

SCHEDULES

SCHEDULE 11

Section 27

PENALTY FOR FAILURE TO MAKE PAYMENTS ON TIME

1 Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended as follows.

2 (1) Paragraph 1 (penalty for failure) is amended as follows.

(2) In sub-paragraph (2), for “8” substitute “8J”.

(3) After sub-paragraph (4) insert—

“(5) Sub-paragraph (4) is subject to paragraph 2A.”

(4) The Table is amended as follows.

(5) In item 2, in column 3, omit “(except an amount falling within item 20)”.

(6) In item 4, in column 4, for “section 62” substitute “section 71”.

(7) After item 6 insert—

“6A	Value added tax	Amount payable under section 25(1) of VATA 1994 (except an amount falling within item 6B, 13A, 23 or 24)	The date determined— (a) by or under regulations under section 25 of VATA 1994, or (b) in accordance with an order under section 28 of that Act, as the date by which the amount must be paid
6B	Value added tax	Amount payable under section 25(1) of VATA 1994 which is an instalment of an amount due in respect of a period of 9 months or more (“amount A”)	The date on or before which P must pay any balancing payment or other outstanding payment due in respect of amount A
6C	Insurance premium tax	Amount payable under regulations under section 54 of FA 1994 (except an amount falling within item 13B, 23 or 24)	The date determined by or under regulations under section 54 of FA 1994 as the date by which the amount must be paid”.

(8) After item 11 insert—

Status: This is the original version (as it was originally enacted).

“11A	Aggregates levy	Amount payable under regulations under section 25 of FA 2001 (except an amount falling within item 16A, 23 or 24)	The date determined by or under regulations under section 25 of FA 2001 as the date by which the amount must be paid
11B	Climate change levy	Amount payable under regulations under paragraph 41 of Schedule 6 to FA 2000 (except an amount falling within item 16B, 23 or 24)	The date determined by or under regulations under paragraph 41 of Schedule 6 to FA 2000 as the date by which the amount must be paid
11C	Landfill tax	Amount payable under regulations under section 49 of FA 1996 (except an amount falling within item 16C, 23 or 24)	The date determined by or under regulations under section 49 of FA 1996 as the date by which the amount must be paid
11D	Air passenger duty	Amount payable under regulations under section 38 of FA 1994 (except an amount falling within item 17A, 23 or 24)	The date determined by or under regulations under section 38 of FA 1994 as the date by which the amount must be paid
11E	Alcoholic liquor duties	Amount payable under regulations under section 13, 49, 56 or 62 of ALDA 1979 (except an amount falling within item 17A, 23 or 24)	The date determined by or under regulations under section 13, 49, 56 or 62 of ALDA 1979 as the date by which the amount must be paid
11F	Tobacco products duty	Amount payable under regulations under section 7 of TPDA 1979 (except an amount falling within item 17A, 23 or 24)	The date determined by or under regulations under section 7 of TPDA 1979 as the date by which the amount must be paid
11G	Hydrocarbon oil duties	Amount payable under regulations under section 21 or 24 of HODA 1979	The date determined by or under regulations under section 21 or 24 of HODA 1979 as the date by which the amount must be paid

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

		(except an amount falling within item 17A, 23 or 24)	
11H	General betting duty	Amount payable under section 5B of BGDA 1981 (except an amount falling within item 17A, 23 or 24)	The date determined— (a) under section 5B of BGDA 1981, or (b) by or under regulations under paragraph 2 of Schedule 1 to that Act, as the date by which the amount must be paid
11I	Pool betting duty	Amount payable under section 8 of BGDA 1981 (except an amount falling within item 17A, 23 or 24)	The date determined— (a) under section 8 of BGDA 1981, or (b) by or under regulations under that section or directions under paragraph 3 of Schedule 1 to that Act, as the date by which the amount must be paid
11J	Bingo duty	Amount payable under regulations under paragraph 9 of Schedule 3 to BGDA 1981 (except an amount falling within item 17A, 23 or 24)	The date determined by or under regulations under paragraph 9 of Schedule 3 to BGDA 1981 as the date by which the amount must be paid
11K	Lottery duty	Amount payable under section 26 of FA 1993 (except an amount falling within item 17A, 23 or 24)	The date determined— (a) by section 26 of FA 1993, or (b) by or under regulations under that section, as the date by which the amount must be paid
11L	Gaming duty	Amount payable under section 12 of FA 1997 (except an amount falling within item 17A, 23 or 24)	The date determined by or under regulations under— (a) section 12 of FA 1997, or (b) paragraph 11 of Schedule 1 to that Act, as the date by which the amount must be paid
11M	Remote gaming duty	Amount payable under section 26I of BGDA 1981 (except an amount falling within item 17A, 23 or 24)	The date determined by or under regulations under section 26I of BGDA 1981 as the date by which the amount must be paid”.

