenue, and
 - (c) for any other case, 45% of the potential lost revenue.
- (4) If the failure is in category 3, the penalty is—
- (a) for a deliberate and concealed failure, 200% of the potential lost revenue,
 - (b) for a deliberate but not concealed failure, 140% of the potential lost revenue, and
 - (c) for any other case, 60% of the potential lost revenue.
- (5) Paragraph 6A explains the 3 categories of failure.

Textual Amendments

F20 Sch. 41 paras. 6-6D substituted for Sch. 41 para. 6 (6.4.2011) by [Finance Act 2010 \(c. 13\), s. 35\(2\), Sch. 10 para. 8; S.I. 2011/975, art. 2\(1\)](#) (with art. 4)

Commencement Information

I6 Sch. 41 para. 6 in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511, art. 2](#)

- 6A (1) A failure is in category 1 if—
- (a) it involves a domestic matter, or
 - (b) it involves an offshore matter and—
 - (i) the territory in question is a category 1 territory, or
 - (ii) the tax at stake is a tax other than income tax or capital gains tax.
- (2) A failure is in category 2 if—
- (a) it involves an offshore matter [^{F21}or an offshore transfer],
 - (b) the territory in question is a category 2 territory, and
 - (c) the tax at stake is income tax or capital gains tax.
- (3) A failure is in category 3 if—
- (a) it involves an offshore matter [^{F22}or an offshore transfer],
 - (b) the territory in question is a category 3 territory, and
 - (c) the tax at stake is income tax or capital gains tax.
- (4) A failure “involves an offshore matter” if it results in a potential loss of revenue that is charged on or by reference to—
- (a) income arising from a source in a territory outside the UK,

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- (b) assets situated or held in a territory outside the UK,
 - (c) activities carried on wholly or mainly in a territory outside the UK, or
 - (d) anything having effect as if it were income, assets or activities of a kind described above.
- [^{F23}(4A) A failure “involves an offshore transfer” if—
- (a) it does not involve an offshore matter,
 - (b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,
 - (c) the tax at stake is income tax or capital gains tax, and
 - (d) the applicable condition in paragraph 6AA is satisfied.]
- (5) A failure “involves a domestic matter” if it results in a potential loss of revenue [^{F24}and does not involve either an offshore matter or an offshore transfer].
- (6) If a single failure is in more than one category (each referred to as a “relevant category”)—
- (a) it is to be treated for the purposes of this Schedule as if it were separate failures, one in each relevant category according to the matters [^{F25}or transfers] that it involves, and
 - (b) the potential lost revenue in respect of each separate failure is taken to be such share of the potential lost revenue in respect of the single failure (see paragraphs 7 and 11) as is just and reasonable.
- (7) For the purposes of this Schedule—
- (a) paragraph 21A of Schedule 24 to FA 2007 (classification of territories) has effect, but
 - (b) an order under that paragraph does not apply to relevant obligations that are to be complied with by a date before the date on which the order comes into force.
- ^{F26}(8)
- (9) In this paragraph [^{F27}and paragraph 6AA]—
- “assets” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling;
 - “UK” means the United Kingdom, including the territorial sea of the United Kingdom.

Textual Amendments

- F20** Sch. 41 paras. 6-6D substituted for Sch. 41 para. 6 (6.4.2011) by [Finance Act 2010 \(c. 13\), s. 35\(2\)](#), [Sch. 10 para. 8](#); S.I. 2011/975, art. 2(1) (with art. 4)
- F21** Words in [Sch. 41 para. 6A\(2\)\(a\)](#) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(3\)](#); S.I. 2016/456, art. 4(1)
- F22** Words in [Sch. 41 para. 6A\(3\)\(a\)](#) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(4\)](#); S.I. 2016/456, art. 4(1)
- F23** [Sch. 41 para. 6A\(4A\)](#) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(5\)](#); S.I. 2016/456, art. 4(1)
- F24** Words in [Sch. 41 para. 6A\(5\)](#) substituted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(6\)](#); S.I. 2016/456, art. 4(1)

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- F25** Words in Sch. 41 para. 6A(6)(a) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by Finance Act 2015 (c. 11), s. 120(2), **Sch. 20 para. 11(7)**; S.I. 2016/456, art. 4(1)
- F26** Sch. 41 para. 6A(8) omitted (with effect in accordance with art. 4(2) of the commencing S.I.) by virtue of Finance Act 2015 (c. 11), s. 120(2), **Sch. 20 para. 11(8)**; S.I. 2016/456, art. 4(1)
- F27** Words in Sch. 41 para. 6A(9) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by Finance Act 2015 (c. 11), s. 120(2), **Sch. 20 para. 11(9)**; S.I. 2016/456, art. 4(1)

[^{F28}6A(1) This paragraph makes provision in relation to offshore transfers.

