



# Finance Act 1985

## 1985 CHAPTER 54

### PART I

#### CUSTOMS AND EXCISE AND VALUE ADDED TAX

### CHAPTER I

#### CUSTOMS AND EXCISE

##### *The rates of duty*

#### **1 Spirits, beer, wine, made-wine and cider**

- (1) In section 5 of the Alcoholic Liquor Duties Act 1979 (excise duty on spirits) for "£15.48" there shall be substituted " £15.77".
- (2) In section 36 of that Act (excise duty on beer) for "£24.00" and "£0.80" there shall be substituted " £25.80 " and " £0.86 " respectively.
- (3) For the Table of rates of duty in Schedule 1 to that Act (wine and made-wine) there shall be substituted the Table in Schedule 1 to this Act.
- (4) With respect to wine or made-wine imported into or produced in the United Kingdom on or after 29th July 1985, Schedule 1 to this Act shall have effect with the substitution—
  - (a) for the words " of less than 15 ", in each place where they occur, of the words " not exceeding 15 "; and
  - (b) for the words " of not less than 15 " of the words " exceeding 15 ".
- (5) In section 62(1) of that Act (excise duty on cider) for "£14.28 " there shall be substituted " £15.80".
- (6) This section and Schedule 1 to this Act shall be deemed to have come into force on 20th March 1985.

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## 2 Tobacco products

- (1) For the Table in Schedule 1 to the Tobacco Products Duty Act 1979 there shall be substituted—

“TABLE

1. Cigarettes	An amount equal to 21 per cent, of the retail price plus £26-95 per thousand cigarettes.
2. Cigars	£47-05 per kilogram.
3. Hand-rolling tobacco	£43-73 per kilogram.
4. Other smoking tobacco and chewing tobacco.	£24-95 per kilogram.”

- (2) This section shall be deemed to have come into force on 22nd March 1985.

## 3 Hydrocarbon oil

- (1) In section 6(1) of the Hydrocarbon Oil Duties Act 1979 (rates of duty on hydrocarbon oil) for " £0.1716 " (light oil) and " £0.1448 " (heavy oil) there shall be substituted " £0.1794 " and " £0.1515 " respectively.
- (2) This section shall be deemed to have come into force at 6 o'clock in the evening of 19th March 1985.

## 4 Vehicles excise duty

- (1) The Vehicles (Excise) Act 1971 and the Vehicles (Excise) Act (Northern Ireland) 1972 shall be amended as follows.
- (2) For the provisions of Part II of Schedules 1 to 5 to each of those Acts (annual rates of duty) there shall be substituted the provisions set out in Part I of Schedule 2 to this Act.
- (3) The provisions of Part I of Schedule 4 to each of those Acts (annual rates of duty on goods vehicles: general provisions) shall have effect subject to the amendments made by Part II of Schedule 2 to this Act.
- (4) In section 2(1)(b) of each of those Acts (six month licence for vehicles with annual rate exceeding £18) for " £18 " there shall be substituted " £35".
- (5) In section 16 of the Act of 1971 (rates of duty for trade licences) in subsection (5), including that subsection as set out in paragraph 12 of Part I of Schedule 7 to that Act, for " £44" there shall be substituted " £46".
- (6) In section 16 of the Act of 1972 (rates of duty for trade licences) in subsection (6), including that subsection as set out in paragraph 12 of Part I of Schedule 9 to that Act, for " £44 " there shall be substituted " £46".
- (7) In the heading of Schedule 1 to each of those Acts and in paragraph 1 of Part I of each of those Schedules (annual rates of duty on certain vehicles not exceeding 425 kilograms) for " 425 KG." and " 425 kilograms " there shall be substituted respectively " 450KG. " and " 450 kilograms ".
- (8) This section applies in relation to licences taken out after 19th March 1985.

