

SCHEDULES

SCHEDULE 55

Section 106

PENALTY FOR FAILURE TO MAKE RETURNS ETC

Penalty for failure to make returns etc

- 1 (1) A penalty is payable by a person (“P”) where P fails to make or deliver a return, or to deliver any other document, specified in the Table below on or before the filing date.
- (2) Paragraphs 2 to 13 set out—
- (a) the circumstances in which a penalty is payable, and
 - (b) subject to paragraphs 14 to 17, the amount of the penalty.
- (3) If P’s failure falls within more than one paragraph of this Schedule, P is liable to a penalty under each of those paragraphs (but this is subject to paragraph 17(3)).
- (4) In this Schedule—
- “filing date”, in relation to a return or other document, means the date by which it is required to be made or delivered to HMRC;
 - “penalty date”, in relation to a return or other document, means the date on which a penalty is first payable for failing to make or deliver it (that is to say, the day after the filing date).
- (5) In the provisions of this Schedule which follow the Table—
- (a) any reference to a return includes a reference to any other document specified in the Table, and
 - (b) any reference to making a return includes a reference to delivering a return or to delivering any such document.

	<i>Tax to which return etc relates</i>	<i>Return or other document</i>
1	Income tax or capital gains tax	(a) Return under section 8(1)(a) of TMA 1970 (b) Accounts, statement or document required under section 8(1)(b) of TMA 1970
2	Income tax or capital gains tax	(a) Return under section 8A(1)(a) of TMA 1970 (b) Accounts, statement or document required under

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	<i>Tax to which return etc relates</i>	<i>Return or other document</i>
		section 8A(1)(b) of TMA 1970
3	Income tax or corporation tax	(a) Return under section 12AA(2)(a) or (3)(a) of TMA 1970 (b) Accounts, statement or document required under section 12AA(2)(b) or (3)(b) of TMA 1970
4	Income tax	(a) Annual return of payments and net tax deducted for the purposes of PAYE regulations (b) Return of revised payments and net tax deducted for those purposes where those amounts are revised after end of tax year
5	Income tax	Return under section 254 of FA 2004 (pension schemes)
6	Deductions on account of tax under Chapter 3 of Part 3 of FA 2004 (construction industry scheme)	Return under regulations under section 70 of FA 2004
7	Corporation tax	Company tax return under paragraph 3 of Schedule 18 to FA 1998
8	Inheritance tax	Account under section 216 or 217 of IHTA 1984
9	Stamp duty land tax	Land transaction return under section 76 of FA 2003 or further return under section 81 of that Act
10	Stamp duty land tax	Return under paragraph 3, 4 or 8 of Schedule 17A to FA 2003

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	<i>Tax to which return etc relates</i>	<i>Return or other document</i>
11	Stamp duty reserve tax	Notice of charge to tax under regulations under section 98 of FA 1986
12	Petroleum revenue tax	Return under paragraph 2 of Schedule 2 to OTA 1975
13	Petroleum revenue tax	Statement under section 1(1)(a) of PRTA 1980

Amount of penalty: occasional returns and annual returns

- 2 Paragraphs 3 to 6 apply in the case of a return falling within any of items 1 to 5 and 7 to 13 in the Table.
- 3 P is liable to a penalty under this paragraph of £100.
- 4 (1) P is liable to a penalty under this paragraph if (and only if)—
- (a) P's failure continues after the end of the period of 3 months beginning with the penalty date,
 - (b) HMRC decide that such a penalty should be payable, and
 - (c) HMRC give notice to P specifying the date from which the penalty is payable.
- (2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).
- (3) The date specified in the notice under sub-paragraph (1)(c)—
- (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).
- 5 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this paragraph is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- 6 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).
- (3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

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- (a) 100% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- (4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—
- (a) 70% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- (5) In any other case, the penalty under this paragraph is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.

