
Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

SCHEDULES

SEVENTH SCHEDULE

Section 61.

APPLICATION OF PART III TO THE PROFITS TAX

- 1 (1) Where a person has been required by a notice served under paragraph 1 of Part III of the Fifth Schedule to the Finance Act, 1937, to make any return or furnish any particulars and fails to comply with the notice, he shall be liable, subject to paragraph 3 of this Schedule, to a penalty not exceeding, except in the case mentioned in paragraph 2 of this Schedule, fifty pounds and, if the failure continues after it has been declared by the court or Commissioners before whom proceedings for the penalty have been commenced, to a further penalty not exceeding ten pounds for each day on which the failure so continues.
- (2) In paragraph 4 of the said Part III, for the words " any of the foregoing provisions " there shall be substituted the words " the provisions of paragraph 3 " , and the words from " and, in a case " to the end of the paragraph shall be omitted.
- 2 Where any such failure continues after the expiration of one year from the service of the notice, the first of the penalties mentioned in paragraph 1 of this Schedule shall be an amount not exceeding the aggregate of fifty pounds and the total amount of the tax with which the said person is charged, in assessments made after the expiration of one year from the service of the notice, on the profits of the trade or business in question arising during any chargeable accounting period which is or includes the period or any part of the period to which the return or the particulars ought to have related.
- 3 Except in the case mentioned in paragraph 2 of this Schedule, a person shall not be liable to any penalty incurred under paragraph 1 of this Schedule if his failure is remedied before proceedings for the recovery of the penalty are commenced.
- 4 (1) Where a person fraudulently or negligently delivers any incorrect return or particulars of a kind mentioned in paragraph 1 of Part III of the Fifth Schedule to the Finance Act, 1937, or makes any incorrect statement or declaration in connection with any application for relief, he shall be liable to a penalty not exceeding the aggregate of—
- (a) fifty pounds, and
 - (b) the amount or, in the case of fraud, twice the amount of the difference specified in paragraph 5 of this Schedule.
- (2) Where any such return, particulars, statement or declaration were delivered or made by any person neither fraudulently nor negligently and it comes to his notice that they were incorrect then, unless the error is remedied without unreasonable delay, the return, particulars, statement or declaration shall be treated for the purposes of this paragraph as having been negligently delivered or made by him.
- 5 The difference referred to in paragraph 4 of this Schedule is the difference between—

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (a) the total amount of tax chargeable in assessments for any chargeable accounting period which is or includes the period or any part of the period to which the return, particulars, statement or declaration relate; and
 - (b) the amount which would have been the amount so chargeable if the return, particulars, statement or declaration as delivered or made by him had been correct.
- 6 Any person who assists in or induces the making or delivery for any purposes of the profits tax of any return, statement, declaration or particulars which he knows to be incorrect shall be liable to a penalty not exceeding five hundred pounds.
- 7 (1) Whenever any assessment to income tax for any year of assessment has been made on any person by virtue of section fifty-one of this Act which is based wholly or partly on the profits of a trade or business carried on by him, an assessment to the profits tax may, subject to sub-paragraph (2) of this paragraph, be made on him for any chargeable accounting period ending after the beginning of the period during which those profits arose.
 - (2) Without prejudice to any power exercisable under section twenty-seven of the Finance Act, 1958, an assessment under this paragraph may be made only before the expiration of two years from the final determination of the tax covered by the said assessment to income tax, and only for the purpose of making good to the Crown a loss of tax attributable to the said person's neglect.
 - (3) In determining the amount of the tax to be charged for any chargeable accounting period in any assessment made under this paragraph effect shall be given, if the person to be assessed so requires, to any deduction or relief to which he would have been entitled for that period on an application made within the time allowed by the enactments relating to the profits tax.
- 8 (1) Where the amount of any penalty to which a person is liable under the enactments relating to the profits tax is determined by reference to tax charged in an assessment for any chargeable accounting period which is made not later than six years after the end of that period, proceedings for the recovery of the penalty shall not be out of time by reason that they are commenced after the time allowed by the Eighth Schedule to the Finance Act, 1943, if they are commenced within three years after the final determination of the amount of that tax.
 - (2) Where the said amount was finally determined before the sixth day of April, nineteen hundred and fifty-nine, the proceedings shall not be out of time if they are commenced before the sixth day of April, nineteen hundred and sixty-two.
 - (3) In any proceedings for the recovery of a penalty which could not have been commenced but for this paragraph any tax charged in an assessment made under paragraph 7 of this Schedule shall be left out of account in determining the amount of the penalty.
- 9 (1) Except as otherwise provided in this paragraph, no proceedings shall be commenced against any person for the recovery of any fine or penalty under the enactments relating to the profits tax except by order of the Commissioners of Inland Revenue.
 - (2) Any such proceedings which are not instituted (in England, Wales or Northern Ireland) under the Crown Proceedings Act, 1947, by and in the name of the Commissioners of Inland Revenue as an authorised department for the purposes of that Act shall be instituted in the name of an officer or,
 - (a) in England and Wales, in the name of the Attorney General;

