



Revenue Scotland and Tax Powers Act 2014

2014 asp 16

PART 8

PENALTIES

CHAPTER 2

PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX

Penalties under Chapter 2: general

174 Interaction of penalties under Chapter 2 with other penalties

Where P is liable to a penalty under this Chapter which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P (other than a penalty under this Chapter or section 209), if the amount of the penalty is determined by reference to the same liability to tax.

Commencement Information

II [S. 174](#) in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

175 Reduction in penalty under sections 159 to 167 for disclosure

- (1) Revenue Scotland may reduce a penalty under sections 159 to 167 where P discloses information which has been withheld by a failure to make a return (“relevant information”).
- (2) P discloses relevant information by—
 - (a) telling Revenue Scotland about it,
 - (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of its having been withheld, and

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- (c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.
- (3) Reductions under this section may reflect—
 - (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 P has no reason to believe that Revenue Scotland has discovered or is about to discover the relevant information, and
 - (b) otherwise, is “prompted”.
- (5) In relation to disclosure, “quality” includes timing, nature and extent.

Commencement Information

I2 [S. 175](#) in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

176 Suspension of penalty under sections 168 to 173 during currency of agreement for deferred payment

- (1) This section applies if—
 - (a) P fails to pay an amount of tax when it becomes due and payable,
 - (b) P makes a request to Revenue Scotland that payment of the amount of tax be deferred, and
 - (c) Revenue Scotland agrees that payment of that amount may be deferred for a period (“the deferral period”).
- (2) If P would (ignoring this subsection) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under sections 168 to 173 for failing to pay that amount, P is not liable to that penalty.
- (3) But if—
 - (a) P breaks the agreement, and
 - (b) Revenue Scotland serves on P a notice specifying any penalty to which P would become liable (ignoring subsection (2)),
 P becomes liable to that penalty at the date of the notice.
- (4) P breaks an agreement if—
 - (a) P fails to pay the amount of tax in question when the deferral period ends, or
 - (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.
- (5) If the agreement mentioned in subsection (1)(c) is varied at any time by a further agreement between P and Revenue Scotland, this section applies from that time to the agreement as varied.

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Commencement Information

I3 [S. 176](#) in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

177 Special reduction in penalty under Chapter 2

- (1) Revenue Scotland 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
 - (b) the fact that a potential loss of revenue from one taxpayer 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 references to a penalty include references to any interest in relation to the penalty.
- (5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

Commencement Information

I4 [S. 177](#) in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

178 Reasonable excuse for failure to make return or pay tax

- (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under sections 159 to 167 does not arise in relation to that failure.
- (2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under sections 168 to 173 does not arise in relation to that 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 P's control,
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
 - (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.

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Commencement Information

I5 S. 178 in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

179 Assessment of penalties under Chapter 2

- (1) Where P becomes liable to a penalty under this Chapter, Revenue Scotland must—
 - (a) assess the penalty,
 - (b) notify the person, and
 - (c) state in the notice the period, or the transaction, in respect of which the penalty is assessed.
- (2) A penalty under this Chapter must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment of a penalty under this Chapter—
 - (a) is to be treated for enforcement purposes as an assessment to tax, and
 - (b) may be combined with an assessment to tax.
- (4) In relation to penalties under sections 159 to 167—
 - (a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return,
 - (b) a replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return.
- (5) In relation to penalties under sections 168 to 173—
 - (a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was owing,
 - (b) if an assessment in respect of a penalty is based on an amount of tax owing that is found by Revenue Scotland to be excessive, Revenue Scotland may by notice to P amend the assessment so that it is based on the correct amount.
- (6) An amendment made under subsection (5)(b)—
 - (a) does not affect when the penalty must be paid,
 - (b) may be made after the last day on which the assessment in question could have been made under section 180.

Commencement Information

I6 S. 179 in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

180 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—

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- (a) in the case of failure to make a return, the filing date, or
 - (b) in the case of failure to pay tax, the last date on which payment may be made without paying a penalty.
- (3) Date B is the last day of the period of 12 months beginning with—
 - (a) in the case of failure to make a return—
 - (i) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, 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, or
 - (b) in the case of failure to pay tax—
 - (i) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or
 - (ii) if there is no such assessment, the date on which that amount of tax is ascertained.
- (4) In subsection (3)(a)(i) and (b)(i) “appeal period” means the period during which—
 - (a) an appeal could be brought, or
 - (b) an appeal that has been brought has not been determined or withdrawn.

Commencement Information

I7 [S. 180](#) in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

181 Power to change penalty provisions in Chapter 2

- (1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.
- (2) Provision under subsection (1) includes provision—
 - (a) about the circumstances in which a penalty is payable,
 - (b) about the amounts of penalties,
 - (c) about the procedure for issuing penalties,
 - (d) about appealing penalties,
 - (e) about enforcing penalties.
- (3) Regulations under subsection (1) may not create criminal offences.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

Commencement Information

I8 [S. 181](#) in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 141(3A)(3B) inserted by [2017 asp 2 Sch. 2 para. 2\(2\)](#)
- s. 215A-215G and cross-headings inserted by [2017 asp 2 Sch. 2 para. 21](#)
- s. 223(1)(d)(e) inserted by [2017 asp 2 Sch. 2 para. 24](#)
- s. 233(1)(j) inserted by [2017 asp 2 Sch. 2 para. 25\(2\)](#)
- s. 233(3A) inserted by [2017 asp 2 Sch. 2 para. 25\(3\)](#)