

SCHEDULES

SCHEDULE 17

STAMP DUTY: PENALTIES OTHER THAN ON LATE STAMPING

PART II

DETERMINATION OF PENALTY AND APPEALS

Introduction

- 9 (1) This Part of this Schedule applies to penalties under the enactments relating to stamp duty, other than penalties under section 15B of the Stamp Act 1891 (penalty on late stamping).
- (2) Nothing in this Part of this Schedule affects criminal proceedings for an offence.

Determination of penalty by officer of Commissioners

- 10 (1) An officer of the Commissioners authorised by the Commissioners for the purposes of this paragraph may make a determination—
- (a) imposing the penalty, and
 - (b) setting it at such amount as in the officer's opinion is correct or appropriate.
- (2) Notice of the determination must be served on the person liable to the penalty.
- The notice must also state—
- (a) the date on which the notice is issued, and
 - (b) the time within which an appeal against the determination may be made.
- (3) After notice of the determination has been served, the determination cannot be altered except—
- (a) in accordance with sub-paragraph (4),
 - (b) by agreement in writing, or
 - (c) on appeal.
- (4) If it is discovered by an officer of the Commissioners authorised by the Commissioners for the purposes of this paragraph that the amount of a penalty determined under this paragraph 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 the officer's opinion is correct or appropriate.
- (5) If a person liable to a penalty has died—
- (a) any determination which could have been made in relation to that person may be made in relation to his personal representatives, and

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- (b) any penalty imposed on them is a debt due from and payable out of the person's estate.
- (6) A penalty determined under this paragraph is due and payable at the end of the period of 30 days beginning with the date of the issue of the notice of determination.
- 11 (1) An appeal lies to the Special Commissioners against a determination under paragraph 10.
- (2) Notice of appeal must be given in writing to the officer of the Commissioners by whom the determination was made within 30 days of the date of the notice of the determination.
- (3) An appeal may be brought out of time with the consent of the Commissioners or the Special Commissioners.
 - The Commissioners—
 - (a) shall give that consent if satisfied, on an application for that purpose, that there was a reasonable excuse for not bringing the appeal within the time limit, and
 - (b) if not so satisfied, shall refer the matter for determination by the Special Commissioners.
- (4) The notice of appeal must specify the grounds of appeal, but on the hearing of the appeal the Special Commissioners may allow the appellant to put forward a ground not specified in the notice of appeal, and take it into consideration, if satisfied that the omission was not wilful or unreasonable.
- (5) The powers conferred by section 46A(1)(c) and (2) to (4) and sections 56B to 56D of the Taxes Management Act 1970 (power of Lord Chancellor to make regulations as to jurisdiction, practice and procedure in relation to appeals to Special Commissioners) apply in relation to appeals under this paragraph.
- (6) On an appeal under this paragraph the Special Commissioners may—
 - (a) if it appears to them that no penalty has been incurred, set the determination aside;
 - (b) if the amount determined appears to them to be appropriate, confirm the determination;
 - (c) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate;
 - (d) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.
- 12 (1) Section 56A of the Taxes Management Act 1970 (general right of appeal on point of law) applies in relation to a decision of the Special Commissioners under paragraph 11.
- (2) Without prejudice to that right of appeal, an appeal lies against the amount of a penalty determined by the Special Commissioners under paragraph 11, at the instance of the person liable to the penalty—
 - (a) to the High Court, or
 - (b) in Scotland, to the Court of Session sitting as the Court of Exchequer.
- (3) On an appeal under sub-paragraph (2) the court has the same powers as are conferred on the Special Commissioners by paragraph 11(6) above.

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Penalty proceedings before the court

- 13 (1) Where in the opinion of the Commissioners the liability of a person for a penalty arises by reason of his fraud or the fraud of another person, proceedings for the penalty may be brought—
- (a) in the High Court, or
 - (b) in Scotland, in the Court of Session sitting as the Court of Exchequer.
- (2) Proceedings under this paragraph in England and Wales shall be brought—
- (a) by and in the name of the Commissioners as an authorised department for the purposes of the Crown Proceedings Act 1947, or
 - (b) in the name of the Attorney General.
- Any such proceedings shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947.
- (3) Proceedings under this paragraph in Scotland shall be brought in the name of the Advocate General for Scotland.
- (4) Proceedings under this paragraph in Northern Ireland shall be brought—
- (a) by and in the name of the Commissioners as an authorised department for the purposes of the Crown Proceedings Act 1947 as for the time being in force in Northern Ireland, or
 - (b) in the name of the Attorney General for Northern Ireland.
- Any such proceedings shall be deemed to be civil proceedings within the meaning of Part II of the Crown Proceedings Act 1947 as for the time being in force in Northern Ireland.
- (5) If in proceedings under this paragraph the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Commissioners as to fraud, the penalty would not have been a matter for the court.
- (6) Paragraph 10 above (determination of penalty by officer of Commissioners) does not apply where proceedings are brought under this paragraph.

Supplementary provisions

- 14 (1) The Commissioners may in their discretion mitigate any penalty, or stay or compound any proceedings for the recovery of a penalty.
- (2) They may also, after judgment, further mitigate or entirely remit the penalty.
- 15 A penalty may be determined under paragraph 10, or proceedings for a penalty brought under paragraph 13, at any time within six years after the date on which the penalty was incurred.