### *Other provisions*

## **5 Blending of certain wines to constitute production of wine**

- (1) In section 54 of the Alcoholic Liquor Duties Act 1979 (charge of excise duty on wine) at the end of subsection (3) there shall be inserted the following subsections: —

“(3A) For the purposes of this Act, the process of blending or otherwise mixing two or more wines (in this subsection referred to as “the constituent wines”) constitutes the production of wine if—

- (a) the rate of duty applicable to one of the constituent wines is different from that applicable to the other or, as the case may be, at least one of the others ; and
- (b) the rate of duty applicable to the wine which is the product of the blending or other mixing is higher than that which is applicable to at least one of the constituent wines ; and
- (c) the blending or other mixing is with a view to dealing wholesale in the wine which is the product thereof;

and for the purposes of this subsection the rate of duty applicable to any wine is that which is or would be chargeable under subsection (1) above on its importation into the United Kingdom or, as the case may be, on its production as mentioned in paragraph (b) of that subsection.

(3B) Where, by virtue of subsection (3A) above, wine is produced in the United Kingdom, duty shall be chargeable on that wine by virtue of paragraph (b) of subsection (1) above whether or not duty was previously charged on all or any of the constituent wines by virtue of paragraph (a) or paragraph (b) of that subsection; but nothing in this subsection shall affect the operation of any regulations under section 56 below giving relief from duty on wine so produced by reference to duty charged on all or any of the constituent wines.”

- (2) Subsection (1) above has effect in relation to the blending or otherwise mixing of wines on or after 26th March 1985.

## **6 Miscellaneous amendments relating to spirits and beer**

- (1) The Alcoholic Liquor Duties Act 1979 shall have effect subject to the amendments in Schedule 3 to this Act (being amendments relating to spirits and beer).
- (2) Paragraphs 3 and 4 of Schedule 3 to this Act shall come into operation on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint; and a different day may be so appointed for each of those paragraphs.

## **7 Hydrocarbon oil: mixing etc.**

- (1) Schedule 4 to this Act (which contains provisions about mixing hydrocarbon oil etc.) shall have effect.
- (2) That Schedule shall come into operation on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint.

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## **8 Gaming machine licence duty**

- (1) The Betting and Gaming Duties Act 1981 (in this section referred to as " the 1981 Act") shall have effect subject to the amendments in Part I of Schedule 5 to this Act, being amendments designed—
  - (a) to enable the type of gaming machine licence which may be granted and the amount of duty payable thereon to be determined by reference to the value of the maximum prize obtainable by a successful player of the machine; and
  - (b) to extend to Northern Ireland the provisions of the 1981 Act relating to gaming machine licence duty.
- (2) Part II of Schedule 5 to this Act shall have effect for the purpose of extending to Northern Ireland certain subordinate legislation made under the 1981 Act.
- (3) Nothing in Schedule 5 to this Act has effect with respect to licences granted or to be granted for any period beginning before 1st October 1985.
- (4) In consequence of the extension to Northern Ireland referred to in subsection (1)(b) above, no gaming machine licence shall be issued under Part V of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972 in respect of any period beginning on or after 1st October 1985.

## **9 Vehicles excise duty: fees**

- (1) In section 13 of the Vehicles (Excise) Act 1971 (temporary licences) the following subsection shall be inserted after subsection (2)—
 

“(2A) Where an application for a vehicle licence is made to a body authorised by the Secretary of State to act as his agent for the purpose of issuing licences, then, before the body issues a licence under subsection (1)(a) above, it may require the applicant to pay to it in connection with the issue a fee of £2 or such other sum as may be prescribed.”
- (2) In section 37(2) of that Act (cases where fees may be prescribed without Treasury approval) after "made by" there shall be inserted " section 13 (2A) or".