(9) After item 13 insert—

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

“13A	Value added tax	Amount assessed under section 73(1) of VATA 1994 in the absence of a return	The date by which the amount would have been required to be paid if it had been shown in the return
13B	Insurance premium tax	Amount assessed under section 56(1) of FA 1994 in the absence of a return	The date by which the amount would have been required to be paid if it had been shown in the return”.

(10) After item 16 insert—

“16A	Aggregates levy	Amount assessed under paragraph 2 or 3 of Schedule 5 to FA 2001 in the absence of a return	The date by which the amount would have been required to be paid if it had been shown in the return
16B	Climate change levy	Amount assessed under paragraph 78 or 79 of Schedule 6 to FA 2000 in the absence of a return	The date by which the amount would have been required to be paid if it had been shown in the return
16C	Landfill tax	Amount assessed under section 50(1) of FA 1996 in the absence of a return	The date by which the amount would have been required to be paid if it had been shown in the return”.

(11) After item 17 insert—

“17A	Tax falling within any of items 11D to 11M	Amount assessed under section 12(1) of FA 1994 in the absence of a return	The date by which the amount would have been required to be paid if it had been shown in the return”.
------	--	---	---

(12) Omit item 20.

(13) In item 23—

- (a) in columns 2 and 3, for “items 1 to 6, 9 or 10” substitute “items 1 to 6A, 6C, 9, 10 or 11A to 11M”, and
- (b) in column 3, for “any of items 18 to 20” substitute “item 18 or 19”.

(14) In item 24—

- (a) in column 2, for “items 1 to 6, 9 or 10” substitute “items 1 to 6A, 6C, 9, 10 or 11A to 11M”, and
- (b) in column 3, for “any of items 18 to 20” substitute “item 18 or 19”.

3 In paragraph 2 (assessments and determinations in default of return), in paragraph (c), for “10” substitute “11M”.

4 After paragraph 2 insert—

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

“Different penalty date for certain PAYE payments

- 2A (1) PAYE regulations may provide that, in relation to specified payments of tax falling within item 2, the penalty date is a specified date later than that determined in accordance with column 4 of the Table.
- (2) In sub-paragraph (1) “specified” means specified in the regulations.”
- 5 (1) Paragraph 3 (amount of penalty for occasional amounts and amounts due for periods of 6 months or more) is amended as follows.
- (2) Sub-paragraph (1) is amended as follows.
- (3) In paragraph (a), for “items 1, 3 and 7 to 24” substitute “items 1, 3, 6B, 7 to 11 and 12 to 24”.
- (4) In paragraph (b)—
- (a) for “item 2 or 4” substitute “any of items 2, 4, 6A, 6C and 11A to 11M”, and
- (b) omit the “and” at the end.
- (5) After paragraph (c) insert “, and
- (d) a payment of tax falling within item 6A which relates to a transitional period for the purposes of the annual accounting scheme.”
- (6) After sub-paragraph (1) insert—
- “(1A) In sub-paragraph (1)(d), a transitional period for the purposes of the annual accounting scheme is a prescribed accounting period (within the meaning of section 25(1) of VATA 1994) which—
- (a) ends on the day immediately preceding the date indicated by the Commissioners for Her Majesty’s Revenue and Customs in a notification of authorisation under regulation 50 of the Value Added Tax Regulations 1995 (S.I. 1995/2518) (admission to annual accounting scheme), or
- (b) begins on the day immediately following the end of the last period of 12 months for which such an authorisation has effect.”
- 6 For paragraph 6 substitute—
- “6 (1) P is liable to a penalty, in relation to each tax, of an amount determined by reference to—
- (a) the number of defaults that P has made during the tax year (see sub-paragraphs (2) and (3)), and
- (b) the amount of that tax comprised in the total of those defaults (see sub-paragraphs (4) to (7)).
- (2) For the purposes of this paragraph, P makes a default when P fails to make one of the following payments (or to pay an amount comprising two or more of those payments) in full on or before the date on which it becomes due and payable—
- (a) a payment under PAYE regulations;

