



Finance Act 1985

1985 CHAPTER 54

PART I

CUSTOMS AND EXCISE AND VALUE ADDED TAX

CHAPTER II

VALUE ADDED TAX

Civil penalties

13 Tax evasion: conduct involving dishonesty.

- (1) In any case where,—
- (a) for the purpose of evading tax, a person does any act or omits to take any action, and
 - (b) his conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),
- he shall be liable, subject to [^{F1}subsection (7)] below, to a penalty equal to the amount of tax evaded or, as the case may be, sought to be evaded, by his conduct.
- (2) The reference in subsection (1)(a) above to evading tax includes a reference to obtaining any of the following sums,—
- (a) a payment under section 14(5) of the principal Act,
 - (b) a refund under [^{F2}section 20A,] section 21 or section 22 of that Act, . . . ^{F3}
 - [^{F4}(ba) a refund under any regulations made by virtue of section 8C(5) of that Act;]
 - (c) a repayment under section 23 of that Act, [^{F5}and]
 - [^{F5}(d) a refund under section 11 of the Finance Act 1990,]
- in circumstances where the person concerned is not entitled to that sum.
- (3) The reference in subsection (1) above to the amount of the tax evaded or sought to be evaded by a person's conduct shall be construed,—

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- (a) in relation to tax itself or a payment under section 14(5) of the principal Act, as a reference to the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated; and
- (b) in relation to the sums referred to in paragraphs (b), [F6(ba)] and (c) of subsection (2) above, as a reference to the amount falsely claimed by way of refund or repayment.
- F7(4)
- (5) Statements made or documents produced by or on behalf of a person shall not be inadmissible in any such proceedings as are mentioned in subsection (6) below by reason only that it has been drawn to his attention—
- (a) that, in relation to tax, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings and, though no undertaking can be given as to whether the Commissioners will make such an assessment in the case of any person, it is their practice to be influenced by the fact that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for investigation, and
- (b) that the Commissioners or, on appeal, a value added tax tribunal [F8] have power under section 15A below to reduce a penalty under this section,]
- and that he was or may have been induced thereby to make the statements or produce the documents.
- (6) The proceedings mentioned in subsection (5) above are—
- (a) any criminal proceedings against the person concerned in respect of any offence in connection with or in relation to tax, and
- (b) any proceedings against him for the recovery of any sum due from him in connection with or in relation to tax.
- (7) Where, by reason of conduct falling within subsection (1) above, a person is convicted of an offence (whether under the principal Act or otherwise), that conduct shall not also give rise to liability to a penalty under this section.

Textual Amendments

- F1** Words in s. 13(1) substituted (27.7.1993 with effect as mentioned in s. 3(3) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2**, para. 3(2)(a)(3)
- F2** Words in s. 13(2)(b) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 77(1)(a)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F3** Word repealed by Finance Act 1990 (c. 26, SIF 40:2), ss. 11(12), 132, **Sch. 19 Pt. III**
- F4** S. 13(2)(ba) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 77(1)(b)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F5** Word “and” and s. 13(2)(d) inserted by Finance Act 1990 (c. 29, SIF 40:2), s. 11(12)
- F6** Words in S. 13(3)(b) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 77(2)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art.3, **Sch.**
- F7** S. 13(4) repealed (27.7.1993 with effect as mentioned in ss. 3(3), 44(4) of the amending Act) by 1993 c. 34, ss. 49, 213, **Sch. 2**, para. 3(2)(3), **Sch. 23**, Pt. II
- F8** Words in s. 13(5) substituted (27.7.1993 with effect as mentioned in s. 3(3) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2**, para. 3(2)(b)(3)

Status: Point in time view as at 27/07/1993.

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Modifications etc. (not altering text)

C1 S. 13 applied by Finance Act 1986 (c. 41, SIF 40:2), s. 14(3)

[^{F9}13A Incorrect certificates as to zero-rating etc.

