



# 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 for failure to make returns*

#### **159 Penalty for failure to make returns**

(1) A penalty is payable by a person (“P”) where P fails to make a tax return specified in the table below on or before the filing date (see section 82).

	<i>Tax to which return relates</i>	<i>Return</i>
1.	Land and buildings transaction tax	(a) Return under section 29, 31, 33 or 34 of the LBTT(S) Act 2013. (b) Return under paragraph 10, 11, 20, 22 or 30 of Schedule 19 to the LBTT(S) Act 2013.
2.	Scottish landfill tax	Return under regulations made under section 25 of the LT(S) Act 2014.

(2) If P’s failure falls within more than one provision of this section or of sections 160 to 167, P is liable to a penalty under each of those provisions.

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- (3) But where P is liable for a penalty under more than one provision of this section or of sections 160 to 167 which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.
- (4) In sections 160 to 167 “penalty date”, in relation to a return, means the day after the filing date.
- (5) Sections 160 to 163 apply in the case of a return falling within item 1 of the table.
- (6) Sections 164 to 167 apply in the case of a return falling within item 2 of the table.

*Amounts of penalties for failure to make returns: LBTT*

**160 Land and buildings transaction tax: first penalty for failure to make return**

- (1) This section applies in the case of a failure to make a return falling within item 1 of the table in section 159.
- (2) P is liable to a penalty under this section of £100.

**161 Land and buildings transaction tax: 3 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if)—
  - (a) P’s failure continues after the end of the period of 3 months beginning with the penalty date,
  - (b) Revenue Scotland decides that such a penalty should be payable, and
  - (c) Revenue Scotland gives notice to P specifying the date from which the penalty is payable.
- (2) The penalty under this section is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subsection (1)(c).
- (3) The date specified in the notice under subsection (1)(c)—
  - (a) may be earlier than the date on which the notice is given, but
  - (b) may not be earlier than the end of the period mentioned in subsection (1)(a).

**162 Land and buildings transaction tax: 6 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this section is the greater of—
  - (a) 5% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.

**163 Land and buildings transaction tax: 12 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.

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- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P’s liability to tax, the penalty under this section is the greater of—
  - (a) 100% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.
- (3) In any case not falling within subsection (2), the penalty under this section is the greater of—
  - (a) 5% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.

*Amounts of penalties for failure to make returns: Scottish landfill tax*

#### **164 Scottish landfill tax: first penalty for failure to make return**

- (1) This section applies in the case of a failure to make a return falling within item 2 of the table in section 159.
- (2) P is liable to a penalty under this section of £100.
- (3) In addition, a penalty period begins to run on the penalty date for the return.
- (4) The penalty period ends with the day 12 months after the filing date for the return, unless it is extended under section 165(2)(c).

#### **165 Scottish landfill tax: multiple failures to make return**

- (1) This section applies if—
  - (a) a penalty period has begun under section 164 because P has failed to make a return (“return A”), and
  - (b) before the end of the period, P fails to make another return (“return B”) falling within the same item in the table as return A.
- (2) In such a case—
  - (a) section 164(2) and (3) do not apply to the failure to make return B,
  - (b) P is liable to a penalty under this section for that failure, and
  - (c) the penalty period that has begun is extended so that it ends with the day 12 months after the filing date for return B.
- (3) The amount of the penalty under this section is determined by reference to the number of returns that P has failed to make during the penalty period.
- (4) If the failure to make return B is P’s first failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £200.
- (5) If the failure to make return B is P’s second failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £300.
- (6) If the failure to make return B is P’s third or subsequent failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £400.

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- (7) For the purposes of this section, in accordance with subsection (1)(b), the references in subsections (3) to (6) to a return are references to a return falling within the same item in the table as returns A and B.
- (8) A penalty period may be extended more than once under subsection (2)(c).

**166 Scottish landfill tax: 6 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this section is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.

