



# Value Added Tax Act 1994

## 1994 CHAPTER 23

### PART IV **U.K.**

#### ADMINISTRATION, COLLECTION AND ENFORCEMENT

##### *Default surcharges and other penalties and criminal offences*

#### 59 The default surcharge. **U.K.**

- (1) [<sup>F1</sup>Subject to subsection (1A) below]if, by the last day on which a taxable person is required in accordance with regulations under this Act to furnish a return for a prescribed accounting period—
- the Commissioners have not received that return, or
  - the Commissioners have received that return but have not received the amount of VAT 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.

[<sup>F2</sup>(1A) A person shall not be regarded for the purposes of this section as being in default in respect of any prescribed accounting period if that period is one in respect of which he is required by virtue of any order under section 28 to make any payment on account of VAT.]

- (2) Subject to subsections (9) and (10) below, subsection (4) below applies in any case where—
- a taxable person is in default in respect of a prescribed accounting period; and
  - the Commissioners serve notice on the taxable person (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 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 a default in respect of a prescribed accounting period and that period ends at or before the expiry of an existing surcharge

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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 (7) to (10) 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 VAT 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 VAT for that prescribed accounting period and £30.

(5) Subject to subsections (7) to (10) below, the specified percentage referred to in 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 and for which he has outstanding VAT, so that—

- (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; and
- (d) in relation to each such period after the third, the specified percentage is 15 per cent.

(6) For the purposes of subsections (4) and (5) above a person has outstanding VAT for a prescribed accounting period if some or all of the VAT 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 VAT for a prescribed accounting period is to so much of the VAT for which he is so liable as has not been paid by that day.

(7) 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 tribunal that, in the case of a default which is material to the surcharge—

- (a) the return or, as the case may be, the VAT 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 VAT 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).

(8) For the purposes of subsection (7) 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

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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.

- (9) 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 section 69(1), 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.
- (10) 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.

[<sup>F3</sup>(11) For the purposes of this section references to a thing's being done by any day include references to its being done on that day.]

#### Textual Amendments

- F1** Words in s. 59(1) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(3)
- F2** S. 59(1A) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(3)
- F3** S. 59(11) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(4)

#### [<sup>F4</sup>59A Default surcharge: payments on account. U.K.]

- (1) For the purposes of this section a taxable person shall be regarded as in default in respect of any prescribed accounting period if the period is one in respect of which he is required, by virtue of an order under section 28, to make any payment on account of VAT and either—
- (a) a payment which he is so required to make in respect of that period has not been received in full by the Commissioners by the day on which it became due; or
  - (b) he would, but for section 59(1A), be in default in respect of that period for the purposes of section 59.
- (2) Subject to subsections (10) and (11) below, subsection (4) below applies in any case where—
- (a) a taxable person is in default in respect of a prescribed accounting period; and
  - (b) the Commissioners serve notice on the taxable person (a “surcharge liability notice”) specifying as a surcharge period for the purposes of this section a period which—
    - (i) begins, subject to subsection (3) below, on the date of the notice; and
    - (ii) ends on the first anniversary of the last day of the period referred to in paragraph (a) above.
- (3) If—
- (a) a surcharge liability notice is served by reason of a default in respect of a prescribed accounting period, and

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- (b) 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, the existing period and its extension shall be regarded as a single surcharge period.
- (4) Subject to subsections (7) to (11) below, if—
- (a) a taxable person on whom a surcharge liability notice has been served is in default in respect of a prescribed accounting period,
  - (b) that prescribed accounting period is one ending within the surcharge period specified in (or extended by) that notice, and
  - (c) the aggregate value of his defaults in respect of that prescribed accounting period is more than nil,
- that person shall be liable to a surcharge equal to whichever is the greater of £30 and the specified percentage of the aggregate value of his defaults in respect of that prescribed accounting period.
- (5) Subject to subsections (7) to (11) below, the specified percentage referred to in subsection (4) above shall be determined in relation to a prescribed accounting period by reference to the number of such periods during the surcharge period which are periods in respect of which the taxable person is in default and in respect of which the value of his defaults is more than nil, so that—
- (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.; and
  - (d) in relation to each such period after the third, the specified percentage is 15 per cent.
- (6) For the purposes of this section the aggregate value of a person's defaults in respect of a prescribed accounting period shall be calculated as follows—
- (a) where the whole or any part of a payment in respect of that period on account of VAT was not received by the Commissioners by the day on which it became due, an amount equal to that payment or, as the case may be, to that part of it shall be taken to be the value of the default relating to that payment;
  - (b) if there is more than one default with a value given by paragraph (a) above, those values shall be aggregated;
  - (c) the total given by paragraph (b) above, or (where there is only one default) the value of the default under paragraph (a) above, shall be taken to be the value for that period of that person's defaults on payments on account;
  - (d) the value of any default by that person which is a default falling within subsection (1)(b) above shall be taken to be equal to the amount of any outstanding VAT less the amount of unpaid payments on account; and
  - (e) the aggregate value of a person's defaults in respect of that period shall be taken to be the aggregate of—
    - (i) the value for that period of that person's defaults (if any) on payments on account; and
    - (ii) the value of any default of his in respect of that period that falls within subsection (1)(b) above.