- (1) Subject to subsections (3) and (4) below, where—
 - (a) a person to whom one or more supplies are, or are to be, made gives to the supplier—
 - (i) a certificate that the supply or supplies fall, or will fall, wholly or partly within Group 7, 8 or 8A of Schedule 5, or Group 1 of Schedule 6, to the principal Act; or
 - (ii) a certificate such as is mentioned in paragraph 13(4)(f) of Schedule 3 to the Finance Act 1989 relating to the supply or supplies; and
 - (b) the certificate is incorrect,
the person giving the certificate shall be liable to a penalty.
- (2) The amount of the penalty shall be equal to the difference between the amount of the tax which would have been chargeable on the supply or supplies if the certificate had been correct and the amount of tax actually so chargeable.
- (3) The giving of a certificate shall not give rise to a penalty under this section if the person who gave it satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for his having given it.
- (4) Where by reason of giving a certificate a person is convicted of an offence (whether under the principal Act or otherwise), the giving of the certificate shall not also give rise to a penalty under this section.]

Textual Amendments

F9 S. 13A inserted by Finance Act 1989 (c. 26, SIF 40:2), s. 23(1)(2)

14 Serious misdeclaration or neglect resulting in understatements or overclaims.

- (1) In any case where, for a prescribed accounting period beginning after the day appointed under subsection (8) below,—
 - (a) a return is made which understates a person's liability to tax or overstates his entitlement to a payment under section 14(5) of the principal Act, or
 - (b) an assessment is made which understates a person's liability to tax and, at the end of the period of thirty days beginning on the date of the assessment, he has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioners,
and the circumstances are as set out in . . . ^{F10} subsection (2) below, the person concerned shall be liable, subject to subsections (6) and (7) below, to a penalty equal to [^{F11}15 per cent.] of the tax which would have been lost if the inaccuracy had not been discovered.
- [^{F12}(2) The circumstances referred to in subsection (1) above are that the tax for the period concerned which would have been lost if the inaccuracy had not been discovered—
 - (a) equals or exceeds 30 per cent. of the true amount of tax for that period, or

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- (b) equals or exceeds whichever is the greater of £10,000 and 5 per cent. of the true amount of tax for that period.]
- (4) [^{F13}Any reference in this section] to the tax for a prescribed accounting period which would have been lost if an inaccuracy had not been discovered is a reference to the aggregate of—
- (a) the amount (if any) by which credit for input tax for that period was overstated; and
 - (b) the amount (if any) by which output tax for that period was understated;
- but if for any period there is an understatement of credit for input tax or an overstatement of output tax, allowance shall be made for that error in determining the tax for that period which would have been so lost.
- (5) In [^{F14}this section]“the true amount of tax”, in relation to a prescribed accounting period, means the amount of tax which was due from the person concerned for that period or, as the case may be, the amount of the payment (if any) to which he was entitled under section 14(5) of the principal Act for that period.
- [^{F15}(5A) Where—
- (a) a return for any prescribed accounting period overstates or understates to any extent a person’s liability to tax or his entitlement to a payment under section 14(5) of the principal Act, and
 - (b) that return is corrected, in such circumstances and in accordance with such conditions as may be prescribed, by a return for a later such period which understates or overstates, to the corresponding extent, that liability or entitlement,
- it shall be assumed for the purposes of subsection (5) above that the statement made by each of those returns is a correct statement for the accounting period to which it relates.
- (5B) This section shall have effect in relation to a body which is registered and to which section 20 of the principal Act applies as if—
- (a) any reference to a payment under section 14(5) of that Act included a reference to a refund under the said section 20, and
 - (b) any reference to credit for input tax included a reference to tax chargeable on supplies, [^{F16}acquisitions] or importations which were not for the purposes of any business carried on by the body.]
- (6) Conduct falling within subsection (1) above shall not give rise to liability to a penalty under this section . . . ^{F17} if—
- (a) the person concerned satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the conduct, or
 - (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, so far as they relate to tax, the person concerned furnished to the Commissioners full information with respect to the inaccuracy concerned.
- (7) Where, by reason of conduct falling within subsection (1) above,—
- (a) a person is convicted of an offence (whether under the principal Act or otherwise), or
 - (b) a person is assessed to a penalty under section 13 above,
- that conduct shall not also give rise to liability to a penalty under this section . . . ^{F17}.

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- (8) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint.