## **10 Computer records etc.**

- (1) Any provision made by or under any enactment which requires a person, in connection with any assigned matter,—
  - (a) to produce, furnish or deliver any document, or cause any document to be produced, furnished or delivered, or
  - (b) to permit the Commissioners of Customs and Excise (in this section referred to as " the Commissioners ") or a person authorised by them—
    - (i) to inspect any document, or
    - (ii) to make or take extracts from or copies of or remove any document,
 shall have effect as if any reference in that provision to a document were a reference to a document within the meaning of Part I of the Civil Evidence Act 1968 ; and, accordingly, any reference in such a provision to a copy of a document shall be construed in accordance with section 10(2) of that Act.
- (2) In connection with any assigned matter, a person authorised by the Commissioners to exercise the powers conferred by this subsection—

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- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with any document to which this subsection applies ; and
  - (b) may require—
    - (i) the person by whom or on whose behalf the computer is or has been so used, or
    - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,to afford him such reasonable assistance as he may require for the purposes of paragraph (a) above.
- (3) Subsection (2) above applies to any document, within the meaning of Part I of the Civil Evidence Act 1968, which, in connection with any assigned matter, a person is or may be required by or under any enactment—
- (a) to produce, furnish or deliver, or cause to be produced, furnished or delivered ; or
  - (b) to permit the Commissioners or a person authorised by them to inspect, make or take extracts from or copies of or remove.
- (4) Any person who—
- (a) obstructs a person authorised under subsection (2) above in the exercise of his powers under paragraph (a) of that subsection, or
  - (b) without reasonable excuse fails to comply within a reasonable time with a requirement under paragraph (b) of that subsection,
- shall be liable on summary conviction to a penalty of level 4 on the standard scale (as defined in section 75 of the Criminal Justice Act 1982).
- (5) In each of the enactments mentioned in subsection (6) below (which create offences in relation, among other matters, to false documents) " document" shall have the same meaning as in Part I of the Civil Evidence Act 1968.
- (6) The enactments referred to in subsection (5) above are—
- (a) paragraph 4(1) of Schedule 1 to the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972 (false statements and documents in connection with pool betting duty);
  - (b) paragraph 8(1) of Schedule 2 to that Act (false statements and documents in connection with general betting duty);
  - (c) section 167 of the Customs and Excise Management Act 1979 (untrue declarations etc.);
  - (d) section 168 of that Act (counterfeit documents etc.);
  - (e) section 15 of the Customs and Excise Duties (General Reliefs) Act 1979 (false statements and documents in connection with reliefs);
  - (f) paragraph 13(3) of Schedule 1 to the Betting and Gaming Duties Act 1981 (false statements and documents in connection with betting duty);
  - (g) paragraph 7(3) of Schedule 2 to that Act (false statements and documents in connection with gaming licence duty);
  - (h) paragraph 8(2) of Schedule 1 to the Car Tax Act 1983 (false documents etc.).

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- (7) In the application of this section to Scotland and Northern Ireland, references in this section to Part I of the Civil Evidence Act 1968 and section 10(2) of that Act shall be construed—
- (a) in the case of Scotland, as references to Part III of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 and section 17(4) of that Act respectively, and
  - (b) in the case of Northern Ireland, as references to Part I of the Civil Evidence Act (Northern Ireland) 1971 and section 6(2) of that Act respectively.
- (8) In this section " assigned matter " means any matter which is an assigned matter for the purposes of the Customs and Excise Management Act 1979.

## CHAPTER II

### VALUE ADDED TAX

#### *Newspaper advertisements*

#### **11 Newspaper advertisements**

With respect to supplies made on or after 1st May 1985, Schedule 5 to the principal Act shall have effect with the omission of Group 5 (newspaper advertisements).

#### *Offences etc.*

#### **12 Offences and penalties in criminal proceedings**

- (1) Section 39 of the principal Act (offences and penalties) shall be amended in accordance with the following provisions of this section; but any increased penalty provided for by those provisions does not apply to an offence committed on or before the date this Act is passed.
- (2) In subsections (1)(b). (2)(ii) and (3)(b) (maximum of 2 years imprisonment on indictment) for " 2 " there shall be substituted " 7".
- (3) After subsection (1) there shall be inserted the following subsection: —
- “(1A) Any reference in subsection (1) above or subsection (3) below to the evasion of tax includes a reference to the obtaining of—
- (a) a payment under section 14(5) above; or
  - (b) a refund under section 21 or section 22 above; or
  - (c) a repayment under section 23 above ; and any reference in those subsections to the amount of the tax shall be construed,—
    - (i) in relation to tax itself or a payment falling within paragraph (a) above, 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