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- (7) In the application of subsection (6) above for the calculation of the aggregate value of a person's defaults in respect of a prescribed accounting period—
- (a) the amount of outstanding VAT referred to in paragraph (d) of that subsection is the amount (if any) which would be the amount of that person's outstanding VAT for that period for the purposes of section 59(4); and
  - (b) the amount of unpaid payments on account referred to in that paragraph is the amount (if any) equal to so much of any payments on account of VAT (being payments in respect of that period) as has not been received by the Commissioners by the last day on which that person is required (as mentioned in section 59(1)) to make a return for that period.
- (8) 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 tribunal—
- (a) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(a) above—
    - (i) that the payment on account of VAT 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 by the day on which it became due, or
    - (ii) that there is a reasonable excuse for the payment not having been so despatched,
  - or
  - (b) in the case of a default that is material for the purposes of the surcharge and falls within subsection (1)(b) above, that the condition specified in section 59(7)(a) or (b) is satisfied as respects the default,
- 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).
- (9) For the purposes of subsection (8) 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.
- (10) 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 section 69(1), and
  - (b) by reason of that conduct, the person concerned is assessed to a penalty under section 69,
- the default shall be left out of account for the purposes of subsections (2) to (5) above.
- (11) 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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- (12) For the purposes of this section the Commissioners shall be taken not to receive a payment by the day on which it becomes due unless it is made in such a manner as secures (in a case where the payment is made otherwise than in cash) that, by the last day for the payment of that amount, all the transactions can be completed that need to be completed before the whole amount of the payment becomes available to the Commissioners.
- (13) In determining for the purposes of this section whether any person would, but for section 59(1A), be in default in respect of any period for the purposes of section 59, subsection (12) above shall be deemed to apply for the purposes of section 59 as it applies for the purposes of this section.
- (14) For the purposes of this section references to a thing's being done by any day include references to its being done on that day.]

#### Textual Amendments

- F4** S. 59A inserted (29.4.1996 with application as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(2)

#### [<sup>F5</sup>59B Relationship between sections 59 and 59A. U.K.]

- (1) This section applies in each of the following cases, namely—
- (a) where a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person (whether before or after the coming into force of section 59A) of a surcharge liability notice under section 59; and
  - (b) where a prescribed accounting period which is not a section 28 accounting period ends within a surcharge period begun or extended by the service on a taxable person of a surcharge liability notice under section 59A.
- (2) In a case falling within subsection (1)(a) above section 59A shall have effect as if—
- (a) subject to paragraph (b) below, the section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59A; but
  - (b) any question—
    - (i) whether a surcharge period was begun or extended by the notice, or
    - (ii) whether the taxable person was in default in respect of any prescribed accounting period which was not a section 28 accounting period but ended within the surcharge period begun or extended by that notice,
 were to be determined as it would be determined for the purposes of section 59.
- (3) In a case falling within subsection (1)(b) above section 59 shall have effect as if—
- (a) subject to paragraph (b) below, the prescribed accounting period that is not a section 28 accounting period were deemed to be a period ending within a surcharge period begun or, as the case may be, extended by a notice served under section 59;
  - (b) any question—
    - (i) whether a surcharge period was begun or extended by the notice, or

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- (ii) whether the taxable person was in default in respect of any prescribed accounting period which was a section 28 accounting period but ended within the surcharge period begun or extended by that notice, were to be determined as it would be determined for the purposes of section 59A; and
  - (c) that person were to be treated as having had outstanding VAT for a section 28 accounting period in any case where the aggregate value of his defaults in respect of that period was, for the purposes of section 59A, more than nil.
- (4) In this section “a section 28 accounting period”, in relation to a taxable person, means any prescribed accounting period ending on or after the day on which the Finance Act 1996 was passed in respect of which that person is liable by virtue of an order under section 28 to make any payment on account of VAT.]

#### Textual Amendments

**F5** S. 59B inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, s. 35(5)

## 60 VAT evasion: conduct involving dishonesty. **U.K.**

- (1) In any case where—
- (a) for the purpose of evading VAT, 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 subsection (6) below, to a penalty equal to the amount of VAT evaded or, as the case may be, sought to be evaded, by his conduct.
- (2) The reference in subsection (1)(a) above to evading VAT includes a reference to obtaining any of the following sums—
- (a) a refund under any regulations made by virtue of section 13(5);
  - (b) a VAT credit;
  - (c) a refund under section 35, 36 or 40 of this Act or section 22 of the 1983 Act; and
  - (d) a repayment under section 39,
- in circumstances where the person concerned is not entitled to that sum.
- (3) The reference in subsection (1) above to the amount of the VAT evaded or sought to be evaded by a person’s conduct shall be construed—
- (a) in relation to VAT itself or a VAT credit 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 subsection (2)(a), (c) and (e) above, as a reference to the amount falsely claimed by way of refund or repayment.
- (4) 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 (5) below by reason only that it has been drawn to his attention—
- (a) that, in relation to VAT, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings and, though no

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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 tribunal have power under section 70 to reduce a penalty under this section,

and that he was or may have been induced thereby to make the statements or produce the documents.

- (5) The proceedings mentioned in subsection (4) above are—
- (a) any criminal proceedings against the person concerned in respect of any offence in connection with or in relation to VAT, and
- (b) any proceedings against him for the recovery of any sum due from him in connection with or in relation to VAT.
- (6) Where, by reason of conduct falling within subsection (1) above, a person is convicted of an offence (whether under this Act or otherwise), that conduct shall not also give rise to liability to a penalty under this section.
- (7) On an appeal against an assessment to a penalty under this section, the burden of proof as to the matters specified in subsection (1)(a) and (b) above shall lie upon the Commissioners.

