

Status: Point in time view as at 24/05/2024.

Changes to legislation: Finance Act 2008, SCHEDULE 40 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 40

Section 122

PENALTIES: AMENDMENTS OF SCHEDULE 24 TO FA 2007

1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.

Commencement Information

II Sch. 40 para. 1 in force at 1.4.2009 by S.I. 2009/571, art. 2

- 2 (1) Paragraph 1 (error in taxpayer's document) is amended as follows.
- (2) In sub-paragraph (2)—
- (a) for “P's” substitute “ a ”, and
 - (b) omit “by P”.
- (3) In sub-paragraph (3), for “careless or deliberate (within the meaning of paragraph 3)” substitute “careless (within the meaning of paragraph 3) or deliberate on P's part”.
- (4) In the Table, after the entry relating to income tax and capital gains tax: accounts in connection with a partnership return insert—

“Income tax	Return under section 254 of FA 2004.”
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- (5) In the Table, after the entries relating to VAT insert—

“Insurance premium tax	Return under regulations under section 54 of FA 1994.
Insurance premium tax	Return, statement or declaration in connection with a claim.
Inheritance tax	Account under section 216 or 217 of IHTA 1984.
Inheritance tax	Information or document under regulations under section 256 of IHTA 1984.
Inheritance tax	Statement or declaration in connection with a deduction, exemption or relief.
Stamp duty land tax	Return under section 76 of FA 2003.
Stamp duty reserve tax	Return under regulations under section 98 of FA 1986.
Petroleum revenue tax	Return under paragraph 2 of Schedule 2 to the Oil Taxation Act 1975.

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Petroleum revenue tax	Statement or declaration in connection with a claim under Schedule 5, 6, 7 or 8 to the Oil Taxation Act 1975.
Petroleum revenue tax	Statement under section 1(1)(a) of the Petroleum Revenue Tax Act 1980.
Aggregates levy	Return under regulations under section 25 of FA 2001.
Climate change levy	Return under regulations under paragraph 41 of Schedule 6 to FA 2000.
Landfill tax	Return under regulations under section 49 of FA 1996.
Air passenger duty	Return under section 38 of FA 1994.
Alcoholic liquor duties	Return under regulations under section 13, 49, 56 or 62 of the Alcoholic Liquor Duties Act 1979.
Alcoholic liquor duties	Statement or declaration in connection with a claim for repayment of duty under section 4(4) of FA 1995.
Tobacco products duty	Return under regulations under section 7 of the Tobacco Products Duties Act 1979.
Hydrocarbon oil duties	Return under regulations under section 21 of the Hydrocarbon Oil Duties Act 1979.
Excise duties	Return under regulations under section 93 of CEMA 1979.
Excise duties	Return under regulations under section 100G or 100H of CEMA 1979.
Excise duties	Statement or declaration in connection with a claim.
General betting duty	Return under regulations under paragraph 2 of Schedule 1 to BGDA 1981.
Pool betting duty	Return under regulations under paragraph 2A of Schedule 1 to BGDA 1981.
Bingo duty	Return under regulations under paragraph 9 of Schedule 3 to BGDA 1981.
Lottery duty	Return under regulations under section 28(2) of FA 1993.
Gaming duty	Return under directions under paragraph 10 of Schedule 1 to FA 1997.

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Remote gaming duty

Return under regulations under
section 26K of BGDA 1981.”

(6) In the Table, in the last entry, in column 1, for “Income tax, capital gains tax, corporation tax or VAT” substitute “ Any of the taxes mentioned above ”.

(7) Insert at the end—

“(5) In relation to a return under paragraph 2 of Schedule 2 to the Oil Taxation Act 1975, references in this Schedule to P include any person who, after the giving of the return for a taxable field (within the meaning of that Act), becomes the responsible person for the field (within the meaning of that Act).”

Commencement Information

I2 Sch. 40 para. 2 in force at 1.4.2009 by S.I. 2009/571, art. 2 (with arts. 3-5)

3 After that paragraph insert—

“Error in taxpayer’s document attributable to another person

1A (1) A penalty is payable by a person (T) where—

- (a) another person (P) gives HMRC a document of a kind listed in the Table in paragraph 1,
- (b) the document contains a relevant inaccuracy, and
- (c) the inaccuracy was attributable to T deliberately supplying false information to P (whether directly or indirectly), or to T deliberately withholding information from P, with the intention of the document containing the inaccuracy.

(2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—

- (a) an understatement of a liability to tax,
- (b) a false or inflated statement of a loss, or
- (c) a false or inflated claim to repayment of tax.

(3) A penalty is payable under this paragraph in respect of an inaccuracy whether or not P is liable to a penalty under paragraph 1 in respect of the same inaccuracy.”