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- (ii) in relation to a refund or repayment falling within paragraph (b) or paragraph (c) above, as a reference to the amount falsely claimed by way of refund or repayment.”
- (4) In subsection (2)(i) (penalty on summary conviction for certain offences relating to false documents or false information) after the words " statutory maximum " there shall be inserted " or, where subsection (2A) or subsection (2B) below applies, to the alternative penalty specified in that subsection if it is greater".
- (5) After subsection (2) there shall be inserted the following subsections: —
- “(2A) In any case where—
- (a) the document referred to in subsection (2) (a) above is a return required under this Act, or
- (b) the information referred to in subsection (2) (b) above is contained in or otherwise relevant to such a return,
- the alternative penalty referred to in subsection (2)(i) above is a penalty equal to three times 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.
- (2B) In any case where—
- (a) the document referred to in subsection (2)(a) above is a claim for a refund under section 21 or section 22 above or for a repayment under section 23 above, or
- (b) the information referred to in subsection (2)(b) above is contained in or otherwise relevant to such a claim,
- the alternative penalty referred to in subsection (2)(i) above is a penalty equal to three times the amount falsely claimed.
- (2C) The reference in subsection (2) (a) above to furnishing, sending or otherwise making use of a document which is false in a material particular, with intent to deceive, includes a reference to furnishing, sending or otherwise making use of such a document, with intent to secure that a machine will respond to the document as if it were a true document.
- (2D) Any reference in subsection (2) (a) or subsection (20) above to producing, furnishing or sending a document includes a reference to causing a document to be produced, furnished or sent.”
- (6) After subsection (3) there shall be inserted the following subsection: —
- “(3A) Where an authorised person has reasonable grounds for suspecting that an offence has been committed under the preceding provisions of this section, he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.”
- (7) The following provisions shall cease to have effect—
- (a) in subsection (5), paragraph (a) and the words from " or, if greater " onwards ;
- (b) subsection (6); and
- (c) subsection (7).
- (8) In subsection (8)—

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- (a) for the words " the failure referred to in subsection (7) above " there shall be substituted " a person's failure to comply with any regulations made under this Act"; and
- (b) for the words from " that subsection " to " (if it is greater) " there shall be substituted " that person shall be liable on summary conviction to a penalty of level 3 on the standard scale, together with a penalty of whichever is the greater of £10 and";

but that subsection, as so amended, shall not apply to a failure which begins on or after such day as the Treasury may by order made by statutory instrument appoint.

- (9) In accordance with the provisions of subsections (1) to (7) above, section 39 of the principal Act, excluding subsection (8), shall have effect as set out in Schedule 6 to this Act.

### *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 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,
- 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

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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.
- (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—

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- (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.

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- (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.

## **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.

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- (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 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

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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.

*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 paragraph 11(1)(a) of Schedule 1 to the principal Act,
- the tax or other amount assessed shall carry interest, in accordance with subsection (4) or subsection (5) below, at the prescribed rate until payment.
- (2) In any case where—
- (a) a person fails to comply with paragraph 3 or paragraph 4 of Schedule 1 to the principal Act (notification of liability to registration) or, being a person exempted from registration under sub-paragraph (1)(a) of paragraph 11 of that Schedule, fails to comply with sub-paragraph (2) of that paragraph (notice of circumstances affecting entitlement to exemption), and

