Status: *Point in time view as at 11/05/2001.*
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SCHEDULES

SCHEDULE 5

Section 27.

AGGREGATES LEVY: RECOVERY AND INTEREST

Recovery of levy as debt due

1 Aggregates levy shall be recoverable as a debt due to the Crown.

Assessments of amounts of levy due

2 (1) Where it appears to the Commissioners—

(a) that any period is an accounting period by reference to which a person is liable to account for aggregates levy,

(b) that any aggregates levy for which that person is liable to account by reference to that period has become due, and

(c) that there has been a default by that person that falls within sub-paragraph (2) below,

they may assess the amount of the levy due from that person for that period to the best of their judgement and notify that amount to that person.

(2) The defaults falling within this sub-paragraph are—

(a) any failure to make a return required to be made by any provision made by or under this Part of this Act;

(b) any failure to keep any documents necessary to verify returns required to be made under any such provision;

(c) any failure to afford the facilities necessary to verify returns required to be made under any such provision;

(d) the making, in purported compliance with any requirement of any such provision to make a return, of an incomplete or incorrect return;

(e) any failure to comply with a requirement imposed by or under Schedule 4 to this Act.

(3) Where it appears to the Commissioners that a default falling within sub-paragraph (2) above is a default by a person on whom the requirement to make a return is imposed in his capacity as the representative of another person, sub-paragraph (1) above shall apply as if the reference to the amount of aggregates levy due included a reference to any aggregates levy due from that other person.

(4) In a case where—

(a) the Commissioners have made an assessment for any accounting period as a result of any person's failure to make a return for that period,

(b) the levy assessed has been paid but no proper return has been made for that period,

(c) as a result of a failure (whether by that person or a representative of his) to make a return for a later accounting period, the Commissioners find it

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necessary to make another assessment under this paragraph in relation to the later period, and

(d) the Commissioners think it appropriate to do so in the light of the absence of a proper return for the earlier period,

they may, in the assessment in relation to the later period, specify an amount of aggregates levy due that is greater than the amount that they would have considered to be appropriate had they had regard only to the later period.

(5) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable on the basis that it is an amount of aggregates levy due from him.

(6) Sub-paragraph (5) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

Supplementary assessments

3 (1) If, where an assessment has been notified to any person under paragraph 2 above or this paragraph, it appears to the Commissioners that the amount which ought to have been assessed as due for any accounting period exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.

(2) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable on the basis that it is an amount of aggregates levy due from him.

(3) Sub-paragraph (2) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

Time limits for assessments

4 (1) An assessment under paragraph 2 or 3 above of an amount of aggregates levy due for any accounting period—

(a) shall not be made more than two years after the end of the accounting period unless it is made within the period mentioned in sub-paragraph (2) below; and

(b) subject to sub-paragraph (3) below, shall not in any event be made more than three years after the end of that accounting period.

(2) The period referred to in sub-paragraph (1)(a) above is the period of one year after evidence of facts sufficient in the Commissioners' opinion to justify the making of the assessment first came to their knowledge.

(3) Subject to sub-paragraph (4) below, where aggregates levy has been lost—

(a) as a result of any conduct for which a person has been convicted of an offence involving fraud,

(b) in circumstances giving rise to liability to a penalty under paragraph 1 of Schedule 4 to this Act (failure to notify of registrability etc.), or

(c) as a result of conduct falling within paragraph 7(1) of Schedule 6 to this Act (evasion),

that levy may be assessed under paragraph 2 or 3 above as if, in sub-paragraph (1)(b) above, for "three years" there were substituted " twenty years ".

(4) Where, after a person's death, the Commissioners propose to assess an amount of aggregates levy as due by reason of some conduct of the deceased—

(a) the assessment shall not be made more than three years after the death; and

(b) if the circumstances are as set out in sub-paragraph (3) above—

(i) the modification of sub-paragraph (1) above contained in that sub-paragraph shall not apply; but

(ii) any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it.

(5) Nothing in this paragraph shall prejudice the powers of the Commissioners under paragraph 2(4) above.

