

Status: Point in time view as at 01/01/2016.

Changes to legislation: There are currently no known outstanding effects for the Alcoholic Liquor Duties Act 1979, SCHEDULE 2B. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 2B

Section 88H

PENALTIES FOR CONTRAVENTIONS OF PART 6A

Textual Amendments

F1 Sch. 2B inserted (26.3.2015) by Finance Act 2015 (c. 11), s. 54(5)(8)

Liability to penalty

1 A penalty is payable by a person (“P”) who contravenes section 88C(1) or 88F.

Amount of penalty

- 2 (1) If the contravention is deliberate and concealed, the amount of the penalty is the maximum amount (see paragraph 10).
- (2) If the contravention is deliberate but not concealed, the amount of the penalty is 70% of the maximum amount.
- (3) In any other case, the amount of the penalty is 30% of the maximum amount.
- (4) The contravention is—
- (a) “deliberate and concealed” if the contravention is deliberate and P makes arrangements to conceal the contravention, and
 - (b) “deliberate but not concealed” if the contravention is deliberate but P does not make arrangements to conceal the contravention.

Reductions for disclosure

- 3 (1) Paragraph 4 provides for reductions in penalties under this Schedule where P discloses a contravention.
- (2) P discloses a contravention by—
- (a) telling the Commissioners about it,
 - (b) giving the Commissioners reasonable help in identifying any other contraventions of section 88C(1) or 88F of which P is aware, and
 - (c) allowing the Commissioners access to records for the purpose of identifying such contraventions.
- (3) Disclosure of a contravention—
- (a) is “unprompted” if made at a time when P has no reason to believe that the Commissioners have discovered or are about to discover the contravention, and
 - (b) otherwise, is “prompted”.

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- (4) In relation to disclosure “quality” includes timing, nature and extent.
- 4 (1) Where P discloses a contravention, the Commissioners must reduce the penalty to one that reflects the quality of the disclosure.
- (2) If the disclosure is prompted, the penalty may not be reduced below—
- (a) in the case of a contravention that is deliberate and concealed, 50% of the maximum amount,
 - (b) in the case of a contravention that is deliberate but not concealed, 35% of the maximum amount, and
 - (c) in any other case, 20% of the maximum amount.
- (3) If the disclosure is unprompted, the penalty may not be reduced below—
- (a) in the case of a contravention that is deliberate and concealed, 30% of the maximum amount,
 - (b) in the case of a contravention that is deliberate but not concealed, 20% of the maximum amount, and
 - (c) in any other case, 10% of the maximum amount.

Special reduction

- 5 (1) If the Commissioners think it right because of special circumstances, they may reduce a penalty under this Schedule.
- (2) In sub-paragraph (1) “special circumstances” does not include ability to pay.
- (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.

Assessment

- 6 (1) Where P becomes liable for a penalty under this Schedule, the Commissioners must—
- (a) assess the penalty,
 - (b) notify P, and
 - (c) state in the notice the contravention in respect of which the penalty is assessed.
- (2) A penalty under 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 is to be treated as an amount of duty due from P under this Act and may be recovered accordingly.
- (4) An assessment of a penalty under this Schedule may not be made later than one year after evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.
- (5) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty under this Schedule.

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Reasonable excuse

- 7 (1) Liability to a penalty does not arise under this Schedule in respect of a contravention which is not deliberate if P satisfies the Commissioners or (on an appeal made to the appeal tribunal) the tribunal that there is a reasonable excuse for the contravention.
- (2) For the purposes of sub-paragraph (1), where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the contravention.

Companies: officer's liability

- 8 (1) Where a penalty under this Schedule is payable by a company in respect of a contravention 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 the Commissioners may specify by written notice to the officer.
- (2) Sub-paragraph (1) does not allow the Commissioners to recover more than 100% of a penalty.
- (3) In the application of sub-paragraph (1) to a body corporate 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),
 - (b) a manager, and
 - (c) a secretary.
- (4) In the application of sub-paragraph (1) to a limited liability partnership, “officer” means a member.
- (5) In the application of sub-paragraph (1) in any other case, “officer” means—
- (a) a director,
 - (b) a manager,
 - (c) a secretary, and
 - (d) any other person managing or purporting to manage any of the company's affairs.
- (6) Where the Commissioners have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—
- (a) paragraph 5 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) sub-paragraphs (3) to (5) of paragraph 6 apply as if the notice were an assessment of a penalty, and
 - (d) paragraph 9 applies as if the officer were liable to a penalty.
- (7) In this paragraph “company” means any body corporate or unincorporated association, but does not include a partnership.

Double jeopardy

- 9 P is not liable to a penalty under this Schedule in respect of a contravention in respect of which P has been convicted of an offence.

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The maximum amount

- 10 (1) In this Schedule “the maximum amount” means £10,000.
- (2) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sum for the time being specified in sub-paragraph (1) such other sum as appears to them to be justified by the change.
- (3) In sub-paragraph (2), “relevant date” means—
- (a) the date on which the Finance Act 2015 is passed, and
 - (b) each date on which the power conferred by that sub-paragraph has been exercised.
- (4) Regulations under this paragraph do not apply to any contravention which occurred before the date on which they come into force.

Appeal tribunal

- 11 In this Schedule “appeal tribunal” has the same meaning as in Chapter 2 of Part 1 of the Finance Act 1994.]

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