



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 8

### PENALTIES

#### CHAPTER 3

##### PENALTIES RELATING TO INACCURACIES

###### *Penalties under Chapter 3: general*

#### **187 Potential lost revenue: normal rule**

- (1) The “potential lost revenue” in respect of—
  - (a) an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information), or
  - (b) a failure to notify an under-assessment,is the additional amount due and payable in respect of tax as a result of correcting the inaccuracy or under-assessment.
- (2) The reference in subsection (1) to the additional amount due and payable includes a reference to—
  - (a) an amount payable to Revenue Scotland having been erroneously paid by way of repayment of tax, and
  - (b) an amount which would have been repayable by Revenue Scotland had the inaccuracy or assessment not been corrected.

#### **188 Potential lost revenue: multiple errors**

- (1) Where P is liable to a penalty under section 182 in respect of more than one inaccuracy, and the calculation of potential lost revenue under section 187 in respect of each

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inaccuracy depends on the order in which they are corrected, careless inaccuracies are to be taken to be corrected before deliberate inaccuracies.

- (2) In calculating potential lost revenue where P is liable to a penalty under section 182 in respect of one or more understatements in one or more documents relating to a tax period, account is to be taken of any overstatement in any document given by P which relates to the same tax period.
- (3) In subsection (2)—
  - (a) “understatement” means an inaccuracy that meets condition A in section 182, and
  - (b) “overstatement” means an inaccuracy that does not meet that condition.
- (4) For the purpose of subsection (2) overstatements are to be set against understatements in the following order—
  - (a) understatements in respect of which P is not liable to a penalty,
  - (b) careless understatements,
  - (c) deliberate understatements.
- (5) In calculating for the purposes of a penalty under section 182 potential lost revenue in respect of a document given by or on behalf of P, no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential overpayment by another person (except to the extent that an enactment requires or permits a person’s tax liability to be adjusted by reference to P’s).

#### **189 Potential lost revenue: losses**

- (1) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is calculated in accordance with section 187.
- (2) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of a devolved tax and the loss has not been wholly used to reduce the amount due and payable in respect of tax, the potential lost revenue is—
  - (a) the potential lost revenue calculated in accordance with section 187 in respect of any part of the loss that has been used to reduce the amount due and payable in respect of tax, plus
  - (b) 10% of any part that has not.
- (3) Subsections (1) and (2) apply both—
  - (a) to a case where no loss would have been recorded but for the inaccuracy, and
  - (b) to a case where a loss of a different amount would have been recorded (but in that case subsections (1) and (2) apply only to the difference between the amount recorded and the true amount).
- (4) The potential lost revenue in respect of a loss is nil where, because of the nature of the loss or P’s circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

#### **190 Potential lost revenue: delayed tax**

- (1) Where an inaccuracy resulted in an amount of tax being declared later than it should have been (“the delayed tax”), the potential lost revenue is—

- (a) 5% of the delayed tax for each year of the delay, or
  - (b) a percentage of the delayed tax, for each separate period of delay of less than a year, equating to 5% per year.
- (2) This section does not apply to a case to which section 189 applies.

### **191 Special reduction in penalty under this Chapter**

- (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.

### **192 Reduction in penalty under this Chapter for disclosure**

- (1) Revenue Scotland may reduce a penalty under this Chapter where a person makes a qualifying disclosure.
- (2) A “qualifying disclosure” means disclosure of—
- (a) an inaccuracy,
  - (b) a supply of false information or withholding of information, or
  - (c) a failure to disclose an under-assessment.
- (3) A person makes a qualifying disclosure by—
- (a) telling Revenue Scotland about it,
  - (b) giving Revenue Scotland reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and
  - (c) allowing Revenue Scotland access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.
- (4) Reductions under this section may reflect—
- (a) whether the disclosure was prompted or unprompted, and
  - (b) the quality of the disclosure.
- (5) Disclosure of relevant information—
- (a) is “unprompted” if made at a time when the person making it has no reason to believe that Revenue Scotland has discovered or is about to discover the

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inaccuracy, the supply of false information or withholding of information, or the under-assessment, and

(b) otherwise, is “prompted”.

(6) In relation to disclosure, “quality” includes timing, nature and extent.

### **193 Assessment of penalties under this Chapter**

(1) Where a person 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 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) An assessment of a penalty under section 182 or 185 must be made before the end of the period of 12 months beginning with—

- (a) the end of the appeal period for the decision correcting the inaccuracy, or
- (b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.

(5) An assessment of a penalty under section 186 must be made before the end of the period of 12 months beginning with—

- (a) the end of the appeal period for the assessment of tax which corrected the understatement, or
- (b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.

(6) In subsections (4) and (5) “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.

(7) Subject to subsections (4) and (5), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

### **194 Power to change penalty provisions in Chapter 3**

(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) a failure which began before the date on which the regulations come into force, and
  - (b) an inaccuracy in any information or document provided to Revenue Scotland before that date.