



Finance Act 1989

1989 CHAPTER 26

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER IV

MANAGEMENT

Penalties

162 Failure to make return

- (1) Section 93 of the Taxes Management Act 1970 (failure to comply with notice to make return for income tax or capital gains tax) shall be amended as follows.
- (2) In subsection (1) (initial and daily penalties), for paragraphs (a) and (b) there shall be substituted—
 - “(a) to a penalty not exceeding £300, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under paragraph (a) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”
- (3) The following subsection shall be substituted for subsection (2)—
 - “(2) If a failure by a person to comply with a notice such as is referred to in subsection (1) above continues after the end of the year of assessment following that during which it was served then, without prejudice to any penalty under subsection (1) above, he shall be liable to a penalty of an amount not exceeding so much of the tax with which he is charged (whether for one or for more than one year of assessment) in assessments—

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- (a) based wholly or partly on any income or chargeable gains that ought to have been included in the return required by the notice, and
- (b) made after the end of the year next following the year of assessment in which the notice was served,

as is attributable to the income or chargeable gains that ought to have been so included.”

(4) The following subsection shall be substituted for subsection (5)—

“(5) No penalty shall be imposed under subsection (1) above in respect of a failure at any time after the failure has been remedied.”

(5) The following subsection shall be substituted for subsection (7)—

“(7) If the person on whom a notice is served proves that there was no income or chargeable gain to be included in the return, the penalty under this section shall not exceed £100.”

(6) This section shall apply in relation to any failure to comply with a notice served on or after 6th April 1989.

163 Incorrect return, accounts etc

(1) In—

- (a) section 95(1) of the Taxes Management Act 1970 (incorrect return etc. for income tax or capital gains tax), and
- (b) section 96(1) of that Act (incorrect return etc. for corporation tax),

for the words “the aggregate” onwards there shall be substituted the words “the amount of the difference specified in subsection (2) below.”

(2) This section shall apply in relation to returns, statements, declarations or accounts delivered, made or submitted on or after the day on which this Act is passed.

164 Special returns, information etc

(1) Section 98 of the Taxes Management Act 1970 (special returns, information etc.) shall be amended as follows.

(2) In subsection (1) (initial and daily penalties)—

- (a) for the word “Where” there shall be substituted the words “Subject to section 98A below, where”, and
- (b) for the words “subsection (3)” onwards there shall be substituted the words “subsections (3) and (4) below—

- (i) to a penalty not exceeding £300, and
- (ii) if the failure continues after a penalty is imposed under paragraph (i) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under paragraph (i) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”

- (3) In subsection (2) (maximum penalty for information given fraudulently or negligently) —
- (a) for the word “Where” there shall be substituted the words “Subject to section 98A below, where”, and
 - (b) for the words “ £250, or, in the case of fraud, £500” there shall be substituted “ £3,000”.
- (4) The following subsections shall be substituted for subsection (3)—
- “(3) No penalty shall be imposed under subsection (1) above in respect of a failure within paragraph (a) of that subsection at any time after the failure has been remedied.
 - (4) No penalty shall be imposed under paragraph (ii) of subsection (1) above in respect of a failure within paragraph (b) of that subsection at any time after the failure has been remedied.”
- (5) In the Table—
- (a) in the first column, in the entry relating to Part III of the Taxes Management Act 1970, the words “, except sections 16 and 24(2)” shall be omitted;
 - (b) the entries relating to sections 38(5) and 42 of the Taxes Act 1988 shall be moved from the second column to the appropriate place in the first column; and
 - (c) the entry relating to section 481(5)(k) of that Act shall be omitted from the first column and an entry relating to section 482(2) of that Act shall be inserted at the appropriate place in the second column.
- (6) In consequence of the amendment made by subsection (5)(a) above section 16(6) of the Taxes Management Act 1970 shall cease to have effect.
- (7) This section shall apply in relation to—
- (a) any failure to comply with a notice or to furnish information, give a certificate or produce a document or record beginning on or after the day on which this Act is passed, and
 - (b) the furnishing, giving, producing or making of any incorrect information, certificate, document, record or declaration on or after that day.