- (2) Where the tax at stake is income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income—
- (a) is received in a territory outside the UK, or
- (b) is transferred before the calculation date to a territory outside the UK.
- (3) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—
- (a) are received in a territory outside the UK, or
- (b) are transferred before the calculation date to a territory outside the UK.
- (4) In the case of a transfer falling within sub-paragraph (2)(b) or (3)(b), references to the income or proceeds transferred are to be read as including references to any assets derived from or representing the income or proceeds.
- (5) In relation to an offshore transfer, the territory in question for the purposes of paragraph 6A is the highest category of territory by virtue of which the failure involves an offshore transfer.
- (6) In this paragraph “calculation date” means the date by reference to which the potential lost revenue is to be calculated (see paragraph 7).]

Textual Amendments

- F20** Sch. 41 paras. 6-6D substituted for Sch. 41 para. 6 (6.4.2011) by Finance Act 2010 (c. 13), s. 35(2), **Sch. 10 para. 8**; S.I. 2011/975, art. 2(1) (with art. 4)
- F28** Sch. 41 paras. 6AA, 6AB inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by Finance Act 2015 (c. 11), s. 120(2), **Sch. 20 para. 12**; S.I. 2016/456, art. 4(1)

[^{F28}6AB Regulations under paragraph 21B of Schedule 24 to FA 2007 (location of assets etc) apply for the purposes of paragraphs 6A and 6AA of this Schedule as they apply for the purposes of paragraphs 4A and 4AA of that Schedule.]

Textual Amendments

- F20** Sch. 41 paras. 6-6D substituted for Sch. 41 para. 6 (6.4.2011) by Finance Act 2010 (c. 13), s. 35(2), **Sch. 10 para. 8**; S.I. 2011/975, art. 2(1) (with art. 4)
- F28** Sch. 41 paras. 6AA, 6AB inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by Finance Act 2015 (c. 11), s. 120(2), **Sch. 20 para. 12**; S.I. 2016/456, art. 4(1)

6B The penalty payable under any of paragraphs 2, 3(1) and 4 is—

(a) for a deliberate and concealed act or failure, 100% of the potential lost revenue,

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- (b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue, and
- (c) for any other case, 30% of the potential lost revenue.

Textual Amendments

F20 Sch. 41 paras. 6-6D substituted for Sch. 41 para. 6 (6.4.2011) by [Finance Act 2010 \(c. 13\)](#), s. 35(2), [Sch. 10 para. 8](#); [S.I. 2011/975](#), art. 2(1) (with art. 4)

6C The penalty payable under paragraph 3(2) is 100% of the potential lost revenue.

Textual Amendments

F20 Sch. 41 paras. 6-6D substituted for Sch. 41 para. 6 (6.4.2011) by [Finance Act 2010 \(c. 13\)](#), s. 35(2), [Sch. 10 para. 8](#); [S.I. 2011/975](#), art. 2(1) (with art. 4)

[^{F29}6C(1) The penalty payable under paragraph 3A is—

- (a) for a deliberate and concealed act or failure, 100% of the potential lost revenue, and
- (b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue.

(2) No penalty is payable under paragraph 3A in any other case.]

Textual Amendments

F20 Sch. 41 paras. 6-6D substituted for Sch. 41 para. 6 (6.4.2011) by [Finance Act 2010 \(c. 13\)](#), s. 35(2), [Sch. 10 para. 8](#); [S.I. 2011/975](#), art. 2(1) (with art. 4)

F29 [Sch. 41 para. 6CA](#) inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 27\(5\)](#)

6D Paragraphs 7 to 11 define “potential lost revenue”.]

Textual Amendments

F20 Sch. 41 paras. 6-6D substituted for Sch. 41 para. 6 (6.4.2011) by [Finance Act 2010 \(c. 13\)](#), s. 35(2), [Sch. 10 para. 8](#); [S.I. 2011/975](#), art. 2(1) (with art. 4)

Potential lost revenue

7 (1) “The potential lost revenue” in respect of a failure to comply with a relevant obligation is as follows.

