



# Finance Act 1985

## 1985 CHAPTER 54

### PART I

#### CUSTOMS AND EXCISE AND VALUE ADDED TAX

### CHAPTER II

#### VALUE ADDED TAX

##### *Interest, surcharges and supplements*

#### **18 Interest on tax etc. recovered or recoverable by assessment.**

(1) Subject to section 21(6) below, where an assessment is made under any provision of paragraph 4 of Schedule 7 to the principal Act and, in the case of an assessment under subparagraph (1) of that paragraph, at least one of the following conditions is fulfilled, namely,—

- (a) the assessment relates to a prescribed accounting period in respect of which either—
  - (i) a return has previously been made, or
  - (ii) an earlier assessment has already been notified to the person concerned,
- (b) the assessment relates to a prescribed accounting period which exceeds three months and begins on the date with effect from which the person concerned was, or was required to be, registered,
- (c) the assessment relates to a prescribed accounting period at the beginning of which the person concerned was, but should no longer have been, exempted from registration under [<sup>F1</sup>paragraph 11(1)] of Schedule 1 to the principal Act [<sup>F2</sup>or under paragraph 8 of Schedule 1B to that Act],

the [<sup>F3</sup>whole of the amount assessed shall [<sup>F4</sup>(subject to subsection (3A) below)] carry interest at the prescribed rate from the reckonable date] until payment.

*Status: Point in time view as at 01/10/1993.*

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- (2) ..... <sup>F5</sup>
- (3) [<sup>F6</sup>In any case where]—
- (a) the circumstances are such that an assessment falling within subsection (1) above could have been made, but
  - (b) before such an assessment was made the tax due or other amount concerned was paid (so that no such assessment was necessary),
- [<sup>F7</sup>the whole of the amount paid shall [<sup>F4</sup>(subject to subsection (3A) below)] carry interest at the prescribed rate from the reckonable date] until the date on which it was paid.
- [<sup>F8</sup>(3A) Where (apart from this subsection)—
- (a) the period before the assessment in question for which any amount would carry interest under subsection (1) above; or
  - (b) the period for which any amount would carry interest under subsection (3) above,
- would exceed three years, the part of that period for which that amount shall carry interest under that subsection shall be confined to the last three years of that period.]
- (4) ..... <sup>F9</sup>
- (6) Where an unauthorised person, as defined in section 15(2) above, issues an invoice showing an amount as being tax or as including an amount attributable to tax, the amount which is shown as tax or, as the case may be, is to be taken as representing tax shall carry interest at the prescribed rate from the date of the invoice until payment.
- (7) The references in subsections [<sup>F10</sup>(1) and (3)] above to the reckonable date shall be construed as follows—
- (a) where the amount assessed or paid is such an amount as is referred to in subparagraph (2)(a) or subparagraph (2)(b) of paragraph 4 of Schedule 7 to the principal Act (incorrect repayment of tax or payment in respect of excess credit), the reckonable date is the seventh day after the day on which a written instruction was issued by the Commissioners directing the making of the payment of the amount which ought not to have been repaid or paid to the person concerned; and
  - (b) in all other cases the reckonable date is the latest date on which (in accordance with regulations under the principal Act) a return is required to be made for the prescribed accounting period to which the amount assessed or paid relates; and
  - (c) in the case of an amount assessed under paragraph 4(6) of Schedule 7 to the principal Act (assessments in respect of goods which cannot be accounted for) the sum assessed shall be taken for the purposes of paragraph (b) above to relate to the period for which the assessment was made;
- and interest under this section shall run from the reckonable date even if that date is a nonbusiness day, within the meaning of section 92 of the <sup>M1</sup>Bills of Exchange Act 1882.
- (8) In this section “the prescribed rate” means such rate as may be prescribed by order made by the Treasury; and such an order—
- (a) may prescribe different rates for different purposes;

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- (b) shall apply to interest for periods beginning on or after the date when the order is expressed to come into force, whether or not interest runs from before that date; and
  - (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.
- (9) Interest under this section shall be paid without any deduction of income tax.
- (10) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint and any reference in this section to a prescribed accounting period is a reference to a period which begins on or after the day so appointed.

