



Taxes Management Act 1970

1970 CHAPTER 9

PART X

PENALTIES, ETC.

93 Failure to make return for income tax or capital gains tax

- (1) If any person has been required by a notice served under or for the purposes of section 8 or 9 of this Act (or either of those sections as extended by section 12 of this Act or section 39(3) of the principal Act (husband and wife)) to deliver any return, and he fails to comply with the notice he shall be liable, subject to the provisions of this section—
 - (a) to a penalty not exceeding, except in the case mentioned in subsection (2) below, £50, and
 - (b) 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 £10 for each day on which the failure so continues.
- (2) If the failure continues after the end of the year of assessment following that during which the notice was served, the penalty under subsection (1)(a) above shall be an amount not exceeding the aggregate of £50 and the total amount of the tax with which the said person is charged (whether for one or for more than one year of assessment) in assessments—
 - (a) based wholly or partly on any income or chargeable gains that ought to have been included in the return required by the notice, and
 - (b) made after the end of the year next following the year of assessment in which the said notice was served.
- (3) Where in any year of assessment any amount was deducted from the said person's emoluments under section 204 of the principal Act (pay as you earn), and that amount exceeds the total amount (if any) charged in any assessments under Schedule E made on him for that year before the end of the year of assessment next following that in which the said notice was served, the amount of the excess shall be treated, for the purposes of subsection (2) of this section, as reducing the amount of the tax charged

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in assessments under Schedule E made on him for the first-mentioned year after the end of the said following year.

- (4) The reference in subsection (2) above to tax includes surtax, except that in relation to a return required for the purposes of section 9 of this Act it does not include any tax not chargeable in the partnership name; and in relation to a person's failure to deliver any other return it does not include tax assessed in the name of a partnership on so much of the profits or gains assessed as falls to be included in the total income of any other person.
- (5) Except in the case mentioned in subsection (2) above, a person shall not be liable to any penalty incurred under this section for a failure to comply with any notice, if the failure is remedied before proceedings for the recovery of the penalty are commenced.
- (6) Where a person is liable to more than one penalty of an amount determined under subsection (2) above, any assessment taken into account for the purposes of one of those penalties shall be left out of account for the purposes of the other or others.
- (7) If the defendant (or, in Scotland, the defender) in proceedings under this section proves that there was no income and no chargeable gains to be included in the return, the penalty shall not exceed £5.
- (8) References in this section to the amount of tax with which a person is charged for any year of assessment and to assessments made on him include, in the case of a person who has died, references to any amount with which his personal representatives are charged for that year and to assessments made on them.

94 Failure to make return for corporation tax

- (1) If any company has been required by a notice served under section 11 of this Act (or under that section as extended by section 12 of this Act) to deliver a return and the company fails to comply with the notice the company shall be liable, subject to subsection (3) of this section—
 - (a) to a penalty not exceeding, except in the case mentioned in subsection (2) of this section, £50, and
 - (b) 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 £10 for each day on which the failure so continues.
- (2) If the failure continues after the end of the period of two years beginning with the date on which the notice was served, the penalty under subsection (1)(a) above shall be an amount not exceeding the aggregate of £50 and the total amount of the tax with which the said company is charged (whether for one or more accounting periods) in assessments to corporation tax—
 - (a) based wholly or partly on any profits that ought to have been included in the return required by the notice, and
 - (b) made after the end of the said period of two years,
 and in arriving at the amount of corporation tax with which the company is so charged no account shall be taken of any income tax which under section 240(5) or 246(3) of the principal Act (income tax borne by deduction from receipts) may be set off against corporation tax.

- (3) Except in the case mentioned in subsection (2) above, the company shall not be liable to any penalty incurred under this section for failure to comply with a notice, if the failure is remedied before proceedings for the recovery of the penalty are commenced.
- (4) If in proceedings under this section it is proved that there were no profits to be included in the return, the penalty under this section shall not exceed £5.

