



# Finance Act 1994

## 1994 CHAPTER 9

### PART I

#### CUSTOMS AND EXCISE

### CHAPTER II

#### APPEALS AND PENALTIES

##### *Assessments to excise duty or to penalties*

## 12 Assessments to excise duty.

- (1) Subject to subsection (4) below, where it appears to the Commissioners—
- (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
  - (b) that there has been a default falling within subsection (2) below,
- the Commissioners may assess the amount of duty due from that person to the best of their judgement and notify that amount to that person or his representative.

- [<sup>F1</sup>(1A) Subject to subsection (4) below, where it appears to the Commissioners—
- (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
  - (b) that the amount due can be ascertained by the Commissioners,
- the Commissioners may assess the amount of duty due from that person and notify that amount to that person or his representative.]

- (2) The defaults falling within this subsection are—
- (a) any failure by any person to make, keep, preserve or produce as required or directed by or under any enactment any returns, accounts, books, records or other documents;

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- (b) any omission from or inaccuracy in any returns, accounts, books, records or other documents which any person is required or directed by or under any enactment to make, keep, preserve or produce;
  - (c) any failure by any person to take or permit to be taken any step which he is required under Schedule 1 or 3 to the <sup>M1</sup>Betting and Gaming Duties Act 1981 [<sup>F2</sup>or Schedule 1 to the Finance Act 1997] to take or to permit to be taken;
  - [<sup>F3</sup>(ca) any failure by any person to comply with a requirement to which he is made subject by or under Schedule 2A to the Alcoholic Liquor Duties Act 1979 (duty stamps);]
  - (d) any unreasonable delay in performing any obligation the failure to perform which would be a default falling within this subsection.
- [<sup>F4</sup>(2A) In subsection (2)(a) and (b) above “enactment” includes directly applicable Community provision.]
- (3) Where an amount has been assessed as due from any person and notified in accordance with this section, it shall, subject to any appeal under section 16 below, be deemed to be an amount of the duty in question due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
  - (4) An assessment of the amount of any duty of excise due from any person shall not be made under this section at any time after whichever is the earlier of the following times, that is to say—
    - (a) subject to subsection (5) below, the end of the period of [<sup>F5</sup>three years] beginning with the time when his liability to the duty arose; and
    - (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge;
 but this subsection shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making of an assessment under this section, to the making of a further assessment within the period applicable by virtue of this subsection in relation to that further assessment.
  - (5) Subsection (4) above shall have effect as if the reference in paragraph (a) to [<sup>F5</sup>three years] were a reference to twenty years in the case of any assessment to any amount of duty the assessment or payment of any of which has been postponed or otherwise affected by—
    - (a) conduct in respect of which any person (whether or not the person assessed)—
      - (i) has become liable to a penalty under section 8 above, or
      - (ii) has been convicted of an offence of fraud or dishonesty; or
    - (b) any conduct in respect of which proceedings for an offence of fraud or dishonesty would have been commenced or continued against any person (whether or not the person assessed), but for their having been compounded under section 152(a) of the Management Act.
  - (6) The reference in subsection (4) above to the time when a person’s liability to a duty of excise arose are references—
    - (a) in the case of a duty of excise on goods, to the excise duty point; and
    - (b) in any other case, to the time when the duty was charged.
  - (7) In this section references to an offence of fraud or dishonesty include references to an offence under any of the following provisions, that is to say-

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- (a) sections 100(3), 136(1), 159(6), 167(1), 168(1), 170(1) and (2) and 170B(1) of the Management Act,
- (b) section 24(6) of the <sup>M2</sup>Betting and Gaming Duties Act 1981 and paragraph 13(3) of Schedule 1, <sup>F6</sup> . . . and paragraph 16(1) of Schedule 3 to that Act,
- (c) section 31(1) and (3) of the <sup>M3</sup>Finance Act 1993, and
- (d) section 41(1) and (3) below,

and also include references to attempting or conspiring to commit an offence of fraud or dishonesty and to inciting the commission of such an offence.

- (8) In this section “representative”, in relation to a person appearing to the Commissioners to be a person from whom any amount has become due in respect of any duty of excise, means his personal representative [<sup>F7</sup>, trustee in bankruptcy or interim or permanent trustee,] any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person.

