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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001, SCHEDULE 6. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 6

Section 28.

#### AGGREGATES LEVY: EVASION, MISDECLARATION AND NEGLECT

##### PART 1

##### CRIMINAL OFFENCES

###### *Evasion*

- 1 (1) A person is guilty of an offence if he is knowingly concerned in, or in the taking of steps with a view to—
- (a) the fraudulent evasion by that person of any aggregates levy with which he is charged; or
  - (b) the fraudulent evasion by any other person of any aggregates levy with which that other person is charged.
- (2) The references in sub-paragraph (1) above to the evasion of aggregates levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment of aggregates levy.
- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4) below)—
- (a) on summary conviction, to a penalty of [<sup>F1</sup>the statutory maximum][<sup>F1</sup>£20,000] or to imprisonment for a term not exceeding six months, or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (4) In the case of any offence under this paragraph, where [<sup>F2</sup>the statutory maximum][<sup>F2</sup>the amount of £5,000 mentioned in paragraph 1(3)(a)] is less than three times the sum of the amounts of aggregates levy which are shown to be amounts that were or were intended to be evaded, the penalty on summary conviction shall be the amount equal to three times that sum (instead of [<sup>F2</sup>the statutory maximum][<sup>F2</sup>the amount of £5,000 mentioned in paragraph 1(3)(a)]).
- (5) For the purposes of sub-paragraph (4) above the amounts of levy that were or were intended to be evaded shall be taken to include—
- (a) the amount of any tax credit, and
  - (b) the amount of any repayment of aggregates levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (6) In determining for the purposes of sub-paragraph (4) above how much aggregates levy (in addition to any amount falling within sub-paragraph (5) above) was or was

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intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayment of aggregates levy to which he was, or would have been, entitled.

#### Textual Amendments

- F1** Sum in Sch. 6 para. 1(3)(a) substituted (E.W.) (12.3.2015) for words by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 12(3)(a)** (with reg. 5(1))
- F2** Words in Sch. 6 para. 1(4) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 12(3)(b)** (with reg. 5(1))

#### Misstatements

- 2 (1) A person is guilty of an offence if, with the requisite intent and for purposes connected with aggregates levy—
- (a) he produces or provides, or causes to be produced or provided, any document which is false in a material particular; or
  - (b) he otherwise makes use of such a document;
- and in this sub-paragraph “the requisite intent” means the intent to deceive any person or to secure that a machine will respond to the document as if it were a true document.
- (2) A person is guilty of an offence if, in providing any information under any provision made by or under this Part of this Act—
- (a) he makes a statement which he knows to be false in a material particular; or
  - (b) he recklessly makes a statement which is false in a material particular.
- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4) below)—
- (a) on summary conviction, to a penalty of [<sup>F3</sup>the statutory maximum][<sup>F3</sup>£20,000] or to imprisonment for a term not exceeding six months, or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (4) In the case of any offence under this paragraph, where—
- (a) the document referred to in sub-paragraph (1) above is a return required under any provision made by or under this Part of this Act, or
  - (b) the information referred to in sub-paragraph (2) above is contained in or otherwise relevant to such a return,
- the amount of the penalty on summary conviction shall be whichever is the greater of [<sup>F4</sup>the statutory maximum][<sup>F4</sup>the amount of £20,000 mentioned in sub-paragraph (3) (a)] and the amount equal to three times the sum of the amounts (if any) by which the return understates any person’s liability to aggregates levy.
- (5) In sub-paragraph (4) above the reference to the amount by which any person’s liability to aggregates levy is understated shall be taken to be equal to the sum of—
- (a) the amount (if any) by which his gross liability was understated; and

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- (b) the amount (if any) by which any entitlements of his to tax credits and repayments of aggregates levy were overstated.
- (6) In sub-paragraph (5) above “gross liability” means liability to aggregates levy before any deduction is made in respect of any entitlement to any tax credit or repayments of aggregates levy.

