

## SCHEDULES

### SCHEDULE 2

Section 34

#### PENALTIES: SUPPLEMENTARY

##### *Determination of penalties by Board*

- 1 (1) The Board may make a determination—
  - (a) imposing a penalty under section 31, 32(2)(b) or (3) or 33, and
  - (b) setting it at such amount as, in their opinion, is appropriate.
- (2) The Board must give notice of a determination of a penalty under this paragraph to the person on whom the penalty is imposed.
- (3) The notice must state the date on which it is given and give details of the right to appeal against the determination under section 38.
- (4) After the notice of a determination under this paragraph has been given the determination must not be altered except on appeal.
- (5) A penalty determined under this paragraph becomes payable at the end of the period of thirty days beginning with the date on which the notice of determination is given.
- 2 (1) On an appeal to them under section 38 against the determination of a penalty under paragraph 1, the General Commissioners or Special Commissioners may—
  - (a) if it appears that no penalty has been incurred, set the determination aside,
  - (b) if the amount determined appears to be appropriate, confirm the determination,
  - (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as they consider appropriate, or
  - (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.
- (2) An appeal from a decision of the Commissioners under sub-paragraph (1) lies, at the instance of the person on whom the penalty was imposed, to—
  - (a) the High Court, or
  - (b) in Scotland, the Court of Session as the Court of Exchequer in Scotland,and on such an appeal the court has a similar jurisdiction to that conferred on the Commissioners by sub-paragraph (1).

##### *Penalty proceedings before Commissioners*

- 3 (1) The Board may commence proceedings for a penalty under section 32(2)(a).
- (2) Proceedings under this paragraph are by way of information in writing, made to the General Commissioners or Special Commissioners, and upon summons issued by them to the defendant (or defender) to appear before them at a time and place stated in the summons; and they must hear and decide each case in a summary way.

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*Status: This is the original version (as it was originally enacted).*

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- 4 (1) An appeal against the determination of a penalty in proceedings under paragraph 3 lies to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland—
- (a) by any party on a question of law, and
  - (b) by the defendant (or, in Scotland, the defender) against the amount of the penalty.
- (2) On any such appeal the court may—
- (a) if it appears that no penalty has been incurred, set the determination aside,
  - (b) if the amount determined appears to be appropriate, confirm the determination,
  - (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the court considers appropriate, or
  - (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the court considers appropriate.

*Mitigation of penalties*

- 5 The Board may in their discretion mitigate any penalty under this Part or stay or compound any proceedings for any such penalty and may also, after judgment, further mitigate or entirely remit any such penalty.

*Time limits for penalties*

- 6 (1) In the case of a penalty under section 31 relating to a tax credit for a person or persons for the whole or part of a tax year (other than a penalty to which sub-paragraph (3) applies), the Board may determine the penalty at any time before the latest of—
- (a) the end of the period of one year beginning with the expiry of the period for initiating an enquiry under section 19 into the entitlement of the person, or the joint entitlement of the persons, for the tax year,
  - (b) if such an enquiry is made, the end of the period of one year beginning with the day on which the enquiry is completed, and
  - (c) if a decision relating to the entitlement of the person, or the joint entitlement of the persons, for the tax year is made under section 20(1) or (4), the end of the period of one year beginning with the day on which the decision is made.
- (2) In the case of a penalty under section 32 relating to a tax credit for a person or persons for the whole or part of a tax year (other than a penalty to which sub-paragraph (3) applies), the Board may determine the penalty, or commence proceedings for it, at any time before—
- (a) if an enquiry into the entitlement of the person, or the joint entitlement of the persons, for the tax year is made under section 19, the end of the period of one year beginning with the day on which the enquiry is completed, and
  - (b) otherwise, the end of the period of one year beginning with the expiry of the period for initiating such an enquiry.
- (3) In the case of—
- (a) a penalty under section 31 or 32 relating to a requirement imposed by virtue of regulations under section 25, or
  - (b) a penalty under section 33,

the Board may determine the penalty, or commence proceedings for it, at any time before the end of the period of six years after the date on which the penalty was incurred or began to be incurred.

*Recovery of penalties*

- 7 (1) A penalty payable under this Part is to be treated for the purposes of Part 6 of the Taxes Management Act 1970 (c. 9) (collection and recovery) as if it were tax charged in an assessment and due and payable.
- (2) Regulations under section 203(2)(a) of the Income and Corporation Taxes Act 1988 (c. 1) (PAYE) apply to a penalty payable under this Part as if it were an underpayment of tax for a previous year of assessment.