#### Subordinate Legislation Made

- P1** S. 18 : for previous exercises of this power see Index to Government Orders
- P2** S. 18(8): s. 18(8) power exercised by S.I. 1991/348  
S. 18(8): s. 18(8) power exercised by S.I. 1991/1078  
S. 18(8): s. 18(8) power exercised by S.I. 1991/1472.  
S. 18(8): S. 18(8) power exercised by S.I. 1991/2195

#### Textual Amendments

- F1** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 14(8)(b)
- F2** Words in s. 18(1)(c) 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. 83; S.I. 1992/2979, art. 4, Sch. Pt. II and S.I. 1992/3261, art. 3, Sch.
- F3** Words substituted by Finance Act 1990 (c. 29, SIF 40:2), s. 16(2)(6)
- F4** Words in s. 18(1)(3) inserted (with effect in relation to any prescribed accounting period beginning on or after 1.10.1993) by 1993 c. 34, s. 49, Sch. 2, para. 4(1)(3); S.I. 1993/2214, art.2
- F5** S. 18(2) repealed by Finance Act 1988 (c. 39, SIF 40:2), ss. 18(4)(a), 148, Sch. 14 Pt. III
- F6** Words substituted by Finance Act 1988 (c. 39, SIF 40:2), s. 18(4)(b)
- F7** Words substituted by Finance Act 1990 (c. 29, SIF 40:2), s. 16(3)(6)
- F8** S. 18(3A) inserted (with effect in relation to any prescribed accounting period beginning on or after 1.10.1993) by 1993 c. 34, s. 49, Sch. 2, para. 4(2)(3); S.I. 1993/2214, art.2
- F9** S. 18(4)(5) repealed by Finance Act 1990 (c. 29, SIF 40:2), ss. 16(4)(6), 132, Sch. 19 Pt. III Note 2
- F10** Words substituted by Finance Act 1990 (c. 29, SIF 40:2), s. 16(5)(6)

#### Modifications etc. (not altering text)

- C1** Power of appointment conferred by s. 18(10) fully exercised (1.4.1990): S.I. 1989/2270, art. 3

#### Marginal Citations

- M1** 1882 c. 61.

## 19 The default surcharge.

- (1) If, by the last day on which a taxable person is required in accordance with regulations under the principal Act to furnish a return for the prescribed accounting period, being a day falling on or after the day appointed under subsection (10) below,—
- (a) the Commissioners have not received that return, or
  - (b) the Commissioners have received that return but have not received the amount of tax shown on the return as payable by him in respect of that period,

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then that person shall be regarded for the purposes of this section as being in default in respect of that period.

- (2) Subject to subsections (8) and (9) below, subsection (4) below applies in any case where—
- (a) a taxable person is in default in respect of [<sup>F11</sup>a prescribed accounting period]; and
  - <sup>F12</sup>(b) .....
  - (c) the Commissioners serve notice on the taxable person (in this section referred to as a “surcharge liability notice”) specifying as a surcharge period for the purposes of this section a period ending on the first anniversary of the last day of the [<sup>F13</sup>period referred to in paragraph (a)] above and beginning, subject to subsection (3) below, on the date of the notice.
- (3) If a surcharge liability notice is served by reason of [<sup>F14</sup>a default in respect of a prescribed accounting period and that period] ends at or before the expiry of an existing surcharge period already notified to the taxable person concerned, the surcharge period specified in that notice shall be expressed as a continuation of the existing surcharge period and, accordingly, for the purposes of this section, that existing period and its extension shall be regarded as a single surcharge period.
- <sup>F15</sup>(4) Subject to subsections (6) to (9) below, if a taxable person on whom a surcharge liability notice has been served—
- (a) is in default in respect of a prescribed accounting period ending within the surcharge period specified in (or extended by) that notice, and
  - (b) has outstanding tax for that prescribed accounting period,
- he shall be liable to a surcharge equal to whichever is the greater of the following, namely, the specified percentage of his outstanding tax for that prescribed accounting period and £30.]
- (5) Subject to subsections (6) to (9) below, the specified percentage referred to in [<sup>F16</sup>subsection (4) above] shall be determined in relation to a prescribed accounting period by reference to the number of such periods in respect of which the taxable person is in default during the surcharge period [<sup>F17</sup>and for which he has outstanding tax], so that,—
- <sup>F18</sup>(a) in relation to the first such prescribed accounting period, the specified percentage is 2 per cent.;
  - (b) in relation to the second such period, the specified percentage is 5 per cent.;
  - (c) in relation to the third such period, the specified percentage is 10 per cent.;
  - (d) in relation to each such period after the third, the specified percentage is 15 per cent.]
- <sup>F19</sup>(5A) For the purposes of subsections (4) and (5) above a person has outstanding tax for a prescribed accounting period if some or all of the tax for which he is liable in respect of that period has not been paid by the last day on which he is required (as mentioned in subsection (1) above) to make a return for that period; and the reference in subsection (4) above to a person’s outstanding tax for a prescribed accounting period is to so much of the tax for which he is so liable as has not been paid by that day.]
- (6) If a person who, apart from this subsection, would be liable to a surcharge under subsection (4) above satisfies the Commissioners or, on appeal, a value added tax tribunal that, in the case of a default which is material to the surcharge,—

