

Status: Point in time view as at 06/04/2003.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, Part V. (See end of Document for details)

SCHEDULES

SCHEDULE 5

LANDFILL TAX

Modifications etc. (not altering text)

C1 Sch. 5 extended (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. I para. 4(3)

PART V

CIVIL PENALTIES

Evasion

- 18 (1) Where—
- (a) for the purpose of evading tax, a registrable 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 is liable to a penalty equal to the amount of tax evaded, or (as the case may be) sought to be evaded, by his conduct; but this is subject to sub-paragraph (7) below.
- (2) The reference in sub-paragraph (1)(a) above to evading tax includes a reference to obtaining a payment under regulations under section 51(2)(c) or (d) or (f) of this Act in circumstances where the person concerned is not entitled to the sum.
- (3) The reference in sub-paragraph (1) above to the amount of tax evaded or sought to be evaded is a reference to the aggregate of—
- (a) the amount (if any) falsely claimed by way of credit, and
 - (b) the amount (if any) by which the gross amount of tax was falsely understated.
- (4) In this paragraph—
- (a) “credit” means credit for which provision is made by regulations under section 51 of this Act;
 - (b) “the gross amount of tax” means the total amount of tax due before taking into account any deduction for which provision is made by regulations under section 51(2) of this Act.
- (5) Statements made or documents produced by or on behalf of a person shall not be inadmissible in any such proceedings as are mentioned in sub-paragraph (6) below by reason only that it has been drawn to his attention—
- (a) that, in relation to tax, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings and, though no undertaking can be given as to whether the Commissioners will make such

Status: Point in time view as at 06/04/2003.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, Part V. (See end of Document for details)

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, an appeal tribunal have power under paragraph 25 below to reduce a penalty under this paragraph,

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

- (6) The proceedings referred to in sub-paragraph (5) above are—
- (a) any criminal proceedings against the person concerned in respect of any offence in connection with or in relation to tax, and
- (b) any proceedings against him for the recovery of any sum due from him in connection with or in relation to tax.
- (7) Where, by reason of conduct falling within sub-paragraph (1) above, a person is convicted of an offence (whether under this Part of this Act or otherwise) that conduct shall not also give rise to liability to a penalty under this paragraph.
- 19 (1) Where it appears to the Commissioners—
- (a) that a body corporate is liable to a penalty under paragraph 18 above, 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 paragraph on the body corporate and on the named officer.
- (2) A notice under this paragraph shall state—
- (a) the amount of the penalty referred to in sub-paragraph (1)(a) above (the basic penalty), and
- (b) that the Commissioners propose, in accordance with this paragraph, 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 paragraph, the portion of the basic penalty specified in the notice shall be recoverable from the named officer as if he were personally liable under paragraph 18 above to a penalty which corresponds to that portion; and the amount of that penalty may be assessed and notified to him accordingly under paragraph 32 below.
- (4) Where a notice is served under this paragraph—
- (a) the amount which, under paragraph 32 below, 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 sub-paragraph (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.
- (5) No appeal shall lie against a notice under this paragraph as such but—
- (a) where a body corporate is assessed as mentioned in sub-paragraph (4)(a) above, the body corporate may require a review of the Commissioners' decision as to its liability to a penalty and as to the amount of the basic penalty as if it were specified in the assessment;

Status: Point in time view as at 06/04/2003.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, Part V. (See end of Document for details)

- (b) where an assessment is made on a named officer by virtue of sub-paragraph (3) above, the named officer may require a review of the Commissioners' decision that the conduct of the body corporate referred to in sub-paragraph (1)(b) above is, in whole or in part, attributable to his dishonesty and of their decision as to the portion of the penalty which the Commissioners propose to recover from him;
 - (c) sections 55 and 56 of this Act shall apply accordingly.
- (6) In this paragraph 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 paragraph 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.

Misdeclaration or neglect

- 20 (1) Where, for an accounting period—
- (a) a return is made which understates a person's liability to tax or overstates his entitlement to credit, or
 - (b) an assessment is made which understates a person's liability to tax 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,
- the person concerned is liable, subject to sub-paragraphs (3) and (4) below, to a penalty equal to 5 per cent. of the amount of the understatement of liability or (as the case may be) overstatement of entitlement.
- (2) Where—
- (a) a return for an accounting period overstates or understates to any extent a person's liability to tax or his entitlement to credit, and
 - (b) that return is corrected, in such circumstances and in accordance with such conditions as may be prescribed by regulations, by a return for a later accounting period which understates or overstates, to the corresponding extent, that liability or entitlement,
- it shall be assumed for the purposes of this paragraph that the statement made by each such return is a correct statement for the accounting period to which the return relates.
- (3) Conduct falling within sub-paragraph (1) above shall not give rise to liability to a penalty under this paragraph if the person concerned furnishes full information with respect to the inaccuracy concerned to the Commissioners—
- (a) at a time when he has no reason to believe that enquiries are being made by the Commissioners into his affairs, so far as they relate to tax, and
 - (b) in such form and manner as may be prescribed by regulations or specified by the Commissioners in accordance with provision made by regulations.
- (4) Where, by reason of conduct falling within sub-paragraph (1) above—
- (a) a person is convicted of an offence (whether under this Part of this Act or otherwise), or
 - (b) a person is assessed to a penalty under paragraph 18 above,
- that conduct shall not also give rise to liability to a penalty under this paragraph.

