



# 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 subsections (4) and (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 section 21 or section 22 of that Act, and
  - (c) a repayment under section 23 of that Act,
- 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,—
- (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

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- 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) and (c) of subsection (2) above, as a reference to the amount falsely claimed by way of refund or repayment.
- (4) If a person liable to a penalty under this section has cooperated with the Commissioners in the investigation of his true liability for tax or, as the case may be, of his true entitlement to any payment, refund or repayment, the Commissioners or, on appeal, a value added tax tribunal may reduce the penalty to an amount which is not less than half what it would have been apart from this subsection ; and in determining the extent of any reduction under this subsection, the Commissioners or tribunal shall have regard to the extent of the co-operation which the person concerned has given to the Commissioners in their investigation.
- (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 have power to reduce a penalty under this section, as provided in subsection (4) above, and, in determining the extent of such a reduction in the case of any person, the Commissioners or tribunal will have regard to the extent of the co-operation which he has given to the Commissioners in their investigation,
- 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.

#### **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,

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and the circumstances are as set out in paragraph (a) or paragraph (b) of subsection (2) below, the person concerned shall be liable, subject to subsections (6) and (7) below, to a penalty equal to 30 per cent, of the tax which would have been lost if the inaccuracy had not been discovered.

- (2) The circumstances referred to in subsection (1) above are as follows—
- (a) that the tax for the period concerned which would have been lost if the inaccuracy had not been discovered—
    - (i) equals or exceeds 30 per cent, of the true amount of tax for that period, or
    - (ii) equals or exceeds whichever is the greater of £10,000 and 5 per cent, of the true amount of tax for that period ; or
  - (b) that the condition in subsection (3) below is fulfilled with respect to the period concerned and that, during any period of four years beginning not more than six years before the end of that period, there were at least two earlier prescribed accounting periods beginning after the day appointed under subsection (8) below in respect of each of which—
    - (i) either there was made such a return as is referred to in paragraph (a) of subsection (1) above or there was such an assessment as is referred to in paragraph (b) of that subsection and the person concerned did not, within the period there referred to, take all such steps as were reasonable to draw the understatement to the attention of the Commissioners; and
    - (ii) the condition in subsection (3) below was fulfilled.
- (3) The condition referred to in subsection (2)(b) above is that the tax for the period concerned which would have been lost if the inaccuracy had not been discovered equals or exceeds 15 per cent, of the true amount of tax for that period.
- (4) The references in subsections (1) to (3) above 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 subsections (2) (a) and (3) above " 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.
- (6) Conduct falling within subsection (1) above shall not give rise to liability to a penalty under this section nor be taken into account under subsection (2) (b) above 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.

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- (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 and shall not be taken into account under subsection (2)(b) above.
- (8) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint.

## **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) of Schedule 1 to the principal Act (duty to notify liability for registration or change in nature of supplies etc. by a person exempted from registration), or
  - (b) an unauthorised person issues an invoice 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 30 per cent, 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,—
- (a) in relation to a person's failure to comply with paragraph 3 or paragraph 4 of Schedule 1 to the principal 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 the date on which the Commissioners received notification of, or otherwise discovered, his liability to be registered ; and
  - (b) in relation to a person's failure to comply with sub-paragraph (2) of paragraph 11 of Schedule 1 to the principal 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 sub-paragraph and ending on the date on which the Commissioners received notification of, or otherwise discovered, that change or alteration ; and
  - (c) in relation to the issue of such an invoice as is referred to in subsection (1) (b) above, the amount which is shown on the invoice as tax or which is to be taken as representing 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
  - (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.

## **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.
- (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.

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## 17 Breaches of regulatory provisions

- (1) If any person fails to comply with a requirement imposed under—
- (a) paragraph 7 of Schedule 1 to the principal Act (notification of cessation of taxable supplies), 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),
- he shall be liable, subject to subsections (9) and (10) and section 21(6) below, to a daily penalty at the prescribed rate for each day on which the failure continues.
- (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, £10;
  - (b) if there has been only one such occasion in that period, £20; and
  - (c) in any other case, £30.
- (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;
  - (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 ;
  - (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 one-sixth, one-third or one-half of 1 per cent, of the

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