Textual Amendments

- F10** Words repealed by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), s. 148, [Sch. 14 Pt. III](#)
- F11** Words in [s. 14\(1\)](#) substituted (16.3.1992 with effect as mentioned in [s. 7\(3\)\(4\)](#) of the amending Act) by [Finance Act 1992 \(c. 20\)](#), [s. 7\(1\)](#)
- F12** [S. 14\(2\)](#) substituted for [s. 14\(2\)\(3\)](#) by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 16\(2\)](#)
- F13** Words substituted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 16\(3\)](#)
- F14** Words substituted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 16\(4\)](#)
- F15** [S. 14\(5A\)\(5B\)](#) inserted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), [s. 16\(5\)](#)
- F16** Word in [s. 14\(5B\)\(b\)](#) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), [s. 14\(2\)](#), [Sch. 3 Pt. II para.78](#); [S.I. 1992/2979](#), [art.4](#), [Sch. Pt. II](#) and [S.I. 1992/3261](#), [art.3](#), [Sch.](#)
- F17** Words repealed by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), s. 148, [Sch. 14 Pt. III](#)

Modifications etc. (not altering text)

- C2** Power of appointment conferred by [s. 14\(8\)](#) fully exercised (31.3.1990): [S.I. 1989/2270](#), [art. 2](#)

^{F18}14A Persistent misdeclaration resulting in understatements or overclaims.

- (1) In any case where—
- for a prescribed accounting period (including one beginning before the commencement of this section), a return has been made which understates a person's liability to tax or overstates his entitlement to a payment under [section 14\(5\)](#) of the principal Act; and
 - the tax for that period which would have been lost if the inaccuracy had not been discovered equals or exceeds whichever is the greater of £100 and 1 per cent. of the true amount of tax for that period,
- the inaccuracy shall be regarded, subject to subsections (5) and (6) below, as material for the purposes of this section.
- (2) Subsection (3) below applies in any case where—
- there is a material inaccuracy in respect of any two prescribed accounting periods; and
 - the last day of the later one of those periods falls on or before the second anniversary of the last day of the earlier one; and
 - after the coming into operation of this section, the Commissioners serve notice on the person concerned (in this section referred to as “a penalty liability notice”) specifying as a penalty period for the purposes of this section a period beginning on the date of the notice and ending on the second anniversary of that date.
- (3) If there is a material inaccuracy in respect of a prescribed accounting period ending within the penalty period specified in a penalty liability notice served on the person concerned, that person shall be liable to a penalty equal to 15 per cent. of the tax for that period which would have been lost if the inaccuracy had not been discovered.
- (4) Subsections (4) to (5B) of [section 14](#) above shall apply for the purposes of this section as they apply for the purposes of that section.

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- (5) An inaccuracy shall not be regarded as material for the purposes of this section if—
- (a) the person concerned satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the inaccuracy; or
 - (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, so far as they relate to tax, the person concerned furnished to the Commissioners full information with respect to the inaccuracy.
- (6) Where by reason of conduct falling within subsection (1) above—
- (a) a person is convicted of an offence (whether under the principal Act or otherwise); or
 - (b) a person is assessed to a penalty under section 13 or 14 above,
- the inaccuracy concerned shall not be regarded as material for the purposes of this section.
- (7) In any case where subsection (5) or (6) above applies, any penalty liability notice the service of which depended upon the inaccuracy concerned shall be deemed not to have been served.]

Textual Amendments

F18 S. 14A inserted by [Finance Act 1988 \(c. 39, SIF, 40:2\)](#), s. 17

[14B ^{F19}**Inaccuracies in EC sales statements.**

- (1) Where—
- (a) an EC sales statement containing a material inaccuracy has been submitted by any person to the Commissioners;
 - (b) the Commissioners have, within six months of discovering the inaccuracy, issued that person with a written warning identifying that statement and stating that future inaccuracies might result in the service of a notice for the purposes of this section;
 - (c) another EC sales statement containing a material inaccuracy (“the second inaccurate statement”) has been submitted by that person to the Commissioners;
 - (d) the submission date for the second inaccurate statement fell within the period of two years beginning with the day after the warning was issued;
 - (e) the Commissioners have, within six months of discovering the inaccuracy in the second inaccurate statement, served that person with a notice identifying that statement and stating that future inaccuracies will attract a penalty under this section;
 - (f) yet another EC sales statement containing a material inaccuracy is submitted by that person to the Commissioners; and
 - (g) the submission date for the statement falling within paragraph (f) above is not more than two years after the service of the notice or the date on which any previous statement attracting a penalty was submitted by that person to the Commissioners,
- that person shall be liable to a penalty of £100 in respect of the statement so falling.

