



# Finance Act 1985

## 1985 CHAPTER 54

### PART I

#### CUSTOMS AND EXCISE AND VALUE ADDED TAX

### CHAPTER II

#### VALUE ADDED TAX

#### *Miscellaneous*

#### **28 Penalty for failure to comply with directions etc. of tribunal**

At the end of paragraph 9 of Schedule 8 to the principal Act (procedural rules for tribunals) there shall be added the following paragraph—

- “10 (1) A person who fails to comply with a direction or summons issued by a value added tax tribunal under rules made under paragraph 9 above shall be liable to a penalty not exceeding £1000.
- (2) A penalty for which a person is liable by virtue of sub-paragraph (1) above may be awarded summarily by a tribunal notwithstanding that no proceedings for its recovery have been commenced.
- (3) An appeal shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland, from the award of a penalty under this paragraph, and on such an appeal the court may either confirm or reverse the decision of the tribunal or reduce or increase the sum awarded.
- (4) A penalty awarded by virtue of this paragraph shall be recoverable as if it were tax due from the person liable for the penalty.”

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*Status: This is the original version (as it was originally enacted).*

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## **29 Enforcement of certain decisions of tribunal**

- (1) If the decision of a value added tax tribunal in England and Wales on an appeal under section 40 of the principle Act is registered by the Commissioners in accordance with rules of court, payment of—
  - (a) any amount which, as a result of the decision, is, or is recoverable as, tax due from any person, and
  - (b) any costs awarded to the Commissioners by the decision,may be enforced by the High Court as if that amount or, as the case may be, the amount of those costs were an amount due to the Commissioners in pursuance of a judgment or order of the High Court.
- (2) If the decision of a value added tax tribunal in Scotland on an appeal under section 40 of the principal Act—
  - (a) confirms or varies an amount which is, or is recoverable as, tax due from any person, or
  - (b) awards costs to the Commissioners,the decision may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.
- (3) Subsection (4) below shall apply in relation to the decision of a value added tax tribunal in Northern Ireland on an appeal under section 40 of the principal Act where—
  - (a) any amount is, or is recoverable as, tax due from any person, as a result of the decision, whether with or without an award of costs to the Commissioners ; or
  - (b) any costs are awarded to the Commissioners by the decision.
- (4) Where this subsection applies—
  - (a) payment of the amount mentioned in paragraph (a) of subsection (3) above or, as the case may be, the amount of the costs mentioned in paragraph (b) of that subsection may be enforced by the Enforcement of Judgments Office; and
  - (b) a sum equal to any such amount shall be deemed to be payable under a money judgment within the meaning of Article 2(2) of the Judgments Enforcement (Northern Ireland) Order 1981, and the provisions of that Order shall apply accordingly.
- (5) Any reference in this section to a decision of a value added tax tribunal includes a reference to an order (however described) made by a tribunal for giving effect to a decision.

## **30 Appointments to and administration of tribunals**

- (1) Schedule 8 to this Act shall have effect with respect to appointments to and the administration of value added tax tribunals.
- (2) This section shall come into operation on such day as the Lord Chancellor may by order made by statutory instrument appoint.
- (3) No provision of Schedule 8 to this Act shall affect the appointment of any person who, immediately before that provision comes into operation, holds office as President, or as a chairman or other member of value added tax tribunals.

## 31 Insolvency

At the end of subsection (4) of section 31 of the principal Act (power by regulations to make provisions for persons who carry on a business of a taxable person who has become bankrupt or incapacitated etc.) there shall be added the following subsection—

“(5) In relation to a company which is a taxable person, the reference in subsection (4) above to the taxable person having become bankrupt or incapacitated shall be construed as a reference to its being in liquidation or receivership or to an administration order being in force in relation to it.”

## 32 Refund of tax in cases of bad debts

(1) For section 22 of the principal Act there shall be substituted the following section—

### “22 Refund of tax in cases of bad debts.

(1) Where

- (a) a person has supplied goods or services for a consideration in money and has accounted for and paid tax on that supply; and
- (b) the person liable to pay any outstanding amount of the consideration has become insolvent,

then, subject to subsections (4) and (5) below and to regulations under this section, the first-mentioned person shall be entitled, on making a claim to the Commissioners, to a refund of the amount of tax chargeable by reference to the outstanding amount

