

SCHEDULES

SCHEDULE 50

Section 230

PENALTIES: LATE FILING, LATE PAYMENT AND ERRORS

Amendments to Schedule 24 to FA 2007: penalties for errors

- 1 (1) In Schedule 24 to FA 2007 (penalties for errors), paragraph 13 (procedure: assessment) is amended as follows.
- (2) In sub-paragraph (1)(c), after “assessed” insert “(subject to sub-paragraph (1ZB))”.
- (3) After sub-paragraph (1) insert—
- “(1ZA) Sub-paragraph (1ZB) applies where—
- (a) a person is at any time liable for two or more penalties relating to PAYE returns, or for two or more penalties relating to CIS returns, and
- (b) the penalties (“the relevant penalties”) are assessed in respect of more than one tax period (“the relevant tax periods”).
- (1ZB) A notice under sub-paragraph (1) in respect of any of the relevant penalties may, instead of stating the tax period in respect of which the penalty is assessed, state the tax year or the part of a tax year to which the penalty relates.
- (1ZC) For that purpose, a relevant penalty relates to the tax year or the part of a tax year in which the relevant tax periods fall.
- (1ZD) For the purposes of sub-paragraph (1ZA)—
- “a PAYE return” means a return for the purposes of PAYE regulations;
- “a CIS return” means a return for the purposes of regulations under section 70(1)(a) of FA 2004 in connection with deductions on account of tax under the Construction Industry Scheme.”

Amendments to Schedule 55 to FA 2009: penalty for failure to make returns

- 2 Schedule 55 (penalty for failure to make returns etc) to FA 2009 is amended in accordance with paragraphs 3 to 9.
- 3 In paragraph 1 (returns etc in respect of which penalties are to be paid under that Schedule)—
- (a) in the definition of “penalty date” in sub-paragraph (4), after “document” insert “falling within any of items 1 to 3 and 5 to 13 in the Table”;
- (b) after sub-paragraph (4) insert—
- “(4A) The Treasury may by order make such amendments to item 4 in the Table as they think fit in consequence of any amendment,

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revocation or re-enactment of the regulations mentioned in that item.”

- 4 In the Table at the end of paragraph 1, in item 4 (annual return of payments for purposes of PAYE regulations etc), for the words in the third column substitute—

“Return under any of the following provisions of the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682)—
 (a) regulation 67B (real time returns)
 (b) regulation 67D (exceptions to regulation 67B)”.

- 5 In paragraph 2 (amount of penalty: occasional returns and returns for periods of 6 months or more), for “1 to 5” substitute “1 to 3, 5”.

- 6 After paragraph 6A insert—

“Amount of penalty: real time information for PAYE

6B Paragraphs 6C and 6D apply in the case of a return falling within item 4 in the Table.

6C (1) If P fails during a tax month to make a return on or before the filing date, P is liable to a penalty under this paragraph in respect of that month.

(2) But this is subject to sub-paragraphs (3) and (4).

(3) P is not liable to a penalty under this paragraph in respect of a tax month as a result of any failure to make a return on or before the filing date which occurs during the initial period.

(4) P is not liable to a penalty under this paragraph in respect of a tax month falling in a tax year if the month is the first tax month in that tax year during which P fails to make a return on or before the filing date (disregarding for this purpose any failure which occurs during the initial period).

(5) In sub-paragraphs (3) and (4) “the initial period” means the period which—

(a) begins with the day in the first tax year on which P is first required to make a return, and

(b) is of such duration as is specified in regulations made by the Commissioners,

and for this purpose “the first tax year” means the first tax year in which P is required to make returns.

(6) P may be liable under this paragraph to no more than one penalty in respect of each tax month.

(7) The penalty under this paragraph is to be calculated in accordance with regulations made by the Commissioners.

