



# Tax Collection and Management (Wales) Act 2016

2016 anaw 6

## PART 5

### PENALTIES

#### CHAPTER 2

##### PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX

###### *Penalty for failure to make tax return*

**118 Penalty for failure to make tax return on or before filing date**

A person is liable to a penalty of £100 if the person fails to make a tax return on or before the filing date.

**119 Penalty for failure to make tax return within 6 months from filing date**

- (1) A person is liable to a penalty if the person's failure to make a tax return continues after the end of the period of 6 months beginning with the day after the filing date.
- (2) The penalty is the greater of—
  - (a) 5% of the amount of the devolved tax to which the person would have been liable if the tax return had been made, and
  - (b) £300.

**120 Penalty for failure to make tax return within 12 months from filing date**

- (1) A person is liable to a penalty if the person's failure to make a tax return continues after the end of the period of 12 months beginning with the day after the filing date.

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- (2) Where, by failing to make the tax return, the person deliberately withholds information which would enable or assist WRA to assess the person’s liability to a devolved tax, the penalty is the greater of—
- (a) 100% of the amount of the devolved tax to which the person would have been liable if the tax return had been made, and
  - (b) £300.
- (3) In any case not falling within subsection (2), the penalty is the greater of—
- (a) 5% of the amount of the devolved tax to which the person would have been liable if the tax return had been made, and
  - (b) £300.

### **121 Reduction in penalty for failure to make tax return: disclosure**

- (1) WRA may reduce a penalty under section 118, 119 or 120 if the person discloses information which has been withheld as a result of a failure to make a tax return (“relevant information”).
- (2) A person discloses relevant information by—
- (a) telling WRA about it,
  - (b) giving WRA reasonable help in quantifying any devolved tax unpaid by reason of the information having been withheld, and
  - (c) allowing WRA access to records for the purpose of checking how much devolved tax is so unpaid.
- (3) In reducing a penalty under this section, WRA may take account of—
- (a) whether the disclosure was prompted or unprompted, and
  - (b) the quality of the disclosure.
- (4) Disclosure of relevant information—
- (a) is “unprompted” if made at a time when the person making the disclosure has no reason to believe that WRA has discovered or is about to discover the relevant information, and
  - (b) otherwise, is “prompted”.
- (5) “Quality”, in relation to disclosure, includes timing, nature and extent.

#### *Penalty for failure to pay tax*

### **122 Penalty for failure to pay tax**

- (1) A person is liable to a penalty if the person fails to pay, on or before the penalty date, an amount of devolved tax which is payable by that person.
- (2) The “penalty date”, in relation to an amount of devolved tax which is payable, is the date specified in an enactment as the date on or before which the amount must be paid.
- (3) The penalty under this section is the percentage of the amount of unpaid devolved tax which is specified by an enactment as the amount of the penalty in the relevant circumstances.

### **123 Suspension of penalty for failure to pay tax during currency of agreement for deferred payment**

- (1) This section applies if—
  - (a) a person by whom an amount of devolved tax is payable has made a request to WRA, on or before the penalty date, to defer payment of the amount, and
  - (b) WRA has agreed, on or before that date, that payment of the amount may be deferred for a period (“the deferral period”).
- (2) If the person would (apart from this subsection) become liable, between the day on which the person makes the request and the end of the deferral period, to a penalty for failing to pay the amount, the person is not liable to that penalty.
- (3) But if—
  - (a) the person breaks the agreement, and
  - (b) WRA issues a notice to the person specifying any penalty to which the person would be liable apart from subsection (2),the person becomes liable to that penalty on the day on which the notice is issued.
- (4) A person breaks an agreement if—
  - (a) the person fails to pay the amount in question when the deferral period ends, or
  - (b) the deferral is subject to a condition (including a condition that part of the amount be paid during the deferral period) and the person fails to comply with it.
- (5) If the agreement mentioned in subsection (1) is varied at any time by a further agreement between the person and WRA, this section applies from that time to the agreement as varied.