## **61 VAT evasion: liability of directors etc. U.K.**

- (1) Where it appears to the Commissioners—
- (a) that a body corporate is liable to a penalty under section 60, and
- (b) that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a “named officer”),
- the Commissioners may serve a notice under this section on the body corporate and on the named officer.
- (2) A notice under this section shall state—
- (a) the amount of the penalty referred to in subsection (1)(a) above (“the basic penalty”), and
- (b) that the Commissioners propose, in accordance with this section, to recover from the named officer such portion (which may be the whole) of the basic penalty as is specified in the notice.
- (3) Where a notice is served under this section, the portion of the basic penalty specified in the notice shall be recoverable from the named officer as if he were personally liable under section 60 to a penalty which corresponds to that portion; and the amount of that penalty may be assessed and notified to him accordingly under section 76.
- (4) Where a notice is served under this section—
- (a) the amount which, under section 76, may be assessed as the amount due by way of penalty from the body corporate shall be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer by virtue of subsection (3) above; and
- (b) the body corporate shall be treated as discharged from liability for so much of the basic penalty as is so assessed and notified.



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- (5) No appeal shall lie against a notice under this section as such but—
- (a) where a body corporate is assessed as mentioned in subsection (4)(a) above, the body corporate may appeal against the Commissioners' decision as to its liability to a penalty and against the amount of the basic penalty as if it were specified in the assessment; and
  - (b) where an assessment is made on a named officer by virtue of subsection (3) above, the named officer may appeal against the Commissioners' decision that the conduct of the body corporate referred to in subsection (1)(b) above is, in whole or part, attributable to his dishonesty and against their decision as to the portion of the penalty which the Commissioners propose to recover from him.
- (6) In this section a “managing officer”, in relation to a body corporate, means any manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity or as a director; and where the affairs of a body corporate are managed by its members, this section shall apply in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

## 62 Incorrect certificates as to zero-rating etc. **U.K.**

- (1) Subject to subsections (3) and (4) below, where—
- (a) a person [<sup>F6</sup>by whom one or more acquisitions or]to whom one or more supplies are, or are to be, made—
    - (i) gives to the supplier a certificate that the supply or supplies fall, or will fall, wholly or partly within Group 5 or 6 of Schedule 8 or Group 1 of Schedule 9; <sup>F7</sup> . . .
    - (ii) gave to the supplier a certificate that the supplies fell within Group 7 of Schedule 5 to the 1983 Act for the purposes of paragraph 13(4)(f) of Schedule 3 to the <sup>M1</sup>Finance Act 1989; <sup>F7</sup> . . .
    - <sup>F8</sup>(iii) prepares a certificate in accordance with section 18B(1)(d) or gives a supplier a certificate in accordance with section 18B(2)(d); or
    - (iv) gives the supplier a certificate in accordance with section 18C(1)(c); and]
  - (b) the certificate is incorrect,  
the person giving [<sup>F9</sup>or preparing] or who gave the certificate shall be liable to a penalty.
- (2) The amount of the penalty shall be equal to the difference between the amount of the VAT which would have been chargeable on the supply or supplies if the certificate had been correct and the amount of VAT actually so chargeable.
- (3) The giving [<sup>F9</sup>or preparing] of a certificate shall not give rise to a penalty under this section if the person who gave [<sup>F10</sup>or prepared] it satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for his having given [<sup>F10</sup>or prepared]it.
- (4) Where by reason of giving [<sup>F9</sup>or preparing]a certificate a person is convicted of an offence (whether under this Act or otherwise), the giving of the certificate shall not also give rise to a penalty under this section.

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#### Textual Amendments

- F6** Words in s. 62(1)(a) inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 8(2)**; S.I. 1996/1249, **art. 2**
- F7** Words in s. 62(1)(a)(i)(ii) repealed (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, 205, **Sch. 3 para. 8(2)**, **Sch. 41 Pt. IV(1)** Note; S.I. 1996/1249, **art. 2**
- F8** S. 62(1)(a)(iii)(iv) inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 8(2)**; S.I. 1996/1249, **art. 2**
- F9** Words in s. 62(1)(3)(4) inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 8(3)**; S.I. 1996/1249, **art. 2**
- F10** Words in s. 62(3) inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 8(4)**; S.I. 1996/1249, **art. 2**

#### Marginal Citations

- M1** 1989 c. 26.

### 63 **Penalty for misdeclaration or neglect resulting in VAT loss for one accounting period equalling or exceeding certain amounts. U.K.**

- (1) In any case where, for a prescribed accounting period—
- (a) a return is made which understates a person’s liability to VAT or overstates his entitlement to a VAT credit, or
  - (b) an assessment is made which understates a person’s liability to VAT and, at the end of the period of 30 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 subsection (2) below, the person concerned shall be liable, subject to subsections (10) and (11) below, to a penalty equal to 15 per cent. of the VAT which would have been lost if the inaccuracy had not been discovered.
- (2) The circumstances referred to in subsection (1) above are that the VAT for the period concerned which would have been lost if the inaccuracy had not been discovered equals or exceeds whichever is the lesser of £1,000,000 and 30 per cent. of the relevant amount for that period.
- (3) Any reference in this section to the VAT for a prescribed accounting period which would have been lost if an inaccuracy had not been discovered is a reference to the amount of the understatement of liability or, as the case may be, overstatement of entitlement referred to, in relation to that period, in subsection (1) above.
- (4) In this section “the relevant amount”, in relation to a prescribed accounting period, means—
- (a) for the purposes of a case falling within subsection (1)(a) above, the gross amount of VAT for that period; and
  - (b) for the purposes of a case falling within subsection (1)(b) above, the true amount of VAT for that period.