Penalty interest on unpaid levy

5 (1) Where—

(a) a person makes a return for the purposes of any regulations made under section 25 of this Act (whether or not at the time required by the regulations), and

(b) the return shows that an amount of aggregates levy is due from him for the accounting period for which the return is made,

that amount shall carry penalty interest for the period specified in sub-paragraph (2) below.

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under section 25 of this Act to pay aggregates levy due from him for the accounting period in question; and

(b) ends with the day before that on which the amount shown in the return is paid.

Interest on overdue levy paid before assessment

6 (1) Where—

(a) the circumstances are such that there was a time when an assessment could have been made under paragraph 2 or 3 above of an amount of levy due from any person, but

(b) before the making and notification to that person of any assessment of that amount, the amount was paid,

the whole of the amount paid shall be taken to have carried interest for the period specified in sub-paragraph (2).

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under section 25 of this Act to pay aggregates levy due from him for the accounting period to which the amount in question relates; and

(b) ends with the day before that on which that amount was paid.

(3) The interest payable by virtue of this paragraph shall be payable at the rate applicable under section 197 of the Finance Act 1996 (c. 8).

Status: *Point in time view as at 11/05/2001.*
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Penalty interest on levy where no return made

7 (1) Where—

(a) the Commissioners make an assessment under paragraph 2 or 3 above of an amount of aggregates levy due from any person for any accounting period and notify it to him, and

(b) the assessment is made at a time after the time by which a return is required by regulations under section 25 of this Act to be made by that person for that accounting period and before any such return has been made,

that amount shall carry penalty interest for the period specified in sub-paragraph (2) below.

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under section 25 of this Act to pay aggregates levy due from him for the accounting period in question; and

(b) ends with the day before that on which the assessed amount is paid.

Ordinary and penalty interest on under-declared levy

8 (1) Subject to sub-paragraph (4) below, where—

(a) the Commissioners make an assessment under paragraph 2 or 3 above of an amount of aggregates levy due from any person for any accounting period and notify it to him,

(b) the assessment is made after a return for the purposes of any regulations under section 25 has been made by that person for that accounting period, and

(c) the assessment is made on the basis that the amount ("the additional amount") is due from him in addition to any amount shown in the return, or in a previous assessment made in relation to the accounting period,

the additional amount shall carry interest for the period specified in sub-paragraph (2) below.

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under section 25 of this Act to pay aggregates levy due from him for the accounting period in question; and

(b) ends with the day before the day on which the additional amount is paid.

(3) Interest under this paragraph—

(a) in respect of so much of the period specified in sub-paragraph (2) above as falls before the day on which the assessment is notified to the person in question, shall be payable at the rate applicable under section 197 of the Finance Act 1996 (c. 8); and

(b) in respect of the remainder (if any) of that period, shall be penalty interest.

(4) Where—

(a) the Commissioners make an assessment under paragraph 2 or 3 above of an amount of aggregates levy due from any person for any accounting period and notify it to him,

(b) they also specify a date for the purposes of this sub-paragraph, and

(c) the amount assessed is paid on or before that date,

the only interest carried by that amount under this paragraph shall be interest, at the rate given by sub-paragraph (3)(a) above, for the period before the day on which the assessment is notified.

Penalty interest on unpaid ordinary interest

9 (1) Subject to sub-paragraph (2) below, where the Commissioners make an assessment under paragraph 12 below of an amount of interest payable at the rate given by paragraph 8(3)(a) above, that amount shall carry penalty interest for the period which—

(a) begins with the day on which the assessment is notified to the person on whom the assessment is made; and

(b) ends with the day before the day on which the assessed interest is paid.

(2) Where—

(a) the Commissioners make an assessment under paragraph 12 below of an amount of interest due from any person,

(b) they also specify a date for the purposes of this sub-paragraph, and

(c) the amount of interest assessed is paid on or before that date,

the amount paid before that date shall not carry penalty interest under this paragraph.

Penalty interest

10 (1) Penalty interest under any of paragraphs 5 to 9 above shall be compound interest calculated—

(a) at the penalty rate; and

(b) with monthly rests.