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- (a) the return or, as the case may be, the tax shown on the return was despatched 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 the return or tax not having been so despatched,

he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question (and, accordingly, any surcharge liability notice the service of which depended upon that default shall be deemed not to have been served).

- (7) For the purposes of subsection (6) above, a default is material to a surcharge if—
  - (a) it is the default which, by virtue of subsection (4) above, gives rise to the surcharge; or
  - (b) it is a default which was taken into account in the service of the surcharge liability notice upon which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a prescribed accounting period ending within the surcharge period specified in or extended by that notice.
- (8) In any case where—
  - (a) the conduct by virtue of which a person is in default in respect of a prescribed accounting period is also conduct falling within subsection (1) of section 17 above, and
  - (b) by reason of that conduct, the person concerned is assessed to a penalty under that section,the default shall be left out of account for the purposes of subsections (2) to (5) above.
- (9) If the Commissioners, after consultation with the Treasury, so direct, a default in respect of a prescribed accounting period specified in the direction shall be left out of account for the purposes of subsections (2) to (5) above.
- (10) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint.

#### Textual Amendments

- F11** Words in s. 19(2)(a) substituted (1.10.1993 with effect as mentioned in Sch. 2 para. 5(3) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 5(1)(a)(3)**
- F12** S. 19(2)(b) repealed (1.10.1993 with effect as mentioned in Sch. 2 paras. 5(3) of the amending Act) by 1993 c. 34, ss. 49, 213, Sch. 2 para. 5(1)(b)(3), **Sch. 23 Pt. II**
- F13** Words in s. 19(2)(c) substituted (1.10.1993 with effect as mentioned in Sch. 2 para. 5(3) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 5(1)(c)(3)**
- F14** Words in s. 19(3) substituted (1.10.1993 with effect as mentioned in Sch. 2 para. 5(3) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 5(2)(3)**
- F15** S. 19(4) substituted (30.9.1993 with effect as mentioned in Sch. 2 para. 6(4)(b) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 6(1)(4)**
- F16** Words in s. 19(5) substituted (30.9.1993 with effect as mentioned in Sch. 2 para. 6(4)(b) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 6(2)(a)(4)**
- F17** Words in s. 19(5) inserted (30.9.1993 with effect as mentioned in Sch. 2 para. 6(4)(b) of the amending Act) by 1993 c. 34, s. 49, **Sch. 2 para. 6(2)(b)(4)**

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- F18** S. 19(5)(a)-(d) substituted for s. 19(a)-(c) (1.10.1993 with effect as mentioned in [Sch. 2 para. 7\(4\)](#) of the amending Act) by virtue of 1993 c. 34, s. 49, [Sch. 2 para. 7\(3\)](#)
- F19** S. 19(5A) inserted (30.9.1993 with effect as mentioned in [Sch. 2 para. 6\(4\)\(b\)](#) of the amending Act) by 1993 c. 34, s. 49, [Sch. 2 para. 6\(3\)\(4\)](#)