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

- (b) a payment of earnings-related contributions within the meaning of the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004);
 - (c) a payment due under the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045);
 - (d) a repayment in respect of a student loan due under the Education (Student Loans) (Repayments) Regulations 2009 (S.I. 2009/470) or the Education (Student Loans) (Repayments) Regulations (Northern Ireland) 2000 (S.R. 2000 No. 121).
- (3) But the first failure during a tax year to make one of those payments (or to pay an amount comprising two or more of those payments) does not count as a default for that tax year.
- (4) If P makes 1, 2 or 3 defaults during the tax year, the amount of the penalty is 1% of the amount of the tax comprised in the total of those defaults.
- (5) If P makes 4, 5 or 6 defaults during the tax year, the amount of the penalty is 2% of the amount of the tax comprised in the total of those defaults.
- (6) If P makes 7, 8 or 9 defaults during the tax year, the amount of the penalty is 3% of the amount of the tax comprised in the total of those defaults.
- (7) If P makes 10 or more defaults during the tax year, the amount of the penalty is 4% of the amount of the tax comprised in the total of those defaults.
- (8) For the purposes of this paragraph—
- (a) the amount of a tax comprised in a default is the amount of that tax comprised in the payment which P fails to make;
 - (b) a default counts for the purposes of sub-paragraphs (4) to (7) even if it is remedied before the end of the tax year.
- (9) The Treasury may by order made by statutory instrument make such amendments to sub-paragraph (2) as they think fit in consequence of any amendment, revocation or re-enactment of the regulations mentioned in that sub-paragraph.”

7 After paragraph 8 insert—

“Amount of penalty: amounts in respect of periods of between 2 and 6 months

- 8A (1) Paragraphs 8B to 8E apply in the case of a payment of tax falling within any of items 6A, 6C and 11A to 11M in the Table which relates to a period of less than 6 months but more than 2 months.
- (2) But those paragraphs do not apply in the case of a payment mentioned in paragraph 3(1)(d).
- (3) Paragraph 8K sets out how payments on account of VAT (item 6A) are to be treated for the purposes of paragraphs 8B to 8E.
- 8B (1) A penalty period begins to run on the penalty date for the payment of tax.

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

- (2) The penalty period ends with the day 12 months after the date specified in or for the purposes of column 4 for the payment, unless it is extended under paragraph 8C(2)(c) or 8H(2)(c).
- 8C (1) This paragraph applies if—
- (a) a penalty period has begun under paragraph 8B or 8G because P has failed to make a payment (“payment A”), and
 - (b) before the end of the period, P fails to make another payment (“payment B”) falling within the same item in the Table as payment A.
- (2) In such a case—
- (a) paragraph 8B(1) does not apply to the failure to make payment B,
 - (b) P is liable to a penalty under this paragraph for that failure, and
 - (c) the penalty period that has begun is extended so that it ends with the day 12 months after the date specified in or for the purposes of column 4 for payment B.
- (3) The amount of the penalty under this paragraph is determined by reference to the number of defaults that P has made during the penalty period.
- (4) If the default is P’s first default during the penalty period, P is liable, at the time of the default, to a penalty of 2% of the amount of the default.
- (5) If the default is P’s second default during the penalty period, P is liable, at the time of the default, to a penalty of 3% of the amount of the default.
- (6) If the default is P’s third or a subsequent default during the penalty period, P is liable, at the time of the default, to a penalty of 4% of the amount of the default.
- (7) For the purposes of this paragraph—
- (a) P makes a default when P fails to pay an amount of tax in full on or before the date on which it becomes due and payable;
 - (b) in accordance with sub-paragraph (1)(b), the references in sub-paragraphs (3) to (6) to a default are references to a default in relation to the tax to which payments A and B relate;
 - (c) a default counts for the purposes of those sub-paragraphs if (but only if) the period to which the payment relates is less than 6 months;
 - (d) the amount of a default is the amount which P fails to pay.
- (8) A penalty period may be extended more than once under sub-paragraph (2)(c).
- 8D If any amount of the tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- 8E If any amount of the tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