(2) For this purpose the penalty rate is the rate found by—

(a) taking the rate applicable under section 197 of the Finance Act 1996 (c. 8) for the purposes of paragraph 8(3)(a) above; and

(b) adding 10 percentage points to that rate.

(3) Where a person is liable under any of paragraphs 5 to 9 above to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.

(4) Subject to sub-paragraph (5) below, where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (3) above.

(5) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (4) above, no account shall be taken of any of the following matters, that is to say—

(a) the insufficiency of the funds available to any person for paying any aggregates levy due or for paying the amount of the interest;

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of aggregates levy;

(c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.

Status: *Point in time view as at 11/05/2001.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2001, SCHEDULE 5. (See end of Document for details)*

(6) In the case of interest reduced by the Commissioners under sub-paragraph (3) above an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

Supplemental provisions about interest

11 (1) Interest under any of paragraphs 5 to 9 above shall be paid without any deduction of income tax.

(2) Sub-paragraph (3) below applies where—

(a) an amount carries interest under any of paragraphs 5 to 9 above (or would do so apart from that sub-paragraph); and

(b) all or part of the amount turns out not to be due.

(3) In such a case—

(a) the amount or part that turns out not to be due shall not carry interest under the applicable paragraph and shall be treated as never having done so; and

(b) all such adjustments as are reasonable shall be made, including (subject to section 32 of, and Schedule 8 to, this Act) adjustments by way of repayment.

Assessments to interest

12 (1) Where a person is liable for interest under any of paragraphs 5 to 9 above, the Commissioners may assess the amount due by way of interest and notify it to him accordingly.

(2) If, where an assessment has been notified to any person under sub-paragraph (1) above or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.

(3) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were aggregates levy due from him.

(4) Sub-paragraph (3) above—

(a) shall not apply so as to require any interest to be payable on interest except—

(i) in accordance with paragraph 9 above; or

(ii) in so far as it falls to be compounded in accordance with paragraph 10 above;

and

(b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

(5) Paragraph 4 above shall apply in relation to assessments under this paragraph as if any assessment to interest were an assessment under paragraph 2 above to aggregates levy due for the period which is the relevant accounting period in relation to that interest.

(6) Subject to sub-paragraph (7) below, where a person—

(a) is assessed under this paragraph to an amount due by way of any interest, and

(b) is also assessed under paragraph 2 or 3 above for the accounting period which is the relevant accounting period in relation to that interest,

the assessments may be combined and notified to him as one assessment.

(7) A notice of a combined assessment under sub-paragraph (6) above must separately identify the interest being assessed.

(8) The relevant accounting period for the purposes of this paragraph is—

(a) in the case of interest on the levy due for any accounting period, that accounting period; and

(b) in the case of interest on interest (whether under paragraph 9 above or by virtue of any compounding under paragraph 10 above) the period which is the relevant accounting period for the interest on which the interest is payable.

(9) In a case where—

(a) the amount of any interest falls to be calculated by reference to aggregates levy which was not paid at the time when it should have been, and

(b) that levy cannot be readily attributed to any one or more accounting periods,

that levy shall be treated for the purposes of interest on any of that levy as aggregates levy due for such period or periods as the Commissioners may determine to the best of their judgement and notify to the person liable.

Further assessments to penalty interest

13 (1) Where an assessment is made under paragraph 12 above to an amount of penalty interest under any of paragraphs 5 to 9 above—

(a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and

(b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under paragraph 12 above in respect of the amounts so accruing.

(2) Where—

(a) an assessment to penalty interest is made specifying a date for the purposes of sub-paragraph (1)(a) above, and

(b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,

that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

Recovery by distress

14 In section 51(5) of the Finance Act 1997 (c. 16) (definition of relevant taxes for the purposes of the power to make provision by regulations for enforcement by distress of the relevant taxes), after paragraph (d) there shall be inserted—

"(da) aggregates levy;".