#### *Penalties under Chapter 2: general*

### **124 Interaction of penalties**

- (1) Where a person is liable to more than one penalty under sections 118 to 120 which is determined by reference to a liability to a devolved tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to the devolved tax.
- (2) Where a person is liable to—
  - (a) a penalty under this Chapter which is determined by reference to a liability to a devolved tax, and
  - (b) any other penalty (other than a penalty under this Chapter) which is determined by reference to the same liability to a devolved tax,the amount of the penalty under this Chapter is to be reduced by the amount of that other penalty.

### **125 Special reduction in penalty under Chapter 2**

- (1) WRA may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.
- (2) In subsection (1), “special circumstances” does not include—
  - (a) ability to pay, or

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- (b) the fact that a potential loss of revenue from one person is balanced by a potential over-payment by another.
- (3) In subsection (1), the reference to reducing a penalty includes a reference to—
  - (a) remitting a penalty entirely,
  - (b) suspending a penalty, and
  - (c) agreeing a compromise in relation to proceedings for a penalty.
- (4) In this section a reference to a penalty include a reference to any interest in relation to a penalty.

### **126 Reasonable excuse for failure to make tax return or pay tax**

- (1) If a person satisfies WRA or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a tax return, the person is not liable to a penalty under sections 118 to 120 in relation to the failure.
- (2) If a person satisfies WRA or (on appeal) the tribunal that there is a reasonable excuse for a failure to pay a devolved tax, the person is not liable to a penalty under section 122 in relation to the failure.
- (3) For the purposes of subsections (1) and (2)—
  - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person’s control;
  - (b) where a person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure;
  - (c) where a person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

### **127 Assessment of penalties under Chapter 2**

- (1) Where a person becomes liable to a penalty under this Chapter, WRA must—
  - (a) assess the penalty,
  - (b) issue notice to the person of the penalty assessed, and
  - (c) state in the notice the period or transaction in respect of which the penalty has been assessed.
- (2) An assessment of a penalty under this Chapter may be combined with an assessment to a devolved tax.
- (3) A supplementary assessment may be made in respect of a penalty under section 119 or 120 if an earlier assessment operated by reference to an underestimate of the amount of devolved tax to which a person would have been liable if a tax return had been made.
- (4) If—
  - (a) an assessment in respect of a penalty under section 119 or 120 is based on the amount of devolved tax to which a person would have been liable if a tax return had been made, and
  - (b) that liability is found by WRA to be excessive,
 WRA may issue a notice to the person liable to the penalty amending the assessment so that it is based on the correct amount.

- (5) A supplementary assessment may be made in respect of a penalty under section 122 if an earlier assessment operated by reference to an underestimate of the amount of devolved tax which was payable.
- (6) If an assessment in respect of a penalty under section 122 is based on an amount of tax payable that is found by WRA to be excessive, WRA may issue a notice to the person liable to the penalty amending the assessment so that it is based on the correct amount.
- (7) An amendment made under subsection (4) or (6)—
  - (a) does not affect when the penalty must be paid, and
  - (b) may be made after the last day on which the assessment in question could have been made under section 128.

## **128 Time limit for assessment of penalties under Chapter 2**

- (1) An assessment of a penalty under this Chapter in respect of any amount must be made on or before the later of date A and (where it applies) date B.
- (2) Date A is the last day of the period of 2 years beginning with—
  - (a) in the case of failure to make a tax return, the filing date, or
  - (b) in the case of failure to pay a devolved tax, the penalty date.
- (3) Date B is the last day of the period of 12 months beginning with—
  - (a) in the case of a failure to make a tax return—
    - (i) the end of the appeal period for the assessment of the amount of devolved tax to which a person would have been liable if the tax return had been made, or
    - (ii) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil;
  - (b) in the case of a failure to pay a devolved tax—
    - (i) the end of the appeal period for the assessment of the amount of devolved tax in respect of which the penalty is assessed, or
    - (ii) if there is no such assessment, the date on which that amount of devolved tax is ascertained.
- (4) In subsection (2)(b), “penalty date” has the meaning given by section 122(2).
- (5) In subsection (3)(a) and (b), “appeal period” means the later of the following periods—
  - (a) if no appeal is made, the period during which an appeal could be made, and
  - (b) if an appeal is made, the period ending with its final determination or withdrawal.