(8) Regulations under sub-paragraph (7) may provide for a penalty under this paragraph in respect of a tax month to be calculated by reference to either or both of the following matters—

(a) the number of persons employed by P, or treated as employed by P for the purposes of PAYE regulations;

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- (b) the number of previous penalties incurred by P under this paragraph in the same tax year.
 - (9) The Commissioners may by regulations disapply sub-paragraph (3) or (4) in such circumstances as are specified in the regulations.
 - (10) If P has elected under PAYE regulations to be treated as different employers in relation to different groups of employees, this paragraph applies to P as if—
 - (a) in respect of each group P were a different person, and
 - (b) each group constituted all of P’s employees.
 - (11) Regulations made by the Commissioners under this paragraph may—
 - (a) make different provision for different cases, and
 - (b) include incidental, consequential and supplementary provision.
- 6D
- (1) P may be liable to one or more penalties under this paragraph in respect of extended failures.
 - (2) In this paragraph an “extended failure” means a failure to make a return on or before the filing date which continues after the end of the period of 3 months beginning with the day after the filing date.
 - (3) P is liable to a penalty or penalties under this paragraph if (and only if)—
 - (a) HMRC decide at any time that such a penalty or penalties should be payable in accordance with sub-paragraph (4) or (6), and
 - (b) HMRC give notice to P specifying the date from which the penalty, or each penalty, is payable.
 - (4) HMRC may decide under sub-paragraph (3)(a) that a separate penalty should be payable in respect of each unpenalised extended failure in the tax year to date.
 - (5) In that case the amount of the penalty in respect of each failure is 5% of any liability to make payments which would have been shown in the return in question.
 - (6) HMRC may decide under sub-paragraph (3)(a) that a single penalty should be payable in respect of all the unpenalised extended failures in the tax year to date.
 - (7) In that case the amount of the penalty in respect of those failures is 5% of the sum of the liabilities to make payments which would have been shown in each of the returns in question.
 - (8) For the purposes of this paragraph, an extended failure is unpenalised if a penalty has not already been imposed in respect of it under this paragraph (whether in accordance with sub-paragraph (4) or (6)).
 - (9) The date specified in the notice under sub-paragraph (3)(b) in relation to a penalty—
 - (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 (2) in relation to the relevant extended failure.
 - (10) In sub-paragraph (9)(b) “the relevant extended failure” means—

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- (a) the extended failure in respect of which the penalty is payable, or
- (b) if the penalty is payable in respect of more than one extended failure (in accordance with sub-paragraph (6)), the extended failure with the latest filing date.”

7 In paragraph 18 (assessment), for sub-paragraph (5) substitute—

“(5) Sub-paragraph (6) applies if—

- (a) an assessment in respect of a penalty is based on a liability to tax that would have been shown in a return, and
- (b) that liability is found by HMRC to be excessive.

(6) HMRC may by notice to P amend the assessment so that it is based upon the correct amount.

(7) An amendment under sub-paragraph (6)—

- (a) does not affect when the penalty must be paid;
- (b) may be made after the last day on which the assessment in question could have been made under paragraph 19.”

8 (1) Paragraph 19 (assessment) is amended as follows.

(2) In sub-paragraph (2) after “Date A is” insert “—

- (a) in the case of an assessment of a penalty under paragraph 6C, the last day of the period of 2 years beginning with the end of the tax month in respect of which the penalty is payable,
- (b) in the case of an assessment of a penalty under paragraph 6D, the last day of the period of 2 years beginning with the filing date for the relevant extended failure (as defined in paragraph 6D(10)), and
- (c) in any other case.”

(3) In sub-paragraph (3)(a), after “return” insert “or returns (as the case may be in relation to penalties under section 6C or 6D)”.

9 (1) Paragraph 27 (interpretation) is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) The Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.”

(3) After sub-paragraph (3) insert—

“(3A) Tax month” means the period beginning with the 6th day of a month and ending with the 5th day of the following month.”

Amendments to Schedule 56 to FA 2009: penalty for failure to make payments on time

10 Schedule 56 (penalty for failure to make payments on time) to FA 2009 is amended in accordance with paragraphs 11 to 14.

11 In paragraph 1 (penalty for failure to pay tax), in sub-paragraph (4), for the words from “the date on which” to the end substitute “the day after the date specified in or for the purposes of column 4 of the Table in relation to that amount.”

12 (1) Paragraph 6 (amount of penalty: PAYE and CIS amounts) is amended as follows.

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(2) For sub-paragraph (1) substitute—

“(1) P is liable to a penalty under this paragraph, in relation to each tax, each time that P makes a default in relation to a tax year.”