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- (2) Subject to subsections (3) and (4) below, an EC sales statement shall be regarded for the purposes of this section as containing a material inaccuracy if, having regard to the matters required to be included in the statement, the inclusion or omission of any information from the statement is misleading in any material respect.
- (3) An inaccuracy contained in an EC sales statement shall not be regarded as material for the purposes of this section if—
- (a) the person who submitted the statement satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the inaccuracy; or
 - (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, that person furnished the Commissioners with full information with respect to the inaccuracy.
- (4) Where, by reason of the submission of a statement containing a material inaccuracy by any person, that person is convicted of an offence (whether under the principal Act or otherwise), the inaccuracy to which the conviction relates shall be regarded for the purposes of this section as not being material.
- (5) Where the only statement identified in a warning or notice served for the purposes of subsection (1)(b) or (e) above is one which (whether by virtue of either or both of subsections (3) and (4) above or otherwise) is regarded as containing no material inaccuracies, that warning or notice shall be deemed not to have been issued or served for those purposes.
- (6) In this section—
- “EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(2A) of Schedule 7 to the principal Act; and
- “submission date”, in relation to such a statement, means whichever is the earlier of the last day for the submission of the statement to the Commissioners in accordance with those regulations and the day on which it was in fact submitted to the Commissioners.]

Textual Amendments

- F19** S. 14B inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 79**; S.I. 1992/2979, art.4, **Sch. Pt. II** and S.I. 1992/3261, art.3, **Sch.**

15 Failures to notify and unauthorised issue of invoices.

- (1) In any case where—
- (a) a person fails to comply with any of paragraphs 3, 4 and 11(2) ^[F20] and (3) of Schedule 1 to the principal Act ^[F21] with paragraph 3 of Schedule 1A to that Act or with paragraph 3 or 8(2) of Schedule 1B to that Act] (duty to notify liability for registration or change in nature of supplies etc. by a person exempted from registration), or
 - ^[F22](aa) a person fails to comply with a requirement of regulations under paragraph 2(2B) of Schedule 7 to the principal Act (notification of acquisition of excise duty goods or new means of transport), or]

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(b) an unauthorised person issues [^{F23}one or more invoices] showing an amount as being tax or as including an amount attributable to tax.

he shall be liable, subject to subsections (4) and (5) below, to a penalty equal to [^{F24}the specified percentage] of the relevant tax or, if it is greater or the circumstances are such that there is no relevant tax, to a penalty of £50.

(2) In subsection (1)(b) above, “an unauthorised person” means anyone other than—

- (a) a person registered under the principal Act; or
- (b) a body corporate treated for the purposes of section 29 of that Act as a member of a group; or
- (c) a person treated as a taxable person under regulations made under section 31(4) of that Act; or
- (d) a person authorised to issue an invoice under regulations made under paragraph 2(6) of Schedule 7 to that Act; or
- (e) a person acting on behalf of the Crown.

(3) In subsection (1) above “relevant tax” means [^{F25}(subject to subsections (3B) and (3C) below)],—

- (a) in relation to a person’s failure to comply with paragraph 3 or paragraph 4 of Schedule 1 to the principal Act [^{F26}with paragraph 3 of Schedule 1A to that Act or with paragraph 3 of Schedule 1B to that Act], the tax (if any) for which he is liable for the period beginning on the date with effect from which he is, in accordance with that paragraph, required to be registered and ending on that date on which the Commissioners received notification of, or otherwise [^{F27}became fully aware of], his liability to be registered; and
- (b) in relation to a person’s failure to comply with subparagraph (2) [^{F28}or (3)] of paragraph 11 of Schedule 1 to the principal Act [^{F26}or with sub-paragraph (2) of paragraph 8 of Schedule 1B to that Act], the tax (if any) for which, but for any exemption from registration, he would be liable for the period beginning on the date of the change or alteration referred to in that subparagraph and ending on the date on which the Commissioners received notification of, or otherwise [^{F29}became fully aware of], that change or alteration; and
- [^{F30}(ba) in relation to a person’s failure to comply with a requirement of regulations under paragraph 2(2B) of Schedule 7 to the principal Act, the tax on the acquisition to which the failure relates; and]
- (c) in relation to the issue of [^{F31}one or more such invoices as are] referred to in subsection (1)(b) above, [^{F32}the amount which is, or the aggregate of the amounts which are—
 - (i) shown on the invoice or invoices as tax, or
 - (ii) to be taken as representing tax].

