

**Changes to legislation:** Finance Act 2008, Cross Heading: Appeal is up to date with all changes known to be in force on or before 14 March 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) View outstanding changes

## SCHEDULES

### SCHEDULE 41

#### PENALTIES: FAILURE TO NOTIFY AND CERTAIN VAT AND EXCISE WRONGDOING

##### Modifications etc. (not altering text)

- C1** Sch. 41 applied (with modifications) (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), **Sch. 16 para. 13**
- C1** Sch. 41 modified (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), **Sch. 12 paras. 33, 34**
- C1** Sch. 41 applied (with modifications) (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), **Sch. 16 para. 11(6)** (with Sch. 16 para. 11(7))

##### *Appeal*

- 17 (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.

##### Commencement Information

- II** Sch. 41 para. 17 in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511](#), **art. 2**

[<sup>F1</sup>18 (1) An appeal shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or the Upper Tribunal).

- (2) [<sup>F2</sup>Sub-paragraph (1) does not apply—
- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
  - (b) in respect of any other matter expressly provided for by this Act.]]

##### Textual Amendments

- F1** Sch. 41 para. 18 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 473(2)**
- F2** Sch. 41 para. 18(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 57 para. 11**

##### Commencement Information

- I2** Sch. 41 para. 18 in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511](#), **art. 2**

- 19 (1) On an appeal under paragraph 17(1) the [<sup>F3</sup>tribunal] may affirm or cancel HMRC's decision.

*Changes to legislation: Finance Act 2008, Cross Heading: Appeal is up to date with all changes known to be in force on or before 14 March 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) View outstanding changes*

- (2) On an appeal under paragraph 17(2) the [<sup>F3</sup>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 [<sup>F3</sup>tribunal] substitutes its decision for HMRC's, the [<sup>F4</sup>tribunal] may rely on paragraph 14—
- (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 [<sup>F4</sup>tribunal] thinks that HMRC's decision in respect of the application of paragraph 14 was flawed.
- (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- [<sup>F5</sup>(5) In this paragraph, “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 18(1)).]

#### Textual Amendments

- F3** Word in Sch. 41 para. 19 substituted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 473(3)(a)**
- F4** Word in Sch. 41 para. 19(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 473(3)(b)**
- F5** Sch. 41 para. 19(5) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 473(3)(c)**

#### Commencement Information

- I3** [Sch. 41 para. 19](#) in force at 1.4.2010 with effect in accordance with art. 3 by [S.I. 2009/511](#), **art. 2**

**Changes to legislation:**

Finance Act 2008, Cross Heading: Appeal is up to date with all changes known to be in force on or before 14 March 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.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 41 para. 6(1A) inserted by [2015 c. 11 Sch. 20 para. 10\(2\)](#)
- Sch. 41 para. 6A(A1)(1) substituted for Sch. 41 para. 6A(1) by [2015 c. 11 Sch. 20 para. 11\(2\)](#)