#### Textual Amendments

- F1** S. 12(1A) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 7, 12; S.I. 1998/2243, art. 2
- F2** Words in s. 12(2)(c) inserted (19.3.1997) by 1997 c. 16, ss. 13, 15, Sch. 2 para. 7
- F3** S. 12(2)(ca) inserted (with effect in accordance with s. 4(5) of the amending Act) by Finance Act 2004 (c. 12), s. 4(3); S.I. 2006/201, art. 2
- F4** S. 12(2A) inserted (28.9.2001) by S.I. 2001/3022, reg. 9
- F5** Words in s. 12(4)(a)(5) substituted (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 para. 6(2)(a)
- F6** Words in s. 12(7)(b) repealed (19.3.1997 with effect as mentioned in Sch. 18 Pt. II Note 2 of the repealing Act) by 1997 c. 16, s. 113, Sch. 18 Pt. II Note 2
- F7** Words in s. 12(8) substituted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(3), 7; S.I. 1997/1305, art. 2

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

- C1** S. 12 applied by 1981 c. 63, s. 26(4) (as inserted (with effect in accordance with s. 8(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 1 para. 2; S.I. 2007/2172, art. 2)
- C2** S. 12 modified (19.3.1997) by 1997 c. 16, ss. 12(6)(a), 15
- C3** S. 12(1) extended (29.4.1996 with effect as mentioned in 1996 c. 8, s. 6(5)) by 1979 c. 5, s. 20AAB(5) (as inserted by 1996 c. 8, s. 6(3)(5)); S.I. 1996/2751, art. 2

#### Commencement Information

- I1** S. 12 wholly in force at 1.1.1995; s. 12 not in force at Royal Assent see s. 19(1); s. 12 (except s. 12(7)(b)(c) and specified references in s. 12(7)(a)) in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 12 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3

#### Marginal Citations

- M1** 1981 c. 63.
- M2** 1981 c. 63.
- M3** 1993 c. 34.

#### [<sup>F8</sup>12A Other assessments relating to excise duty matters.

- (1) This subsection applies where any relevant excise duty relief other than an excepted relief—

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- (a) has been given but ought not to have been given, or
- (b) would not have been given had the facts been known or been as they later turn out to be.
- (2) Where subsection (1) above applies, the Commissioners may assess the amount of the relief given as being excise duty due from the liable person and notify him or his representative accordingly.
- (3) Where an amount has been assessed as due from any person under—
- (a) subsection (2) above,
- (b) section 94 or 96 of the Management Act, <sup>F9</sup> . . .  
 [ section 8, 10 [<sup>F11</sup>, 11 or 36G] of the Alcoholic Liquor Duties Act 1979,]  
<sup>F10</sup>(bb)
- (c) section 10, 13, [<sup>F12</sup>13AB,] 14, 23 or 24 of the <sup>M4</sup>Hydrocarbon Oil Duties Act 1979,
- [ section 8 of the Tobacco Products Duty Act 1979, or  
<sup>F13</sup>(d)
- (e) section 2 of the Finance (No. 2) Act 1992,]  
 and notice has been given accordingly, that amount shall, subject to any appeal under section 16 below, be deemed to be an amount of excise duty due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (4) No assessment under any of the provisions referred to in subsection (3) above, or under section 61 or 167 of the Management Act, shall be made at any time after whichever is the earlier of the following times, that is to say—
- (a) subject to subsection (6) below, the end of the period of three years beginning with the relevant time; and
- (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge.
- (5) Subsection (4) above shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making the assessment concerned, to the making of a further assessment within the period applicable by virtue of that subsection in relation to that further assessment.
- (6) Subsection (4) above shall have effect as if the reference in paragraph (a) to three years were a reference to twenty years in any case where the assessment has been postponed or otherwise affected by, or the power to make the assessment arises out of, conduct falling within subsection (5)(a) or (b) of section 12 above (construed in accordance with subsection (7) of that section).]

#### Textual Amendments

- F8** Ss. 12A, 12B inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(1), 7; S.I. 1997/1305, art. 2
- F9** Word at the end of s. 12A(3)(b) repealed (1.10.1998) by 1998 c. 36, ss. 20, 165, Sch. 2 paras. 8(2), 12, Sch. 27 Pt. I(5), Note; S.I. 1998/2243, art. 2
- F10** S. 12A(3)(bb) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 8(2), 12; S.I. 1998/2243, art. 2
- F11** Words in s. 12A(3)(bb) substituted (retrospective to 1.6.2002) by Finance Act 2002 (c. 23), s. 4(1)(2), Sch. 1 para. 4(2)

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- F12** Word in s. 12A(3)(c) inserted (1.10.1998 for certain purposes, 1.9.2008 for specified purposes, 1.6.2009 for specified purposes) by [Finance Act 1998 \(c. 36\)](#), [Sch. 2 paras. 8\(3\)](#), 12; [S.I. 2008/2302](#), arts. 2, 3; [S.I. 2009/1022](#), arts. 2, 3
- F13** S. 12A(3)(d)(e) inserted (1.10.1998 for certain purposes, 1.9.2008 for specified purposes, 1.6.2009 for specified purposes) by [Finance Act 1998 \(c. 36\)](#), [Sch. 2 paras. 8\(3\)](#), 12; [S.I. 2008/2302](#), arts. 2, 3; [S.I. 2009/1022](#), arts. 2, 3

#### Marginal Citations

- M4** 1979 c. 5.