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- (b) the Commissioners, rather than assessing the amount of tax due, require him to make a return for the period beginning on the date with effect from which he was required to be registered or, as the case may be, on which it appears to the Commissioners that he should no longer have been exempt from registration and ending on a date specified by the Commissioners, and
  - (c) that period exceeds three months, and
  - (d) the tax due for that period is paid without the need for an assessment. that tax shall carry interest, in accordance with subsection (4) or subsection (5) below, at the prescribed rate until payment.
- (3) If, in a case where subsection (2) above does not apply,—
- (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),
- that tax or other amount shall carry interest, in accordance with subsection (4) or subsection (5) below, at the prescribed rate until the date on which it was paid.
- (4) Where the amount assessed or paid as mentioned in any of subsections (1) to (3) above relates to a particular prescribed accounting period which does not exceed three months, interest under this section shall run on the whole of that amount from the reckonable date.
- (5) Where subsection (4) above does not apply, the Commissioners shall, to the best of their judgment, attribute different parts of the amount assessed or paid to different parts of the period to which that amount relates; and interest under this section on the part of an amount which is attributed to a particular part of a period shall run from the date which, if that part were a prescribed accounting period, would be the reckonable date.
- (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 (4) and (5) 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 sub-paragraph (2)(a) or sub-paragraph (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 non-business day, within the meaning of section 92 of the Bills of Exchange Act 1882.

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- (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;
  - (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.

## **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 a 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,
- 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 any two prescribed accounting periods; and
  - (b) the last day of the later one of those periods falls on or before the first anniversary of the last day of the earlier one ; and
  - (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 later period referred to in paragraph (b) 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 defaults in respect of two prescribed accounting periods and the second of those periods 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.
- (4) Subject to subsections (6) to (9) below, if a taxable person on whom a surcharge liability notice has been served is in default in respect of a prescribed accounting period ending within the surcharge period specified in (or extended by) that notice, he shall be liable to a surcharge equal to whichever is the greater of—
- (a) the specified percentage of his outstanding tax for that period; and
  - (b) £30;



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and the reference in paragraph (a) above to a person's outstanding tax for a prescribed accounting period is a reference to so much of the tax for which he is liable in respect of that period as 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.

(5) Subject to subsections (6) to (9) below, the specified percentage referred to in subsection (4) (a) 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, so that,—

- (a) in relation to the first such prescribed accounting period, the specified percentage is 5 per cent.;
- (b) in relation to the second such period, the specified percentage is 10 per cent.; and
- (c) in relation to each subsequent such period the specified percentage is increased by a further 5 per cent, up to a maximum of 30 per cent, for the sixth and any later period.

(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,—

- (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.

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

## **20 Repayment supplement in respect of certain delayed payments**

- (1) In any case where—
- (a) a person is entitled to a payment under section 14(5) of the principal Act in respect of a prescribed accounting period, and
  - (b) the return for that period which is required in accordance with regulations under the principal Act is received by the Commissioners not later than one month after the last day on which, in accordance with those regulations, it is required to be furnished, and
  - (c) a written instruction directing the making of the payment due under the said section 14(5) is not issued by the Commissioners within the period of thirty days beginning on the day following the end of that prescribed accounting period or, if it is later, on the date of the receipt by the Commissioners of the return referred to in paragraph (b) above, and
  - (d) the amount shown on that return as due by way of payment under the said section 14(5) is not more than £100 in excess of the payment which was in fact due,

the amount which, apart from this section, would be due by way of that payment shall be increased by the addition of a supplement equal to 5 per cent, of that amount or £30, whichever is the greater.

- (2) Regulations may provide that, in computing the period of thirty days referred to in subsection (1)(c) 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 return referred to in subsection (1)(b) above,
  - (b) the correction by the Commissioners of any errors or omissions in that return,
  - (c) any such continuing failure to submit returns or pay tax as is referred to in section 14(7) of the principal Act, and
  - (d) 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).
- (3) Except for the purpose of determining the amount of the supplement, a supplement paid to any person under subsection (1) above shall be treated as an amount due to him by way of credit under section 14(5) of the principal Act.
- (4) This section shall have effect with respect to any prescribed accounting period ending on or after such day as the Treasury may by order made by statutory instrument appoint.
- (5) 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 (1)(c) above.