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- (5) In this section “the gross amount of tax”, in relation to a prescribed accounting period, means the aggregate of the following amounts, that is to say—
- (a) the amount of credit for input tax which (subject to subsection (8) below) should have been stated on the return for that period, and
  - (b) the amount of output tax which (subject to that subsection) should have been so stated.
- (6) In relation to any return which, in accordance with prescribed requirements, includes a single amount as the aggregate for the prescribed accounting period to which the return relates of—
- (a) the amount representing credit for input tax, and
  - (b) any other amounts representing refunds or repayments of VAT to which there is an entitlement,
- references in this section to the amount of credit for input tax shall have effect (so far as they would not so have effect by virtue of subsection (9) below) as references to the amount of that aggregate.
- (7) In this section “the true amount of VAT”, in relation to a prescribed accounting period, means the amount of VAT which was due from the person concerned for that period or, as the case may be, the amount of the VAT credit (if any) to which he was entitled for that period.
- (8) Where—
- (a) a return for any prescribed accounting period overstates or understates to any extent a person’s liability to VAT or his entitlement to a VAT credit, and
  - (b) that return is corrected, in such circumstances and in accordance with such conditions as may be prescribed, by a return for a later such period which understates or overstates, to the corresponding extent, that liability or entitlement,
- it shall be assumed for the purposes of this section that the statements made by each of those returns (so far as they are not inaccurate in any other respect) are correct statements for the accounting period to which it relates.
- (9) This section shall have effect in relation to a body which is registered and to which section 33 applies as if—
- (a) any reference to a VAT credit included a reference to a refund under that section, and
  - (b) any reference to credit for input tax included a reference to VAT chargeable on supplies, acquisitions or importations which were not for the purposes of any business carried on by the body.
- (10) Conduct falling within subsection (1) above shall not give rise to liability to a penalty under this section if—
- (a) the person concerned satisfies the Commissioners or, on appeal, a 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 VAT, the person concerned furnished to the Commissioners full information with respect to the inaccuracy concerned.
- (11) Where, by reason of conduct falling within subsection (1) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or

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(b) a person is assessed to a penalty under section 60, that conduct shall not also give rise to liability to a penalty under this section.

#### **64 Repeated misdeclarations. U.K.**

(1) In any case where—

- (a) for a prescribed accounting period (including one beginning before the commencement of this section), a return has been made which understates a person's liability to VAT or overstates his entitlement to a VAT credit; and
- (b) the VAT for that period which would have been lost if the inaccuracy had not been discovered equals or exceeds whichever is the lesser of £500,000 and 10 per cent. of the gross amount of tax for that period,

the inaccuracy shall be regarded, subject to subsections (5) and (6) below, as material for the purposes of this section.

(2) Subsection (3) below applies in any case where—

- (a) there is a material inaccuracy in respect of any prescribed accounting period;
- (b) the Commissioners serve notice on the person concerned (a "penalty liability notice") specifying a penalty period for the purposes of this section;
- (c) that notice is served before the end of 5 consecutive prescribed accounting periods beginning with the period in respect of which there was the material inaccuracy; and
- (d) the period specified in the penalty liability notice as the penalty period is the period of 8 consecutive prescribed accounting periods beginning with that in which the date of the notice falls.

(3) If, where a penalty liability notice has been served on any person, there is a material inaccuracy in respect of any of the prescribed accounting periods falling within the penalty period specified in the notice, that person shall be liable, except in relation to the first of those periods in respect of which there is a material inaccuracy, to a penalty equal to 15 per cent. of the VAT for the prescribed accounting period in question which would have been lost if the inaccuracy had not been discovered.

(4) Subsections (3), (5), (8) and (9) of section 63 shall apply for the purposes of this section as they apply for the purposes of that section.

(5) An inaccuracy shall not be regarded as material for the purposes of this section if—

- (a) the person concerned satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the inaccuracy; or
- (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, so far as they relate to VAT, the person concerned furnished to the Commissioners full information with respect to the inaccuracy.

[<sup>F11</sup>(6) Subject to subsection (6A) below, where by reason of conduct falling within subsection (1) above—

- (a) a person is convicted of an offence (whether under this Act or otherwise), or
- (b) a person is assessed to a penalty under section 60 or 63,

the inaccuracy concerned shall not be regarded as material for the purposes of this section.

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- (6A) Subsection (6) above shall not prevent an inaccuracy by reason of which a person has been assessed to a penalty under section 63—
- (a) from being regarded as a material inaccuracy in respect of which the Commissioners may serve a penalty liability notice under subsection (2) above; or
  - (b) from being regarded for the purposes of subsection (3) above as a material inaccuracy by reference to which any prescribed accounting period falling within the penalty period is to be treated as the first prescribed accounting period so falling in respect of which there is a material inaccuracy.
- (7) Where subsection (5) or (6) above requires any inaccuracy to be regarded as not material for the purposes of the serving of a penalty liability notice, any such notice served in respect of that inaccuracy shall be deemed not to have been served.]

#### Textual Amendments

**F11** S. 64(6)(6A)(7) substituted (29.4.1996 with effect in relation to inaccuracies contained in returns made on or after 29.4.1996) for s. 64(6)(7) by 1996 c. 8, s. 36

## 65 Inaccuracies in EC sales statements. **U.K.**

- (1) Where—
- (a) an EC sales statement containing a material inaccuracy has been submitted by any person to the Commissioners;
  - (b) the Commissioners have, within 6 months of discovering the inaccuracy, issued that person with a written warning identifying that statement and stating that future inaccuracies might result in the service of a notice for the purposes of this section;
  - (c) another EC sales statement containing a material inaccuracy (“the second inaccurate statement”) has been submitted by that person to the Commissioners;
  - (d) the submission date for the second inaccurate statement fell within the period of 2 years beginning with the day after the warning was issued;
  - (e) the Commissioners have, within 6 months of discovering the inaccuracy in the second inaccurate statement, served that person with a notice identifying that statement and stating that future inaccuracies will attract a penalty under this section;
  - (f) yet another EC sales statement containing a material inaccuracy is submitted by that person to the Commissioners; and
  - (g) the submission date for the statement falling within paragraph (f) above is not more than 2 years after the service of the notice or the date on which any previous statement attracting a penalty was submitted by that person to the Commissioners,
- that person shall be liable to a penalty of £100 in respect of the statement so falling.
- (2) Subject to subsections (3) and (4) below, an EC sales statement shall be regarded for the purposes of this section as containing a material inaccuracy if, having regard to the matters required to be included in the statement, the inclusion or omission of any information from the statement is misleading in any material respect.

