

SCHEDULES

SCHEDULE 10

Section 26

PENALTY FOR FAILURE TO MAKE RETURNS ETC

1 Schedule 55 to FA 2009 (penalty for failure to make returns etc) is amended as follows.

2 (1) Paragraph 1 (penalty for failure) is amended as follows.

(2) In sub-paragraph (2), for “13” substitute “13J”.

(3) The Table is amended as follows.

(4) After item 7 insert—

“7A	Value added tax	Return under regulations under paragraph 2 of Schedule 11 to VATA 1994
7B	Insurance premium tax	Return under regulations under section 54 of FA 1994”.

(5) Insert at the end—

“14	Aggregates levy	Return under regulations under section 25 of FA 2001
15	Climate change levy	Return under regulations under paragraph 41 of Schedule 6 to FA 2000
16	Landfill tax	Return under regulations under section 49 of FA 1996
17	Air passenger duty	Return under regulations under section 38 of FA 1994
18	Alcoholic liquor duties	Return under regulations under section 13, 49, 56 or 62 of ALDA 1979
19	Tobacco products duty	Return under regulations under section 7 of TPDA 1979
20	Hydrocarbon oil duties	Return under regulations under section 21 of HODA 1979
21	Excise duties	Return under regulations under section 93 of the Customs and Excise Management Act 1979
22	Excise duties	Return under regulations under section 100G or 100H of the Customs and Excise Management Act 1979

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23	General betting duty	Return under regulations under paragraph 2 of Schedule 1 to BGDA 1981
24	Pool betting duty	Return under regulations under paragraph 2A of Schedule 1 to BGDA 1981
25	Bingo duty	Return under regulations under paragraph 9 of Schedule 3 to BGDA 1981
26	Lottery duty	Return under regulations under section 28(2) of FA 1993
27	Gaming duty	Return under directions under paragraph 10 of Schedule 1 to FA 1997
28	Remote gaming duty	Return under regulations under section 26K of BGDA 1981”.

- 3 For paragraph 2 (amount of penalty for occasional or annual returns) and the italic heading preceding it substitute—

“Amount of penalty: occasional returns and returns for periods of 6 months or more

- 2 (1) Paragraphs 3 to 6 apply in the case of—
- (a) a return falling within any of items 1 to 5, 7 and 8 to 13 in the Table,
 - (b) a return falling within any of items 7A, 7B and 14 to 28 which relates to a period of 6 months or more, and
 - (c) a return falling within item 7A which relates to a transitional period for the purposes of the annual accounting scheme.
- (2) In sub-paragraph (1)(c), a transitional period for the purposes of the annual accounting scheme is a prescribed accounting period (within the meaning of section 25(1) of VATA 1994) which—
- (a) ends on the day immediately preceding the date indicated by the Commissioners for Her Majesty’s Revenue and Customs in a notification of authorisation under regulation 50 of the Value Added Tax Regulations 1995 (S.I. 1995/2518) (admission to annual accounting scheme), or
 - (b) begins on the day immediately following the end of the last period of 12 months for which such an authorisation has effect.”

- 4 (1) Paragraph 6 (amount of penalty for occasional returns and annual returns) is amended as follows.

- (2) In sub-paragraph (2), after “P” in the first place it occurs insert “deliberately”.
- (3) In sub-paragraph (5), for “any other case” substitute “any case not falling within sub-paragraph (2)”.

- 5 (1) Paragraph 11 (amount of penalty for certain CIS returns after 12 months) is amended as follows.

- (2) In sub-paragraph (2), after “P” in the first place it occurs insert “deliberately”.

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

- (3) In sub-paragraph (5), for “any other case” substitute “any case not falling within sub-paragraph (2)”.
- 6 (1) Paragraph 12 (amount of penalty for other CIS returns after 12 months) is amended as follows.
- (2) In sub-paragraph (2), after “P” insert “deliberately”.
- 7 After paragraph 13 insert—

