

## SCHEDULES

### SCHEDULE 56

Section 107

#### PENALTY FOR FAILURE TO MAKE PAYMENTS ON TIME

##### *Penalty for failure to pay tax*

- 1 (1) A penalty is payable by a person (“P”) where P fails to pay an amount of tax specified in column 3 of the Table below on or before the date specified in column 4.
- (2) Paragraphs 3 to 8 set out—
  - (a) the circumstances in which a penalty is payable, and
  - (b) subject to paragraph 9, the amount of the penalty.
- (3) If P’s failure falls within more than one provision of this Schedule, P is liable to a penalty under each of those provisions.
- (4) In the following provisions of this Schedule, the “penalty date”, in relation to an amount of tax, means the date on which a penalty is first payable for failing to pay the amount (that is to say, the day after the date specified in or for the purposes of column 4 of the Table).

	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>
<b>PRINCIPAL AMOUNTS</b>			
1	Income tax or capital gains tax	Amount payable under section 59B(3) or (4) of TMA 1970	The date falling 30 days after the date specified in section 59B(3) or (4) of TMA 1970 as the date by which the amount must be paid
2	Income tax	Amount payable under PAYE regulations (except an amount falling within item 20)	The date determined by or under PAYE regulations as the date by which the amount must be paid
3	Income tax	Amount shown in return under section 254(1) of FA 2004	The date falling 30 days after the date specified in section 254(5) of

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	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>
			FA 2004 as the date by which the amount must be paid
4	Deductions on account of tax under Chapter 3 of Part 3 of FA 2004 (construction industry scheme)	Amount payable under section 62 of FA 2004 (except an amount falling within item 17, 23 or 24)	The date determined by or under regulations under section 62 of FA 2004 as the date by which the amount must be paid
5	Corporation tax	Amount shown in company tax return under paragraph 3 of Schedule 18 to FA 1998	The filing date for the company tax return for the accounting period for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998)
6	Corporation tax	Amount payable under regulations under section 59E of TMA 1970 (except an amount falling within item 17, 23 or 24)	The filing date for the company tax return for the accounting period for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998)
7	Inheritance tax	Amount payable under section 226 of IHTA 1984 (except an amount falling within item 14 or 21)	The filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount
8	Inheritance tax	Amount payable under section 227 or 229 of IHTA 1984 (except an amount falling within item 14 or 21)	For the first instalment, the filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount. For any later instalment, the date falling 30

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	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>
			days after the date determined under section 227 or 229 of IHTA 1984 as the date by which the instalment must be paid
9	Stamp duty land tax	Amount payable under section 86(1) or (2) of FA 2003	The date falling 30 days after the date specified in section 86(1) or (2) of FA 2003 as the date by which the amount must be paid
10	Stamp duty reserve tax	Amount payable under section 87, 93 or 96 of FA 1986 or Schedule 19 to FA 1999 (except an amount falling within item 17, 23 or 24)	The date falling 30 days after the date determined by or under regulations under section 98 of FA 1986 as the date by which the amount must be paid
11	Petroleum revenue tax	Amount charged in an assessment under paragraph 11(1) of Schedule 2 to OTA 1975	The date falling 30 days after the date determined in accordance with paragraph 13 of Schedule 2 to OTA 1975 as the date by which the amount must be paid
<b>AMOUNTS PAYABLE IN DEFAULT OF A RETURN BEING MADE</b>			
12	Income tax or capital gains tax	Amount payable under section 59B(5A) of TMA 1970	The date falling 30 days after the date specified in section 59B(5A) of TMA 1970 as the date by which the amount must be paid
13	Corporation tax	Amount shown in determination under paragraph 36 or 37 of	The filing date for the company tax return for the accounting period