[^{F33}(3A) For the purposes of subsection (1) above the specified percentage is—

- (a) 10 per cent. where the relevant tax is given by paragraph (a) or (b) of subsection (3) above and the period referred to in that paragraph does not exceed nine months [^{F34}or where the relevant tax is given by paragraph (ba) of that subsection and the failure in question did not continue for more than three months];
- (b) 20 per cent. where that tax is [^{F35}given by paragraph (a) or (b) of subsection (3) above] and the period so referred to exceeds nine months but does not exceed eighteen months [^{F34}or where that tax is given by paragraph (ba) of that

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subsection and the failure in question continued for more than three months but did not continue for more than six months]; and

- (c) 30 per cent. in any other case.]

[^{F36}(3B) Where—

- (a) the amount of tax which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant tax in relation to a failure mentioned in subsection (3)(a) above includes tax on an acquisition of goods from another member State; and
- (b) the Commissioners are satisfied that value added tax has been paid under the law of another member State on the supply in pursuance of which those goods were acquired,

then, in the determination of the amount of the relevant tax in relation to that failure, an allowance shall be made for the value added tax paid under the law of that member State; and the amount of the allowance shall not exceed the amount of tax due on the acquisition but shall otherwise be equal to the amount of value added tax which the Commissioners are satisfied has been paid on that supply under the law of that member State.

(3C) Where—

- (a) the amount of tax which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant tax in relation to a failure mentioned in subsection (3)(a) above includes tax chargeable by virtue of section 6(2B) of the principal Act on any supply; and
- (b) the Commissioners are satisfied that value added tax has been paid under the law of another member State on that supply,

then, in the determination of the amount of the relevant tax in relation to that failure, an allowance shall be made for the tax paid under the law of the other member State; and the amount of the allowance shall not exceed the amount of tax chargeable by virtue of section 6(2B) on that supply but shall otherwise be equal to the amount of tax which the Commissioners are satisfied has been paid on that supply under the law of that other member State.]

[^{F37}(3D) This section shall have effect in relation to any invoice which—

- (a) for the purposes of any provision made under subsection (3) of section 37B of the principal Act shows an amount as included in the consideration for any supply; and
- (b) either—
- (i) fails to comply with the requirements of any regulations under that section; or
- (ii) 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 tax.]

- (4) Conduct falling within subsection (1) above shall not give rise to liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for his conduct.

(5) Where, by reason of conduct falling within subsection (1) above,—

- (a) a person is convicted of an offence (whether under the principal Act or otherwise), or

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- (b) a person is assessed to a penalty under section 13 above, that conduct shall not also give rise to liability to a penalty under this section.
- (6) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order made by statutory instrument substitute for the sum for the time being specified in subsection (1) above such other sum as appears to them to be justified by the change.
- (7) An order under subsection (6) above shall not apply in relation to a failure to comply which ended on or before the date on which the order comes into force.
- (8) A statutory instrument under subsection (6) above shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.

Textual Amendments

- F20** Words inserted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(1)(a)
- F21** Words in s. 15(1)(a) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 80(1)(a)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F22** S. 15(1)(aa) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 80(1)(b)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F23** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(1)(b)(6)
- F24** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(1)(c)(6)
- F25** Words in s. 15(3) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 80(2)(a)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F26** Words in s. 15(3)(a)(b) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 80(2)(b)(c)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, **art. 3 Sch.**
- F27** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(a)
- F28** Words inserted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(b)
- F29** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(b)
- F30** S. 15(3)(ba) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch.3 Pt. II para. 80(2)(d)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, **art. 3 Sch.**
- F31** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(c)
- F32** Words and s. 15(3)(c)(i)(ii) substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(2)(c)
- F33** S. 15(3A) inserted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(3)
- F34** Words in s. 15(3A)(a)(b) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 80(3)(a)(b)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, **art. 3 Sch.**
- F35** Words in s. 15(3A)(b) substituted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 80(3)(b)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, **art. 3 Sch.**
- F36** S. 15(3B)(3C) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para. 80(4)**; S.I. 1992/2979, art. 4, **Sch. Pt. II** and S.I. 1992/3261, art. 3, **Sch.**
- F37** S. 15(3D) inserted (1.1.1993) by Finance (No. 2) Act 1992 (c. 48), s. 16(5); S.I. 1992/3261, **art. 3, Sch.**

Status: Point in time view as at 27/07/1993.

