

*Status: Point in time view as at 03/05/1994. This version of this schedule contains provisions that are not valid for this point in time.*

*Changes to legislation: Finance Act 1994, SCHEDULE 6 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 6 U.K.

Section 40.

#### AIR PASSENGER DUTY: ADMINISTRATION AND ENFORCEMENT

##### *Application of excise enactments*

- 1 (1) The <sup>M1</sup>Customs and Excise Management Act 1979 shall have effect for the purposes of Chapter IV of Part I of this Act in relation to—
- (a) any person who is or is liable to be registered,
  - (b) any fiscal representative, and
  - (c) any handling agent where a notice given to him under section 37 of this Act is effective,
- as it has effect in relation to revenue traders, but with the modifications mentioned in sub-paragraph (2), and paragraphs 3 and 4, below.
- (2) That Act shall have effect, in relation to any person to whom sub-paragraph (1) above applies, as if—
- (a) the reference in section 112(1) (power of entry) to vehicles included aircraft,
  - (b) section 116 (payment of duty) were omitted,
  - (c) in section 117 (execution and distress)—
    - (i) the references to goods liable to any excise duty included tickets, and
    - (ii) the references to the trade in respect of which duty is imposed were to the trade or business by virtue of which sub-paragraph (1) above applies to him, and
  - (d) any power under section 118B(1)(b) to require any person who is or is liable to be registered to produce or cause to be produced any such documents as are referred to in that subsection included power to require his fiscal representative to produce them.

#### Marginal Citations

M1 1979 c. 2.

- 2 Section 118B of that Act shall have effect for the purposes of Chapter IV of Part I of this Act in relation to any person who, in the course of a trade or business carried on by him, issues or arranges for the issue of tickets as if—
- (a) he were a revenue trader, and
  - (b) the references to services supplied by or to him in the course or furtherance of a business were to services supplied by or to him in the course of issuing or arranging for the issue of tickets.
- 3 (1) A notice may require any person to whom paragraph 1 above applies to furnish, at specified times and in the specified form, any such information to the Commissioners as he could be required by the Commissioners to furnish under subsection (1) of

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section 118B; and any such requirement shall have effect as a requirement under that subsection.

(2) A notice may require any person to whom paragraph 1 or 2 above applies to produce or cause to be produced for inspection by an officer, at specified places and times, any such documents as he could be required by the officer to produce under that subsection; and any such requirement shall have effect as a requirement under that subsection.

(3) In this paragraph—

“notice” means a notice published, and not withdrawn, by the Commissioners, and

“specified” means specified in such a notice.

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In relation to any person to whom paragraph 1 or 2 above applies—

(a) that Act shall have effect as if “document” had the same meaning as in Chapter IV of Part I of this Act, and

(b) that Act and this Schedule shall have effect as if any reference to the production of any document, in the case of information recorded otherwise than in legible form, were to producing a copy of the information in legible form.

### *Information*

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(1) Any person having the management of an airport shall, if required to do so by the Commissioners—

(a) give notice to the Commissioners, within such time and in such form as they may reasonably require, stating whether or not he holds or has at any time held any information relating to the matters mentioned in sub-paragraph (3) below and, if he does or has done, stating the general nature of the information, and

(b) furnish to the Commissioners, within such time and in such form as they may reasonably require, such information relating to such matters as they may reasonably specify.

(2) Any such person shall, if required to do so by an officer, produce any documents relating to those matters, or cause them to be produced, for inspection by that officer.

(3) The matters referred to in sub-paragraphs (1) and (2) above are—

(a) whether or not any aircraft is a chargeable aircraft,

(b) who is the operator of any aircraft,

(c) whether or not any person is a handling agent of the operator of any aircraft, and

(d) whether or not any duty is payable on the carriage of any person and, if so, the amount of duty.

(4) Documents produced under sub-paragraph (2) above shall be produced, at such time as the officer may reasonably require, at the principal place of business of the person required to produce them or cause them to be produced or at such other place as the officer may reasonably require.

(5) An officer may take copies of, or make extracts from, any document produced under this paragraph.