**167 Scottish landfill tax: 12 month penalty for failure to make return**

- (1) P is liable to a penalty under this section if (and only if) P’s failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist Revenue Scotland to assess P’s liability to tax, the penalty under this section is the greater of—
- (a) 100% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.
- (3) In any case not falling within subsection (2), the penalty under this section is the greater of—
- (a) 5% of any liability to tax which would have been shown in the return in question, and
  - (b) £300.

*Penalties for failure to pay tax*

**168 Penalty for failure to pay tax**

- (1) A penalty is payable by a person (“P”) where P fails to pay an amount of tax mentioned in column 3 of the following table on or before the date mentioned in column 4 of the table.

	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty incurred</i>
1.	Land and buildings transaction tax	(a) Amount payable under section 40 of the LBTT(S) Act 2013. (b) Additional amount payable as a result of	(a), (d) and (f) The date falling 30 days after the date by which the amount must be paid.

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<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty incurred</i>
	an adjustment under section 66 of this Act. (c) Additional amount payable as a result of an amendment under section 83 of this Act. (d) Additional amount payable as a result of an amendment under section 87 of this Act. (e) Additional amount payable as a result of an amendment under section 93 of this Act. (f) Amount assessed under section 95 of this Act in the absence of a return. (g) Amount payable as a result of an assessment under section 98 of this Act.	(b), (c), (e) and (g) The date by which the amount must be paid.
2. Scottish landfill tax	(a) Amount payable under regulations made under section 25 of the LT(S) Act 2014. (b) Additional amount payable as a result of an adjustment under section 66 of this Act. (c) Additional amount payable as a result of an amendment under section 83 of this Act.	(a), (b), (c), (e) and (g) The date by which the amount must be paid. (d) and (f) The date falling 30 days after the date by which the amount must be paid.

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<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty incurred</i>
	(d) Additional amount payable as a result of an amendment under section 87 of this Act.	
	(e) Additional amount payable as a result of an amendment under section 93 of this Act.	
	(f) Amount assessed under section 95 of this Act in the absence of a return.	
	(g) Amount payable as a result of an assessment under section 98 of this Act.	

- (2) If P’s failure falls within more than one provision of this section or of sections 169 to 173, P is liable to a penalty under each of those provisions.
- (3) In sections 169 to 173 “penalty date”, in relation to an amount of tax, means the day after the date mentioned in or for the purposes of column 4 of the table in relation to that amount.
- (4) Section 169 applies in the case of a payment falling within item 1 of the table.
- (5) Sections 170 to 173 apply in the case of a payment falling within item 2 of the table.

*Amounts of penalties for failure to pay tax: LBTT*

**169 Land and buildings transaction tax: amounts of penalties for failure to pay tax**

- (1) This section applies in the case of a payment of tax falling within item 1 of the table in section 168.
- (2) P is liable to a penalty of 5% of the unpaid tax.
- (3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- (4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

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*Amounts of penalties for failure to pay tax: Scottish landfill tax*

**170 Scottish landfill tax: first penalty for failure to pay tax**

- (1) This section applies in the case of a payment of tax falling within item 2 of the table in section 168.
- (2) P is liable to a penalty of 1% of the unpaid tax.
- (3) In addition, a penalty period begins to run on the penalty date for the payment of tax.
- (4) The penalty period ends with the day 12 months after the date specified in or for the purposes of column 4 of the table in section 168 for the payment, unless it is extended under section 171(2)(c).

**171 Scottish landfill tax: penalties for multiple failures to pay tax**

- (1) This section applies if—
  - (a) a penalty period has begun under section 170 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 in section 168 as payment A.
- (2) In such a case—
  - (a) section 170(2) and (3) do not apply to the failure to make payment B,
  - (b) P is liable to a penalty under this section 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 section 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 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 section—
  - (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 subsection (1)(b), the references in subsections (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 subsections 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 subsection (2)(c).

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**172 Scottish landfill tax: 6 month penalty for failure to pay tax**

If any amount of 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.

**173 Scottish landfill tax: 12 month penalty for failure to pay tax**

If any amount of 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.

*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.

**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
  - (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.

**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



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- (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.

#### **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.

#### **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.

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- (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.

### **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.

### **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.

## **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.