95 Incorrect return or accounts for income tax or capital gains tax

- (1) Where a person fraudulently or negligently—
 - (a) delivers any incorrect return of a kind mentioned in section 8 or 9 of this Act (or either of those sections as extended by section 12 of this Act or section 39(3) of the principal Act (husband and wife)), or
 - (b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief in respect of income tax or capital gains tax, or
 - (c) submits to an inspector or the Board or any Commissioners any incorrect accounts in connection with the ascertainment of his liability to income tax or capital gains tax,

he shall be liable to a penalty not exceeding the aggregate of—

- (i) £50, and
 - (ii) the amount, or, in the case of fraud, twice the amount, of the difference specified in subsection (2) below.
- (2) The difference is that between—
 - (a) the amount of income tax and capital gains tax payable for the relevant years of assessment by the said person (including any amount of income tax deducted at source and not repayable), and
 - (b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by him had been correct.
- (3) The relevant years of assessment for the purposes of this section are, in relation to anything delivered, made or submitted in any year of assessment, that, the next following, and any preceding year of assessment; and the references in subsection (2) to the amount of income tax payable include surtax, except that, in relation to anything done in connection with a partnership they do not include any income tax not chargeable in the partnership name.

96 Incorrect return or accounts for corporation tax

- (1) Where a company fraudulently or negligently—
 - (a) delivers any incorrect return under section 11 of this Act (or under that section as extended by section 12 of this Act), or
 - (b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief in respect of corporation tax, or
 - (c) submits to an inspector or any Commissioners any incorrect accounts in connection with the ascertainment of the company's liability to corporation tax,

the company shall be liable to a penalty not exceeding the aggregate of—

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- (i) £50, and
- (ii) the amount, or, in the case of fraud, twice the amount, of the difference specified in subsection (2) below.

(2) The difference is that between—

- (a) the amount of corporation tax payable by the said company for the accounting period or accounting periods comprising the period to which the return, statement, declaration or accounts relate, and
- (b) the amount which would have been the amount so payable if the return, statement, declaration or accounts had been correct.

97 Incorrect return or accounts: supplemental

- (1) Where any such return, statement, declaration or accounts as are mentioned in sections 95 and 96 above were made or submitted by any person neither fraudulently nor negligently and it comes to his notice (or, if he has died, to the notice of his personal representatives) that they were incorrect, then, unless the error is remedied without unreasonable delay, the return, statement, declaration or accounts shall be treated for the purposes of those sections as having been negligently made or submitted by him.
- (2) For the purpose of sections 95 and 96 above, any accounts submitted on behalf of any person shall be deemed to have been submitted by him unless he proves that they were submitted without his consent or connivance.

98 Special returns, etc.

(1) Where any person—

- (a) has been required, by a notice served under or for the purposes of any of the provisions specified in the first column of the Table below, to deliver any return or other document, to furnish any particulars, to produce any document, or to make anything available for inspection, and he fails to comply with the notice, or
- (b) fails to furnish any information, give any certificate or produce any document or record in accordance with any of the provisions specified in the second column of the Table below,

he shall be liable, subject to subsection (3) below—

- (i) to a penalty not exceeding £50, and
 - (ii) 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 £10 for each day on which the failure so continues.
- (2) Where a person fraudulently or negligently furnishes, gives, produces or makes any incorrect information, certificate, document, record or declaration of a kind mentioned in any of the provisions specified in either column of the Table below, he shall be liable to a penalty not exceeding £250, or, in the case of fraud, £500.
 - (3) A person shall not be liable to any penalty incurred under this section for a failure to comply with any notice, if the failure is remedied before proceedings for the recovery of the penalty are commenced.

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TABLE

1.	2.
Part III of this Act, except section 16 and section 24(2)	In the principal Act— section 34(4) section 53(2)
Section 51 of this Act	section 87(1) section 186(11) section 187(7)
In the principal Act—	section 224(5)(a) section 402 section 411(4)
section 30(1)(2)	
section 167(4)	
section 200	
section 224(5)(b)	Schedule 5, paragraph 6
section 301	
section 431(4)	Schedule 9, paragraph 2(1)
section 443	
section 453	Regulations under section 204 of the principal Act
section 465	
section 469(8)	
section 470(6)	
section 477(7)	
section 481(1)	
section 483(7)	
section 486(5)	
section 490	
Schedule 5, paragraph 13(1)	
Schedule 6, paragraph 10	

99 Assisting in making incorrect return, etc.

Any person who assists in or induces the making or delivery for any purposes of tax of any return or accounts which he knows to be incorrect shall be liable to a penalty not exceeding £500.