Amount of penalty: CIS returns

- 7 Paragraphs 8 to 13 apply in the case of a return falling within item 6 in the Table.
- 8 P is liable to a penalty under this paragraph of £100.
- 9 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 2 months beginning with the penalty date.
- (2) The penalty under this paragraph is £200.
- 10 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this paragraph is the greater of—
- (a) 5% of any liability to make payments which would have been shown in the return in question, and
 - (b) £300.
- 11 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P withholds information which would enable or assist HMRC to assess the amount that P is liable to pay to HMRC in accordance with Chapter 3 of Part 3 of FA 2004, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).
- (3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—
- (a) 100% of any liability to make payments which would have been shown in the return in question, and
 - (b) £3,000.
- (4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—
- (a) 70% of any liability to make payments which would have been shown in the return in question, and
 - (b) £1,500.
- (5) In any other case, the penalty under this paragraph is the greater of—

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- (a) 5% of any liability to make payments which would have been shown in the return in question, and
 - (b) £300.
- 12 (1) P is liable to a penalty under this paragraph if (and only if)—
 - (a) P’s failure continues after the end of the period of 12 months beginning with the penalty date, and
 - (b) the information required in the return relates only to persons registered for gross payment (within the meaning of Chapter 3 of Part 3 of FA 2004).
- (2) Where, by failing to make the return, P withholds information which relates to such persons, the penalty under this paragraph is—
 - (a) if the withholding of the information is deliberate and concealed, £3,000, and
 - (b) if the withholding of the information is deliberate but not concealed, £1,500.
- 13 (1) This paragraph applies—
 - (a) at any time before P first makes a return falling within item 6 in the Table, to any return falling within that item, and
 - (b) at any time after P first makes a return falling within that item, to that return and any earlier return.
- (2) In respect of any return or returns to which this paragraph applies—
 - (a) paragraphs 10(2)(b) and 11(5)(b) do not apply, and
 - (b) P is not liable to penalties under paragraphs 8 and 9 which exceed, in total, £3,000.
- (3) In sub-paragraph (1)(b) “earlier return” means any return falling within item 6 which has a filing date earlier than the date on which P first made a return.

Reductions for disclosure

- 14 (1) Paragraph 15 provides for reductions in the penalty under paragraph 6(3) or (4) or 11(3) or (4) where P discloses information which has been withheld by a failure to make a return (“relevant information”).
- (2) P discloses relevant information by—
 - (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
 - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.
- (3) Disclosure of relevant information—
 - (a) is “unprompted” if made at a time when P has no reason to believe that HMRC have discovered or are about to discover the relevant information, and
 - (b) otherwise, is “prompted”.
- (4) In relation to disclosure “quality” includes timing, nature and extent.
- 15 (1) Where a person who would otherwise be liable to a 100% penalty has made an unprompted disclosure, HMRC must reduce the 100% to a percentage, not below 30%, which reflects the quality of the disclosure.

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- (2) Where a person who would otherwise be liable to a 100% penalty has made a prompted disclosure, HMRC must reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.
- (3) Where a person who would otherwise be liable to a 70% penalty has made an unprompted disclosure, HMRC must reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.
- (4) Where a person who would otherwise be liable to a 70% penalty has made a prompted disclosure, HMRC must reduce the 70% to a percentage, not below 35%, which reflects the quality of the disclosure.
- (5) But HMRC must not under this paragraph—
 - (a) reduce a penalty under paragraph 6(3) or (4) below £300, or
 - (b) reduce a penalty under paragraph 11(3) or (4) below the amount set by paragraph 11(3)(b) or (4)(b) (as the case may be).

Special reduction

- 16 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.
- (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.

Interaction with other penalties and late payment surcharges

- 17 (1) Where P is liable for a penalty under any paragraph of this Schedule which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.
- (2) In sub-paragraph (1) the reference to “any other penalty” does not include—
 - (a) a penalty under any other paragraph of this Schedule, or
 - (b) a penalty under Schedule 56 (penalty for late payment of tax).
- (3) Where P is liable for a penalty under more than one paragraph of this Schedule which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.