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[^{F38}15A Mitigation of penalties under sections 13, 14, 14A and 15.

- (1) Where a person is liable to a penalty under any of sections 13, 14, 14A and 15 above, the Commissioners or, on appeal, a value added tax tribunal may reduce the penalty to such amount (including nil) as they think proper.
- (2) In the case of a penalty reduced by the Commissioners under subsection (1) above, a value added tax tribunal, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Commissioners.
- (3) None of the matters specified in subsection (4) below shall be matters which the Commissioners or any value added tax tribunal shall be entitled to take into account in exercising their powers under this section.
- (4) Those matters are—
 - (a) the insufficiency of the funds available to any person for paying any tax due or for paying the amount of the penalty;
 - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of tax;
 - (c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.]

Textual Amendments

F38 S. 15A inserted (27.7.1993 with effect as mentioned in Sch. 2 para. 3(3) of the amending Act) by 1993 c. 34, s. 49, Sch. 2, para. 3(1)

16 Breaches of walking possession agreements.

- (1) This section applies where—
 - (a) in accordance with regulations under paragraph 6(4) of Schedule 7 to the principal Act, a distress is authorised to be levied on the goods and chattels of a person (in this section referred to as a “person in default”) who has refused or neglected to pay any tax due or any amount recoverable as if it were tax due; and
 - (b) the person levying the distress and the person in default have entered into a walking possession agreement, as defined in subsection (2) below.
- (2) In this section a “walking possession agreement” means an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—
 - (a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and
 - (b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.
- (3) Subject to subsection (4) below, if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to half of the tax or other amount referred to in subsection (1)(a) above.

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- (4) The person in default shall not be liable to a penalty under subsection (3) above if he satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the breach in question.
- (5) This section does not extend to Scotland.

17 Breaches of regulatory provisions.

- (1) If any person fails to comply with a requirement imposed under—
- (a) paragraph 7 [^{F39}or 7A] of Schedule 1 to the principal Act [^{F40}paragraph 5 of Schedule 1A to that Act or paragraph 5 of Schedule 1B to that Act][^{F41}(notification of end of liability or entitlement to be registered etc.)], or
 - [^{F42}(aa) any regulations made under section 32A of the principal Act requiring a tax representative, for the purposes of registration, to notify the Commissioners that his appointment has taken effect or has ceased to have effect, or]
 - (b) paragraph 7(1) or paragraph 8 of Schedule 7 to that Act (records and information, etc.), or
 - (c) any regulations or rules made under that Act, other than rules made under paragraph 9 of Schedule 8 thereto (procedural rules for tribunals), [^{F43}or]
 - [^{F43}(d) any order made by the Treasury under that Act; or
 - (e) any regulations made under the European Communities Act 1972 and relating to value added tax]

he shall be liable, subject to subsections (9) and (10) and section 21(6) below, [^{F44}to a penalty equal to the prescribed rate multiplied by the number of days on which the failure continues (up to a maximum of 100) or, if it is greater, to a penalty of £50.]