165 Special penalties in the case of certain returns

- (1) The following section shall be inserted after section 98 of the Taxes Management Act 1970—

“98A Special penalties in the case of certain returns

- (1) Regulations under section 203(2) (PAYE) or 566(1) (sub-contractors) of the principal Act may provide that this section shall apply in relation to any specified provision of the regulations.
- (2) Where this section applies in relation to a provision of regulations, any person who fails to make a return in accordance with the provision shall be liable—
 - (a) to a penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but

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- excluding any month after the twelfth or for which a penalty under this paragraph has already been imposed, and
- (b) if the failure continues beyond twelve months, without prejudice to any penalty under paragraph (a) above, to a penalty not exceeding so much of the amount payable by him in accordance with the regulations for the year of assessment to which the return relates as remained unpaid at the end of 19th April after the end of that year.
- (3) For the purposes of subsection (2)(a) above, the relevant monthly amount in the case of a failure to make a return—
- (a) where the number of persons in respect of whom particulars should be included in the return is fifty or less, is £100, and
- (b) where that number is greater than fifty, is £100 for each fifty such persons and an additional £100 where that number is not a multiple of fifty.
- (4) Where this section applies in relation to a provision of regulations, any person who fraudulently or negligently makes an incorrect return of a kind mentioned in the provision shall be liable to a penalty not exceeding the difference between—
- (a) the amount payable by him in accordance with the regulations for the year of assessment to which the return relates, and
- (b) the amount which would have been so payable if the return had been correct.”
- (2) In relation to a failure to make a return beginning before such day as the Treasury may by order made by statutory instrument appoint, section 98A(2) shall have effect with the substitution of the following paragraph for paragraph (a)—
- “(a) to—
- (i) a penalty not exceeding twelve times the relevant monthly amount, and
- (ii) if the failure continues after a penalty is imposed under sub-paragraph (i) above, a further penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this sub-paragraph has already been imposed,”.

166 Assisting in preparation of incorrect return etc

- (1) The following section shall be substituted for section 99 of the Taxes Management Act 1970—

“99 Assisting in preparation of incorrect return etc

Any person who assists in or induces the preparation or delivery of any information, return, accounts or other document which—

- (a) he knows will be, or is or are likely to be, used for any purpose of tax, and
- (b) he knows to be incorrect,
- shall be liable to a penalty not exceeding £3,000.”

- (2) This section shall apply in relation to assistance and inducements occurring on or after the day on which this Act is passed.

167 Determination of penalties

The following sections shall be substituted for section 100 of the Taxes Management Act 1970—

“100 Determination of penalties by officer of Board

- (1) Subject to subsection (2) below and except where proceedings for a penalty have been instituted under section 100D below or a penalty has been imposed by the Commissioners under section 53 of this Act, an officer of the Board authorised by the Board for the purposes of this section may make a determination imposing a penalty under any provision of the Taxes Acts and setting it at such amount as, in his opinion, is correct or appropriate.
- (2) Subsection (1) above does not apply where the penalty is a penalty under—
- (a) section 93(1) above as it has effect before the amendments made by section 162 of the Finance Act 1989 or section 93(1)(a) above as it has effect after those amendments,
 - (b) section 94(1) above as it has effect before the substitution made by section 83 of the Finance (No.2) Act 1987,
 - (c) section 98(1) above as it has effect before the amendments made by section 164 of the Finance Act 1989 or section 98(1)(i) above as it has effect after those amendments, or
 - (d) paragraph (a)(i) of section 98A(2) above as it has effect by virtue of section 165(2) of the Finance Act 1989.
- (3) Notice of a determination of a penalty under this section shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against the determination may be made.
- (4) After the notice of a determination under this section has been served the determination shall not be altered except in accordance with this section or on appeal.
- (5) If it is discovered by an officer of the Board authorised by the Board for the purposes of this section that the amount of a penalty determined under this section is or has become insufficient the officer may make a determination in a further amount so that the penalty is set at the amount which, in his opinion, is correct or appropriate.
- (6) In any case where—
- (a) a determination under this section is of a penalty under section 94(6) above, and
 - (b) after the determination has been made it is discovered by an officer of the Board authorised by the Board for the purposes of this section that the amount which was taken into account as the relevant amount of tax is or has become excessive,

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the determination shall be revised so that the penalty is set at the amount which is correct; and, where more than the correct amount has already been paid, the appropriate amount shall be repaid.