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- (3) An inaccuracy contained in an EC sales statement shall not be regarded as material for the purposes of this section if—
- (a) the person who submitted the statement satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the inaccuracy; or
  - (b) at a time when he had no reason to believe that enquiries were being made by the Commissioners into his affairs, that person furnished the Commissioners with full information with respect to the inaccuracy.
- (4) Where, by reason of the submission of a statement containing a material inaccuracy by any person, that person is convicted of an offence (whether under this Act or otherwise), the inaccuracy to which the conviction relates shall be regarded for the purposes of this section as not being material.
- (5) Where the only statement identified in a warning or notice served for the purposes of subsection (1)(b) or (e) above is one which (whether by virtue of either or both of subsections (3) and (4) above or otherwise) is regarded as containing no material inaccuracies, that warning or notice shall be deemed not to have been issued or served for those purposes.
- (6) In this section—
- “EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3) of Schedule 11; and
- “submission date”, in relation to such a statement, means whichever is the earlier of the last day for the submission of the statement to the Commissioners in accordance with those regulations and the day on which it was in fact submitted to the Commissioners.

## 66 Failure to submit EC sales statement. **U.K.**

- (1) If, by the last day on which a person is required in accordance with regulations under this Act to submit an EC sales statement for any prescribed period to the Commissioners, the Commissioners have not received that statement, that person shall be regarded for the purposes of this section as being in default in relation to that statement until it is submitted.
- (2) Where any person is in default in respect of any EC sales statement the Commissioners may serve notice on him stating—
- (a) that he is in default in relation to the statement specified in the notice;
  - (b) that (subject to the liability mentioned in paragraph (d) below) no action will be taken if he remedies the default before the end of the period of 14 days beginning with the day after the service of the notice;
  - (c) that if the default is not so remedied, that person will become liable in respect of his default to penalties calculated on a daily basis from the end of that period in accordance with the following provisions of this section; and
  - (d) that that person will become liable, without any further notices being served under this section, to penalties under this section if he commits any more defaults before a period of 12 months has elapsed without his being in default.
- (3) Where a person has been served with a notice under subsection (2) above, he shall become liable under this section—

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- (a) if the statement to which the notice relates is not submitted before the end of the period of 14 days beginning with the day after the service of the notice, to a penalty in respect of that statement; and
  - (b) whether or not that statement is so submitted, to a penalty in respect of any EC sales statement the last day for the submission of which is after the service and before the expiry of the notice and in relation to which he is in default.
- (4) For the purposes of this section a notice served on any person under subsection (2) above shall continue in force—
  - (a) except in a case falling within paragraph (b) below, until the end of the period of 12 months beginning with the day after the service of the notice; and
  - (b) where at any time in that period of 12 months that person is in default in relation to any EC sales statement other than one in relation to which he was in default when the notice was served, until a period of 12 months has elapsed without that person becoming liable to a penalty under this section in respect of any EC sales statement.
- (5) The amount of any penalty to which a person who has been served with a notice under subsection (2) above is liable under this section shall be whichever is the greater of £50 and—
  - (a) in the case of a liability in respect of the statement to which the notice relates, a penalty of £5 for every day for which the default continues after the end of the period of 14 days mentioned in subsection (3)(a) above, up to a maximum of 100 days; and
  - (b) in the case of a liability in respect of any other statement, a penalty of the relevant amount for every day for which the default continues, up to a maximum of 100 days.
- (6) In subsection (5)(b) above “the relevant amount”, in relation to a person served with a notice under subsection (2) above, means—
  - (a) £5, where (that person not having been liable to a penalty under this section in respect of the statement to which the notice relates) the statement in question is the first statement in respect of which that person has become liable to a penalty while the notice has been in force;
  - (b) £10 where the statement in question is the second statement in respect of which he has become so liable while the notice has been in force (counting the statement to which the notice relates where he has become liable in respect of that statement); and
  - (c) £15 in any other case.
- (7) If a person who, apart from this subsection, would be liable to a penalty under this section satisfies the Commissioners or, on appeal a tribunal, that—
  - (a) an EC sales statement has been submitted at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit; or
  - (b) there is a reasonable excuse for such a statement not having been dispatched, he shall be treated for the purposes of this section and sections 59 to 65 and 67 to 71, 73, 75 and 76 as not having been in default in relation to that statement and, accordingly, he shall not be liable to any penalty under this section in respect of that statement and any notice served under subsection (2) above exclusively in relation to the failure to submit that statement shall have no effect for the purposes of this section.



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- (8) If it appears to the Treasury that there has been a change in the value of money since 1st January 1993 or, as the case may be, the last occasion when the sums specified in subsections (5) and (6) above were varied, they may by order substitute for the sums for the time being specified in those subsections such other sums as appear to them to be justified by the change; but an order under this section shall not apply to any default in relation to a statement the last day for the submission of which was before the order comes into force.
- (9) In this section “EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3) of Schedule 11.