- (2) If any person fails to comply with a requirement to preserve records imposed under paragraph 7(2) of Schedule 7 to the principal Act, he shall be liable, subject to the following provisions of this section, to a penalty of £500.
- (3) Subject to subsection (4) below, in relation to a failure to comply with any such requirement as is referred to in subsection (1) above, the prescribed rate shall be determined by reference to the number of occasions in the period of two years preceding the beginning of the failure in question on which the person concerned has previously failed to comply with that requirement and, subject to the following provisions of this section, the prescribed rate shall be,—
- (a) if there has been no such previous occasion in that period, [^{F45}£5];
 - (b) if there has been only one such occasion in that period, [^{F45}£10]; and
 - (c) in any other case, [^{F45}£15].
- (4) For the purposes of subsection (3) above—
- (a) a failure to comply with any such requirement as is referred to in subsection (1) above shall be disregarded if, as a result of the failure, the person concerned became liable for a surcharge under section 19 below;
 - (b) a previous failure to comply with any such requirement shall be disregarded if it occurred before the passing of this Act [^{F46}or, in the case of a requirement falling within paragraph (d) or paragraph (e) of subsection (1) above, before the passing of the Finance Act 1986];
 - (c) a continuing failure to comply with any such requirement shall be regarded as one occasion of failure occurring on the date on which the failure began;

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- (d) if the same omission gives rise to a failure to comply with more than one such requirement, it shall nevertheless be regarded as the occasion of only one failure; and
 - (e) in relation to a failure to comply with a requirement imposed by regulations as to the furnishing of a return or as to the payment of tax, a previous failure to comply with such a requirement as to either of those matters shall be regarded as a previous failure to comply with the requirement in question.
- (5) Where the failure referred to in subsection (1) above consists—
- (a) in not paying the tax due in respect of any period within the time required by regulations under section 14(1) of the principal Act, or
 - (b) in not furnishing a return in respect of any period within the time required by regulations under paragraph 2(1) of Schedule 7 to that Act,
- the failure shall be disregarded for the purposes of that subsection and subsections (3) and (4) above unless it begins on or after the day appointed under section 12(8) above but, subject to that, in relation to such a failure the prescribed rate shall be whichever is the greater of that which is appropriate under paragraphs (a) to (c) of subsection (3) above and an amount equal to onesixth, onethird or onehalf of 1 per cent. of the tax due in respect of that period, the appropriate fraction being determined according to whether paragraph (a), paragraph (b) or paragraph (c) of subsection (3) above is applicable.
- (6) For the purposes of subsection (5) above, the tax due,—
- (a) if the person concerned has furnished a return, shall be taken to be the tax shown in the return as that for which he is accountable in respect of the period in question, and
 - (b) in any other case, shall be taken to be such tax as has been assessed for that period and notified to him under paragraph 4(1) of Schedule 7 to the principal Act.
- (7) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order made by statutory instrument substitute for the sums for the time being specified in subsection (2) and paragraphs (a) to (c) of subsection (3) above such other sums as appear to them to be justified by the change; but an order under this subsection shall not apply to a failure which began before the date on which the order comes into force.
- (8) A statutory instrument made under subsection (7) above shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.
- (9) A failure by any person to comply with any such requirement as is referred to in subsection (1) or subsection (2) above shall not give rise to liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for the failure; and a failure in respect of which the Commissioners or tribunal have been so satisfied shall be disregarded for the purposes of subsection (3) above.
- (10) Where, by reason of conduct falling within subsection (1) or subsection (2) above,—
- (a) a person is convicted of an offence (whether under the principal Act or otherwise), or
 - (b) a person is assessed to a penalty under section 13 or section 14 above, or
 - (c) a person is assessed to a surcharge under section 19 below,

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that conduct shall not also give rise to liability to a penalty under this section.

Textual Amendments

- F39** Words inserted by Finance Act 1988 (c. 39, SIF 40:2), s. 19(1)(a)
- F40** Words in s. 17(1)(a) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 81(a); S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3, Sch.
- F41** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 19(1)(a)
- F42** S. 17(1)(aa) inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance Act (No. 2) 1992 (c. 48), s. 14(2), Sch. 3 Pt. II para. 81(b); S.I. 1992/2979, art.4, Sch. Pt. II and S.I. 1992/3261, art. 3, Sch.
- F43** Word “or” and s. 17(1)(d)(e) inserted by Finance Act 1986 (c. 41, SIF 40:2), s. 15(1)
- F44** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 19(1)(b)(5)
- F45** “£5”, “£10” and “£15” substituted respectively for “£10”, “£20” and “£30” by Finance Act 1988 (c. 39, SIF 40:2), s. 19(2)(4)(5)
- F46** Words added by Finance Act 1986 (c. 41, SIF 40:2), s. 15(2)

[17A] ^{F47}Penalties for failure to submit EC sales statement.

