

*Changes to legislation: There are currently no known outstanding effects  
for the Finance Act 2017, SCHEDULE 9. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 9

Section 53

#### SOFT DRINKS INDUSTRY LEVY: REQUIREMENTS TO KEEP RECORDS ETC: PENALTIES

##### PART 1

##### PENALTIES

*Sections 48(2) and 53(1): requirements imposed by regulations*

- 1 (1) A person who fails to comply with a requirement imposed by regulations under section 48(2) or 53(1)(a) is liable to a penalty.
- (2) The amount of the penalty is equal to the relevant amount multiplied by the number of days on which the failure continues (up to a maximum of 100 days) or, if it is greater, to a penalty of £50.
- (3) In relation to a failure by a person to comply with the requirement, the amount of the penalty is to be determined by reference to the number of occasions in the period of 2 years preceding the beginning of the failure on which the person has previously failed to comply with that requirement.
- (4) But—
- (a) a continuing failure to comply with a requirement is to be regarded as one occasion of failure occurring on the date on which the failure began;
  - (b) if the same omission gives rise to a failure to comply with more than one such requirement, it is to be regarded as the occasion of only one failure.
- (5) The relevant amount is—
- (a) if there has been no previous occasion of failure in the period mentioned in sub-paragraph (3), £5;
  - (b) if there has been only one such occasion in that period, £10; and
  - (c) in any other case, £15.
- (6) A person who fails to comply with a requirement to preserve records imposed by regulations under section 53(1)(b) is liable to a penalty of £500.
- (7) If by reason of conduct falling within sub-paragraph (1) or (6) a person is assessed to a penalty for a deliberate inaccuracy under Schedule 24 to FA 2007, that conduct does not also give rise to a penalty under this paragraph.

##### Commencement Information

II Sch. 9 para. 1 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

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*Section 53(2): requirements imposed by directions*

- 2 (1) A person who fails to comply with a requirement imposed under section 53(2)(a) is liable to a penalty.
- (2) The amount of the penalty is equal to £200 multiplied by the number of days on which the failure continues (up to a maximum of 30 days).
- (3) A person who fails to comply with a requirement imposed under section 53(3)(b) is liable to a penalty of £500.
- (4) If by reason of conduct falling within sub-paragraph (1) or (3) a person is assessed to a penalty for a deliberate inaccuracy under Schedule 24 to FA 2007, that conduct does not also give rise to a penalty under this paragraph.

**Commencement Information**

**I2** [Sch. 9 para. 2](#) in force at 6.4.2018 by [S.I. 2018/464](#), [art. 2\(e\)](#)

*Power to alter amounts specified in paragraphs 1 and 2*

- 3 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums specified in paragraph 1(2), (5)(a) to (c) and (6) and paragraph 2(2) and (3) such other sums as appear to them to be justified by the change.
- (2) But regulations under sub-paragraph (1) may not apply to a failure which began before the date on which the regulations come into force.
- (3) The “relevant date”, in relation to a specified sum, means—
- (a) the date on which this Act is passed, and
  - (b) each date on which the power conferred by sub-paragraph (1) has been exercised in relation to that sum.

**Commencement Information**

**I3** [Sch. 9 para. 3](#) in force at 13.1.2018 for specified purposes by [S.I. 2018/32](#), [reg. 2](#)

**I4** [Sch. 9 para. 3](#) in force at 6.4.2018 in so far as not already in force by [S.I. 2018/464](#), [art. 2\(e\)](#)

*Reasonable excuse*

- 4 (1) A failure by any person to comply with any requirement mentioned in paragraph 1 or 2 does not give rise to a liability to a penalty under this Schedule if the person concerned satisfies—
- (a) the Commissioners, or
  - (b) on appeal, a tribunal,
- that there is a reasonable excuse for the failure.
- (2) A failure for which there is a reasonable excuse is to be disregarded for the purposes of paragraph 1(5).
- (3) For the purposes of this paragraph, in the case of a person (P)—

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- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control;
- (b) where P relies on another person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant failure;
- (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

**Commencement Information**

**I5** Sch. 9 para. 4 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

**PART 2**

**ASSESSMENTS**

*Power to make assessments*

- 5 (1) Where a person becomes liable for a penalty under this Schedule—
- (a) the Commissioners may assess the penalty, and
  - (b) if they do so, they must notify the amount to that person.
- (2) Where a person is liable to a penalty under paragraph 1 for failure to comply with a requirement imposed by regulations under section 48(2) or 53, no assessment of the penalty may be made under this paragraph unless—
- (a) the Commissioners have given the person written notice of the consequences of a continuing failure to comply with that requirement, and
  - (b) the notice has been given during the period of 2 years preceding the assessment.
- (3) A notice under sub-paragraph (1) must specify a date, being not later than the date of the notice, to which the amount of the penalty is calculated.
- (4) If the penalty continues to accrue after that date, a further assessment or assessments may be made under this paragraph in respect of the accrued amounts.
- (5) If, within such period as may be notified by the Commissioners to the person liable to a penalty, the failure to comply with a requirement imposed by regulations under section 48(2), or by regulations or a direction under 53, is remedied, it is to be treated as remedied on the date specified under sub-paragraph (3).

**Commencement Information**

**I6** Sch. 9 para. 5 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

*Supplementary assessments*

- 6 (1) Sub-paragraph (2) applies where—
- (a) an assessment has been notified to a person under paragraph 5, and

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- (b) it appears to the Commissioners that the amount which ought to have been assessed as due exceeds the amount that has already been assessed.
- (2) The Commissioners may—
  - (a) make a supplementary assessment of the amount due from the person, and
  - (b) notify the amount to that person.

**Commencement Information**

**I7** Sch. 9 para. 6 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

*Further provision about assessments under this Schedule*

- 7 (1) Where an amount has been assessed and notified to a person under paragraph 5 or 6, it is recoverable on the basis that it is an amount of soft drinks industry levy due from that person.
- (2) But sub-paragraph (1) does not have effect if, or to the extent that, the assessment has been withdrawn or reduced.

**Commencement Information**

**I8** Sch. 9 para. 7 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

*Time limits for assessments*

- 8 (1) An assessment under paragraph 5 may not be made after the end of the relevant period.
- (2) Except in a case within sub-paragraph (3), the relevant period is the period of 4 years from the end of the accounting period to which the assessment relates.
- (3) Where an assessment of an amount due from a person in a case involving loss of soft drinks industry levy—
  - (a) brought about deliberately by the person, or
  - (b) attributable to a failure by the person to comply with a requirement imposed by regulations under section 53 (records),
 the relevant period is the period of 20 years from the end of the accounting period to which the assessment relates.
- (4) In sub-paragraph (3)(a) the reference to loss brought about deliberately by a person includes a reference to a loss brought about as a result of the deliberate inaccuracy in a document given to HMRC by the person.
- (5) In sub-paragraphs (3) and (4) references to a loss brought about by a person include references to a loss brought about by another person acting on behalf of that person.

**Commencement Information**

**I9** Sch. 9 para. 8 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

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*Further provision about notices*

- 9 (1) A notice of an assessment under paragraph 5 or 6 given to a person's representative is to be treated for the purposes of this Schedule as a notice given to the person in relation to whom the representative acts.
- (2) In this paragraph “representative”, in relation to a person, has the meaning given by paragraph 16(2) of Schedule 8.

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**Commencement Information**

**I10** Sch. 9 para. 9 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

- 10 A notice under this Schedule may be given to a person by sending it to that person by post, addressed to the person's last known address.

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**Commencement Information**

**I11** Sch. 9 para. 10 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

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