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	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>
		Schedule 18 to FA 1998	for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998)
14	Inheritance tax	Amount shown in a determination made by HMRC in the circumstances set out in paragraph 2	The filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount
15	Stamp duty land tax	Amount shown in determination under paragraph 25 of Schedule 10 to FA 2003 (including that paragraph as applied by section 81(3) of that Act)	The date falling 30 days after the filing date for the return in question
16	Petroleum revenue tax	Amount charged in an assessment made where participator fails to deliver return for a chargeable period	The date falling 6 months and 30 days after the end of the chargeable period
17	Tax falling within any of items 1 to 6, 9 or 10	Amount (not falling within any of items 12 to 15) which is shown in an assessment or determination made by HMRC in the circumstances set out in paragraph 2	The date falling 30 days after the date by which the amount would have been required to be paid if it had been shown in the return in question

***AMOUNTS SHOWN TO BE DUE IN OTHER ASSESSMENTS,  
DETERMINATIONS, ETC***

18	Income tax or capital gains tax	Amount payable under section 55 of TMA 1970	The date falling 30 days after the date determined in accordance with section 55(3), (4), (6) or (9) of TMA 1970 as the date by
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	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>
19	Income tax or capital gains tax	Amount payable under section 59B(5) or (6) of TMA 1970	which the amount must be paid The date falling 30 days after the date specified in section 59B(5) or (6) of TMA 1970 as the date by which the amount must be paid
20	Income tax	Amount shown in determination made by HMRC where it appears that tax payable under PAYE regulations has not been paid	The date determined by or under PAYE regulations as the date by which the amount must be paid
21	Inheritance tax	Amount shown in— (a) an amendment or correction of a return showing an amount falling within item 7 or 8, or (b) a determination made by HMRC in circumstances other than those set out in paragraph 2	The later of— (a) the filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount, and (b) the date falling 30 days after the date on which the amendment, correction, assessment or determination is made
22	Petroleum revenue tax	Amount charged in an assessment, or an amendment of an assessment, made in circumstances other than those set	The date falling 30 days after— (a) the date by which the amount must be paid, or

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	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>
		out in items 11 and 16	(b) the date on which the assess- ment or amendment is made, whichever is later
23	Tax falling within any of items 1 to 6, 9 or 10	Amount (not falling within any of items 18 to 20) shown in an amendment or correction of a return showing an amount falling within any of items 1 to 6, 9 or 10	The date falling 30 days after— (a) the date by which the amount must be paid, or (b) the date on which the amendment or correction is made, whichever is later
24	Tax falling within any of items 1 to 6, 9 or 10	Amount (not falling within any of items 18 to 20) shown in an assessment or determination made by HMRC in circumstances other than those set out in paragraph 2	The date falling 30 days after— (a) the date by which the amount must be paid, or (b) the date on which the assessment or determin- ation is made, whichever is later

*Assessments and determinations in default of return*

- 2 The circumstances referred to in items 14, 17, 21 and 24 are where—
- (a) P or another person is required to make or deliver a return falling within any item in the Table in Schedule 55,
  - (b) that person fails to make or deliver the return on or before the date by which it is required to be made or delivered, and
  - (c) if the return had been made or delivered as required, the return would have shown that an amount falling within any of items 1 to 10 was due and payable.

*Amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more*

- 3 (1) This paragraph applies in the case of—

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- (a) a payment of tax falling within any of items 1, 3 and 7 to 24 in the Table,
  - (b) a payment of tax falling within item 2 or 4 which relates to a period of 6 months or more, and
  - (c) a payment of tax falling within item 2 which is payable under regulations under section 688A of ITEPA 2003 (recovery from other persons of amounts due from managed service companies).
- (2) P is liable to a penalty of 5% of the unpaid tax.
- (3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- (4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- 4 (1) This paragraph applies in the case of a payment of tax falling within item 5 or 6 in the Table.
- (2) P is liable to a penalty of 5% of the unpaid tax.
- (3) If any amount of the tax is unpaid after the end of the period of 3 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- (4) If any amount of the tax is unpaid after the end of the period of 9 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