(3) In sub-paragraph (2)—

- (a) in the opening words, after “default” insert “in relation to a tax year”;
- (b) in paragraph (a), at the end insert “of tax payable in relation to the tax year”;
- (c) in paragraph (b), at the end insert “payable in relation to the tax year”;
- (d) in paragraph (c), at the end insert “payable in relation to the tax year”;
- (e) in paragraph (d), at the end insert “and due for the tax year”.

(4) For sub-paragraphs (3) to (7) substitute—

“(3) But where a failure to make one of those payments (or to pay an amount comprising two or more of those payments) would, apart from this sub-paragraph, constitute the first default in relation to a tax year, that failure does not count as a default in relation to that year for the purposes of a penalty under this paragraph.

(4) The amount of the penalty for a default made in relation to a tax year is determined by reference to—

- (a) the amount of the tax comprised in the default, and
- (b) the number of previous defaults that P has made in relation to the same tax year.

(5) If the default is P’s 1st, 2nd or 3rd default in relation to the tax year, P is liable, at the time of the default, to a penalty of 1% of the amount of tax comprised in the default.

(6) If the default is P’s 4th, 5th or 6th default in relation to the tax year, P is liable, at the time of the default, to a penalty of 2% of the amount of tax comprised in the default.

(7) If the default is P’s 7th, 8th or 9th default in relation to the tax year, P is liable, at the time of the default, to a penalty of 3% of the amount of tax comprised in the default.

(7A) If the default is P’s 10th or subsequent default in relation to the tax year, P is liable, at the time of the default, to a penalty of 4% of the amount of tax comprised in the default.”

(5) In sub-paragraph (8), for paragraph (b) substitute—

“(b) a previous default counts for the purposes of sub-paragraphs (5) to (7A) even if it is remedied before the time of the default giving rise to the penalty.”

(6) After sub-paragraph (8) insert—

“(8A) Regulations made by the Commissioners for Her Majesty’s Revenue and Customs may specify—

- (a) circumstances in which, for the purposes of sub-paragraph (2), a payment of less than the full amount may be treated as a payment in full;

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(b) circumstances in which sub-paragraph (3) is not to apply.

(8B) Regulations under sub-paragraph (8A) may—

- (a) make different provision for different cases, and
- (b) include incidental, consequential and supplementary provision.”

13 After paragraph 9 insert—

“Interaction with other penalties and late payment surcharges

9A In the application of the following provisions, no account shall be taken of a penalty under this Schedule—

- (a) section 97A of TMA 1970 (multiple penalties),
- (b) paragraph 12(2) of Schedule 24 to FA 2007 (interaction with other penalties), and
- (c) paragraph 15(1) of Schedule 41 to FA 2008 (interaction with other penalties).”

14 (1) Paragraph 11 (assessment of penalty) is amended as follows.

(2) For sub-paragraph (4A) substitute—

“(4A) If an assessment in respect of a penalty is based on an amount of tax due or payable that is found by HMRC to be excessive, HMRC may by notice to P amend the assessment so that it is based upon the correct amount.

(4B) An amendment made under sub-paragraph (4A)—

- (a) does not affect when the penalty must be paid;
- (b) may be made after the last day on which the assessment in question could have been made under paragraph 12.”

(3) Omit sub-paragraph (5).

Consequential amendment

15 In consequence of paragraph 7, paragraph 10 of Schedule 10 to the Finance (No. 3) Act 2010 is repealed.

Commencement

16 (1) The amendments made by paragraph 1 have effect in relation to any assessment of a penalty under Schedule 24 to FA 2007 made on or after the day on which this Act is passed.

(2) The amendments made by paragraphs 2 to 9 and 15 have effect for the tax year 2014-15 and subsequent tax years in relation to failures to make returns with a filing date (as defined in paragraph 1(4) of Schedule 55 to FA 2009) on or after 6 April 2014.

(3) The amendments made by paragraphs 10 to 14 have effect for defaults made in relation to the tax year 2014-15 and subsequent tax years (see paragraph 6(2) of Sch.56 to FA 2009 (as amended by paragraph 12(3) of this Schedule) as to when a default is made in relation to a tax year).