*Assessments, records and information*

**21 Assessment of amounts due by way of penalty, interest or surcharge**

- (1) Where any person is liable—
- (a) to a penalty under any of sections 13 to 17 above, or
  - (b) for interest under section 18 above, or
  - (c) to a surcharge under section 19 above,
- the Commissioners may assess the amount due by way of penalty, interest or surcharge, as the case may be, and notify it to him accordingly; and the fact that any conduct giving rise to a penalty under any of sections 13 to 17 above may have ceased before an assessment is made under this section shall not affect the power of the Commissioners to make such an assessment.
- (2) In the case of the penalties, interest and surcharge referred to in the following paragraphs, the assessment under this section shall be of an amount due in respect of the prescribed accounting period which in the paragraph concerned is referred to as "the relevant period",—
- (a) in the case of a penalty under section 13 above relating to the evasion of tax, the relevant period is the prescribed accounting period for which the tax evaded was due;
  - (b) in the case of a penalty under section 13 above relating to the obtaining of a payment under section 14(5) of the principal Act, the relevant period is the prescribed accounting period in respect of which the payment was obtained;
  - (c) in the case of a penalty under section 14 above, the relevant period is the prescribed accounting period for which liability to tax was understated or, as the case may be, for which entitlement to a payment under section 14(5) of the principal Act was overstated ;
  - (d) in the case of interest under section 18 above, the relevant period is the prescribed accounting period in respect of which the tax (or amount assessed as tax) was due; and
  - (e) in the case of a surcharge under section 19 above, the relevant period is the prescribed accounting period in respect of which the taxable person is in default and in respect of which the surcharge arises.
- (3) In any case where the amount of any penalty, interest or surcharge falls to be calculated by reference to tax which was not paid at the time it should have been and that tax (or the supply which gives rise to it) cannot be readily attributed to any one or more prescribed accounting periods, it shall be treated for the purposes of the principal Act and this Part of this Act as tax due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the tax and penalty, interest or surcharge.
- (4) Where a person is assessed under this section to an amount due by way of any penalty, interest or surcharge falling within subsection (2) above and is also assessed under sub-paragraph (1), sub-paragraph (2) or sub-paragraph (6) of paragraph 4 of Schedule 7 to the principal Act for the prescribed accounting period which is the relevant period under subsection (2) above, the assessments may be combined and notified to him as one assessment, but the amount of the penalty, interest or surcharge shall be separately identified in the notice.

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- (5) In the case of an amount due by way of penalty under section 17 or interest under section 18 above—
- (a) a notice of assessment under this section shall specify a date, being not later than the date of the notice, to which the aggregate amount of the penalty or, as the case may be, the amount of interest which is assessed is calculated; and
  - (b) if the penalty or interest continues to accrue after that date, a further assessment or assessments may be made under this section in respect of amounts which so accrue.
- (6) If, within such period as may be notified by the Commissioners to the person liable to a penalty under section 17 above or for interest under section 18 above,—
- (a) a failure falling within section 17(1) above is remedied, or
  - (b) the tax or other amount referred to in section 18(1) above is paid,
- it shall be treated for the purposes of section 17 or, as the case may be, section 18 above as remedied or paid on the date specified as mentioned in subsection (5)(a) above.
- (7) If an amount is assessed and notified to any person under this section, then unless, or except to the extent that, the assessment is withdrawn or reduced, that amount shall be recoverable as if it were tax due from him.
- (8) Sub-paragraph (10) of paragraph 4 of Schedule 7 to the principal Act (notification to personal representatives etc.) shall apply for the purposes of this section as it applies for the purposes of that paragraph.