**Modifications etc. (not altering text)**

- C2** Power of appointment conferred by s. 19(10) fully exercised (1.10.1986): [S.I. 1986/968, art. 2](#)

**[<sup>F20</sup>20 Repayment supplement in respect of certain delayed payments or refunds.**

(1) In any case where—

- (a) a person is entitled to a payment under section 14(5) of the principal Act, or
- (b) a body which is registered and to which section 20 of that Act applies is entitled to a refund under that section,

and the conditions mentioned in subsection (2) below are satisfied, the amount which, apart from this section, would be due by way of that payment or refund shall be increased by the addition of a supplement equal to 5 per cent. of that amount or £30, whichever is the greater.

(2) The said conditions are—

- (a) that the requisite return or claim is received by the Commissioners not later than one month after the last day on which it is required to be furnished or made, and
- (b) that a written instruction directing the making of the payment or refund is not issued by the Commissioners within the period of thirty days beginning on the date of the receipt by the Commissioners of that return or claim, and
- (c) that the amount shown on that return or claim as due by way of payment or refund does not exceed the payment or refund which was in fact due by more than 5 per cent. of that payment or refund or £250, whichever is the greater.

(3) Regulations may provide that, in computing the period of thirty days referred to in subsection (2)(b) above, there shall be left out of account periods determined in accordance with the regulations and referable to—

- (a) the raising and answering of any reasonable inquiry relating to the requisite return or claim,
- (b) the correction by the Commissioners of any errors or omissions in that return or claim, and
- (c) in the case of a payment, the following matters, namely—
  - (i) any such continuing failure to submit returns as is referred to in section 14(7) of the principal Act, and
  - (ii) compliance with any such condition as is referred to in paragraph 5(1) of Schedule 7 to that Act (production of documents or giving of security as a condition of payment).

[ In determining for the purposes of regulations under subsection (3) above whether any <sup>F21</sup>(3A) period is referable to the raising and answering of such an inquiry as is mentioned in that subsection, there shall be taken to be so referable any period which—

- (a) begins with the date on which the Commissioners first consider it necessary to make such an inquiry, and
- (b) ends with the date on which the Commissioners—

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- (i) satisfy themselves that they have received a complete answer to the inquiry, or
  - (ii) determine not to make the inquiry or, if they have made it, not to pursue it further,
- but excluding so much of that period as may be prescribed; and it is immaterial whether any inquiry is in fact made or whether it is or might have been made of the person or body making the requisite return or claim or of an authorised person or of some other person.]
- (4) Except for the purpose of determining the amount of the supplement—
- (a) a supplement paid to any person under subsection (1)(a) above shall be treated as an amount due to him by way of credit under section 14(5) of the principal Act, and
  - (b) a supplement paid to any body under subsection (1)(b) above shall be treated as an amount due to it by way of refund under section 20 of that Act.
- (5) In this section “requisite return or claim” means—
- (a) in relation to a payment, the return for the prescribed accounting period concerned which is required to be furnished in accordance with regulations under the principal Act, and
  - (b) in relation to a refund, the claim for that refund which is required to be made in accordance with the Commissioners’ determination under section 20 of that Act.
- (6) Subsection (1)(a) above shall have effect with respect to any prescribed accounting period ending, and subsection (1)(b) above shall have effect with respect to any claim made, on or after such day as the Treasury may by order made by statutory instrument appoint.
- (7) If the Treasury by order made by statutory instrument so direct, any period specified in the order shall be disregarded for the purpose of calculating the period of thirty days referred to in subsection (2)(b) above.]

#### **Textual Amendments**

**F20** S. 20 substituted by [Finance Act 1988 \(c. 39, SIF 40:2\)](#), s. 20

**F21** S. 20(3A) inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 15(1)(3).

#### **Modifications etc. (not altering text)**

**C3** Power of appointment conferred by s. 20(6) fully exercised (29.7.1988): [S.I. 1988/354](#), arts. 2, 3

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 1985, Cross Heading: Interest, surcharges and supplements.