[^{F30}(1A) In the case of an obligation under section 7 of TMA 1970 which arises by virtue of subsection (1B) of that section, the potential lost revenue is so much of any income tax or capital gains tax to which P is liable in respect of the tax year in question as is, by reason of the failure to comply with the obligation—

- (a) where the period specified in subsection (1C)(b)(ii) of that section applies and ends after the relevant date, unpaid at the end of that period, or
- (b) in any other case, unpaid on the relevant date.

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- (1B) For the purposes of sub-paragraph (1A) the relevant date is—
- (a) 31 January following the tax year, or
 - (b) if, after that date, HMRC refund a payment on account in respect of the tax year to P, the day after the refund is issued.]
- (2) In the case of a relevant obligation relating to income tax or capital gains tax and a tax year [^{F31}(not falling within sub-paragraph (1A))], the potential lost revenue is so much of any income tax or capital gains tax to which P is liable in respect of the tax year as by reason of the failure is unpaid on 31 January following the tax year.
- (3) In the case of a relevant obligation relating to corporation tax and an accounting period, the potential lost revenue is (subject to sub-paragraph (4)) so much of any corporation tax to which P is liable in respect of the accounting period as by reason of the failure is unpaid 12 months after the end of the accounting period.
- (4) In computing the amount of that tax no account shall be taken of any relief under [^{F32}section 458 of CTA 2010] (relief in respect of repayment etc of loan) which is deferred under [^{F33}subsection (5)] of that section.
- [^{F34}(4A) In the case of a relevant obligation relating to diverted profits tax, the potential lost revenue is the amount of diverted profits tax for which P would be liable at the end of the period of 6 months beginning immediately after the accounting period assuming—
- (a) a charge to diverted profits tax had been imposed on P on the taxable diverted profits arising to P for the accounting period, and
 - (b) that tax was required to be paid before the end of that period of 6 months.]
- (5) In any case where the failure is a failure to comply with the obligation under paragraph 2(4) of Schedule 11 to VATA 1994, the potential lost revenue is the value added tax on the acquisition to which the failure relates.
- (6) In the case of any other relevant obligation relating to value added tax, the potential lost revenue is the amount of the value added tax (if any) for which P is, or but for any exemption from registration would be, liable for the relevant period (see sub-paragraph (7)), but subject to sub-paragraph (8).
- (7) “The relevant period” is—
- (a) in relation to a failure to comply with paragraph 14(2) or (3) of Schedule 1 to VATA 1994, paragraph 8(2) of Schedule 3 to that Act or paragraph 7(2) or (3) of Schedule 3A to that Act, the period beginning on the date of the change or alteration concerned and ending on the date on which HMRC received notification of, or otherwise became fully aware of, that change or alteration, and
 - (b) in relation to a failure to comply with an obligation under any other provision, the period beginning on the date with effect from which P is required in accordance with that provision to be registered and ending on the date on which HMRC received notification of, or otherwise became fully aware of, P's liability to be registered.
- (8) But the amount mentioned in sub-paragraph (6) is reduced—
- (a) if the amount of the tax mentioned in that sub-paragraph includes tax on an acquisition of goods from another member State, by the amount of any

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- VAT which HMRC are satisfied has been paid on the supply in pursuance of which the goods were acquired under the law of that member State, and
- (b) if the amount of that tax includes tax chargeable by virtue of section 7(4) of VATA 1994 on a supply, by the amount of any VAT which HMRC are satisfied has been paid on that supply under the law of another member State.
- [^{F35}(8A) In the case of a relevant obligation under section 47 of FA 1996 (which relates to landfill tax), the potential lost revenue is the amount of tax (if any) for which P is liable for the period—
- (a) beginning with the date with effect from which P is required in accordance with that section to be registered or (as the case may be) from which the Commissioners may register P under that section, and
- (b) ending with the day on which HMRC received notification of, or otherwise became fully aware of, P's liability to be registered or (as the case may be) the Commissioners' power to register P.]
- (9) In the case of a relevant obligation under any provision relating to insurance premium tax, aggregates levy, climate change levy^{F36} ... or air passenger duty, the potential lost revenue is the amount of the tax (if any) for which P is liable for the period—
- (a) beginning on the date with effect from which P is required in accordance with that provision to be registered, and
- (b) ending on the date on which HMRC received notification of, or otherwise became fully aware of, P's liability to be registered.
- (10) In the case of a failure to comply with a relevant obligation relating to any other tax, the potential lost revenue is the amount of any tax which is unpaid by reason of the failure.