(2) An individual becomes insolvent for the purposes of this section if—

- (a) in England and Wales, he is adjudged bankrupt, a deed of arrangement is made for the benefit of his creditors, a composition or scheme proposed by him is approved under Chapter I of Part III of the Insolvency Act 1985 or, after his death, his estate falls to be administered in accordance with an order under Part IV of that Act;
- (b) in Scotland, sequestration of his estate is awarded, he signs a trust deed for his creditors or, after his death, a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to administer his estate;
- (c) in Northern Ireland, he is adjudged bankrupt, a deed of arrangement is made for the benefit of his creditors, a resolution of his creditors is approved by the court under section 5 of the Bankruptcy Amendment Act (Northern Ireland) 1929 or, after his death, the court makes an order for the administration in bankruptcy of his estate; or
- (d) in the Isle of Man, he is adjudged bankrupt, a deed of arrangement is made for the benefit of his creditors or, after his death, the court makes an order for the administration in bankruptcy of his estate.

(3) A company becomes insolvent for the purposes of this section if—

- (a) it goes into liquidation in the United Kingdom or the Isle of Man at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up ; or
- (b) a person who has been appointed in Great Britain to act as its administrator or administrative receiver issues a certificate of his

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opinion that, if it went into liquidation, the assets of the company would be insufficient to cover the payment of any dividend in respect of debts which are neither secured nor preferential.

- (4) A person shall not be entitled to a refund under this section unless—
- (a) the value of the supply is equal to or less than its open market value; and
  - (b) in the case of a supply of goods, the property in the goods has passed to the person to whom they were supplied or to a person deriving title from, through or under that person.
- (5) A person shall not be entitled to a refund under this section in a case where the insolvency arises otherwise than by virtue of such a certificate as is mentioned in subsection (3) (b) above unless he has proved in the insolvency for the requisite amount, that is to say, the outstanding amount of the consideration less the amount of his claim.
- (6) If regulations under this section so provide in relation to insolvencies of any description, this section shall have effect in relation to insolvencies of that description as if—
- (a) subsection (5) above were omitted ; or
  - (b) the reference in that subsection to proving in the insolvency for the requisite amount were a reference to the taking of the prescribed steps in relation to that amount.
- (7) Regulations under this section may—
- (a) require a claim to be made at such time and in such form and manner as may be specified by or under the regulations ;
  - (b) require a claim to be evidenced and quantified by reference to such records and other documents preserved for such period, not exceeding six years from the making of the claim, as may be so specified;
  - (c) make provision for determining what amount (if any) is the outstanding amount of the consideration in particular cases, such as those involving part payment or mutual debts;
  - (d) require the repayment of a refund under this section where any requirement of the regulations is not complied with ;
  - (e) require the repayment of such a refund where the claimant subsequently proves for or takes the prescribed steps in relation to an amount which (taken with the amount for which he has previously proved or in relation to which he has previously taken the prescribed steps) exceeds the requisite amount; and
  - (f) make different provision for different circumstances.
- (8) In this section "administrative receiver" has the same meaning as in Part II of the Insolvency Act 1985 and references to an individual include, in relation to Scotland, references to any debtor within the meaning of the Bankruptcy (Scotland) Act 1985."
- (2) This section applies where the person liable to pay the outstanding amount of the consideration becomes insolvent on or after such day as the Treasury may by order made by statutory instrument appoint; and different days may be so appointed for different purposes.

### **33 Interpretation and construction of Chapter II**

- (1) In this Chapter " the principal Act" means the Value Added Tax Act 1983.
- (2) For the purpose of any provision of this Chapter which refers to a reasonable excuse for any conduct,—
  - (a) an insufficiency of funds to pay any tax due is not a reasonable excuse; and
  - (b) where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse.
- (3) In relation to a prescribed accounting period, any reference in this Chapter to credit for input tax includes a reference to any sum which, in a return for that period, is claimed as a deduction from tax due.
- (4) In any case where—
  - (a) an amount is due from the Commissioners to any person under section 14(5) of the principal Act, and
  - (b) that person is liable to pay a sum assessed by way of penalty, interest or surcharge,the amount referred to in paragraph (a) above shall be set against the sum referred to in paragraph (b) above and, accordingly, to the extent of the set-off, the obligations of the Commissioners and the person concerned shall be discharged.
- (5) This Chapter shall be construed as one with the principal Act except that—
  - (a) references in section 39(9) of that Act (application of certain provisions to offences and penalties) to penalties do not include references to penalties under sections 13 to 17 above ; and
  - (b) section 45 of that Act (orders, rules and regulations) does not apply in relation to orders under any provision of this Chapter.