

SCHEDULES

SCHEDULE 24

Section 97

PENALTIES FOR ERRORS

PART 1

LIABILITY FOR PENALTY

Error in taxpayer's document

- 1 (1) A penalty is payable by a person (P) where—
- (a) P gives HMRC a document of a kind listed in the Table below, and
 - (b) Conditions 1 and 2 are satisfied.
- (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
- (a) an understatement of P's liability to tax,
 - (b) a false or inflated statement of a loss by P, or
 - (c) a false or inflated claim to repayment of tax.
- (3) Condition 2 is that the inaccuracy was careless or deliberate (within the meaning of paragraph 3).
- (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

<i>Tax</i>	<i>Document</i>
Income tax or capital gains tax	Return under section 8 of TMA 1970 (personal return).
Income tax or capital gains tax	Return under section 8A of TMA 1970 (trustee's return).
Income tax or capital gains tax	Return, statement or declaration in connection with a claim for an allowance, deduction or relief.
Income tax or capital gains tax	Accounts in connection with ascertaining liability to tax.
Income tax or capital gains tax	Partnership return.
Income tax or capital gains tax	Statement or declaration in connection with a partnership return.
Income tax or capital gains tax	Accounts in connection with a partnership return.

Status: This is the original version (as it was originally enacted).

<i>Tax</i>	<i>Document</i>
Income tax	Return for the purposes of PAYE regulations.
Construction industry deductions	Return for the purposes of regulations under section 70(1)(a) of FA 2004 in connection with deductions on account of tax under the Construction Industry Scheme.
Corporation tax	Company tax return under paragraph 3 of Schedule 18 to FA 1998.
Corporation tax	Return, statement or declaration in connection with a claim for an allowance, deduction or relief.
Corporation tax	Accounts in connection with ascertaining liability to tax.
VAT	VAT return under regulations made under paragraph 2 of Schedule 11 to VATA 1994.
VAT	Return, statement or declaration in connection with a claim.
Income tax, capital gains tax, corporation tax or VAT	Any document which is likely to be relied upon by HMRC to determine, without further inquiry, a question about— <ul style="list-style-type: none"> (a) P’s liability to tax, (b) payments by P by way of or in connection with tax, (c) any other payment by P (including penalties), or (d) repayments, or any other kind of payment or credit, to P.

Under-assessment by HMRC

- 2 (1) A penalty is payable by a person (P) where—
- (a) an assessment issued to P by HMRC understates P’s liability to tax, and
 - (b) P has failed to take reasonable steps to notify HMRC, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.
- (2) In deciding what steps (if any) were reasonable HMRC must consider—
- (a) whether P knew, or should have known, about the under-assessment, and
 - (b) what steps would have been reasonable to take to notify HMRC.
- (3) In sub-paragraph (1) “tax” means—
- (a) income tax,
 - (b) capital gains tax,
 - (c) corporation tax, and
 - (d) VAT.

Degrees of culpability

- 3 (1) Inaccuracy in a document given by P to HMRC is—
- (a) “careless” if the inaccuracy is due to failure by P to take reasonable care,
 - (b) “deliberate but not concealed” if the inaccuracy is deliberate but P does not make arrangements to conceal it, and
 - (c) “deliberate and concealed” if the inaccuracy is deliberate and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).
- (2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate when the document was given, is to be treated as careless if P—
- (a) discovered the inaccuracy at some later time, and
 - (b) did not take reasonable steps to inform HMRC.

PART 2

AMOUNT OF PENALTY

Standard amount

- 4 (1) The penalty payable under paragraph 1 is—
- (a) for careless action, 30% of the potential lost revenue,
 - (b) for deliberate but not concealed action, 70% of the potential lost revenue, and
 - (c) for deliberate and concealed action, 100% of the potential lost revenue.
- (2) The penalty payable under paragraph 2 is 30% of the potential lost revenue.
- (3) Paragraphs 5 to 8 define “potential lost revenue”.

Potential lost revenue: normal rule

- 5 (1) “The potential lost revenue” in respect of an inaccuracy in a document or a failure to notify an under-assessment is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.
- (2) The reference in sub-paragraph (1) to the additional amount due or payable includes a reference to—
- (a) an amount payable to HMRC having been erroneously paid by way of repayment of tax, and
 - (b) an amount which would have been repayable by HMRC had the inaccuracy or assessment not been corrected.
- (3) In sub-paragraph (1) “tax” includes national insurance contributions.
- (4) The following shall be ignored in calculating potential lost revenue under this paragraph—
- (a) group relief, and
 - (b) section 419(4) of ICTA (close company: relief for loans);
- (but this sub-paragraph does not prevent a penalty being charged in respect of an inaccurate claim for relief).