## 67 Failure to notify and unauthorised issue of invoices. **U.K.**

- (1) In any case where—
- (a) a person fails to comply with any of paragraphs 5, 6 [F12,7] and 14(2) and (3) of Schedule 1 with paragraph 3 of Schedule 2 or with paragraph 3 or 8(2) of Schedule 3, or
  - (b) a person fails to comply with a requirement of regulations under paragraph 2(4) of Schedule 11, or
  - (c) an unauthorised person issues one or more invoices showing an amount as being VAT or as including an amount attributable to VAT,
- he shall be liable, subject to subsections (8) and (9) below, to a penalty equal to the specified percentage of the relevant VAT or, if it is greater or the circumstances are such that there is no relevant VAT, to a penalty of £50.
- (2) In subsection (1)(c) above, “an unauthorised person” means anyone other than—
- (a) a person registered under this Act; or
  - (b) a body corporate treated for the purposes of section 43 as a member of a group; or
  - (c) a person treated as a taxable person under regulations made under section 46(4); or
  - (d) a person authorised to issue an invoice under regulations made under paragraph 2(12) of Schedule 11; or
  - (e) a person acting on behalf of the Crown.
- (3) In subsection (1) above “relevant VAT” means (subject to subsections (5) and (6) below)—
- (a) in relation to a person’s failure to comply with paragraph 5 [F13, 6 or 7] of Schedule 1, paragraph 3 of Schedule 2 or paragraph 3 of Schedule 3, the VAT (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 became fully aware of, his liability to be registered; and
  - (b) in relation to a person’s failure to comply with sub-paragraph (2) or (3) of paragraph 14 of Schedule 1 or with sub-paragraph (2) of paragraph 8 of Schedule 3, the VAT (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 became fully aware of, that change or alteration; and



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- (c) in relation to a person's failure to comply with a requirement of regulations under paragraph 2(4) of Schedule 11, the VAT on the acquisition to which the failure relates; and
  - (d) in relation to the issue of one or more invoices as are referred to in subsection (1)(c) above, the amount which is, or the aggregate of the amounts which are—
    - (i) shown on the invoice or invoices as VAT, or
    - (ii) to be taken as representing VAT.
- (4) For the purposes of subsection (1) above the specified percentage is—
- (a) [<sup>F145</sup> per cent.] where the relevant VAT is given by subsection (3)(a) or (b) above and the period referred to in that paragraph does not exceed 9 months or where the relevant VAT is given by subsection (3)(c) above and the failure in question did not continue for more than 3 months;
  - (b) [<sup>F15</sup>10 per cent.] where that VAT is given by subsection (3)(a) or (b) above and the period so referred to exceeds 9 months but does not exceed 18 months or where that VAT is given by subsection (3)(c) and the failure in question continued for more than 3 months but did not continue for more than 6 months; and
  - (c) [<sup>F16</sup>15 per cent.] in any other case.
- (5) Where—
- (a) the amount of VAT which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant VAT in relation to a failure mentioned in subsection (3)(a) above includes VAT on an acquisition of goods from another member State; and
  - (b) the Commissioners are satisfied that VAT has been paid under the law of another member State on the supply in pursuance of which those goods were acquired,
- then, in the determination of the amount of the relevant VAT in relation to that failure, an allowance shall be made for the VAT paid under the law of that member State; and the amount of the allowance shall not exceed the amount of VAT due on the acquisition but shall otherwise be equal to the amount of VAT which the Commissioners are satisfied has been paid on that supply under the law of that member State.
- (6) Where—
- (a) the amount of VAT which (apart from this subsection) would be treated for the purposes of subsection (1) above as the relevant VAT in relation to a failure mentioned in subsection (3)(a) above includes VAT chargeable by virtue of section 7(4) on any supply; and
  - (b) the Commissioners are satisfied that VAT has been paid under the law of another member State on that supply,
- then, in the determination of the amount of the relevant VAT in relation to that failure, an allowance shall be made for the VAT paid under the law of the other member State; and the amount of the allowance shall not exceed the amount of VAT chargeable by virtue of section 7(4) on that supply but shall otherwise be equal to the amount of VAT which the Commissioners are satisfied has been paid on that supply under the law of that other member State.
- (7) This section shall have effect in relation to any invoice which—
- (a) for the purposes of any provision made under section 54(3) shows an amount as included in the consideration for any supply, and

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- (b) either—
- (i) fails to comply with the requirements of any regulations under that section; or
  - (ii) is issued by a person who is not for the time being authorised to do so for the purposes of that section,
- as if the person issuing the invoice were an unauthorised person and that amount were shown on the invoice as an amount attributable to VAT.
- (8) 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 tribunal that there is a reasonable excuse for his conduct.
- (9) Where, by reason of conduct falling within subsection (1) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a penalty under section 60,
- that conduct shall not also give rise to liability to a penalty under this section.
- (10) If it appears to the Treasury that there has been a change in the value of money since 25th July 1985 or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order 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.
- (11) An order under subsection (10) 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.

#### Textual Amendments

- F12** Word in s. 67(1)(a) inserted (29.4.1996 with effect as mentioned in s. 37(2)(3) of the amending Act) by 1996 c. 8, s. 37(1)(a)
- F13** Words in s. 67(3)(a) substituted (29.4.1996 with effect as mentioned in s. 37(2)(3) of the amending Act) by 1996 c. 8, s. 37(1)(b)
- F14** Words in s. 67(4)(a) substituted (1.5.1995 with effect as mentioned in s. 32(3)(4) of the amending Act) by 1995 c. 4, s. 32(1)(a)
- F15** Words in s. 67(4)(b) substituted (1.5.1995 with effect as mentioned in s. 32(3)(4) of the amending Act) by 1995 c. 4, s. 32(1)(b)
- F16** Words in s. 67(4)(c) substituted (1.5.1995 with effect as mentioned in s. 32(3)(4) of the amending Act) by 1995 c. 4, s. 32(1)(c)

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

- C1** S. 67 amended (29.4.1996) by 1996 c. 8, s. 37(3)

## 68 Breaches of walking possession agreements. **E+W+N.I.**

- (1) This section applies where—
- (a) in accordance with regulations under paragraph 5(4) of Schedule 11, a distress is authorised to be levied on the goods and chattels of a person (a “person in default”) who has refused or neglected to pay any VAT due or any amount recoverable as if it were VAT 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.