Commencement Information

I3 Sch. 40 para. 3 in force at 1.4.2009 by S.I. 2009/571, art. 2

4 (1) Paragraph 2 (under-assessment by HMRC) is amended as follows.

(2) In sub-paragraph (1), for “tax” substitute “ a relevant tax ”.

(3) For sub-paragraph (3) substitute—

“(3) In sub-paragraph (1) “relevant tax” means any tax mentioned in the Table in paragraph 1.”

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Commencement Information

I4 Sch. 40 para. 4 in force at 1.4.2009 by S.I. 2009/571, art. 2

- 5 (1) Paragraph 3 (degrees of culpability) is amended as follows
- (2) In sub-paragraph (1)—
- (a) for “Inaccuracy in” substitute “ For the purposes of a penalty under paragraph 1, inaccuracy in ”, and
- (b) after “is deliberate” (in both places) insert “ on P's part ”.
- (3) In sub-paragraph (2), after “deliberate” insert “ on P's part ”.

Commencement Information

I5 Sch. 40 para. 5 in force at 1.4.2009 by S.I. 2009/571, art. 2

- 6 In paragraph 4 (standard amount), after sub-paragraph (1) insert—
- “(1A) The penalty payable under paragraph 1A is 100% of the potential lost revenue.”

Commencement Information

I6 Sch. 40 para. 6 in force at 1.4.2009 by S.I. 2009/571, art. 2

- 7 In paragraph 5(1) (potential lost revenue: normal rule), after “document” insert “ (including an inaccuracy attributable to a supply of false information or withholding of information) ”.

Commencement Information

I7 Sch. 40 para. 7 in force at 1.4.2009 by S.I. 2009/571, art. 2

- 8 (1) Paragraph 6 (potential lost revenue: multiple errors) is amended as follows.
- (2) In sub-paragraphs (1) and (2), after “penalty” insert “ under paragraph 1 ”.
- (3) In sub-paragraph (5), after “calculating” insert “ for the purposes of a penalty under paragraph 1 ”.

Commencement Information

I8 Sch. 40 para. 8 in force at 1.4.2009 by S.I. 2009/571, art. 2

- 9 (1) Paragraph 9 (reductions for disclosure) is amended as follows.
- (2) Before sub-paragraph (1) insert—
- “(A1) Paragraph 10 provides for reductions in penalties under paragraphs 1, 1A and 2 where a person discloses an inaccuracy, a supply of false information or withholding of information, or a failure to disclose an under-assessment.”

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- (3) In sub-paragraph (1)—
- (a) after “an inaccuracy” insert “, a supply of false information or withholding of information, ”, and
 - (b) in paragraphs (b) and (c), for “or” substitute “, the inaccuracy attributable to the supply or false information or withholding of information, or the ”.
- (4) In sub-paragraph (2)(a), for “or under-assessment” substitute “, the supply of false information or withholding of information, or the under-assessment ”.

Commencement Information

I9 Sch. 40 para. 9 in force at 1.4.2009 by S.I. 2009/571, art. 2

- 10 In paragraph 11(1) (special reduction), after “1” insert “, 1A ”.

Commencement Information

I10 Sch. 40 para. 10 in force at 1.4.2009 by S.I. 2009/571, art. 2

- 11 (1) Paragraph 12 (interaction with other penalties) is amended as follows.
- (2) In sub-paragraph (2), for the words after “other penalty” substitute “ incurred by P, or any surcharge for late payment of tax imposed on P, if the amount of the penalty or surcharge is determined by reference to the same tax liability. ”
- (3) After sub-paragraph (3) insert—
- “(4) Where penalties are imposed under paragraphs 1 and 1A in respect of the same inaccuracy, the aggregate of the amounts of the penalties must not exceed 100% of the potential lost revenue.”
- (4) In the heading before paragraph 12, insert at the end “ *and late payment surcharges* ”.

Commencement Information

I11 Sch. 40 para. 11 in force at 1.4.2009 by S.I. 2009/571, art. 2

- 12 (1) Paragraph 13 (assessment) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “Where P” substitute “ Where a person ”,
 - (b) after “1” insert “, 1A ”, and
 - (c) for “notify P” substitute “ notify the person ”.
- (3) After that sub-paragraph insert—
- “(1A) A penalty under paragraph 1, 1A or 2 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.”
- (4) In sub-paragraph (3)—
- (a) after “1” insert “ or 1A ”,
 - (b) for “within the” substitute “ before the end of the ”, and

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(c) after “no assessment” insert “ to the tax concerned ”.

(5) In sub-paragraph (4), for the words after “made” substitute “before the end of the period of 12 months beginning with—

- (a) the end of the appeal period for the assessment of tax which corrected the understatement, or
- (b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.”