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Potential lost revenue: multiple errors

- 6 (1) Where P is liable to a penalty in respect of more than one inaccuracy, and the calculation of potential lost revenue under paragraph 5 in respect of each inaccuracy depends on the order in which they are corrected—
- (a) careless inaccuracies shall be taken to be corrected before deliberate inaccuracies, and
 - (b) deliberate but not concealed inaccuracies shall be taken to be corrected before deliberate and concealed inaccuracies.
- (2) In calculating potential lost revenue where P is liable to a penalty in respect of one or more understatements in one or more documents relating to a tax period, account shall be taken of any overstatement in any document given by P which relates to the same tax period.
- (3) In sub-paragraph (2)—
- (a) “understatement” means an inaccuracy that satisfies Condition 1 of paragraph 1, and
 - (b) “overstatement” means an inaccuracy that does not satisfy that condition.
- (4) For the purposes of sub-paragraph (2) overstatements shall be set against understatements in the following order—
- (a) understatements in respect of which P is not liable to a penalty,
 - (b) careless understatements,
 - (c) deliberate but not concealed understatements, and
 - (d) deliberate and concealed understatements.
- (5) In calculating potential lost revenue in respect of a document given by or on behalf of P no account shall be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person (except to the extent that an enactment requires or permits a person’s tax liability to be adjusted by reference to P’s).

Potential lost revenue: losses

- 7 (1) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the potential lost revenue is calculated in accordance with paragraph 5.
- (2) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the potential lost revenue is—
- (a) the potential lost revenue calculated in accordance with paragraph 5 in respect of any part of the loss that has been used to reduce the amount due or payable in respect of tax, plus
 - (b) 10% of any part that has not.
- (3) Sub-paragraphs (1) and (2) apply both—
- (a) to a case where no loss would have been recorded but for the inaccuracy, and
 - (b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (1) and (2) apply only to the difference between the amount recorded and the true amount).

- (4) Where an inaccuracy has the effect of creating or increasing an aggregate loss recorded for a group of companies—
 - (a) the potential lost revenue shall be calculated in accordance with this paragraph, and
 - (b) in applying paragraph 5 in accordance with sub-paragraphs (1) and (2) above, group relief may be taken into account (despite paragraph 5(4)(a)).
- (5) The potential lost revenue in respect of a loss is nil where, because of the nature of the loss or P's circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

Potential lost revenue: delayed tax

- 8 (1) Where an inaccuracy resulted in an amount of tax being declared later than it should have been (“the delayed tax”), the potential lost revenue is—
 - (a) 5% of the delayed tax for each year of the delay, or
 - (b) a percentage of the delayed tax, for each separate period of delay of less than a year, equating to 5% per year.
- (2) This paragraph does not apply to a case to which paragraph 7 applies.

Reductions for disclosure

- 9 (1) A person discloses an inaccuracy or a failure to disclose an under-assessment by—
 - (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the inaccuracy or under-assessment, and
 - (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy or under-assessment is fully corrected.
- (2) Disclosure—
 - (a) is “unprompted” if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy or under-assessment, and
 - (b) otherwise, is “prompted”.
- (3) In relation to disclosure “quality” includes timing, nature and extent.
- 10 (1) Where a person who would otherwise be liable to a 30% penalty has made an unprompted disclosure, HMRC shall reduce the 30% to a percentage (which may be 0%) which reflects the quality of the disclosure.
- (2) Where a person who would otherwise be liable to a 30% penalty has made a prompted disclosure, HMRC shall reduce the 30% to a percentage, not below 15%, which reflects the quality of the disclosure.
- (3) Where a person who would otherwise be liable to a 70% penalty has made an unprompted disclosure, HMRC shall reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.
- (4) Where a person who would otherwise be liable to a 70% penalty has made a prompted disclosure, HMRC shall reduce the 70% to a percentage, not below 35%, which reflects the quality of the disclosure.

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- (5) Where a person who would otherwise be liable to a 100% penalty has made an unprompted disclosure, HMRC shall reduce the 100% to a percentage, not below 30%, which reflects the quality of the disclosure.
- (6) Where a person who would otherwise be liable to a 100% penalty has made a prompted disclosure, HMRC shall reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.