100A Provisions supplementary to section 100

- (1) Where a person who has incurred a penalty has died, a determination under section 100 above which could have been made in relation to him may be made in relation to his personal representatives, and any penalty imposed on personal representatives by virtue of this subsection shall be a debt due from and payable out of his estate.
- (2) A penalty determined under section 100 above shall be due and payable at the end of the period of thirty days beginning with the date of the issue of the notice of determination.
- (3) A penalty determined under section 100 above shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

100B Appeals against penalty determinations

- (1) An appeal may be brought against the determination of a penalty under section 100 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (2) On an appeal against the determination of a penalty under section 100 above section 50(6) to (8) of this Act shall not apply but—
 - (a) in the case of a penalty which is required to be of a particular amount, the Commissioners may—
 - (i) if it appears to them that no penalty has been incurred, set the determination aside,
 - (ii) if the amount determined appears to them to be correct, confirm the determination, or
 - (iii) if the amount determined appears to them to be incorrect, increase or reduce it to the correct amount,
 - (b) in the case of any other penalty, the Commissioners may—
 - (i) if it appears to them that no penalty has been incurred, set the determination aside,
 - (ii) if the amount determined appears to them to be appropriate, confirm the determination,
 - (iii) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate, or
 - (iv) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.
- (3) Without prejudice to section 56 of this Act, an appeal from a decision of the Commissioners against the amount of a penalty which has been determined under section 100 above or this section shall lie, at the instance of the person

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liable to the penalty, to the High Court or, in Scotland, to the Court of Session as the Court of Exchequer in Scotland; and on that appeal the court shall have the like jurisdiction as is conferred on the Commissioners by virtue of this section.

100C Penalty proceedings before Commissioners

- (1) An officer of the Board authorised by the Board for the purposes of this section may commence proceedings before the General or Special Commissioners for any penalty to which subsection (1) of section 100 above does not apply by virtue of subsection (2) of that section.
- (2) Proceedings under this section shall be by way of information in writing, made to the Commissioners, and upon summons issued by them to the defendant (or defender) to appear before them at a time and place stated in the summons; and they shall hear and decide each case in a summary way.
- (3) Any penalty determined by the Commissioners in proceedings under this section shall for all purposes be treated as if it were tax charged in an assessment and due and payable.
- (4) An appeal against the determination of a penalty in proceedings under this section shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland—
 - (a) by any party on a question of law, and
 - (b) by the defendant (or, in Scotland, the defender) against the amount of the penalty.
- (5) On any such appeal the court may—
 - (a) if it appears that no penalty has been incurred, set the determination aside,
 - (b) if the amount determined appears to be appropriate, confirm the determination,
 - (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the court considers appropriate, or
 - (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the court considers appropriate.

100D Penalty proceedings before court

- (1) Where in the opinion of the Board the liability of any person for a penalty arises by reason of the fraud of that or any other person, proceedings for the penalty may be instituted before the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland.
- (2) Proceedings under this section which are not instituted (in England, Wales or Northern Ireland) under the Crown Proceedings Act 1947 by and in the name of the Board as an authorised department for the purposes of that Act shall be instituted—
 - (a) in England and Wales, in the name of the Attorney General,
 - (b) in Scotland, in the name of the Lord Advocate, and
 - (c) in Northern Ireland, in the name of the Attorney General for Northern Ireland.

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- (3) Any proceedings under this section instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947 and any such proceedings instituted in Northern Ireland shall be deemed to be civil proceedings within the meaning of that Part of that Act as for the time being in force in Northern Ireland.
- (4) If in proceedings under this section the court does not find that fraud is proved but consider that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.”

168 Amendments consequential on section 167

- (1) In consequence of the amendment made by section 167 above the Taxes Management Act 1970 shall be amended in accordance with subsections (2) to (8) below.
- (2) In section 20A (power to call for papers of tax accountant)—
 - (a) in subsection (1), for the words “awarded against him a penalty incurred by” there shall be substituted the words “a penalty imposed on”,
 - (b) in subsection (2), for the word “award” in the first place where it occurs there shall be substituted the word “penalty” and for that word in the second place where it occurs there shall be substituted the word “imposition”, and
 - (c) in subsection (4), for the words “award against” there shall be substituted the words “imposition on” and for the word “award” there shall be substituted the word “penalty”.
- (3) In section 53 (summary award of penalties by Commissioners)—
 - (a) in subsection (1), for the word “awarded” there shall be substituted the word “determined” and for the words “for its recovery” there shall be substituted the words “under section 100C of this Act”,
 - (b) in subsection (2), for the words “award” and “decision” there shall be substituted the word “determination” and for the word “awarded” there shall be substituted the word “determined”, and
 - (c) in subsection (3), for the word “awarded” there shall be substituted the word “determined”.
- (4) In section 102 (mitigation of penalties), for the words “recovery thereof” there shall be substituted the words “a penalty”.
- (5) In section 105 (evidence)—
 - (a) the following paragraph shall be substituted for paragraph (a) of subsection (1)
 -
 - “(a) pecuniary settlements may be accepted instead of a penalty being determined, or proceedings being instituted, in relation to any tax,”,
 - (b) in paragraph (b) of subsection (2), for the words “sum” onwards there shall be substituted the words “tax due from him”, and
 - (c) after that paragraph there shall be inserted the words “and
 - (c) any proceedings for a penalty or on appeal against the determination of a penalty.”