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- (6) If it appears to an officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document produced under this paragraph.
- (7) Where an officer removes a document under sub-paragraph (6) above, then—
  - (a) if the person from whom it is removed so requests, the officer shall give him a receipt for the document,
  - (b) if the document is reasonably required for the proper conduct of any business, the officer shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced, and
  - (c) if the document is lost or damaged, the Commissioners shall be liable to compensate the owner for any expenses reasonably incurred by him in replacing or repairing it.
- (8) Any reference in this paragraph to the production of a document, in the case of information recorded otherwise than in legible form, is to producing a copy of the information in legible form.
- (9) Any failure by a person having the management of an airport to comply with a requirement imposed under this paragraph shall attract a penalty under section 9 of this Act.

#### *Application of Chapter II*

- 6 An appeal which relates to duty shall not be entertained under section 16 of this Act at any time if any return which the appellant is required by regulations made by virtue of section 38 of this Act to make has not at that time been made.

#### *Interest payable to Commissioners*

- 7 (1) Where an assessment of duty due from any person (“the person assessed”) is made under section 12 of this Act and any of the conditions in sub-paragraph (2) below is fulfilled, the whole of the amount assessed shall, subject to paragraph 8 below, carry interest at the specified rate from the reckonable date until payment.
- (2) The conditions are—
  - (a) that the assessment relates to an accounting period in respect of which either a return has previously been made or an earlier assessment has already been notified to the person assessed, or
  - (b) that the assessment relates to an accounting period which exceeds one month and begins on the date on which the person assessed was, or became liable to be, registered.
- (3) In a case where—
  - (a) the circumstances are such that an assessment of duty due from any person could have been made and, if it had been made, the conditions in sub-paragraph (2) above would have been fulfilled, but
  - (b) before such an assessment was made the duty was paid (so that no such assessment was necessary),the whole of the amount paid shall carry interest at the specified rate from the reckonable date until the date on which it was paid.

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- (4) In this paragraph and paragraph 8 below the “reckonable date” means the latest date on which a return is required to be made under Chapter IV of Part I of this Act for the accounting period to which the amount assessed or paid relates; and interest under this paragraph shall run from the reckonable date even if that date is a non-business day, within the meaning of section 92 of the <sup>M2</sup>Bills of Exchange Act 1882.
- (5) Interest under this paragraph shall be paid without any deduction of income tax.

**Marginal Citations**

**M2** 1882 c. 61.

- 8 (1) Where on an appeal by any person (“the appellant”) to a tribunal under section 16 of this Act against an assessment of duty—
- (a) it is found that the whole or any part of the duty was due from him, and
  - (b) the amount due, or any part of that amount, has not been paid and no cash security has been given for it,
- that amount or, as the case may be, that part of it shall carry interest at such rate as the tribunal may determine from the reckonable date until payment.
- (2) In sub-paragraph (1) above, “cash security” means such adequate security as enables the Commissioners to place the amount in question on deposit.
- (3) Interest under this paragraph shall be paid without any deduction of income tax.

*Interest payable by the Commissioners*

- 9 (1) Where, due to an error on the part of the Commissioners, a person has paid by way of duty an amount which was not due and which the Commissioners are in consequence liable to repay to him, they shall (subject to the following provisions of this paragraph and paragraph 10) pay interest to him on that amount at the specified rate for the applicable period (if and to the extent that they would not be liable to do so apart from this paragraph).
- [<sup>F1</sup>(1A) In sub-paragraph (1) above the reference to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied.]
- (2) For the purposes of this paragraph the applicable period is the period—
- (a) beginning with the date on which the payment is received by the Commissioners, and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable;
- but in determining that period for those purposes there shall be left out of account any period referable to the raising and answering of any reasonable enquiry relating to any matter giving rise to, or otherwise connected with, the person’s entitlement to interest under this paragraph.
- (3) In determining for the purposes of sub-paragraph (2) above whether any period is referable to the raising and answering of such an enquiry as is there mentioned, there

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shall be taken to be so referable any period which begins with the date on which the Commissioners first consider it necessary to make such an enquiry and ends with the date on which the Commissioners—

- (a) satisfy themselves that they have received a complete answer to the enquiry, or
- (b) determine not to make the enquiry or (if they have made it) not to pursue it further;

but excluding so much of that period as may be prescribed.