Walking possession agreements

15 (1) This paragraph applies where—

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(a) in accordance with regulations made by virtue of paragraph 14 above a distress is authorised to be levied on the goods and chattels of a person;

(b) that person ("the person in default") has refused or neglected to pay an amount of aggregates levy due from him or an amount recoverable from him as if it were aggregates levy; and

(c) the person levying the distress and the person in default have entered into a walking possession agreement.

(2) For the purposes of this paragraph a walking possession agreement is an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—

(a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and

(b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.

(3) Subject to sub-paragraph (4) below, if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to one half of the levy or other amount referred to in sub-paragraph (1)(b) above.

(4) The person in default shall not be liable to a penalty under sub-paragraph (3) above if he satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the breach in question.

(5) This paragraph does not extend to Scotland.

Recovery by diligence

16 In section 52(5) of the Finance Act 1997 (c. 16) (definition of relevant taxes for the purposes of the power to make provision by regulations for enforcement by diligence of the relevant taxes), after paragraph (d) there shall be inserted—

"(da) aggregates levy;".

Preferential debts in England and Wales and Northern Ireland

17 (1) In the Insolvency Act 1986 (c. 45)—

(a) in section 386(1) (preferential debts), after "climate change levy,", there shall be inserted " aggregates levy, "; and

(b) in Schedule 6 (categories of preferential debts), the paragraph set out in sub-paragraph (2) below shall be inserted after paragraph 3C.

(2) That paragraph is as follows—

"3D Any aggregates levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as "the 6-month period").

For the purposes of this paragraph—

(a) where the whole of the accounting period to which any aggregates levy is attributable falls within the 6-month period, the whole amount of that levy is referable to that period; and

(b) in any other case the amount of any aggregates levy which is referable to the 6-month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part 2 of the Finance Act 2001.".

(3) In the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))—

(a) in Article 346(1) (preferential debts), after "climate change levy,", there shall be inserted " aggregates levy, "; and

(b) in Schedule 4 (categories of preferential debts), the paragraph set out in sub-paragraph (4) below shall be inserted after paragraph 3C.

(4) That paragraph is as follows—

"3D Any agggregates levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as "the 6-month period").

For the purposes of this paragraph—

(a) where the whole of the accounting period to which any aggregates levy is attributable falls within the 6-month period, the whole amount of that levy is referable to that period; and

(b) in any other case the amount of any aggregates levy which is referable to the 6-month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part 2 of the Finance Act 2001.".

Preferred debts in Scotland

18 (1) In paragraph 2 of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (c. 66) (tax liabilities that are preferred debts), the following sub-paragraph shall be inserted before sub-paragraph (2)—

("1D) Any aggregates levy which is referable to the period of six months next before the relevant date."

(2) In that Schedule, the following paragraph shall be inserted after paragraph 8C—

"**Periods to which aggregates levy referable**

8D (1) For the purpose of paragraph 2(1D) of Part 1 of this Schedule—

(a) where the whole of the accounting period to which any aggregates levy is attributable falls within the period of six months next before the relevant date ('the relevant period'), the whole amount of that levy shall be referable to the relevant period; and

(b) in any other case the amount of any aggregates levy which shall be referable to the relevant period shall be the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the relevant period.

Status: *Point in time view as at 11/05/2001.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2001, SCHEDULE 5. (See end of Document for details)*

(2) In sub-paragraph (1) above 'accounting period' shall be construed in accordance with Part 2 of the Finance Act 2001.".

Interpretation of Schedule etc.

19 (1) In this Schedule "penalty interest" shall be construed in accordance with paragraph 10 above.

(2) Any notification of an assessment under any provision of this Schedule to a person's representative shall be treated for the purposes of this Part of this Act as notification to the person in relation to whom the representative acts.

(3) In this Schedule "representative", in relation to any person, means—

(a) any of that person's personal representatives;

(b) that person's trustee in bankruptcy or liquidator;

(c) any person holding office as a receiver in relation to that person or any of his property;

(d) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person.

(4) In this paragraph "trustee in bankruptcy" includes, as respects Scotland—

(a) an interim or permanent trustee (within the meaning of the Bankruptcy (Scotland) Act 1985); and

(b) a trustee acting under a trust deed (within the meaning of that Act).

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