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (b) in Scotland, in the name of the Lord Advocate ; and
 - (c) in Northern Ireland, in the name of the Attorney General for Northern Ireland.
- (3) Any such proceedings may, except as otherwise provided in the enactments relating to the profits tax, be commenced either before the General or Special Commissioners, or—
- (a) in England, Wales or Northern Ireland, in the High Court;
 - (b) in Scotland, in the Court of Session as the Court of Exchequer in Scotland ;
- and any proceedings commenced as mentioned in paragraph (a) of this sub-paragraph shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act, 1947, or, as the case may be, that Part as for the time being in force in Northern Ireland.
- (4) The surveyor may, without an order of the Commissioners of Inland Revenue, commence before the General Commissioners (or, in Northern Ireland, the Special Commissioners) proceedings for a penalty incurred under paragraph 1 of this Schedule; but in any proceedings so commenced the Commissioners shall not in any case award, in respect of the first of the penalties mentioned in that paragraph, a sum exceeding fifty pounds.
- (5) Where any proceedings under this paragraph are brought before any Commissioners, an appeal shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland, from their decision—
- (a) by any party, on a question of law ; and
 - (b) by the defendant (or, in Scotland, the defender) against the amount of any fine or penalty awarded ;
- and on any appeal under paragraph (b) of this sub-paragraph the court may either confirm the decision or reduce or increase the sum awarded.
- (6) Proceedings under this paragraph before any Commissioners shall be by way of information in writing, made to them, and upon summons issued by them to the defendant (or defender) to appear before them at a time and place stated in the summons, and they shall hear and determine each case in a summary way ; and any penalty awarded by them in such proceedings shall for all purposes be treated as if it were tax charged in an assessment and due and payable.
- (7) The Governor of Northern Ireland may, if he thinks fit, appoint some other person to act instead of the Attorney General for Northern Ireland in relation to any matters to which this paragraph relates, and in that case the reference in this paragraph to the Attorney General for Northern Ireland shall be construed as a reference to the person so appointed.
- 10 (1) Where an assessment to the profits tax is made for the purpose of making good to the Crown a loss of tax wholly or partly attributable to the fraud, wilful default or neglect of any person, the tax charged by the assessment, or as the case may be, such part thereof as corresponds to the part so attributable, shall carry interest at the rate of three per cent. per annum from the expiration of one year after the end of the chargeable accounting period until payment.
- (2) Tax carrying interest under this paragraph shall not carry interest under section eight of the Finance (No. 2) Act, 1947.

*Status: This is the original version (as it was originally enacted). This
item of legislation is currently only available in its original format.*

- (3) Subsections (4) and (6) of the said section eight (which provide for the adjustment, in certain cases, and the recovery of interest payable under that section) shall apply in relation to interest payable under this paragraph as they apply in relation to interest payable under that section.
 - (4) A certificate by the General or Special Commissioners that the tax or a specified part of the tax charged by an assessment specified in the certificate carries interest under this paragraph from a date so specified shall be sufficient evidence of that fact in proceedings for the recovery of that interest.
 - (5) A certificate under sub-paragraph (4) of this paragraph shall not be given except on the application of the surveyor or a person nominated for that purpose by the Commissioners of Inland Revenue, and on any such application the person charged by the assessment shall be entitled to appear and be heard.
 - (6) The Commissioners of Inland Revenue may in their discretion mitigate (whether before or after judgment) any interest due under this paragraph and may stay or compound any proceedings for the recovery thereof.
- 11 For the purposes of this Schedule, any assessment which can no longer be varied by any Commissioners on appeal or by the order of any court shall be sufficient evidence that the profits in respect of which tax is charged in the assessment arose as stated therein.