## **22 Assessments: time limits and supplementary assessments**

- (1) Subject to the following provisions of this section, an assessment—
- (a) under any provision of paragraph 4 of Schedule 7 to the principal Act, or
  - (b) under section 21 above,
- shall not be made more than six years after the end of the prescribed accounting period or importation concerned or, in the case of an assessment under section 21 above of an amount due by way of a penalty which is not among those referred to in subsection (2) of that section, six years after the event giving rise to the penalty.
- (2) Subject to subsection (5) below, an assessment under section 21 above of an amount due by way of any penalty, interest or surcharge referred to in subsection (2) of that section may be made at any time before the expiry of the period of two years beginning when the amount of tax due for the prescribed accounting period concerned has been finally determined.
- (3) In relation to an assessment under section 21 above, any reference in subsection (1) or subsection (2) above to the prescribed accounting period concerned is a reference to that period which, in the case of the penalty, interest or surcharge concerned, is the relevant period referred to in subsection (2) of that section.
- (4) Subject to subsection (5) below, if tax has been lost—
- (a) as a result of conduct falling within section 13(1) above or for which a person has been convicted of fraud, or
  - (b) in circumstances giving rise to liability to a penalty under section 15 above,
- an assessment may be made as if, in subsection (1) above, each reference to six years were a reference to twenty years.

- (5) Where, after a person's death, the Commissioners propose to assess a sum as due by reason of some conduct (howsoever described) of the deceased, including a sum due by way of penalty, interest or surcharge,—
- (a) the assessment shall not be made more than three years after the death ; and
  - (b) if the circumstances are as set out in subsection (4) above, the modification of subsection (1) above contained in that subsection shall not apply but any assessment which (from the point of view of time limits) could have been made immediately after the death may be made at any time within three years after it.
- (6) Sub-paragraphs (7) and (8) of paragraph 4 of Schedule 7 to the principal Act (which are superseded by the preceding provisions of this section) shall cease to have effect.
- (7) If, otherwise than in circumstances falling within subparagraph (5) (b) of paragraph 4 of Schedule 7 to the principal Act (further evidence relating to an assessment under subparagraph (1) or sub-paragraph (2) of that paragraph), it appears to the Commissioners that the amount which ought to have been assessed in an assessment under any provision of that paragraph or under section 21 above exceeds the amount which was so assessed, then,—
- (a) under the like provision as that assessment was made, and
  - (b) on or before the last day on which that assessment could have been made,
- the Commissioners may make a supplementary assessment of the amount of the excess and shall notify the person concerned accordingly.

### **23 Amendments of Schedule 7 to the principal Act**

Schedule 7 to the principal Act (administration, collection and enforcement) shall be amended in accordance with Schedule 7 to this Act.

#### *Appeals*

### **24 Amendments of section 40 of the principal Act**

- (1) In section 40 of the principal Act (appeals), at the end of subsection (1) (decisions which are appealable) there shall be added the following paragraphs—
- “(o) any liability to a penalty or surcharge by virtue of any of sections 13 to 17 and 19 of the Finance Act 1985;
  - (p) the amount of any penalty, interest or surcharge specified in an assessment under section 21 of that Act;
  - (q) the making of an assessment on the basis set out in section 22(4) of that Act.”
- (2) After subsection (1) of that section there shall be inserted the following subsection—
- “(1A) Without prejudice to section 13(4) of the Finance Act 1985, nothing in subsection (Dip) above shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty, interest or surcharge except in so far as it is necessary to reduce it to the amount which is appropriate under sections 13 to 19 of that Act.”
- (3) In subsection (2) of that section (appeals not to be entertained unless all required returns have been made and the amounts payable have been paid) after the word "

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and " there shall be inserted " except in the case of an appeal against a decision with respect to the matter mentioned in subsection (1)(n) above, unless he".

(4) In subsection (3) of that section, for the words "paragraph (b) or (m) " there shall be substituted " any of paragraphs (b), (m), (o) and (p)".

(5) After subsection (3) of that section there shall be inserted the following subsection—

“(3A) Where, on an appeal against a decision with respect to any of the matters mentioned in paragraph (m) above,—

(a) it is found that the amount specified in the assessment is less than it ought to have been, and

(b) the tribunal gives a direction specifying the correct amount,  
the assessment shall have effect as an assessment of the amount specified in the direction and that amount shall be deemed to have been notified to the appellant.”

