

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 94: Publishing Details of Deliberate Tax Defaulters

Summary

1. [Section 94](#) provides for the Commissioners of HM Revenue and Customs (HMRC) to publish information (including names) of persons who have been penalised for deliberate defaults: inaccuracies, failing to notify, and certain VAT and Excise duty wrongdoings where the tax lost exceeds £25,000. No details will be published if the person has made a full disclosure either unprompted or prompted. Any details must be published within 12 months from the relevant penalties becoming final and may not continue to be published beyond 12 months from when first published.

Details of the Section

2. Subsection (1) provides that the Commissioners may publish information about any person who has incurred relevant tax penalties where the potential lost revenue, incurred in consequence of an investigation by HMRC, exceeds £25,000.
3. Subsection (2) lists the relevant tax penalties all of which are for deliberate or deliberate and concealed defaults. They are inaccuracy in documents, including inaccuracies attributable to supply of false information or withholding information by a person, failure to notify, unauthorised VAT invoice, putting product to use attracting higher (excise) duty, knowingly supplying such product, and handling goods subject to unpaid excise duty.
4. Subsection (3) gives statutory references for definitions of potential lost revenue for each relevant tax penalty. Broadly, this is the amount of tax unpaid or undeclared as a result of the default to which the penalty percentage is applied.
5. Subsection (4) specifies the information that may be published including the name, address, nature of any business, amount of penalties and potential lost revenue, period covered and such further information as may be required to make clear the person's identity.
6. Subsection (5) provides for the information to be published in any manner considered appropriate. It is envisaged this would be in quarterly lists on the HMRC website.
7. Subsection (6) requires the Commissioners to inform the person they are considering publishing information and to give the person a reasonable opportunity to make representations.
8. Subsection (7) provides that the Commissioners may not publish any information until the relevant tax penalties have become final, which is defined in subsection (12).
9. Subsection (8) provides that if information is to be published it must be within one year of the day the penalties have become final.

*These notes refer to the Finance Act 2009 (c.10)
which received Royal Assent on 21 July 2009*

10. Subsection (9) provides that the information must not be published, or continue to be published, after one year from the day of first publication.
11. Subsections (10) give exemption from publication for those whose penalties have been reduced for disclosure, whether prompted or unprompted, by the full extent permitted.
12. Subsection (11) explains that a penalty becomes final either when all appeal avenues have expired or been finally determined or when a contract settlement, including relevant penalties, is made.
13. Subsections (12) to (15) provide for Treasury orders to vary the financial limit (by negative resolution) and for an appointed day order to commence the provisions.

Background Note

14. Publishing details (including names) aims to deter deliberate tax defaulters; reassure those who do pay the right tax; and encourage those who do not, to come forward and bring their tax affairs up to date.
15. The publication scheme is founded on definitions in the penalty regimes enacted in Finance Acts 2007 and 2008, which apply across the taxes and duties HMRC administer. In addition to the specific exemptions from publication for those making disclosure there may be some exceptional circumstances where publication will not be appropriate.