#### Textual Amendments

- F3** Sum in Sch. 6 para. 2(3)(a) substituted (E.W.) (12.3.2015) for words by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 12(3)(c)** (with reg. 5(1))
- F4** Words in Sch. 6 para. 2(4) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 12(3)(d)** (with reg. 5(1))

#### *Conduct involving evasions or misstatements*

- 3 (1) A person is guilty of an offence under this paragraph if his conduct during any particular period must have involved the commission by him of one or more offences under the preceding provisions of this Schedule.
- (2) For the purposes of any proceedings for an offence under this paragraph it shall be immaterial whether the particulars of the offence or offences that must have been committed are known.
- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4) below)—
- (a) on summary conviction, to a penalty of [<sup>F5</sup>the statutory maximum][<sup>F5</sup>£20,000] or to imprisonment for a term not exceeding six months, or to both;
- (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.
- (4) In the case of any offence under this paragraph, where [<sup>F6</sup>the statutory maximum][<sup>F6</sup>the amount of £20,000 mentioned in sub-paragraph (3)(a)] is less than three times the sum of the amounts of aggregates levy which are shown to be amounts that were or were intended to be evaded by the conduct in question, the penalty on summary conviction shall be the amount equal to three times that sum (instead of [<sup>F6</sup>the statutory maximum][<sup>F6</sup>the amount of £20,000 mentioned in sub-paragraph (3)(a)]).
- (5) For the purposes of sub-paragraph (4) above the amounts of levy that were or were intended to be evaded by any conduct shall be taken to include—
- (a) the amount of any tax credit, and
- (b) the amount of any repayment of aggregates levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (6) In determining for the purposes of sub-paragraph (4) above how much aggregates levy (in addition to any amount falling within sub-paragraph (5) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any

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liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of aggregates levy to which he was, or would have been, entitled.

#### Textual Amendments

- F5** Sum in Sch. 6 para. 3(3)(a) substituted (E.W.) (12.3.2015) for words by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 12(3)(e)** (with reg. 5(1))
- F6** Words in Sch. 6 para. 3(4) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 12(3)(f)** (with reg. 5(1))

#### *Preparations for evasion*

- 4 (1) Where a person—
- (a) becomes a party to any agreement under or by means of which a quantity of taxable aggregate is or is to be subjected to commercial exploitation in [<sup>F7</sup>England, Wales or Northern Ireland], or
  - (b) makes arrangements for any other person to become a party to such an agreement,
- he is guilty of an offence if he does so in the belief that aggregates levy chargeable on the aggregate in question will be evaded.
- (2) Subject to sub-paragraph (3) below, a person guilty of an offence under this paragraph shall be liable, on summary conviction, to a penalty of [<sup>F8</sup>level 5 on the standard scale][<sup>F8</sup>£20,000].
- (3) In the case of any offence under this paragraph, where [<sup>F9</sup>level 5 on the standard scale][<sup>F9</sup>the amount of £20,000 mentioned in sub-paragraph (2)] is less than three times the sum of the amounts of aggregates levy which are shown to be amounts that were or were intended to be evaded in respect of the aggregate in question, the penalty shall be the amount equal to three times that sum (instead of [<sup>F9</sup>level 5 on the standard scale][<sup>F9</sup>the amount of £20,000 mentioned in sub-paragraph (2)]).
- (4) For the purposes of sub-paragraph (3) above the amounts of levy that were or were intended to be evaded shall be taken to include—
- (a) the amount of any tax credit, and
  - (b) the amount of any repayment of aggregates levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (5) In determining for the purposes of sub-paragraph (3) above how much aggregates levy (in addition to any amount falling within sub-paragraph (4) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of aggregates levy to which he was, or would have been, entitled.

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**Textual Amendments**

- F7** Words in Sch. 6 para. 4(1)(a) substituted (with effect in accordance with s. 18(4) of the amending Act) by [Scotland Act 2016 \(c. 11\)](#), s. 72(3), **Sch. 1 para. 11**
- F8** Sum in Sch. 6 para. 4(2) substituted (E.W.) (12.3.2015) for words by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 12(3)(g)** (with reg. 5(1))
- F9** Words in Sch. 6 para. 4(3) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 12(3)(h)** (with reg. 5(1))

*Criminal proceedings etc.*

- 5 Sections 145 to 155 of the Customs and Excise Management Act 1979 (c. 2) (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences and penalties under this Part of this Schedule as they apply in relation to offences and penalties under the customs and excise Acts.

*Arrest*

- F10**6 .....

**Textual Amendments**

- F10** Sch. 6 para. 6 repealed (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 84(5), Sch. 22 para. 12(a), **Sch. 27 Pt. 5(1)**; S.I. 2007/3166, art. 3(a)

**PART 2**

CIVIL PENALTIES

*Evasion*

- F11**7 .....