- (1) If by the last day on which a person is required in accordance with regulations under the principal Act to submit an EC sales statement for any prescribed period to the Commissioners, the Commissioners have not received that statement, that person shall be regarded for the purposes of this section as being in default in relation to that statement until it is submitted.
- (2) Where any person is in default in respect of any EC sales statement the Commissioners may serve notice on him stating—
 - (a) that he is in default in relation to the statement specified in the notice;
 - (b) that (subject to the liability mentioned in paragraph (d) below) no action will be taken if he remedies the default before the end of the period of fourteen days beginning with the day after the service of the notice;
 - (c) that if the default is not so remedied, that person will become liable in respect of his default to penalties calculated on a daily basis from the end of that period in accordance with the following provisions of this section; and
 - (d) that that person will become liable, without any further notices being served under this section, to penalties under this section if he commits any more defaults before a period of twelve months has elapsed without his being in default.
- (3) Where a person has been served with a notice under subsection (2) above, he shall become liable under this section—
 - (a) if the statement to which the notice relates is not submitted before the end of the period of fourteen days beginning with the day after the service of the notice, to a penalty in respect of that statement; and
 - (b) whether or not that statement is so submitted, to a penalty in respect of any EC sales statement the last day for the submission of which is after the service and before the expiry of the notice and in relation to which he is in default.
- (4) For the purposes of this section a notice served on any person under subsection (2) above shall continue in force—

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- (a) except in a case falling within paragraph (b) below, until the end of the period of twelve months beginning with the day after the service of the notice; and
 - (b) where at any time in that period of twelve months that person is in default in relation to any EC sales statement other than one in relation to which he was in default when the notice was served, until a period of twelve months has elapsed without that person becoming liable to a penalty under this section in respect of any EC sales statement.
- (5) The amount of any penalty to which a person who has been served with a notice under subsection (2) above is liable under this section shall be whichever is the greater of £50 and—
 - (a) in the case of a liability in respect of the statement to which the notice relates, a penalty of £5 for every day for which the default continues after the end of the period of fourteen days mentioned in subsection (3)(a) above, up to a maximum of one hundred days; and
 - (b) in the case of a liability in respect of any other statement, a penalty of the relevant amount for every day for which the default continues, up to a maximum of one hundred days.
- (6) In subsection (5)(b) above “the relevant amount”, in relation to a person served with a notice under subsection (2) above, means—
 - (a) £5, where (that person not having been liable to a penalty under this section in respect of the statement to which the notice relates) the statement in question is the first statement in respect of which that person has become liable to a penalty while the notice has been in force;
 - (b) £10, where the statement in question is the second statement in respect of which he has become so liable while the notice has been in force (counting the statement to which the notice relates where he has become liable in respect of that statement); and
 - (c) £15, in any other case.
- (7) If a person who, apart from this subsection, would be liable to a penalty under this section satisfies the Commissioners or, on appeal a value added tax tribunal, that—
 - (a) an EC sales statement has been submitted at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit; or
 - (b) there is a reasonable excuse for such a statement not having been dispatched, he shall be treated for the purposes of this Act as not having been in default in relation to that statement and, accordingly, he shall not be liable to any penalty under this section in respect of that statement and any notice served under subsection (2) above exclusively in relation to the failure to submit that statement shall have no effect for the purposes of this section.
- (8) If it appears to the Treasury that there has been a change in the value of money since the coming into force of this section or, as the case may be, the last occasion when the sums specified in subsections (5) and (6) above were varied, they may by order substitute for the sums for the time being specified in those subsections such other sums as appear to them to be justified by the change; but an order under this section shall not apply to any default in relation to a statement the last day for the submission of which was before the order comes into force.
- (9) A statutory instrument containing an order under subsection (8) above shall be subject to annulment in pursuance of a resolution of the House of Commons.

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- (10) In this section “EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(2A) of Schedule 7 to the principal Act.]

Textual Amendments

- F47** S. 17A inserted (1.12.1992 for certain purposes and 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. II para.82**; S.I. 1992/2979, art.4, **Sch. Pt. II** and S.I. 1992/3261, art.3, **Sch.**

Status:

Point in time view as at 27/07/1993.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 1985, Cross Heading: Civil penalties.