Special reduction

- 11 (1) If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1 or 2.
- (2) In sub-paragraph (1) “special circumstances” does not include—
 - (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
 - (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

Interaction with other penalties

- 12 (1) The final entry in the Table in paragraph 1 excludes a document in respect of which a penalty is payable under section 98 of TMA 1970 (special returns).
- (2) The amount of a penalty for which P is liable under paragraph 1 or 2 in respect of a document relating to a tax period shall be reduced by the amount of any other penalty which P has incurred and the amount of which is determined by reference to P’s tax liability for that period.
- (3) In the application of section 97A of TMA 1970 (multiple penalties) no account shall be taken of a penalty under paragraph 1 or 2.

PART 3

PROCEDURE

Assessment

- 13 (1) Where P becomes liable for a penalty under paragraph 1 or 2 HMRC shall—
 - (a) assess the penalty,
 - (b) notify P, and
 - (c) state in the notice a tax period in respect of which the penalty is assessed.
- (2) An assessment—
 - (a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.

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- (3) An assessment of a penalty under paragraph 1 must be made within the period of 12 months beginning with—
 - (a) the end of the appeal period for the decision correcting the inaccuracy, or
 - (b) if there is no assessment within paragraph (a), the date on which the inaccuracy is corrected.
- (4) An assessment of a penalty under paragraph 2 must be made within the period of 12 months beginning with the end of the appeal period for the assessment of tax which corrected the understatement.
- (5) For the purpose of sub-paragraphs (3) and (4) a reference to an appeal period is a reference to the period during which—
 - (a) an appeal could be brought, or
 - (b) an appeal that has been brought has not been determined or withdrawn.
- (6) Subject to sub-paragraphs (3) and (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

Suspension

- 14 (1) HMRC may suspend all or part of a penalty for a careless inaccuracy under paragraph 1 by notice in writing to P.
 - (2) A notice must specify—
 - (a) what part of the penalty is to be suspended,
 - (b) a period of suspension not exceeding two years, and
 - (c) conditions of suspension to be complied with by P.
 - (3) HMRC may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under paragraph 1 for careless inaccuracy.
 - (4) A condition of suspension may specify—
 - (a) action to be taken, and
 - (b) a period within which it must be taken.
 - (5) On the expiry of the period of suspension—
 - (a) if P satisfies HMRC that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and
 - (b) otherwise, the suspended penalty or part becomes payable.
 - (6) If, during the period of suspension of all or part of a penalty under paragraph 1, P becomes liable for another penalty under that paragraph, the suspended penalty or part becomes payable.

Appeal

- 15 (1) P may appeal against a decision of HMRC that a penalty is payable by P.
 - (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.
 - (3) P may appeal against a decision of HMRC not to suspend a penalty payable by P.

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- (4) P may appeal against a decision of HMRC setting conditions of suspension of a penalty payable by P.
- 16 An appeal may be brought to—
- (a) the General Commissioners, in so far as the penalty relates to direct tax, or
 - (b) a VAT and duties tribunal, in so far as the penalty relates to VAT.
- 17 (1) On an appeal under paragraph 15(1) the appellate tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 15(2) the appellate tribunal may—
- (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the appellate tribunal substitutes its decision for HMRC's, the appellate tribunal may rely on paragraph 11—
- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
 - (b) to a different extent, but only if the appellate tribunal thinks that HMRC's decision in respect of the application of paragraph 11 was flawed.
- (4) On an appeal under paragraph 15(3)—
- (a) the appellate tribunal may order HMRC to suspend the penalty only if it thinks that HMRC's decision not to suspend was flawed, and
 - (b) if the appellate tribunal orders HMRC to suspend the penalty—
 - (i) P may appeal to the appellate tribunal against a provision of the notice of suspension, and
 - (ii) the appellate tribunal may order HMRC to amend the notice.
- (5) On an appeal under paragraph 15(4) the appellate tribunal—
- (a) may affirm the conditions of suspension, or
 - (b) may vary the conditions of suspension, but only if the appellate tribunal thinks that HMRC's decision in respect of the conditions was flawed.
- (6) In sub-paragraphs (3)(b), (4)(a) and (5)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (7) Paragraph 14 (see in particular paragraph 14(3)) is subject to the possibility of an order under this paragraph.

PART 4

MISCELLANEOUS

Agency

- 18 (1) P is liable under paragraph 1(1)(a) where a document which contains a careless inaccuracy (within the meaning of paragraph 3) is given to HMRC on P's behalf.
- (2) In paragraph 2(1)(b) and (2)(a) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

Status: This is the original version (as it was originally enacted).