### <sup>F14</sup>12B Section 12A: supplementary provisions.

(1) For the purposes of section 12A above and this section, relevant excise duty relief has been given if (and only if)—

- (a) an amount of excise duty which a person is liable to pay has been remitted or payment of an amount of excise duty which a person is liable to pay has been waived;
- (b) an amount of excise duty has been repaid to a person;
- (c) an amount by way of drawback of excise duty has been paid to a person;
- (d) an allowance of excise duty in any amount has been made to a person;
- (e) an amount by way of rebate has been allowed to a person;
- (f) the liability of a person to repay an amount paid by way of drawback of excise duty has been waived;
- (g) an amount has been paid to a person under section 20(3) of the Hydrocarbon Oil Duties Act 1979 (payments in respect of contaminated or accidentally mixed oil); or
- (h) an amount of relief has been allowed to a person by virtue of section 20AA [<sup>F15</sup>or 20AB] of that Act (power to allow reliefs), or in accordance with paragraph 10 of Schedule 3 to that Act (power to make regulations for the purpose of relieving from excise duty oil intended for exportation or shipment as stores);

and the amount of the relief is the amount mentioned in relation to the relief in this subsection.

(2) For the purposes of section 12A above the relevant time is—

- (a) in the case of an assessment under section 61 of the Management Act, the time when the ship or aircraft in question returned to a place within the United Kingdom;
- (b) in the case of an assessment under section 94 of that Act, the time at which the goods in question were warehoused;
- (c) in the case of an assessment under that section as it has effect by virtue of section 95 of that Act, the time when the goods in question were lawfully taken from the warehouse;
- (d) in the case of an assessment under section 96 of that Act, the time when the goods in question were moved by pipe-line or notified as goods to be moved by pipe-line;
- (e) in the case of an assessment under section 167 of that Act—
  - (i) if the assessment relates to unpaid duty, the time when the duty became payable or, if later, the time when the document in question was delivered or the statement in question was made; and

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- (ii) if the assessment relates to an overpayment, the time when the overpayment was made;
- [<sup>F16</sup>(ea) in the case of an assessment under section 8 or 10 of the Alcoholic Liquor Duties Act 1979, the time of delivery from warehouse;
- (eb) in the case of an assessment under section 11 of that Act, the time when the direction was made;]
- [<sup>F17</sup>(ec) in the case of an assessment under section 36G of that Act, the the time at which the requirement to pay the duty took effect (which time, in a case where there was an excise duty point for the beer fixed under section 1 of the Finance (No. 2) Act 1992, is that excise duty point);]
- (f) in the case of an assessment under section 10, 13, [<sup>F18</sup>13AB,] 14 or 23 of the <sup>M5</sup>Hydrocarbon Oil Duties Act 1979, the time of the action which gave rise to the power to assess;
- (g) in the case of an assessment under section 24(4A) or (4B) of that Act, the time when the rebate was allowed or the oil was delivered without payment of duty (as the case may be);
- [<sup>F19</sup>(ga) in the case of an assessment under section 8 of the Tobacco Products Duty Act 1979, the time when the Commissioners are satisfied of a failure to prove as mentioned in subsection (2)(a) or (b) of that section;
- (gb) in the case of an assessment under section 2 of the Finance (No. 2) Act 1992, the time when the sums were paid or credited in respect of the drawback;]
- (h) in the case of an assessment under section 12A(2) above, the time when the relevant excise duty relief in question was given.
- (3) In section 12A above “the liable person” means—
- (a) in the case of excise duty which has been remitted or repaid under section 130 of the Management Act on the basis that goods were lost or destroyed while in a warehouse, the proprietor of the goods or the occupier of the warehouse;
- (b) in the case of a rebate which has been allowed on any oil under section 11 of the Hydrocarbon Oil Duties Act 1979, the person to whom the rebate was allowed or the occupier of any warehouse from which the oil was delivered for home use;
- (c) in the case of a rebate allowed on any petrol under section 13A of that Act, the person to whom the rebate was allowed or the occupier of any warehouse from which the petrol was delivered for home use;
- (d) in any other case, the person mentioned in subsection (1) above to whom the relief in question was given.
- (4) In section 12A above—
- “excepted relief” means any relief which is given by the making of a repayment on a claim made under section 137A of the Management Act;
- “representative”, in relation to any person from whom the Commissioners assess an amount as being excise duty due, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to him or any of his property or any other person acting in a representative capacity in relation to him.

