



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 8

### PENALTIES

#### CHAPTER 2

##### PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX

###### *Penalties under Chapter 2: general*

#### **174 Interaction of penalties under Chapter 2 with other penalties**

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

#### **175 Reduction in penalty under sections 159 to 167 for disclosure**

- (1) Revenue Scotland may reduce a penalty under sections 159 to 167 where P discloses information which has been withheld by a failure to make a return (“relevant information”).
- (2) P discloses relevant information by—
  - (a) telling Revenue Scotland about it,
  - (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of its having been withheld, 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

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(b) the quality of the disclosure.

(4) Disclosure of relevant information—

(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 relevant information, and

(b) otherwise, is “prompted”.

(5) In relation to disclosure, “quality” includes timing, nature and extent.

**176 Suspension of penalty under sections 168 to 173 during currency of agreement for deferred payment**

(1) This section applies if—

(a) P fails to pay an amount of tax when it becomes due and payable,

(b) P makes a request to Revenue Scotland that payment of the amount of tax be deferred, and

(c) Revenue Scotland agrees that payment of that amount may be deferred for a period (“the deferral period”).

(2) If P would (ignoring this subsection) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under sections 168 to 173 for failing to pay that amount, P is not liable to that penalty.

(3) But if—

(a) P breaks the agreement, and

(b) Revenue Scotland serves on P a notice specifying any penalty to which P would become liable (ignoring subsection (2)),

P becomes liable to that penalty at the date of the notice.

(4) P breaks an agreement if—

(a) P fails to pay the amount of tax in question when the deferral period ends, or

(b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.

(5) If the agreement mentioned in subsection (1)(c) is varied at any time by a further agreement between P and Revenue Scotland, this section applies from that time to the agreement as varied.

**177 Special reduction in penalty under Chapter 2**

(1) Revenue Scotland may reduce a penalty under this Chapter 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

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- (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.

### **178 Reasonable excuse for failure to make return or pay tax**

- (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under sections 159 to 167 does not arise in relation to that failure.
- (2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under sections 168 to 173 does not arise in relation to that failure.
- (3) For the purposes of subsections (1) and (2)—
  - (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.

### **179 Assessment of penalties under Chapter 2**

- (1) Where P becomes liable to a penalty under this Chapter, Revenue Scotland must—
  - (a) assess the penalty,
  - (b) notify the person, and
  - (c) state in the notice the period, or the transaction, in respect of which the penalty is assessed.
- (2) A penalty under this Chapter must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment of a penalty under this Chapter—
  - (a) is to be treated for enforcement purposes as an assessment to tax, and
  - (b) may be combined with an assessment to tax.
- (4) In relation to penalties under sections 159 to 167—
  - (a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return,
  - (b) 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.
- (5) In relation to penalties under sections 168 to 173—

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- (a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was owing,
  - (b) if an assessment in respect of a penalty is based on an amount of tax owing that is found by Revenue Scotland to be excessive, Revenue Scotland may by notice to P amend the assessment so that it is based on the correct amount.
- (6) An amendment made under subsection (5)(b)—
- (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 section 180.

### **180 Time limit for assessment of penalties under Chapter 2**

- (1) An assessment of a penalty under this Chapter in respect of any amount must be made on or before the later of date A and (where it applies) date B.
- (2) Date A is the last day of the period of 2 years beginning with—
- (a) in the case of failure to make a return, the filing date, or
  - (b) in the case of failure to pay tax, the last date on which payment may be made without paying a penalty.
- (3) Date B is the last day of the period of 12 months beginning with—
- (a) in the case of failure to make a return—
    - (i) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
    - (ii) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil, or
  - (b) in the case of failure to pay tax—
    - (i) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or
    - (ii) if there is no such assessment, the date on which that amount of tax is ascertained.
- (4) In subsection (3)(a)(i) and (b)(i) “appeal period” means the period during which—
- (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.

### **181 Power to change penalty provisions in Chapter 2**

- (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.