**Textual Amendments**

- F11** Sch. 6 paras. 7-9 omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 122(2), **Sch. 40 para. 21(i)**; S.I. 2009/571, art. 2 (with art. 6)

**Modifications etc. (not altering text)**

- C1** Sch. 6 para. 7 savings for effects of 2008 c. 9, Sch. 40 para. 21 (5.3.2009) by [The Finance Act 2008, Schedule 41 \(Appointed Day and Transitional Provisions\) Order 2009 \(S.I. 2009/511\)](#), **art. 4(e)(i)**

*Liability of directors etc. for civil penalties*

- F11**8 .....

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**Textual Amendments**

**F11** Sch. 6 paras. 7-9 omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 122(2), **Sch. 40 para. 21(i)**; [S.I. 2009/571](#), **art. 2** (with **art. 6**)

**Modifications etc. (not altering text)**

**C2** Sch. 6 para. 8 savings for effects of 2008 c. 9, Sch. 40 para. 21 (5.3.2009) by [The Finance Act 2008](#), [Schedule 41 \(Appointed Day and Transitional Provisions\) Order 2009 \(S.I. 2009/511\)](#), **art. 4(e)(i)**

*Misdeclaration or neglect*

<sup>F119</sup> .....

**Textual Amendments**

**F11** Sch. 6 paras. 7-9 omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 122(2), **Sch. 40 para. 21(i)**; [S.I. 2009/571](#), **art. 2** (with **art. 6**)

*Incorrect records etc evidencing claim for tax credit*

<sup>F129A</sup> (1) This paragraph applies where—

- (a) a claim is made for a tax credit in such a case as is mentioned in—
  - (i) section 30(1)(c) of this Act (aggregate used in a prescribed industrial or agricultural process), <sup>F13</sup> ...
  - (ii) section 30A of this Act (transitional tax credit in Northern Ireland)<sup>F14</sup>, or
  - (iii) section 30B(3) of this Act (special tax credit in Northern Ireland);]
- (b) a record or other document is provided to the Commissioners as evidence for the claim; and
- (c) the record or document is incorrect.

(2) The person who provided the document to the Commissioners, and any person who provided it to anyone else with a view to its being used as evidence for a claim for a tax credit, shall be liable to a penalty.

(3) The amount of the penalty shall be equal to 105 per cent of the difference between—

- (a) the amount of tax credit that would have been due on the claim if the record or document had been correct, and
- (b) the amount (if any) of tax credit actually due on the claim.

(4) The providing of a record or other document shall not give rise to a penalty under this paragraph if the person who provided it satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for his having provided it.

(5) Where by reason of providing a record or other document—

- (a) a person is convicted of an offence (whether under this Act or otherwise),  
<sup>F15</sup> .....

<sup>F15</sup>(b) .....

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that person shall not by reason of the providing of the record or document be liable also to a penalty under this paragraph.]

#### Textual Amendments

- F12** Sch. 6 para. 9A inserted (*retrospective* from 1.5.2002 ) by [2002 c. 23](#), 133(5)(6)
- F13** Word in Sch. 6 para. 9A(1)(a)(i) omitted (26.3.2015) by virtue of [Finance Act 2015 \(c. 11\)](#), [s. 61\(5\)\(a\)](#)
- F14** Sch. 6 para. 9A(1)(a)(iii) and word inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), [s. 61\(5\)\(b\)](#)
- F15** Sch. 6 para. 9A(5)(b) and word omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\)](#), [s. 122\(2\)](#), [Sch. 40 para. 21\(i\)](#); [S.I. 2009/571](#), [art. 2](#) (with [art. 6](#))

#### Modifications etc. (not altering text)

- C3** Sch. 6 para. 9A(5)(b) savings for effects of 2008 c. 9, Sch. 40 para. 21 (5.3.2009) by [The Finance Act 2008, Schedule 41 \(Appointed Day and Transitional Provisions\) Order 2009 \(S.I. 2009/511\)](#), [art. 4\(e\)\(ii\)](#)

### PART 3

#### INTERPRETATION OF SCHEDULE

- 10 (1) References in this Schedule to obtaining a tax credit are references to bringing an amount into account as a tax credit for the purposes of aggregates levy on the basis that that amount is an amount which may be so brought into account in accordance with tax credit regulations.
- (2) References in this Schedule to obtaining a repayment of aggregates levy are references to obtaining either—
- the payment or repayment of any amount, or
  - the acknowledgement of a right to receive any amount,
- on the basis that that amount is the amount of a repayment of aggregates levy to which there is an entitlement.

**Changes to legislation:**

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