## **25 Settling appeals by agreement**

(1) Subject to the provisions of this section, where a person gives notice of appeal under section 40 of the principal Act and, before the appeal is determined by a value added tax tribunal, the Commissioners and the appellant come to an agreement (whether in writing or otherwise) under the terms of which the decision under appeal is to be treated—

- (a) as upheld without variation, or
- (b) as varied in a particular manner, or
- (c) as discharged or cancelled,

the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, a tribunal had determined the appeal in accordance with the terms of the agreement (including any terms as to costs).

(2) Subsection (1) above shall not apply where, within thirty days from the date when the agreement was come to, the appellant gives notice in writing to the Commissioners that he desires to repudiate or resile from the agreement.

(3) Where an agreement is not in writing—

- (a) the preceding provisions of this section shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the Commissioners to the appellant or by the appellant to the Commissioners; and
- (b) references in those provisions to the time when the agreement was come to shall be construed as references to the time of the giving of that notice of confirmation.

(4) Where

- (a) a person who has given a notice of appeal notifies the Commissioners, whether orally or in writing, that he desires not to proceed with the appeal; and
- (b) thirty days have elapsed since the giving of the notification without the Commissioners giving to the appellant notice in writing indicating that they are unwilling that the appeal should be treated as withdrawn,

the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and the Commissioners had come to an

agreement, orally or in writing, as the case may be, that the decision under appeal should be upheld without variation.

- (5) References in this section to an agreement being come to with an appellant and the giving of notice or notification to or by an appellant include references to an agreement being come to with, and the giving of notice or notification to or by, a person acting on behalf of the appellant in relation to the appeal.

## **26 Certain appeals to lie directly to the Court of Appeal**

- (1) The Lord Chancellor may by order provide that—
- (a) in such classes of appeal as may be prescribed by the order, and
  - (b) subject to the consent of the parties and to such other conditions as may be so prescribed,
- an appeal from a value added tax tribunal shall lie to the Court of Appeal.
- (2) An order under this section—
- (a) may provide that section 13 of the Tribunals and Inquiries Act 1971 (which provides for appeals to the High Court from, among other tribunals, a value added tax tribunal) shall have effect, in relation to any appeal to which the order applies, with such modifications as may be specified in the order ; and
  - (b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) This section does not extend to Scotland.

## **27 Procedural rules governing appeals**

- (1) On an appeal against an assessment to a penalty under section 13 above, the burden of proof as to the matters specified in paragraphs (a) and (b) of subsection (1) of that section shall lie upon the Commissioners.
- (2) Paragraph 9 of Schedule 8 to the principal Act (rules with respect to procedure to be followed on appeals to value added tax tribunals) shall be amended as follows—
- (a) after the words " on appeals to " there shall be inserted " and in other proceedings before";
  - (b) in paragraph (d) the words " and produce documents " shall be omitted;
  - (c) at the end of paragraph (d) there shall be inserted the following paragraph—  
“(dd) for discovery and for requiring persons to produce documents”; and
  - (d) at the end of paragraph (e) there shall be added the words " or producing documents".
- (3) On and after such day as the Lord Chancellor may by order made by statutory instrument appoint—
- (a) the power to make rules under paragraph 9 of Schedule 8 to the principal Act shall be exercisable by the Lord Chancellor, after consultation with the Lord Advocate, instead of by the Commissioners;
  - (b) any rules under that paragraph which are in force immediately before the day appointed under this subsection shall have effect as if made as mentioned in paragraph (a) above ; and

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- (c) a statutory instrument by which the power referred to in paragraph (a) above is exercised shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In section 45 of the principal Act (orders, rules and regulations) in subsection (2) (statutory instruments to be subject to annulment by the Commons House of Parliament) after the words " subsection (3) below" there shall be inserted " and section 27(3)(c) of the Finance Act 1985".

### *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.”

#### **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

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- (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 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

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- (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,

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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.