- (4) For the purposes of sub-paragraph (3) above it is immaterial—
  - (a) whether any enquiry is in fact made, or
  - (b) whether any enquiry is or might have been made of the person referred to in sub-paragraph (1) above or of an authorised person or of some other person.
- (5) The Commissioners shall only be liable to pay interest under this paragraph on a claim made in writing for that purpose.
- [<sup>F2</sup>(6) A claim under this paragraph shall not be made more than three years after the end of the applicable period to which it relates.]
- [<sup>F3</sup>(7) Any reference in this paragraph to the authorisation by the Commissioners of the payment of any amount includes a reference to the discharge by way of set-off of the Commissioners' liability to pay that amount.]

#### Textual Amendments

- F1** Sch. 6 para. 9(1A) inserted (*retrospectively*) by 1997 c. 16, s. 50(1), **Sch. 5 para. 7(1)(2)**
- F2** Sch. 6 para. 9(6) substituted (*retrospectively*) by 1997 c. 16, s. 50(1), **Sch. 5 para. 7(1)(3)**
- F3** Sch. 6 para. 9(7) substituted (*retrospectively*) by 1997 c. 16, s. 50(1), **Sch. 5 para. 7(1)(4)**

- 9 (1) Where, due to an error on the part of the Commissioners, a person has paid by way of duty an amount which was not due and which the Commissioners are in consequence liable to repay to him, they shall (subject to the following provisions of this paragraph and paragraph 10) pay interest to him on that amount at the specified rate for the applicable period (if and to the extent that they would not be liable to do so apart from this paragraph).
- (2) For the purposes of this paragraph the applicable period is the period—
  - (a) beginning with the date on which the payment is received by the Commissioners, and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable;but in determining that period for those purposes there shall be left out of account any period referable to the raising and answering of any reasonable enquiry relating to any matter giving rise to, or otherwise connected with, the person's entitlement to interest under this paragraph.
- (3) In determining for the purposes of sub-paragraph (2) above whether any period is referable to the raising and answering of such an enquiry as is there mentioned, there shall be taken to be so referable any period which begins with the date on which the

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Commissioners first consider it necessary to make such an enquiry and ends with the date on which the Commissioners—

- (a) satisfy themselves that they have received a complete answer to the enquiry, or
- (b) determine not to make the enquiry or (if they have made it) not to pursue it further;

but excluding so much of that period as may be prescribed.

- (4) For the purposes of sub-paragraph (3) above it is immaterial—
    - (a) whether any enquiry is in fact made, or
    - (b) whether any enquiry is or might have been made of the person referred to in sub-paragraph (1) above or of an authorised person or of some other person.
  - (5) The Commissioners shall only be liable to pay interest under this paragraph on a claim made in writing for that purpose.
  - (6) No claim shall be made under this paragraph after the expiry of six years from the date on which the claimant discovered the error or could with reasonable diligence have discovered it.
  - (7) Any reference in this paragraph to receiving a payment from the Commissioners includes a reference to the discharge, by way of set-off, of their liability to make it.
- 10
- (1) Where a person (“the appellant”) who appeals to a tribunal under section 16 of this Act against an assessment of duty has paid, or given cash security for, the whole or any part of the duty, sub-paragraph (2) below shall apply if the tribunal find that the whole or any part of the amount paid or secured is not due.
  - (2) The Commissioners shall pay interest to the appellant, at such rate as the tribunal may determine, on—
    - (a) so much of the duty paid as is found not to be due or,
    - (b) so much of the cash security as relates to duty found not to be due,
 for the period beginning with the payment of duty or, as the case may be, giving of the cash security and ending with its repayment.
  - (3) In this paragraph “cash security” means such adequate security as enables the Commissioners to place the amount in question on deposit.

*Interest: specified rate*

- 11
- (1) In paragraphs 7 and 9 above, “the specified rate” means such rate as may be specified in an order.
  - (2) An order specifying rates of interest—
    - (a) may specify different rates for different purposes,
    - (b) shall apply to interest for periods beginning on or after the date when the order is expressed to come into force, whether or not interest runs from before that date.