Textual Amendments

- F30** Sch. 41 para. 7(1A)(1B) inserted (17.7.2013) (with effect in accordance with Sch. 51 para. 9 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 51 para. 6(2)**
- F31** Words in Sch. 41 para. 7(2) inserted (17.7.2013) (with effect in accordance with Sch. 51 para. 9 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 51 para. 6(3)**
- F32** Words in Sch. 41 para. 7(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 583(a)** (with Sch. 2)
- F33** Words in Sch. 41 para. 7(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 583(b)** (with Sch. 2)
- F34** Sch. 41 para. 7(4A) inserted (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), **s. 104(6)**
- F35** Sch. 41 para. 7(8A) inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 12 para. 27(6)(a)**
- F36** Words in Sch. 41 para. 7(9) omitted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by virtue of Finance Act 2018 (c. 3), **Sch. 12 para. 27(6)(b)**

Modifications etc. (not altering text)

- C3** Sch. 41 para. 7 applied (3.11.2017) by The Sections 106B, 106C and 106D of the Taxes Management Act 1970 (Specified Threshold Amount) Regulations 2017 (S.I. 2017/988), regs. 1, **4(a)**, 5, 6

Commencement Information

- I7** Sch. 41 para. 7 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, **art. 2**

Status: Point in time view as at 06/04/2018.

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- 8 In the case of the making of an unauthorised issue of an invoice showing VAT, the potential lost revenue is the amount shown on the invoice as value added tax or the amount to be taken as representing value added tax.

Commencement Information

I8 Sch. 41 para. 8 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

- 9 In the case of—
- (a) the doing of an act which enables HMRC to assess an amount of duty as due under a relevant excise provision, or
 - (b) supplying a product knowing that it will be used in a way which enables HMRC to assess an amount as duty due from another person under a relevant excise provision,
- the potential lost revenue is the amount of the duty which may be assessed as due.

Commencement Information

I9 Sch. 41 para. 9 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

- [^{F37}9A In the case of the doing of an act which enables HMRC to assess an amount of landfill tax as due under section 50A of FA 1996, the potential lost revenue is the amount of the tax which may be assessed as due.]

Textual Amendments

F37 Sch. 41 para. 9A inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 para. 27(7)

- 10 In the case of acquiring possession of, or being concerned in dealing with, goods the payment of duty on which is outstanding and has not been deferred [^{F38}or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid], the potential lost revenue is an amount equal to the amount of duty due on the goods.

Textual Amendments

F38 Words in Sch. 41 para. 10 inserted (6.4.2018) by Finance Act 2017 (c. 10), s. 61(1), Sch. 11 para. 2(7); S.I. 2018/464, art. 2(e)

Commencement Information

I10 Sch. 41 para. 10 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

- 11 (1) In calculating potential lost revenue in respect of a relevant act or failure on the part of P no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person (except to the extent that an enactment requires or permits a person's tax liability to be adjusted by reference to P's).
- (2) In this Schedule “a relevant act or failure” means—
- (a) a failure to comply with a relevant obligation,

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- (b) the making of an unauthorised issue of an invoice showing VAT,
- (c) the doing of an act which enables HMRC to assess an amount of duty as due under a relevant excise provision or supplying a product knowing that it will be used in a way which enables HMRC to assess an amount as duty due from another person under a relevant excise provision, or
- (d) acquiring possession of, or being concerned in dealing with, goods the payment of duty on which is outstanding and has not been deferred [^{F39}or (as the case may be) chargeable soft drinks in respect of which a payment of soft drinks industry levy is due and payable and has not been paid].