- (3) Despite sub-paragraphs (1) and (2), P is not liable to a penalty in respect of anything done or omitted by P's agent where P satisfies HMRC that P took reasonable care to avoid inaccuracy (in relation to paragraph 1) or unreasonable failure (in relation to paragraph 2).
- (4) In paragraph 3(1)(a) (whether in its application to a document given by P or, by virtue of sub-paragraph (1) above, in its application to a document given on P's behalf) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.
- (5) In paragraph 3(2) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

Companies: officers' liability

- 19 (1) Where a penalty under paragraph 1 is payable by a company for a deliberate inaccuracy which was attributable to an officer of the company—
 - (a) the officer as well as the company shall be liable to pay the penalty, and
 - (b) HMRC may pursue the officer for such portion of the penalty (which may be 100%) as they may specify by written notice to the officer.
- (2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.
- (3) In the application of sub-paragraph (1) to a body corporate “officer” means—
 - (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006 (c. 46)), or
 - (b) a secretary.
- (4) In the application of sub-paragraph (1) in any other case “officer” means—
 - (a) a director,
 - (b) a manager,
 - (c) a secretary, and
 - (d) any other person managing or purporting to manage any of the company's affairs.
- (5) A reference to P in this Schedule (including paragraph 15) includes a reference to an officer of the company who is liable for a portion of the penalty in accordance with this paragraph.

Partnerships

- 20 (1) This paragraph applies where P is liable to a penalty under paragraph 1 for an inaccuracy in or in connection with a partnership return.
- (2) Where the inaccuracy affects the amount of tax due or payable by a partner of P, the partner is also liable to a penalty (“a partner's penalty”).
- (3) Paragraphs 4 to 13 and 19 shall apply in relation to a partner's penalty (for which purpose a reference to P shall be taken as a reference to the partner).
- (4) Potential lost revenue shall be calculated separately for the purpose of P's penalty and any partner's penalty, by reference to the proportions of any tax liability that would be borne by each partner.
- (5) Paragraph 14 shall apply jointly to P's penalty and any partner's penalties.

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- (6) P may bring an appeal under paragraph 15 in respect of a partner’s penalty (in addition to any appeal that P may bring in connection with the penalty for which P is liable).

Double jeopardy

- 21 P is not liable to a penalty under paragraph 1 or 2 in respect of an inaccuracy or failure in respect of which P has been convicted of an offence.

PART 5

GENERAL

Interpretation

- 22 Paragraphs 23 to 26 apply for the construction of this Schedule.
- 23 HMRC means Her Majesty’s Revenue and Customs.
- 24 An expression used in relation to income tax has the same meaning as in the Income Tax Acts.
- 25 An expression used in relation to corporation tax has the same meaning as in the Corporation Tax Acts.
- 26 An expression used in relation to capital gains tax has the same meaning as in the enactments relating to that tax.
- 27 An expression used in relation to VAT has the same meaning as in VATA 1994.
- 28 In this Schedule—
- (a) a reference to corporation tax includes a reference to tax or duty which by virtue of an enactment is assessable or chargeable as if it were corporation tax,
 - (b) a reference to tax includes a reference to construction industry deductions under Chapter 3 of Part 3 of FA 2004,
 - (c) “direct tax” means—
 - (i) income tax,
 - (ii) capital gains tax, and
 - (iii) corporation tax,
 - (d) a reference to understating liability to VAT includes a reference to overstating entitlement to a VAT credit,
 - (e) a reference to a loss includes a reference to a charge, expense, deficit and any other amount which may be available for, or relied on to claim, a deduction or relief,
 - (f) a reference to repayment of tax includes a reference to allowing a credit,
 - (g) “tax period” means a tax year, accounting period or other period in respect of which tax is charged,
 - (h) a reference to giving a document to HMRC includes a reference to communicating information to HMRC in any form and by any method (whether by post, fax, email, telephone or otherwise),

- (i) a reference to giving a document to HMRC includes a reference to making a statement or declaration in a document,
- (j) a reference to making a return or doing anything in relation to a return includes a reference to amending a return or doing anything in relation to an amended return, and
- (k) a reference to action includes a reference to omission.

Consequential amendments

- 29 The following provisions are omitted—
- (a) sections 95, 95A, 97 and 98A(4) of TMA 1970 (incorrect returns and accounts),
 - (b) sections 100A(1) and 103(2) of TMA 1970 (deceased persons),
 - (c) in Schedule 18 to FA 1998 (company tax returns), paragraphs 20 and 89 (company tax returns), and
 - (d) sections 60, 61, 63 and 64 of VATA 1994 (evasion).
- 30 In paragraph 7 of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) (penalties) a reference to a provision of TMA 1970 shall be construed as a reference to this Schedule so far as is necessary to preserve its effect.
- 31 In paragraph 7 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (penalties) a reference to a provision of TMA 1970 shall be construed as a reference to this Schedule so far as is necessary to preserve its effect.