“Amount of penalty: returns for periods of between 2 and 6 months

- 13A (1) Paragraphs 13B to 13E apply in the case of a return falling within any of items 7A, 7B and 14 to 28 in the Table which relates to a period of less than 6 months but more than 2 months.
- (2) But those paragraphs do not apply in the case of a return mentioned in paragraph 2(1)(c).
- 13B (1) P is liable to a penalty under this paragraph of £100.
- (2) In addition, a penalty period begins to run on the penalty date for the return.
- (3) The penalty period ends with the day 12 months after the filing date for the return, unless it is extended under paragraph 13C(2)(c) or 13H(2)(c).
- 13C (1) This paragraph applies if—
- (a) a penalty period has begun under paragraph 13B or 13G because P has failed to make a return (“return A”), and
- (b) before the end of the period, P fails to make another return (“return B”) falling within the same item in the Table as return A.
- (2) In such a case—
- (a) paragraph 13B(1) and (2) do not apply to the failure to make return B, but
- (b) P is liable to a penalty under this paragraph for that failure, and
- (c) the penalty period that has begun is extended so that it ends with the day 12 months after the filing date for return B.
- (3) The amount of the penalty under this paragraph is determined by reference to the number of returns that P has failed to make during the penalty period.
- (4) If the failure to make return B is P’s first failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £200.
- (5) If the failure to make return B is P’s second failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £300.
- (6) If the failure to make return B is P’s third or a subsequent failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £400.

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- (7) For the purposes of this paragraph—
- (a) in accordance with sub-paragraph (1)(b), the references in sub-paragraphs (3) to (6) to a return are references to a return falling within the same item in the Table as returns A and B, and
 - (b) a failure to make a return counts for the purposes of those sub-paragraphs if (but only if) the return relates to a period of less than 6 months.
- (8) A penalty period may be extended more than once under sub-paragraph (2)(c).
- 13D (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this paragraph is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- 13E (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).
- (3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—
- (a) 100% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- (4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—
- (a) 70% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- (5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.

Amount of penalty: returns for periods of 2 months or less

- 13F (1) Paragraphs 13G to 13J apply in the case of a return falling within any of items 7A, 7B and 14 to 28 in the Table which relates to a period of 2 months or less.

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- (2) But those paragraphs do not apply in the case of a return mentioned in paragraph 2(1)(c).
- 13G (1) P is liable to a penalty under this paragraph of £100.
- (2) In addition, a penalty period begins to run on the penalty date for the return.
- (3) The penalty period ends with the day 12 months after the filing date for the return, unless it is extended under paragraph 13C(2)(c) or 13H(2)(c).
- 13H (1) This paragraph applies if—
- (a) a penalty period has begun under paragraph 13B or 13G because P has failed to make a return (“return A”), and
 - (b) before the end of the period, P fails to make another return (“return B”) falling within the same item in the Table as return A.
- (2) In such a case—
- (a) paragraph 13G(1) and (2) do not apply to the failure to make return B, but
 - (b) P is liable to a penalty under this paragraph for that failure, and
 - (c) the penalty period that has begun is extended so that it ends with the day 12 months after the filing date for return B.
- (3) The amount of the penalty under this paragraph is determined by reference to the number of returns that P has failed to make during the penalty period.
- (4) If the failure to make return B is P’s first, second, third, fourth or fifth failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £100.
- (5) If the failure to make return B is P’s sixth or a subsequent failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £200.
- (6) For the purposes of this paragraph—
- (a) in accordance with sub-paragraph (1)(b), the references in sub-paragraphs (3) to (5) to a return are references to a return falling within the same item in the Table as returns A and B, and
 - (b) a failure to make a return counts for the purposes of those sub-paragraphs if (but only if) the return relates to a period of less than 6 months.
- (7) A penalty period may be extended more than once under sub-paragraph (2)(c).
- 13I (1) P is liable to a penalty under this paragraph if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this paragraph is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and

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- (b) £300.
- 13J (1) P is liable to a penalty under this paragraph if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P’s liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).
- (3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—
- (a) 100% of any liability to tax which would have been shown in the return in question, and
- (b) £300.
- (4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—
- (a) 70% of any liability to tax which would have been shown in the return in question, and
- (b) £300.
- (5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.”
- 8 In paragraph 14(1) (reductions for disclosure), for “or 11(3) or (4)” substitute “, 11(3) or (4), 13E(3) or (4) or 13J(3) or (4)”.
- 9 In paragraph 15(5) (reductions for disclosure not below certain amounts)—
- (a) for “paragraph 11(3) or (4)” substitute “sub-paragraph (3) or (4) of any of paragraphs 11, 13E and 13J”, and
- (b) for “paragraph 11(3)(b) or (4)(b) (as the case may be)” substitute “paragraph (b) of that sub-paragraph”.
- 10 In paragraph 18 (assessment), after sub-paragraph (4) insert—
- “(5) A replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return.”
- 11 For paragraph 23(1) (no liability where there is reasonable excuse for failure) substitute—
- “(1) If P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make a return—
- (a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure, and
- (b) the failure does not count for the purposes of paragraphs 13B(2), 13C, 13G(2) and 13H.”