Textual Amendments

F39 Words in Sch. 41 para. 11(2)(d) inserted (6.4.2018) by Finance Act 2017 (c. 10), s. 61(1), Sch. 11 para. 2(8); S.I. 2018/464, art. 2(e)

Modifications etc. (not altering text)

C4 Sch. 41 para. 11 applied (3.11.2017) by The Sections 106B, 106C and 106D of the Taxes Management Act 1970 (Specified Threshold Amount) Regulations 2017 (S.I. 2017/988), regs. 1, 4(a), 5, 6

Commencement Information

I11 Sch. 41 para. 11 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

Reductions for disclosure

- 12 [^{F40}(1) Paragraph 13 provides for reductions in penalties—
- (a) under paragraph 1 where P discloses a relevant failure that involves a domestic matter, and
 - (b) under paragraphs 2 to 4 where P discloses a relevant act or failure.
- (1A) Paragraph 13A provides for reductions in penalties under paragraph 1 where P discloses a relevant failure that involves an offshore matter or an offshore transfer.
- (1B) Sub-paragraph (2) applies where P discloses—
- (a) a relevant failure that involves a domestic matter,
 - (b) a non-deliberate relevant failure that involves an offshore matter, or
 - (c) a relevant act or failure giving rise to a penalty under any of paragraphs 2 to 4.]
- (2) P discloses [^{F41}the] relevant act or failure by—
- (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it, and
 - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.
- [^{F42}(2A) Sub-paragraph (2B) applies where P discloses—
- (a) a deliberate relevant failure (whether concealed or not) that involves an offshore matter, or
 - (b) a relevant failure that involves an offshore transfer.
- (2B) P discloses the failure by—

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- (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it,
 - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and
 - (d) providing HMRC with additional information.
- (2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).
- (2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.
- (2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.]
- (3) Disclosure of a relevant act or failure—
- (a) is “unprompted” if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the relevant act or failure, and
 - (b) otherwise, is “prompted”.
- (4) In relation to disclosure “quality” includes timing, nature and extent.
- [^{F43}(5) Paragraph 6A(4) to (5) applies to determine whether a failure involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.
- (6) In this paragraph “relevant failure” means a failure to comply with a relevant obligation.]

Textual Amendments

- F40** Sch. 41 para. 12(1)-(1B) substituted for Sch. 41 para. 12(1) (with effect in accordance with reg. 2 of the commencing S.I.) by Finance Act 2016 (c. 24), s. 163(2), **Sch. 21 para. 6(2)**; S.I. 2017/259, reg. 2
- F41** Word in Sch. 41 para. 12(2) substituted (with effect in accordance with reg. 2 of the commencing S.I.) by Finance Act 2016 (c. 24), s. 163(2), **Sch. 21 para. 6(3)**; S.I. 2017/259, reg. 2
- F42** Sch. 41 para. 12(2A)-(2E) inserted (8.3.2017 for specified purposes and in so far as not already in force and with effect in accordance with reg. 2 of the commencing S.I.) by Finance Act 2016 (c. 24), s. 163(2), **Sch. 21 para. 6(4)**; S.I. 2017/259, regs. 2, 3
- F43** Sch. 41 para. 12(5)(6) inserted (with effect in accordance with reg. 2 of the commencing S.I.) by Finance Act 2016 (c. 24), s. 163(2), **Sch. 21 para. 6(5)**; S.I. 2017/259, reg. 2

Commencement Information

- I12** Sch. 41 para. 12 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

- [^{F44}13 (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.
- (2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—
- (a) for a prompted disclosure, in column 2 of the Table, and
 - (b) for an unprompted disclosure, in column 3 of the Table.
- (3) Where the Table shows a different minimum for case A and case B—
- (a) the case A minimum applies if—

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- (i) the penalty is one under paragraph 1, and
 - (ii) HMRC become aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure, and
- (b) otherwise, the case B minimum applies.

<i>^{F45} Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
70%	35%	20%
100%	50%	30%]]

Textual Amendments

- F44** Sch. 41 para. 13 substituted (6.4.2011) by [Finance Act 2010 \(c. 13\), s. 35\(2\), Sch. 10 para. 9; S.I. 2011/975, art. 2\(1\)](#) (with [art. 4](#))
- F45** Sch. 41 para. 13(3) Table substituted (with effect in accordance with reg. 2 of the commencing S.I.) by [Finance Act 2016 \(c. 24\), s. 163\(2\), Sch. 21 para. 7; S.I. 2017/259, reg. 2](#)

Commencement Information

- I13** Sch. 41 para. 13 in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511, art. 2](#)