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VALID FROM 01/05/1995

[<sup>F4</sup> Assessment of interest]

**Textual Amendments**

**F4** Sch. 6: Cross-heading and para. 11A inserted (1.5.1995 with application as mentioned in s. 16(4) of the amending Act) by 1995 c. 4, s. 16(1)

- [<sup>F5</sup>11A(1) Where by virtue of paragraph 7 above duty due from any person for an accounting period carries interest, the Commissioners may assess that person to an amount of interest in accordance with this paragraph.
- (2) Notice of the assessment shall be given to the person liable for the interest or a representative of his.
  - (3) The amount of the interest shall be calculated by reference to a period ending on a date (“the due date”) no later than the date of the notice.
  - (4) The notice shall specify—
    - (a) the amount of the duty which carries the interest assessed (“the specified duty”);
    - (b) the amount of the interest assessed (“the specified interest”);
    - (c) the due date; and
    - (d) a date by which that amount is required to be paid (“the payment date”).
  - (5) Sub-paragraphs (6) and (7) below apply where the specified duty or any part of it is unpaid on the date of the notice.
  - (6) If the unpaid amount or any part of it is paid by the payment date, the payment shall be treated for the purposes of paragraph 7 above as made on the due date.
  - (7) To the extent that the unpaid amount is not paid by the payment date, an assessment may be made under this paragraph in respect of any interest on the unpaid amount which accrues after the due date.
  - (8) For the purposes of sub-paragraphs (6) and (7) above, a payment—
    - (a) which purports to be a payment of the unpaid amount or any part of it, but
    - (b) which is insufficient to discharge both the liability to pay the unpaid amount and the liability to pay the specified interest,shall be treated as made in discharge (or partial discharge) of the liability to pay the specified interest before it is treated as discharging to any extent the liability to pay the unpaid amount.
  - (9) A notice of interest assessed under this paragraph may be combined in one document with notification of an assessment under section 12 of this Act which relates to the specified duty.
  - (10) A notice which is so combined must comply with the requirements of this paragraph which relate to a notice which is not so combined.
  - (11) The specified interest shall be recoverable as if it were duty due from the person assessed to that interest.

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- (12) For the purposes of this paragraph a person is a representative of another if—
- (a) he is that other’s personal representative;
  - (b) he is that other’s trustee in bankruptcy or is a receiver or liquidator appointed in relation to that other or in relation to any of his property; or
  - (c) he is a person acting in some other representative capacity in relation to that other.]

#### Textual Amendments

- F5** Sch. 6: Cross-heading and para. 11A inserted (1.5.1995 with application as mentioned in s. 16(4) of the amending Act) by 1995 c. 4, s. 16(1) (with Sch. 8 paras. 55(2) 57(1))

#### *Evidence by certificate*

- 12 (1) A certificate of the Commissioners—
- (a) that a person was or was not, on any date specified in the certificate, registered or liable to be registered under section 33 of this Act,
  - (b) that the name of any person was or was not, on any date so specified, shown as the fiscal representative of any person in the register kept under that section,
  - (c) that any aircraft was or was not, on any date so specified, a chargeable aircraft,
  - (d) that any return required to be made under regulations made by virtue of section 38 of this Act had not, on any date so specified, been made, or
  - (e) that any duty shown as due in such a return, or in an assessment under section 12 of this Act, had not, on any date so specified, been paid,
- shall be sufficient evidence of that fact until the contrary is proved.
- (2) A photograph of any document furnished to the Commissioners for the purposes of Chapter IV of Part I of this Act and certified by them to be such a photograph shall be admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.
- (3) Any document purporting to be a certificate under sub-paragraph (1) or (2) above shall be taken to be such a certificate until the contrary is proved.

#### *Preferential debt*

- 13 (1) In Schedule 6 to the <sup>M3</sup>Insolvency Act 1986 (categories of preferential debts) in Category 2 (debts due to Customs and Excise) after paragraph 5B there shall be inserted—
- “5C Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.”
- (2) In Schedule 3 to the <sup>M4</sup>Bankruptcy (Scotland) Act 1985 (list of preferred debts) at the end of paragraph 2 (debts due to Customs and Excise) there shall be added—

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“(6) Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.”

(3) In Schedule 4 to the <sup>M5</sup>Insolvency (Northern Ireland) Order 1989 (categories of preferential debts) in Category 2 (debts due to Customs and Excise) after paragraph 5B there shall be inserted—

“5C Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.”

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**Marginal Citations**

**M3** 1986 c. 45.

**M4** 1985 c. 66.

**M5** S.I. 1989/2405 (N.I. 19)

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