



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 8

### PENALTIES

#### CHAPTER 5

##### OTHER ADMINISTRATIVE PENALTIES

*Penalties for failure to register for tax etc.*

#### **209      Penalty for failure to register for tax etc.**

- (1) A penalty is payable by a person (“P”) where—
  - (a) P fails to comply with a requirement imposed by or under section 22 or 23 of the LT(S) Act 2014 (“a relevant requirement”), and
  - (b) the failure was—
    - (i) deliberate on P’s part (“a deliberate failure”), or
    - (ii) careless on P’s part (“a careless failure”).
- (2) A failure is careless if it is due to a failure by P to take reasonable care.
- (3) A failure by P to comply with a relevant requirement, which was neither deliberate nor careless on P’s part at an earlier time, is to be treated as careless if P—
  - (a) discovered the failure at some later time, and
  - (b) did not take reasonable steps to inform Revenue Scotland.
- (4) Section 210 sets out the penalty under this section.

#### **210      Amount of penalty for failure to register for tax etc.**

- (1) This section sets out the penalty payable under section 209.

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- (2) For a deliberate failure, the penalty is 100% of the potential lost revenue.
- (3) For a careless failure, the penalty is 30% of the potential lost revenue.
- (4) In the case of a relevant requirement relating to Scottish landfill tax, the potential lost revenue is the amount of the tax (if any) for which P is liable for the period—
  - (a) beginning on the date with effect from which P is required in accordance with that requirement to be registered, and
  - (b) ending on the date on which Revenue Scotland received notification of, or otherwise became fully aware of, P's liability to be registered.
- (5) In calculating potential lost revenue in respect of a failure to comply with a relevant requirement on the part of P no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person.

*Penalties under Chapter 5: general*

**211 Interaction of penalties under section 209 with other penalties**

The amount of a penalty for which P is liable under section 209 is to be reduced by the amount of any other penalty incurred by P (other than a penalty under Chapter 2), if the amount of the penalty is determined by reference to the same liability to tax.

**212 Reduction in penalty under section 209 for disclosure**

- (1) Revenue Scotland may reduce a penalty under section 209 where P discloses a failure to comply with a relevant requirement (“a relevant failure”).
- (2) P discloses a relevant failure by—
  - (a) telling Revenue Scotland about it,
  - (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of it, and
  - (c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.
- (3) Reductions under this section may reflect—
  - (a) whether the disclosure was prompted or unprompted, and
  - (b) the quality of the disclosure.
- (4) Disclosure of a relevant failure—
  - (a) is “unprompted” if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the failure, and
  - (b) otherwise, is “prompted”.
- (5) In relation to disclosure, “quality” includes timing, nature and extent.

**213 Special reduction in penalty under section 209**

- (1) Revenue Scotland may reduce a penalty under section 209 if it thinks it right to do so because of special circumstances.
- (2) In subsection (1) “special circumstances” does not include—

- (a) ability to pay, or
  - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In subsection (1) the reference to reducing a penalty includes a reference to—
  - (a) remitting a penalty entirely,
  - (b) suspending a penalty, and
  - (c) agreeing a compromise in relation to proceedings for a penalty.
- (4) In this section references to a penalty include references to any interest in relation to the penalty.
- (5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

#### **214 Reasonable excuse for failure to register for tax etc.**

- (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with a relevant requirement, liability to a penalty under section 209 does not arise in relation to that failure.
- (2) For the purposes of subsection (1)—
  - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
  - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
  - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **215 Assessment of penalties under section 209**

- (1) Where P becomes liable to a penalty under section 209, Revenue Scotland must—
  - (a) assess the penalty,
  - (b) notify P, and
  - (c) state in the notice the period in respect of which the penalty is assessed.
- (2) A penalty under section 209 must be paid before the end of the period of 30 days beginning with the day on which the notification of the penalty is issued.
- (3) An assessment of a penalty under section 209—
  - (a) is to be treated for enforcement purposes as an assessment to tax, and
  - (b) may be combined with an assessment to tax.
- (4) An assessment of a penalty under section 209 must be made within the period of 12 months beginning with—
  - (a) the end of the appeal period for the assessment of tax unpaid by reason of the failure to comply with the relevant requirement in respect of which the penalty is assessed, or
  - (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the failure is ascertained.
- (5) In subsection (4) “appeal period” means the period during which—

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- (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.
- (6) Subject to subsection (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

## **216 Power to change penalty provisions in Chapter 5**

- (1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.
- (2) Provision under subsection (1) includes provision—
  - (a) about the circumstances in which a penalty is payable,
  - (b) about the amounts of penalties,
  - (c) about the procedure for issuing penalties,
  - (d) about appealing penalties,
  - (e) about enforcing penalties.
- (3) Regulations under subsection (1) may not create criminal offences.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.