- ^{F46}13A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.
- (2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—
- (a) for a prompted disclosure, in column 2 of the Table, and
 - (b) for an unprompted disclosure, in column 3 of the Table.
- (3) Where the Table shows a different minimum for case A and case B—
- (a) the case A minimum applies if HMRC becomes aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure;
 - (b) otherwise, the case B minimum applies.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
37.5%	case A: 12.5% case B: 25%	case A: 0% case B: 12.5%
45%	case A: 15% case B: 30%	case A: 0% case B: 15%
60%	case A: 20% case B: 40%	case A: 0% case B: 20%

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70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%]

Textual Amendments

F46 Sch. 41 para. 13A inserted (with effect in accordance with reg. 2 of the commencing S.I.) by Finance Act 2016 (c. 24), s. 163(2), Sch. 21 para. 8; S.I. 2017/259, reg. 2

Special reduction

- 14 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any of paragraphs 1 to 4.
- (2) In sub-paragraph (1) “special circumstances” does not include—
- (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
- (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

Commencement Information

I14 Sch. 41 para. 14 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

Interaction with other penalties and late payment surcharges

- 15 (1) The amount of a penalty for which P is liable under any of paragraphs 1 to 4 shall be reduced by the amount of any other penalty incurred by P, or any surcharge for late payment of tax imposed on P, if the amount of the penalty or surcharge is determined by reference to the same tax liability.

[^{F47}(1A) In sub-paragraph (1) “any other penalty” does not include a penalty under Part 4 of FA 2014 (penalty where corrective action not taken after follower notice etc) [^{F48}or Schedule 22 to FA 2016 (asset-based penalty)].]

- (2) If P is liable to a penalty under section 9 of FA 1994 in respect of a failure to comply with a relevant obligation, the amount of any penalty payable under paragraph 1 in respect of the failure is to be reduced by the amount of the penalty under that section.

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- (3) Where penalties are imposed under paragraph 3(1) and (2) in respect of the same act or use, the aggregate of the amounts of the penalties must not exceed 100% of the potential lost revenue.

Textual Amendments

- F47** Sch. 41 para. 15(1A) inserted (17.7.2014) by Finance Act 2014 (c. 26), Sch. 33 para. 4
F48 Words in Sch. 41 para. 15(1A) inserted (with effect in accordance with reg. 2(b) of the commencing S.I.) by Finance Act 2016 (c. 24), s. 165(2), Sch. 22 para. 20(4); S.I. 2017/277, reg. 2(b)

Commencement Information

- I15** Sch. 41 para. 15 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

Assessment

- 16 (1) Where P becomes liable for a penalty under any of paragraphs 1 to 4 HMRC shall—
- (a) assess the penalty,
 - (b) notify P, and
 - (c) state in the notice the period in respect of which the penalty is assessed.
- (2) A penalty under any of paragraphs 1 to 4 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment—
- (a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.
- (4) An assessment of a penalty under any of paragraphs 1 to 4 must be made before the end of the period of 12 months beginning with—
- (a) the end of the appeal period for the assessment of tax unpaid by reason of the relevant act or failure in respect of which the penalty is imposed, or
 - (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the relevant act or failure is ascertained.
- (5) In sub-paragraph (4)(a) “appeal period” means the period during which—
- (a) an appeal could be brought, or
 - (b) an appeal that has been brought has not been determined or withdrawn.
- (6) Subject to sub-paragraph (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.
- (7) The references in this paragraph to “an assessment to tax” are, in relation to a penalty under paragraph 2, a demand for recovery.

Commencement Information

- I16** Sch. 41 para. 16 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

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Appeal

- 17 (1) P may appeal against a decision of HMRC that a penalty is payable by P.
(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

Commencement Information

I17 Sch. 41 para. 17 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

- [^{F49}18 (1) An appeal shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or the Upper Tribunal).
- (2) [^{F50}Sub-paragraph (1) does not apply—
- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
 - (b) in respect of any other matter expressly provided for by this Act.]]

Textual Amendments

F49 Sch. 41 para. 18 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. 473(2)**

F50 Sch. 41 para. 18(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 57 para. 11**

Commencement Information

I18 Sch. 41 para. 18 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

- 19 (1) On an appeal under paragraph 17(1) the [^{F51}tribunal] may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 17(2) the [^{F51}tribunal] may—
- (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the [^{F51}tribunal] substitutes its decision for HMRC's, the [^{F52}tribunal] may rely on paragraph 14—
- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
 - (b) to a different extent, but only if the [^{F52}tribunal] thinks that HMRC's decision in respect of the application of paragraph 14 was flawed.
- (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- [^{F53}(5) In this paragraph, “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 18(1)).]