*Amount of penalty: PAYE and CIS amounts*

- 5 (1) Paragraphs 6 to 8 apply in the case of a payment of tax falling within item 2 or 4 in the Table.
- (2) But those paragraphs do not apply in the case of a payment mentioned in paragraph 3(1)(b) or (c).
- 6 (1) P is liable to a penalty under this paragraph of an amount determined by reference to the number of defaults in relation to the same tax that P has made during the tax year.
- (2) P makes a default in relation to a tax when P fails to pay an amount of that tax in full on or before the date on which it becomes due and payable.
- (3) But the first failure during a tax year to pay an amount of tax does not count as a default in relation to that tax during that tax year.
- (4) If P makes 1, 2 or 3 defaults during the tax year, P is liable to penalty of 1% of the total amount of those defaults.
- (5) If P makes 4, 5 or 6 defaults during the tax year, P is liable to penalty of 2% of the total amount of those defaults.
- (6) If P makes 7, 8 or 9 defaults during the tax year, P is liable to penalty of 3% of the total amount of those defaults.
- (7) If P makes 10 or more defaults during the tax year, P is liable to penalty of 4% of the total amount of those defaults.
- (8) In this paragraph—

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- (a) in accordance with sub-paragraph (1), the references in sub-paragraphs (4) to (7) to a default are references to a default in relation to the tax mentioned in sub-paragraph (3),
  - (b) the amount of a default is the amount which P fails to pay, and
  - (c) a default counts for the purposes of sub-paragraphs (4) to (7) even if the default is remedied before the end of the tax year.
- 7 If any amount of the tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- 8 If any amount of the tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

*Special reduction*

- 9 (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.

*Suspension of penalty during currency of agreement for deferred payment*

- 10 (1) This paragraph applies if—
- (a) P fails to pay an amount of tax when it becomes due and payable,
  - (b) P makes a request to HMRC that payment of the amount of tax be deferred, and
  - (c) HMRC agrees that payment of that amount may be deferred for a period (“the deferral period”).
- (2) If P would (apart from this sub-paragraph) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under any paragraph of this Schedule for failing to pay that amount, P is not liable to that penalty.
- (3) But if—
- (a) P breaks the agreement (see sub-paragraph (4)), and
  - (b) HMRC serves on P a notice specifying any penalty to which P would become liable apart from sub-paragraph (2),
- P becomes liable, at the date of the notice, to that penalty.
- (4) P breaks an agreement if—
- (a) P fails to pay the amount of tax in question when the deferral period ends, or
  - (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.



- (5) If the agreement mentioned in sub-paragraph (1)(c) is varied at any time by a further agreement between P and HMRC, this paragraph applies from that time to the agreement as varied.

### *Assessment*

- 11 (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.
- (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 notice of the assessment 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 an amount of unpaid tax.
- (5) A supplementary assessment may be made in respect of a penalty under paragraph 6 if—
- (a) notice of the assessment of the penalty was issued before the end of the tax year, and
  - (b) before the end of the year, P makes a further default (so that the penalty for the earlier default is increased).
- 12 (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 date specified in or for the purposes of column 4 of the Table (that is to say, the last date on which payment may be made without incurring a penalty).
- (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 amount of tax in respect of which the penalty is assessed, or
  - (b) if there is no such assessment, the date on which that amount of tax is ascertained.
- (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.

### *Appeal*

- 13 (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.

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- 14 (1) An appeal under paragraph 13 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.
- 15 (1) On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.
- (2) On an appeal under paragraph 13(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.
- (3) If the tribunal substitutes its decision for HMRC’s, the tribunal may rely on paragraph 9—
- (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 9 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 14(1)).

*Reasonable excuse*

- 16 (1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a payment 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.

*Double jeopardy*

- 17 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*

- 18 (1) This paragraph applies for the construction of this Schedule.

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- (2) “HMRC” means Her Majesty’s Revenue and Customs.
- (3) References to tax include construction industry deductions under Chapter 3 of Part 3 of FA 2004.
- (4) References to a determination, in relation to an amount payable under PAYE regulations or under Chapter 3 of Part 3 of FA 2004, include a certificate.
- (5) References to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.