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- (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 VAT 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 tribunal that there is a reasonable excuse for the breach in question.
- (5) This section does not extend to Scotland.

## 69 Breaches of regulatory provisions. **U.K.**

- (1) If any person fails to comply with a regulatory requirement, that is to say, a requirement imposed under—
  - (a) paragraph 11 or 12 of Schedule 1, paragraph 5 of Schedule 2 or paragraph 5 of Schedule 3; or
  - (b) any regulations made under section 48 requiring a VAT representative, for the purposes of registration, to notify the Commissioners that his appointment has taken effect or has ceased to have effect; or
  - (c) paragraph 6(1) or 7 of Schedule 11; or
  - (d) any regulations or rules made under this Act, other than rules made under paragraph 9 of Schedule 12; or
  - (e) any order made by the Treasury under this Act; or
  - (f) any regulations made under the <sup>M2</sup>European Communities Act 1972 and relating to VAT, [<sup>F17</sup>; or
  - (g) section 18A in the form of a condition imposed by the Commissioners under subsection (1) or (6) of that section,]he shall be liable, subject to subsections (8) and (9) below and section 76(6), to a penalty equal to the prescribed rate multiplied by the number of days on which the failure continues (up to a maximum of 100) or, if it is greater, to a penalty of £50.
- (2) If any person fails to comply with a requirement to preserve records imposed under paragraph 6(3) of Schedule 11, he shall be liable, subject to the following provisions of this section, to a penalty of £500.
- (3) Subject to subsection (4) below, in relation to a failure to comply with any regulatory requirement, the prescribed rate shall be determined by reference to the number of occasions in the period of 2 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, £5;
  - (b) if there has been only one such occasion in that period, £10; and

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- (c) in any other case, £15.
- (4) For the purposes of subsection (3) above—
- (a) a failure to comply with any regulatory requirement shall be disregarded if, as a result of the failure, the person concerned became liable for a surcharge under section 59 [<sup>F18</sup>or 59A];
  - (b) 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;
  - (c) 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
  - (d) 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 VAT, 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 VAT due in respect of any period within the time required by regulations under section 25(1), or
  - (b) in not furnishing a return in respect of any period within the time required by regulations under paragraph 2(1) of Schedule 11,
- the prescribed rate shall be whichever is the greater of that which is appropriate under subsection (3)(a) to (c) above and an amount equal to one-sixth, one-third or one-half of 1 per cent. of the VAT due in respect of that period, the appropriate fraction being determined according to whether subsection (3)(a), (b) or (c) above is applicable.
- (6) For the purposes of subsection (5) above, the VAT due—
- (a) if the person concerned has furnished a return, shall be taken to be the VAT 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 VAT as has been assessed for that period and notified to him under section 73(1).
- (7) If it appears to the Treasury that there has been a change in the value of money since 25th July 1985 or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order substitute for the sums for the time being specified in subsections (2) and (3)(a) to (c) 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 failure by any person to comply with any regulatory requirement or the requirement referred to in 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 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.
- (9) Where, by reason of conduct falling within subsection (1) or (2) above—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
  - (b) a person is assessed to a surcharge under section 59 [<sup>F19</sup>or 59A], or
  - (c) a person is assessed to a penalty under section 60 or 63,
- that conduct shall not also give rise to liability to a penalty under this section.

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- (10) This section applies in relation to failures occurring before as well as after the commencement of this Act, and for that purpose any reference to any provision of this Act includes a reference to the corresponding provision of the enactments repealed by this Act.

#### Textual Amendments

- F17** S. 69(1)(g) and word preceding it inserted (1.6.1996 with application to any acquisition of goods from another member State and any supply taking place on or after that day) by 1996 c. 8, ss. 25, 26, **Sch. 3 para. 9**; S.I. 1996/1249, **art. 2**
- F18** Words in s. 69(4)(a) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, **s. 35(6)(8)**
- F19** Words in s. 69(9)(b) inserted (29.4.1996 with effect as mentioned in s. 35(8) of the amending Act) by 1996 c. 8, **s. 35(6)(8)**

#### Marginal Citations

- M2** 1972 c. 68.

VALID FROM 28/07/2000

#### **[<sup>F20</sup>69A Breach of record-keeping requirements etc. in relation to transactions in gold. U.K.]**

- (1) This section applies where a person fails to comply with a requirement of regulations under section 13(5)(a) or (b) of the <sup>M3</sup>Finance Act 1999 (gold: duties to keep records or provide information).
- Where this section applies, the provisions of section 69 do not apply.
- (2) A person who fails to comply with any such requirement is liable to a penalty not exceeding 17.5% of the value of the transactions to which the failure relates.
- (3) For the purposes of assessing the amount of any such penalty, the value of the transactions to which the failure relates shall be determined by the Commissioners to the best of their judgement and notified by them to the person liable.
- (4) No assessment of a penalty under this section shall be made more than 2 years after evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to their knowledge.
- (5) The reference in subsection (4) above to facts sufficient to justify the making of the assessment is to facts sufficient—
- to indicate that there had been a failure to comply with any such requirement as is referred to in subsection (1) above, and
  - to determine the value of the transactions to which the failure relates.
- (6) A failure by any person to comply with any such requirement as is mentioned in subsection (1) above shall not give rise to a liability to a penalty under this section if the person concerned satisfies the Commissioners or, on appeal, a tribunal, that there is a reasonable excuse for the failure.
- (7) Where by reason of conduct falling within subsection (1) above a person—

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- (a) is assessed to a penalty under section 60, or  
(b) is convicted of an offence (whether under this Act or otherwise),  
that conduct shall not also give rise to a penalty under this section.]