Status: Point in time view as at 06/04/2018.

Changes to legislation: Finance Act 2008, SCHEDULE 41 is up to date with all changes known to be in force on or before 13 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F51** Word in Sch. 41 para. 19 substituted (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. 473(3)(a)**
- F52** Word in Sch. 41 para. 19(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. 473(3)(b)**
- F53** Sch. 41 para. 19(5) 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. 473(3)(c)**

Commencement Information

- I19** [Sch. 41 para. 19](#) in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511](#), **art. 2**

Reasonable excuse

- 20 (1) Liability to a penalty under any of paragraphs 1, 2, 3(1) and 4 does not arise in relation to an act or failure which is not deliberate if P satisfies HMRC or ^{F54}(on an appeal notified to the tribunal) the tribunal] that there is a reasonable excuse for the act or failure.
- (2) For the purposes of sub-paragraph (1)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant act or failure, and
 - (c) where P had a reasonable excuse for the relevant act or failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the relevant act or failure is remedied without unreasonable delay after the excuse ceased.

Textual Amendments

- F54** Words in [Sch. 41 para. 20\(1\)](#) 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. 473(4)**

Commencement Information

- I20** [Sch. 41 para. 20](#) in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511](#), **art. 2**

Agency

- 21 (1) In paragraph 1 the reference to a failure by P includes a failure by a person who acts on P's behalf; but P is not liable to a penalty in respect of any failure by P's agent where P satisfies HMRC or ^{F55}(on an appeal notified to the tribunal) the tribunal] that P took reasonable care to avoid the failure.
- (2) In paragraph 2 the reference to the making by P of an unauthorised issue of an invoice showing VAT includes the making of such an unauthorised issue by a person who acts on P's behalf; but P is not liable to a penalty in respect of any action by P's agent where P satisfies HMRC or ^{F55}(on an appeal notified to the tribunal) the tribunal] that P took reasonable care to avoid it.

Status: Point in time view as at 06/04/2018.

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- (3) In paragraph 3(1) the reference to the doing by P of an act which enables HMRC to assess an amount as duty due from P under a relevant excise provision includes the doing of such an act by a person who acts on P's behalf; but P is not liable to a penalty in respect of any action by P's agent where P satisfies HMRC or [^{F55}(on an appeal notified to the tribunal) the tribunal] that P took reasonable care to avoid it.
- (4) In [^{F56}paragraph 4(1)] the reference to P acquiring possession of, or being concerned in dealing with, goods the payment of duty on which is outstanding and has not been deferred includes a person who acts on P's behalf doing so; but P is not liable to a penalty in respect of any action by P's agent where P satisfies HMRC or [^{F55}(on an appeal notified to the tribunal) the tribunal] that P took reasonable care to avoid it.
- [^{F57}(5) In paragraph 4(1A) the reference to P acquiring possession of, or being concerned in dealing with, chargeable soft drinks in respect of which a payment of soft drinks industry levy is payable but has not been paid includes a person who acts on P's behalf in doing so; but P is not liable to a penalty in respect of any action by P's agent where P satisfies HMRC or (on appeal) the First-tier Tribunal that P took reasonable care to avoid it.]

Textual Amendments

- F55** Words in Sch. 41 para. 21 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. 473(5)**
- F56** Words in Sch. 41 para. 21(4) substituted (6.4.2018) by [Finance Act 2017 \(c. 10\)](#), s. 61(1), **Sch. 11 para. 2(9)(a)**; S.I. 2018/464, art. 2(e)
- F57** Sch. 41 para. 21(5) inserted (6.4.2018) by [Finance Act 2017 \(c. 10\)](#), s. 61(1), **Sch. 11 para. 2(9)(b)**; S.I. 2018/464, art. 2(e)

Commencement Information

- I21** Sch. 41 para. 21 in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511](#), **art. 2**