Status: Point in time view as at 06/04/2003.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, Part V. (See end of Document for details)

- (5) In this paragraph “credit” means credit for which provision is made by regulations under section 51 of this Act.

Registration

- 21 (1) A person who fails to comply with section 47(3) of this Act is liable to a penalty equal to 5 per cent. of the relevant tax or, if it is greater or the circumstances are such that there is no relevant tax, to a penalty of £250; but this is subject to sub-paragraph (4) below.
- (2) In sub-paragraph (1) above “relevant tax” means the tax (if any) for which the person concerned is liable for the period which—
- (a) begins on the date with effect from which he is, in accordance with section 47 of this Act, required to be registered, and
 - (b) ends on the date on which the Commissioners received notification of, or otherwise became aware of, his liability to be registered.
- (3) A person who fails to comply with section 47(4) of this Act is liable to a penalty of £250.
- (4) Where, by reason of conduct falling within sub-paragraph (1) above—
- (a) a person is convicted of an offence (whether under this Part of this Act or otherwise), or
 - (b) a person is assessed to a penalty under paragraph 18 above,
- that conduct shall not also give rise to liability to a penalty under this paragraph.

Information

- 22 (1) If a person—
- (a) fails to comply with any provision of paragraph 1 or 3 above, or
 - (b) fails to make records as required by any provision of regulations made under paragraph 2 above,
- he is liable to a penalty of £250; but this is subject to sub-paragraph (4) below.
- (2) Where—
- (a) a penalty (an initial penalty) is imposed on a person under sub-paragraph (1) above, and
 - (b) the failure which led to the initial penalty continues after its imposition,
- he is (subject to sub-paragraph (4) below) liable to a further penalty of £20 for each day during which (or any part of which) the failure continues after the day on which the initial penalty was imposed.
- (3) A person who fails to preserve records in compliance with any provision of regulations made under paragraph 2 above (read with that paragraph and any direction given under the regulations) is liable to a penalty of £250; but this is subject to sub-paragraph (4) below.
- (4) Where by reason of a failure falling within sub-paragraph (1) or (3) above—
- (a) a person is convicted of an offence (whether under this Part of this Act or otherwise), or
 - (b) a person is assessed to a penalty under paragraph 18 above,

Status: Point in time view as at 06/04/2003.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, Part V. (See end of Document for details)

that failure shall not also give rise to liability to a penalty under this paragraph.

Breach of regulations

- 23 (1) Where regulations made under this Part of this Act impose a requirement on any person, they may provide that if the person fails to comply with the requirement he shall be liable to a penalty of £250; but this is subject to sub-paragraphs (2) and (3) below.
- (2) Where by reason of any conduct—
- (a) a person is convicted of an offence (whether under this Part of this Act or otherwise), or
 - (b) a person is assessed to a penalty under paragraph 18 above,
- that conduct shall not also give rise to liability to a penalty under the regulations.
- (3) Sub-paragraph (1) above does not apply to any failure mentioned in paragraph 22 above.

Modifications etc. (not altering text)

C1 Sch. 5 para. 23 extended (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. I para. 4(3)

Walking possession agreements

- 24 (1) This paragraph applies where—
- (a) in accordance with regulations under [^{F1}section 51 of the Finance Act 1997 (enforcement by distress)] 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 tax due from him or any amount recoverable as if it were tax due from him, and
 - (b) the person levying the distress and the person in default have entered into a walking possession agreement.
- (2) For the purposes of this paragraph a walking possession agreement is 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) If the person in default is in breach of the undertaking contained in a walking possession agreement, he is liable to a penalty equal to half of the tax or other amount referred to in sub-paragraph (1)(a) above.
- (4) This paragraph does not extend to Scotland.

Status: Point in time view as at 06/04/2003.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, Part V. (See end of Document for details)

Textual Amendments

F1 Words in Sch. 5 para. 24(1)(a) substituted (1.7.1997) by 1997 c. 16, s. 53(8); S.I. 1997/1432, art. 2

Mitigation of penalties

- 25 (1) Where a person is liable to a penalty under this Part of this Schedule the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper.
- (2) Where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for any breach, failure or other conduct, that is a factor which (among other things) may be taken into account under sub-paragraph (1) above.
- (3) In the case of a penalty reduced by the Commissioners under sub-paragraph (1) above an appeal tribunal, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Commissioners.

Status:

Point in time view as at 06/04/2003.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 1996, Part V.