#### Textual Amendments

**F20** S. 69A inserted (28.7.2000) by 2000 c. 17, s. 137(2)

#### Marginal Citations

**M3** 1999 c. 16.

### 70 Mitigation of penalties under sections 60, 63, 64 and 67. **U.K.**

- (1) Where a person is liable to a penalty under section 60, 63, 64 or 67, the Commissioners or, on appeal, a tribunal may reduce the penalty to such amount (including nil) as they think proper.
- (2) In the case of a penalty reduced by the Commissioners under subsection (1) above, a tribunal, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Commissioners.
- (3) None of the matters specified in subsection (4) below shall be matters which the Commissioners or any tribunal shall be entitled to take into account in exercising their powers under this section.
- (4) Those matters are—
  - (a) the insufficiency of the funds available to any person for paying any VAT due or for paying the amount of the penalty;
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of VAT;
  - (c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.

### 71 Construction of sections 59 to 70. **U.K.**

- (1) For the purpose of any provision of sections 59 to 70 which refers to a reasonable excuse for any conduct—
  - (a) an insufficiency of funds to pay any VAT 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.
- (2) In relation to a prescribed accounting period, any reference in sections 59 to 69 to credit for input tax includes a reference to any sum which, in a return for that period, is claimed as a deduction from VAT due.

### 72 Offences. **U.K.**

- (1) If any person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of VAT by him or any other person, he shall be liable—

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- (a) on summary conviction, to a penalty of the statutory maximum or of three times the amount of the VAT, whichever is the greater, or to imprisonment for a term not exceeding 6 months or to both; or
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.
- (2) Any reference in subsection (1) above or subsection (8) below to the evasion of VAT includes a reference to the obtaining of—
- (a) the payment of a VAT credit; or
  - (b) a refund under section 35, 36 or 40 of this Act or section 22 of the 1983 Act; or
  - (c) a refund under any regulations made by virtue of section 13(5); or
  - (d) a repayment under section 39;
- and any reference in those subsections to the amount of the VAT shall be construed—
- (i) in relation to VAT itself or a VAT credit, 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
  - (ii) in relation to a refund or repayment falling within paragraph (b), (c) or (d) above, as a reference to the amount falsely claimed by way of refund or repayment.
- (3) If any person—
- (a) with intent to deceive produces, furnishes or sends for the purposes of this Act or otherwise makes use for those purposes of any document which is false in a material particular; or
  - (b) in furnishing any information for the purposes of this Act makes any statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,
- he shall be liable—
- (i) on summary conviction, to a penalty of the statutory maximum or, where subsection (4) or (5) below applies, to the alternative penalty specified in that subsection if it is greater, or to imprisonment for a term not exceeding 6 months or to both; or
  - (ii) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.
- (4) In any case where—
- (a) the document referred to in subsection (3)(a) above is a return required under this Act, or
  - (b) the information referred to in subsection (3)(b) above is contained in or otherwise relevant to such a return,
- the alternative penalty referred to in subsection (3)(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.
- (5) In any case where—
- (a) the document referred to in subsection (3)(a) above is a claim for a refund under section 35, 36 or 40 of this Act or section 22 of the 1983 Act, for a refund under any regulations made by virtue of section 13(5) or for a repayment under section 39, or
  - (b) the information referred to in subsection (3)(b) above is contained in or otherwise relevant to such a claim,

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the alternative penalty referred to in subsection (3)(i) above is a penalty equal to 3 times the amount falsely claimed.

- (6) The reference in subsection (3)(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.
- (7) Any reference in subsection (3)(a) or (6) above to producing, furnishing or sending a document includes a reference to causing a document to be produced, furnished or sent.
- (8) Where a person's conduct during any specified period must have involved the commission by him of one or more offences under the preceding provisions of this section, then, whether or not the particulars of that offence or those offences are known, he shall, by virtue of this subsection, be guilty of an offence and liable—
  - (a) on summary conviction, to a penalty of the statutory maximum or, if greater, 3 times the amount of any VAT that was or was intended to be evaded by his conduct, or to imprisonment for a term not exceeding 6 months or to both, or
  - (b) on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.
- (9) 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.
- (10) If any person acquires possession of or deals with any goods, or accepts the supply of any services, having reason to believe that VAT on the supply of the goods or services, on the acquisition of the goods from another member State or on the importation of the goods from a place outside the member States has been or will be evaded, he shall be liable on summary conviction to a penalty of level 5 on the standard scale or three times the amount of the VAT, whichever is the greater.
- (11) If any person supplies goods or services in contravention of paragraph 4(2) of Schedule 11, he shall be liable on summary conviction to a penalty of level 5 on the standard scale.
- (12) Subject to subsection (13) below, sections 145 to 155 of the Management Act (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences under this Act (which include any act or omission in respect of which a penalty is imposed) and penalties imposed under this Act as they apply in relation to offences and penalties under the customs and excise Acts as defined in that Act; and accordingly in section 154(2) as it applies by virtue of this subsection the reference to duty shall be construed as a reference to VAT.
- (13) In subsection (12) above the references to penalties do not include references to penalties under sections 60 to 70.



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