Companies: officers' liability

- 22 (1) Where a penalty under any of paragraphs 1, 2, 3(1) and 4 is payable by a company for a deliberate act or failure which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer.
- (2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.
- (3) In the application of sub-paragraph (1) to a body corporate [^{F58}other than a limited liability partnership] “officer” means—
- (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006 (c. 46)), [^{F59}...
- [^{F60}(aa) a manager, and]
- (b) a secretary.
- [^{F61}(3A) In the application of sub-paragraph (1) to a limited liability partnership, “officer” means a member.]
- (4) In the application of sub-paragraph (1) in any other case “officer” means—
- (a) a director,

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- (b) a manager,
 - (c) a secretary, and
 - (d) any other person managing or purporting to manage any of the company's affairs.
- (5) Where HMRC have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—
- (a) paragraph 14 applies to the specified portion as to a penalty,
 - (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
 - (c) paragraph 16(3) to (5) and (7) apply as if the notice were an assessment of a penalty,
 - (d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 16(6),
 - (e) paragraphs 17 to 19 apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer, and
 - (f) paragraph 23 applies as if the officer were liable to a penalty.

[^{F62}(6) In this paragraph “company” means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.]

Textual Amendments

- F58** Words in Sch. 41 para. 22(3) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 12\(2\)\(a\)](#)
- F59** Word in Sch. 41 para. 22(3)(a) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 12\(2\)\(b\)](#)
- F60** Sch. 41 para. 22(3)(aa) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 12\(2\)\(c\)](#)
- F61** Sch. 41 para. 22(3A) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 12\(3\)](#)
- F62** Sch. 41 para. 22(6) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 12\(4\)](#)

Commencement Information

- I22** [Sch. 41 para. 22](#) in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511](#), [art. 2](#)

Double jeopardy

- 23 P is not liable to a penalty under any of paragraphs 1 to 4 in respect of a failure or action in respect of which P has been convicted of an offence.

Commencement Information

- I23** [Sch. 41 para. 23](#) in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511](#), [art. 2](#)

Interpretation

- 24 (1) This paragraph applies for the construction of this Schedule
- (2) “HMRC” means Her Majesty's Revenue and Customs.
- (3) “Tax”, without more, includes duty.

Status: Point in time view as at 06/04/2018.

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- (4) An expression used in relation to value added tax has the same meaning as in VATA 1994.

Commencement Information

I24 Sch. 41 para. 24 in force at 1.4.2010 with effect in accordance with art. 3 by S.I. 2009/511, art. 2

Consequential repeals

- 25 In consequence of this Schedule the following provisions are omitted—
- (a) in TMA 1970—
 - (i) section 7(8), and
 - (ii) in the table in section 98, in the second column, the entry relating to section 55 of FA 2004,
 - (b) section 170A of CEMA 1979,
 - (c) in ALDA 1979—
 - (i) in section 47(5), “which shall be calculated by reference to the amount of duty charged on the beer produced”,
 - (ii) in section 54(5), “which shall be calculated by reference to the amount of duty charged on the wine produced”,
 - (iii) in section 55(6), “which shall be calculated by reference to the amount of duty charged on the made-wine produced”, and
 - (iv) in section 62(4), “which shall be calculated by reference to the amount of duty charged on the cider made”,
 - (d) in HODA 1979—
 - (i) section 13AD(4)(a) and (b), and
 - (ii) section 14F(4)(a) and (b),
 - (e) in FA 1994—
 - (i) section 33(6),
 - (ii) paragraph 13 of Schedule 4, and
 - (iii) paragraph 14 of Schedule 7,
 - (f) section 67 of VATA 1994,
 - (g) section 32 of FA 1995,
 - (h) in FA 1996—
 - (i) section 37, and
 - (ii) paragraph 21(1), (2) and (4) of Schedule 5,
 - (i) section 27(11) of FA 1997,
 - (j) paragraph 2(3) and (4) of Schedule 18 to FA 1998,
 - (k) in FA 2000—
 - (i) section 136(2), and
 - (ii) paragraph 55(2) to (6) of Schedule 6, and
 - (l) paragraph 1(2) to (6) of Schedule 4 to FA 2001.

Status: Point in time view as at 06/04/2018.

Changes to legislation: *Finance Act 2008, SCHEDULE 41 is up to date with all changes known to be in force on or before 13 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I25 [Sch. 41 para. 25](#) in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511](#), [art. 2](#) (with [art. 4](#))

Status:

Point in time view as at 06/04/2018.

Changes to legislation:

Finance Act 2008, SCHEDULE 41 is up to date with all changes known to be in force on or before 13 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.