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

Amount of penalty: amounts in respect of periods of 2 months or less

- 8F (1) Paragraphs 8G to 8J apply in the case of a payment of tax falling within any of items 6A, 6C and 11A to 11M in the Table which relates to a period of 2 months or less.
- (2) But those paragraphs do not apply in the case of a payment mentioned in paragraph 3(1)(d).
- 8G (1) A penalty period begins to run on the penalty date for the payment of tax.
- (2) The penalty period ends with the day 12 months after the date specified in or for the purposes of column 4 for the payment, unless it is extended under paragraph 8C(2)(c) or 8H(2)(c).
- 8H (1) This paragraph applies if—
- (a) a penalty period has begun under paragraph 8B or 8G because P has failed to make a payment (“payment A”), and
 - (b) before the end of the period, P fails to make another payment (“payment B”) falling within the same item in the Table as payment A.
- (2) In such a case—
- (a) paragraph 8G(1) does not apply to the failure to make payment B,
 - (b) P is liable to a penalty under this paragraph for that failure, and
 - (c) the penalty period that has begun is extended so that it ends with the day 12 months after the date specified in or for the purposes of column 4 for payment B.
- (3) The amount of the penalty under this paragraph is determined by reference to the number of defaults that P has made during the penalty period.
- (4) If the default is P’s first, second or third default during the penalty period, P is liable, at the time of the default, to a penalty of 1% of the amount of the default.
- (5) If the default is P’s fourth, fifth or sixth default during the penalty period, P is liable, at the time of the default, to a penalty of 2% of the amount of the default.
- (6) If the default is P’s seventh, eighth or ninth default during the penalty period, P is liable, at the time of the default, to a penalty of 3% of the amount of the default.
- (7) If the default is P’s tenth or a subsequent default during the penalty period, P is liable, at the time of the default, to a penalty of 4% of the amount of the default.
- (8) For the purposes of this paragraph—
- (a) P makes a default when P fails to pay an amount of tax in full on or before the date on which it becomes due and payable;

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

- (b) in accordance with sub-paragraph (1)(b), the references in sub-paragraphs (3) to (7) to a default are references to a default in relation to the tax to which payments A and B relate;
 - (c) a default counts for the purposes of those sub-paragraphs if (but only if) the period to which the payment relates is less than 6 months;
 - (d) the amount of a default is the amount which P fails to pay.
- (9) A penalty period may be extended more than once under sub-paragraph (2)(c).
- 8I If any amount of the tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- 8J If any amount of the tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.”

8 After paragraph 8J insert—

“Calculation of unpaid VAT: treatment of payments on account

- 8K (1) Where P is required, by virtue of an order under section 28 of VATA 1994, to make any payment on account of VAT—
- (a) each payment is to be treated for the purposes of this Schedule as relating to the prescribed accounting period in respect of which it is to be paid (and not as relating to the interval between the dates on which payments on account are required to be made), and
 - (b) the amount of tax unpaid in respect of the prescribed accounting period is the total of the amounts produced by paragraphs (a) and (b) of sub-paragraph (3).
- (2) In determining that total—
- (a) if there is more than one amount of POAD or POAT, those amounts are to be added together, and
 - (b) if the amount produced by sub-paragraph (3)(b) is less than zero, that amount is to be disregarded.
- (3) The amounts are—
- (a)
$$\text{POAD} - \text{POAT}$$
 - , and
 - (b)
$$\text{BPD} - \text{BPT}$$
- (4) In this paragraph—
- POAD is the amount of any payment on account due in respect of the prescribed accounting period,

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

POAT is the amount of any payment on account paid on time (that is, on or before the date on which it was required to be made),

BPD (which is the balancing payment due in respect of the prescribed accounting period) is equal to

PAPD – POAD

, and

BPT (which is the amount paid on time in satisfaction of any liability to pay BPD) is equal to

PAPP – POAP

(5) In sub-paragraph (4)—

PAPD is the amount of VAT due in respect of the prescribed accounting period,

PAPP is the total amount paid, on or before the last day on which P is required to make payments in respect of that period, in satisfaction of any liability to pay PAPD, and

POAP is the total amount paid, on or before that day (but whether or not paid on time), in satisfaction of any liability to pay POAD.”

9 (1) Paragraph 11 (assessment) is amended as follows.

(2) In sub-paragraph (4), for “unpaid tax” substitute “tax which was due or payable”.

(3) After sub-paragraph (4) insert—

“(4A) A replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of an amount of tax which was due or payable.”

10 For paragraph 16(1) (no liability where there is reasonable excuse for failure) substitute—

“(1) If P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make a payment—

(a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure, and

(b) the failure does not count as a default for the purposes of paragraphs 6, 8B, 8C, 8G and 8H.”