Commencement Information

I12 Sch. 40 para. 12 in force at 1.4.2009 by S.I. 2009/571, art. 2

13 In paragraph 15 (right of appeal)—

- (a) for “P may” (in each place) substitute “ A person may ”, and
- (b) for “by P” (in each place) substitute “ by the person ”.

Commencement Information

I13 Sch. 40 para. 13 in force at 1.4.2009 by S.I. 2009/571, art. 2

^{F1}14

Textual Amendments

F1 Sch. 40 para. 14 omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 1 para. 472

15 In paragraph 18(3) (agency), after “penalty” insert “ under paragraph 1 or 2 ”.

Commencement Information

I14 Sch. 40 para. 15 in force at 1.4.2009 by S.I. 2009/571, art. 2

16 (1) Paragraph 19 (companies: officers' liability) is amended as follows.

(2) In sub-paragraph (1), for the words from “of the company” to “as they” substitute “ of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC ”.

(3) For sub-paragraph (5) substitute—

“(5) Where HMRC have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—

- (a) paragraph 11 applies to the specified portion as to a penalty,
- (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
- (c) paragraph 13(2), (3) and (5) apply as if the notice were an assessment of a penalty,

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- (d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 13(6),
- (e) paragraphs 15(1) and (2), 16 and 17(1) to (3) and (6) apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer, and
- (f) paragraph 21 applies as if the officer were liable to a penalty.”

Commencement Information

I15 Sch. 40 para. 16 in force at 1.4.2009 by S.I. 2009/571, art. 2

17 In paragraph 21 (double jeopardy)—

- (a) for “P is” substitute “ A person is ”,
- (b) after “1” insert “ , 1A ”, and
- (c) for “P has” substitute “ the person has ”.

Commencement Information

I16 Sch. 40 para. 17 in force at 1.4.2009 by S.I. 2009/571, art. 2

18 In paragraph 22 (interpretation: introduction), for “26” substitute “ 27 ”.

Commencement Information

I17 Sch. 40 para. 18 in force at 1.4.2009 by S.I. 2009/571, art. 2

19 After paragraph 23 insert—

“23A “Tax”, without more, includes duty.”

Commencement Information

I18 Sch. 40 para. 19 in force at 1.4.2009 by S.I. 2009/571, art. 2

20 (1) Paragraph 28 (interpretation) is amended as follows.

- (2) In paragraph (c) (meaning of “direct tax”), omit “and” after paragraph (ii) and after paragraph (iii) insert “and
(iv) petroleum revenue tax.”.

^{F2}(3)

- (4) In paragraph (f), insert at the end “ against tax or to a payment of a corporation tax credit ”.

(5) After that paragraph insert—

“(fa) “corporation tax credit” means—

- (i) an R&D tax credit under Schedule 20 to FA 2000,
- (ii) a land remediation tax credit or life assurance company tax credit under Schedule 22 to FA 2001,

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- (iii) a tax credit under Schedule 13 to FA 2002 (vaccine research etc),
- (iv) a film tax credit under Schedule 5 to FA 2006, or
- (v) a first-year tax credit under Schedule A1 to CAA 2001,.”

Textual Amendments

F2 Sch. 40 para. 20(3) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 14\(b\)](#)

Commencement Information

I19 Sch. 40 para. 20 in force at 1.4.2009 by [S.I. 2009/571](#), [art. 2](#)

- 21 In consequence of this Schedule the following provisions are omitted—
- (a) paragraphs 8 and 9 of Schedule 2 to OTA 1975,
 - (b) in section 1(3B) of the Petroleum Revenue Tax Act 1980, “, 8 and 9”,
 - (c) in IHTA 1984—
 - (i) section 247(1) and (2),
 - (ii) in section 248, in subsection (1), “account,” and “delivered,” (in both places) and, in subsection (2), “under section 247 above”, and
 - (iii) section 250(2),
 - (d) in FA 1994—
 - (i) section 8, and
 - (ii) paragraphs 12 and 13 of Schedule 7,
 - (e) paragraphs 18 to 20 of Schedule 5 to FA 1996,
 - (f) paragraphs 83ZA(4) and (5), 83F, 83L, 83R and 83X of Schedule 18 to FA 1998,
 - (g) section 108(2)(a) of FA 1999,
 - (h) paragraphs 98 to 100 of Schedule 6 to FA 2000,
 - (i) in Schedule 6 to FA 2001, paragraphs 7 to 9, and in paragraph 9A(5), paragraph (b) and the “or” before it,
 - (j) section 133(2) to (4) of FA 2002,
 - (k) in FA 2003—
 - (i) section 192(8), and
 - (ii) paragraph 8 of Schedule 10 to FA 2003, and
 - (l) section 295(4)(a) of FA 2004.

Commencement Information

I20 Sch. 40 para. 21 in force at 1.4.2009 by [S.I. 2009/571](#), [art. 2](#) (with [art. 6](#))

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