
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, Cross Heading: Amendments to Schedule 55 to FA 2009: penalty for failure to make returns. (See end of Document for details)

SCHEDULES

SCHEDULE 50

PENALTIES: LATE FILING, LATE PAYMENT AND ERRORS

Amendments to Schedule 55 to FA 2009: penalty for failure to make returns

- 2 Schedule 55 (penalty for failure to make returns etc) to FA 2009 is amended in accordance with paragraphs 3 to 9.
- 3 In paragraph 1 (returns etc in respect of which penalties are to be paid under that Schedule)—
- (a) in the definition of “penalty date” in sub-paragraph (4), after “document” insert “ falling within any of items 1 to 3 and 5 to 13 in the Table ”;
 - (b) after sub-paragraph (4) insert—
- “(4A) The Treasury may by order make such amendments to item 4 in the Table as they think fit in consequence of any amendment, revocation or re-enactment of the regulations mentioned in that item.”
- 4 In the Table at the end of paragraph 1, in item 4 (annual return of payments for purposes of PAYE regulations etc), for the words in the third column substitute—
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- “Return under any of the following provisions of the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682)—
- (a) regulation 67B (real time returns)
 - (b) regulation 67D (exceptions to regulation 67B)”
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- 5 In paragraph 2 (amount of penalty: occasional returns and returns for periods of 6 months or more), for “1 to 5” substitute “ 1 to 3, 5 ”.
- 6 After paragraph 6A insert—

“Amount of penalty: real time information for PAYE

- 6B Paragraphs 6C and 6D apply in the case of a return falling within item 4 in the Table.
- 6C (1) If P fails during a tax month to make a return on or before the filing date, P is liable to a penalty under this paragraph in respect of that month.
- (2) But this is subject to sub-paragraphs (3) and (4).
 - (3) P is not liable to a penalty under this paragraph in respect of a tax month as a result of any failure to make a return on or before the filing date which occurs during the initial period.
 - (4) P is not liable to a penalty under this paragraph in respect of a tax month falling in a tax year if the month is the first tax month in that tax year during

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which P fails to make a return on or before the filing date (disregarding for this purpose any failure which occurs during the initial period).

- (5) In sub-paragraphs (3) and (4) “the initial period” means the period which—
- (a) begins with the day in the first tax year on which P is first required to make a return, and
 - (b) is of such duration as is specified in regulations made by the Commissioners,
- and for this purpose “the first tax year” means the first tax year in which P is required to make returns.
- (6) P may be liable under this paragraph to no more than one penalty in respect of each tax month.
- (7) The penalty under this paragraph is to be calculated in accordance with regulations made by the Commissioners.
- (8) Regulations under sub-paragraph (7) may provide for a penalty under this paragraph in respect of a tax month to be calculated by reference to either or both of the following matters—
- (a) the number of persons employed by P, or treated as employed by P for the purposes of PAYE regulations;
 - (b) the number of previous penalties incurred by P under this paragraph in the same tax year.
- (9) The Commissioners may by regulations disapply sub-paragraph (3) or (4) in such circumstances as are specified in the regulations.
- (10) If P has elected under PAYE regulations to be treated as different employers in relation to different groups of employees, this paragraph applies to P as if—
- (a) in respect of each group P were a different person, and
 - (b) each group constituted all of P's employees.
- (11) Regulations made by the Commissioners under this paragraph may—
- (a) make different provision for different cases, and
 - (b) include incidental, consequential and supplementary provision.
- 6D (1) P may be liable to one or more penalties under this paragraph in respect of extended failures.
- (2) In this paragraph an “extended failure” means a failure to make a return on or before the filing date which continues after the end of the period of 3 months beginning with the day after the filing date.
- (3) P is liable to a penalty or penalties under this paragraph if (and only if)—
- (a) HMRC decide at any time that such a penalty or penalties should be payable in accordance with sub-paragraph (4) or (6), and
 - (b) HMRC give notice to P specifying the date from which the penalty, or each penalty, is payable.
- (4) HMRC may decide under sub-paragraph (3)(a) that a separate penalty should be payable in respect of each unpenalised extended failure in the tax year to date.

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- (5) In that case the amount of the penalty in respect of each failure is 5% of any liability to make payments which would have been shown in the return in question.
 - (6) HMRC may decide under sub-paragraph (3)(a) that a single penalty should be payable in respect of all the unpenalised extended failures in the tax year to date.
 - (7) In that case the amount of the penalty in respect of those failures is 5% of the sum of the liabilities to make payments which would have been shown in each of the returns in question.
 - (8) For the purposes of this paragraph, an extended failure is unpenalised if a penalty has not already been imposed in respect of it under this paragraph (whether in accordance with sub-paragraph (4) or (6)).
 - (9) The date specified in the notice under sub-paragraph (3)(b) in relation to a penalty—
 - (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in sub-paragraph (2) in relation to the relevant extended failure.
 - (10) In sub-paragraph (9)(b) “the relevant extended failure” means—
 - (a) the extended failure in respect of which the penalty is payable, or
 - (b) if the penalty is payable in respect of more than one extended failure (in accordance with sub-paragraph (6)), the extended failure with the latest filing date.”
- 7 In paragraph 18 (assessment), for sub-paragraph (5) substitute—
- “(5) Sub-paragraph (6) applies if—
- (a) an assessment in respect of a penalty is based on a liability to tax that would have been shown in a return, and
 - (b) that liability is found by HMRC to be excessive.
- (6) HMRC may by notice to P amend the assessment so that it is based upon the correct amount.
- (7) An amendment under sub-paragraph (6)—
- (a) does not affect when the penalty must be paid;
 - (b) may be made after the last day on which the assessment in question could have been made under paragraph 19.”

8 (1) Paragraph 19 (assessment) is amended as follows.

(2) In sub-paragraph (2) after “Date A is” insert “—

 - (a) in the case of an assessment of a penalty under paragraph 6C, the last day of the period of 2 years beginning with the end of the tax month in respect of which the penalty is payable,
 - (b) in the case of an assessment of a penalty under paragraph 6D, the last day of the period of 2 years beginning with the filing date for the relevant extended failure (as defined in paragraph 6D(10)), and
 - (c) in any other case,”.

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- (3) In sub-paragraph (3)(a), after “return” insert “ or returns (as the case may be in relation to penalties under section 6C or 6D) ”.
- 9 (1) Paragraph 27 (interpretation) is amended as follows.
- (2) After sub-paragraph (2) insert—
- “(2A) The Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.”
- (3) After sub-paragraph (3) insert—
- “(3A) Tax month” means the period beginning with the 6th day of a month and ending with the 5th day of the following month.”

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