(6) In section 112 (loss of documents etc.), the following subsection shall be added at the end—

“(3) The references in subsection (1) above to assessments to tax include references to determinations of penalties; and in its application to such determinations the proviso to that subsection shall have effect with the appropriate modifications.”

(7) In section 113 (form of documents)—

(a) the following subsection shall be inserted after subsection (1C)—

“(1D) Where an officer of the Board has decided to impose a penalty under section 100 of this Act and has taken all other decisions needed for arriving at the amount of the penalty, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the determination on the person liable to the penalty.”, and

(b) in subsection (3)—

(i) after the words “Every assessment,” there shall be inserted the words “determination of a penalty,”

(ii) after the words “notice of assessment” there shall be inserted the words “, of determination”, and

(iii) after the words “levying tax” there shall be inserted the words “or determining a penalty”.

(8) In paragraph 5 of Schedule 3 (rules for assigning proceedings to Commissioners), for the words “section 100(4)” there shall be substituted the words “section 100C or an appeal under section 100B against the determination of a penalty”.

(9) In section 41 of the Development Land Tax Act 1976 (administration of development land tax) the following subsection shall be inserted after subsection (1)—

“(1A) Nothing in sections 167 to 169 of the Finance Act 1989 shall apply to penalties relating to development land tax.”

169 Time limits

(1) The following section shall be substituted for section 103 of the Taxes Management Act 1970—

“103 Time limits for penalties

(1) Subject to subsection (2) below, where the amount of a penalty is to be ascertained by reference to tax payable by a person for any period, the penalty may be determined by an officer of the Board, or proceedings for the penalty may be commenced before the Commissioners or a court—

(a) at any time within six years after the date on which the penalty was incurred, or

(b) at any later time within three years after the final determination of the amount of tax by reference to which the amount of the penalty is to be ascertained.

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- (2) Where the tax was payable by a person who has died, and the determination would be made in relation to his personal representatives, subsection (1)(b) above does not apply if the tax was charged in an assessment made later than six years after the end of the chargeable period for which it was charged.
 - (3) A penalty under section 99 of this Act may be determined by an officer of the Board, or proceedings for such a penalty may be commenced before a court, at any time within twenty years after the date on which the penalty was incurred.
 - (4) A penalty to which neither subsection (1) nor subsection (3) above applies may be so determined, or proceedings for such a penalty may be commenced before the Commissioners or a court, at any time within six years after the date on which the penalty was incurred or began to be incurred.”
- (2) The amendment made by subsection (1) above shall not affect the application of section 103(4) of the Taxes Management Act 1970 to proceedings under section 100 of that Act as it has effect before the amendment made by section 167 above.

170 Up-rating of certain penalties

- (1) In section 23(8) of the Taxes Act 1988 (maximum penalty for agents failing to make certain payments on behalf of principals), for “£50” there shall be substituted “£300”.
- (2) In section 234(4) of that Act (penalty for failure to comply with provisions as to explanation of deduction from dividends etc.), for “£10” and “£100” there shall be substituted respectively “£60” and “£600”.
- (3) In section 306(6) of that Act (maximum penalty for false certificates or statements relating to investment in corporate trades), for the words “£250 or, in the case of fraud, £500” there shall be substituted “£3,000”.
- (4) In—
 - (a) section 619(7) of that Act (maximum penalty for false statements or representations relating to relief for qualifying premiums),
 - (b) section 653 of that Act (maximum penalty for statements or representations about personal pension schemes), and
 - (c) section 658(5) of that Act (maximum penalty for false statements or representations relating to purchased life annuities),
 for “£500” there shall be substituted “£3,000”.
- (5) In paragraph 2(4) of Schedule 19A to that Act and Schedule 16A to the Finance Act 1973 (maximum penalty for incorrect return by Lloyd’s agent), for the words “£500 in the case of fraud and £250 in the case of negligence” there shall be substituted “£3,000”.
- (6) This section shall apply in relation to things done or omitted on or after the day on which this Act is passed.