#### Textual Amendments

**F14** Ss. 12A, 12B inserted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(1), 7; S.I. 1997/1305, art. 2

**F15** Words in s. 12B(1)(h) inserted (11.5.2001) by 2001 c. 9, s. 3(4)

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- F16** S. 12B(2)(ea)(eb) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 9(2), 12; S.I. 1998/2243, art. 2
- F17** S. 12B(2)(ec) inserted (retrospective to 1.6.2002) by Finance Act 2002 (c. 23), s. 4(1)(2), Sch. 1 para. 4(3)
- F18** Word in s. 12B(2)(f) inserted (1.10.1998) by 1998 c. 36, s. 20, Sch. 2 paras. 9(3), 12; S.I. 1998/2243, art. 2
- F19** S. 12B(2)(ga)(gb) inserted (1.10.1998 for certain purposes, 1.9.2008 for specified purposes) by Finance Act 1998 (c. 36), Sch. 2 paras. 9(4), 12; S.I. 1998/2243, art. 2; S.I. 2008/2302, arts. 2, 3

#### Marginal Citations

- M5** 1979 c. 5.

### 13 Assessments to penalties.

- (1) Where any person is liable to a penalty under this Chapter, the Commissioners may assess the amount due by way of penalty and notify that person, or his representative, accordingly.
- (2) An assessment under this section may be combined with an assessment under section 12 above, but any notification for the purposes of any such combined assessment shall separately identify any amount assessed by way of a penalty.
- (3) In the case of any amount due from any person by way of a penalty under section 9 above for conduct consisting in a contravention which attracts daily penalties—
  - (a) a notification of an assessment under this section shall specify a date, being a date no later than the date of the notification, to which the penalty as assessed is to be calculated; and
  - (b) if the contravention continues after that date, a further assessment, or (subject to this subsection) further assessments, may be made under this section in respect of any continuation of the contravention after that date.
- (4) If—
  - (a) a person is assessed to a penalty in accordance with paragraph (a) of subsection (3) above, and
  - (b) the contravention to which that penalty relates is remedied within such period after the date specified for the purposes of that subsection in the notification of assessment as may for the purposes of this subsection be notified to that person by the Commissioners,that contravention shall be treated for the purposes of this Chapter as having been remedied, and accordingly the conduct shall be deemed to have ceased, immediately before that date.
- (5) If an amount has been assessed as due from any person and notified in accordance with this section, then unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced, that amount shall, subject to any appeal under section 16 below, be recoverable as if it were an amount due from that person as an amount of the appropriate duty.
- (6) In subsection (5) above “the appropriate duty” means—
  - (a) the [<sup>F20</sup>relevant duty] (if any) by reference to an amount of which the penalty in question is calculated; or

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- (b) where there is no such duty, the [<sup>F20</sup>relevant duty] the provisions relating to which are contravened by the conduct giving rise to the penalty or, if those provisions relate to more than one duty, such of the duties as appear to the Commissioners and are certified by them to be relevant in the case in question.
- (7) In this section “representative”, in relation to a person liable to a penalty under this Chapter, means his personal representative [<sup>F21</sup>, trustee in bankruptcy or interim or permanent trustee,] any receiver or liquidator appointed in relation to that person or any of his property or any other person acting in a representative capacity in relation to that person.

#### Textual Amendments

- F20** Words in s. 13(6)(a)(b) substituted (1.7.1997) by 1997 c. 16, s. 53(3)(9); S.I. 1997/1432, art. 2
- F21** Words in s. 13(7) substituted (1.6.1997) by 1997 c. 16, s. 50(2), Sch. 6 paras. 1(3), 7; S.I. 1997/1305, art. 2

#### Commencement Information

- I2** S. 13 wholly in force at 1.1.1995; s. 13 not in force at Royal Assent see s. 19(1); s. 13 in force for certain purposes at 1.11.1994 by S.I. 1994/2679, art. 2, Sch.; s. 13 in force at 1.1.1995 insofar as not already in force by S.I. 1994/2679, art. 3



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