Assessment

- 18 (1) Where P is liable for a penalty under any paragraph of this Schedule HMRC must—
 - (a) assess the penalty,
 - (b) notify P, and
 - (c) state in the notice the period in respect of which the penalty is assessed.

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- (2) A penalty under any paragraph of this Schedule 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 of a penalty under any paragraph of this Schedule—
 - (a) is to 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 Schedule),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.
 - (4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return.
- 19
- (1) An assessment of a penalty under any paragraph of this Schedule in respect of any amount must be made on or before the later of date A and (where it applies) date B.
 - (2) Date A is the last day of the period of 2 years beginning with the filing date.
 - (3) Date B is the last day of the period of 12 months beginning with—
 - (a) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
 - (b) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil.
 - (4) In sub-paragraph (3)(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.
 - (5) Sub-paragraph (1) does not apply to a re-assessment under paragraph 24(2)(b).

Appeal

- 20
- (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.
- 21
- (1) An appeal under paragraph 20 is to 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 Upper Tribunal).
 - (2) 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.
- 22
- (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.
 - (2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may—
 - (a) affirm HMRC’s decision, or
 - (b) substitute for HMRC’s decision another decision that HMRC had power to make.

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- (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16—
- (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 tribunal thinks that HMRC's decision in respect of the application of paragraph 16 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.
- (5) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 21(1)).

Reasonable excuse

- 23 (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the 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 failure, and
 - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Determination of penalty geared to tax liability where no return made

- 24 (1) References to a liability to tax which would have been shown in a return are references to the amount which, if a complete and accurate return had been delivered on the filing date, would have been shown to be due or payable by the taxpayer in respect of the tax concerned for the period to which the return relates.
- (2) In the case of a penalty which is assessed at a time before P makes the return to which the penalty relates—
- (a) HMRC is to determine the amount mentioned in sub-paragraph (1) to the best of HMRC's information and belief, and
 - (b) if P subsequently makes a return, the penalty must be re-assessed by reference to the amount of tax shown to be due and payable in that return (but subject to any amendments or corrections to the return).
- (3) In calculating a liability to tax which would have been shown in a return, no account is to be taken of any relief under subsection (4) of section 419 of ICTA (relief in respect of repayment etc of loan) which is deferred under subsection (4A) of that section.

Partnerships

- 25 (1) This paragraph applies where—
- (a) the representative partner, or

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- (b) a successor of the representative partner,
fails to make a return falling within item 3 in the Table (partnership returns).
- (2) A penalty in respect of the failure is payable by every relevant partner.
- (3) In accordance with sub-paragraph (2), any reference in this Schedule to P is to be read as including a reference to a relevant partner.
- (4) An appeal under paragraph 20 in connection with a penalty payable by virtue of this paragraph may be brought only by—
 - (a) the representative partner, or
 - (b) a successor of the representative partner.
- (5) Where such an appeal is brought in connection with a penalty payable in respect of a failure, the appeal is to be treated as if it were an appeal in connection with every penalty payable in respect of that failure.
- (6) In this paragraph—
 - “relevant partner” means a person who was a partner in the partnership to which the return relates at any time during the period in respect of which the return was required;
 - “representative partner” means a person who has been required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver any return;
 - “successor” has the meaning given by section 12AA(11) of TMA 1970.

Double jeopardy

- 26 P is not liable to a penalty under any paragraph of this Schedule in respect of a failure or action in respect of which P has been convicted of an offence.

Interpretation

- 27 (1) This paragraph applies for the construction of this Schedule.
- (2) The withholding of information by P is—
 - (a) “deliberate and concealed” if P deliberately withholds the information and makes arrangements to conceal the fact that the information has been withheld, and
 - (b) “deliberate but not concealed” if P deliberately withholds the information but does not make arrangements to conceal the fact that the information has been withheld.
- (3) “HMRC” means Her Majesty’s Revenue and Customs.
- (4) References to a liability to tax, in relation to a return falling within item 6 in the Table (construction industry scheme), are to a liability to make payments in accordance with Chapter 3 of Part 3 of FA 2004.
- (5) References to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.