100 Procedure for recovery of penalties

- (1) Except as otherwise provided in this section, no proceedings shall be commenced against any person for the recovery of any penalty under the Taxes Acts except by order of the Board.
- (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 Board 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,
 - (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 Taxes Acts, 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 subsection 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 inspector may, without an order of the Board, commence before the General Commissioners (or, in Northern Ireland, the Special Commissioners) proceedings for a penalty incurred by any person under section 93(1) or section 98(1) of this Act for a failure to deliver, furnish or produce anything to the inspector; but in any proceedings so commenced the Commissioners shall not in any case award, in respect of the penalty under paragraph (a) of the said section 93(1), a sum exceeding £50.
- (5) Where the person who has incurred any penalty has died, any proceedings under this section which have been or could have been commenced against him may be continued or commenced against his personal representatives, and any penalty awarded in proceedings so continued or commenced shall be a debt due from and payable out of his estate; but nothing in this subsection shall extend the time for commencing proceedings against personal representatives.
- (6) Where any proceedings under this section 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 penalty awarded,and on any appeal under paragraph (b) above the court may either confirm the decision or reduce or increase the sum awarded.
- (7) Proceedings under this section 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.

- (8) The Commissioners or the court before whom any proceedings for a penalty of a fixed amount are brought under this section may, if they think fit, give judgment for a less amount.
- (9) 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 section relates, and in that case the reference in this section to the Attorney General for Northern Ireland shall be construed as a reference to the person so appointed.

101 Evidence of profits for purposes of preceding provisions of Part X

For the purposes of the preceding provisions of this Part of this Act, any assessment which can no longer be varied by any Commissioners on appeal or by order of any court shall be sufficient evidence that the income or chargeable gains in respect of which tax is charged in the assessment arose or were received as stated therein.

102 Mitigation of penalties

The Board may in their discretion mitigate any penalty, or stay or compound any proceedings for recovery thereof, and may also, after judgment, further mitigate or entirely remit the penalty.

103 Time limit for recovery of penalties

- (1) Proceedings for the recovery of any penalty incurred under the Taxes Acts in connection with or in relation to tax may be commenced at any time within six years next after the date on which it was incurred, or at any later time allowed under the following provisions of this section.
- (2) Proceedings for the recovery of any penalty from any person in connection with or in relation to any tax covered by any assessment may, where any form of fraud or wilful default has been committed by him or on his behalf in connection with or in relation to that tax, be commenced at any time within three years from the final determination of the amount of tax covered by the assessment:

Provided that this subsection shall not extend the time for the bringing of any proceedings against the personal representatives of any person by whom or on whose behalf any form of fraud or wilful default has been committed.
- (3) Where the amount of any penalty to which a person is liable under the Taxes Acts is determined by reference to tax charged in an assessment for any chargeable period which is made not later than six years after the end of that chargeable period, proceedings for the recovery of the penalty may be commenced within three years from the final determination of the amount of that tax.
- (4) In any proceedings for the recovery of a penalty which could not have been commenced but for subsection (3) above, any tax charged in an assessment made under section 37, 39 or 40(2) of this Act shall be left out of account in determining the amount of the penalty.

104 Saving for criminal proceedings

The provisions of the Taxes Acts shall not, save so far as is otherwise provided, affect any criminal proceedings for any misdemeanour.

105 Evidence in cases of fraud or wilful default

(1) Statements made or documents produced by or on behalf of a person shall not be inadmissible in any such proceedings as are mentioned in subsection (2) below by reason only that it has been drawn to his attention that—

- (a) in relation to tax, the Board may accept pecuniary settlements instead of instituting proceedings, and
- (b) though no undertaking can be given as to whether or not the Board will accept such a settlement in the case of any particular person, it is the practice of the Board to be influenced by the fact that a person has made a full confession of any fraud or default to which he has been a party and has given full facilities for investigation,

and that he was or may have been induced thereby to make the statements or produce the documents.

(2) The proceedings mentioned in subsection (1) above are—

- (a) any criminal proceedings against the person in question for any form of fraud or wilful default in connection with or in relation to tax, and
- (b) any proceedings against him for the recovery of any sum due from him, whether by way of tax or penalty, in connection with or in relation to tax.

106 Refusal to allow a deduction of income tax, and avoidance of agreements for payment without deduction

(1) A person who refuses to allow a deduction of income tax authorised by the Taxes Acts to be made out of any payment shall incur a penalty of £50.

(2) Every agreement for payment of interest, rent or other annual payment in full without allowing any such deduction shall be void.

*Scotland***107 Criminal liability for false statements made to obtain allowances**

(1) This section applies only in Scotland.

(2) If any person, for the purpose of obtaining any allowance, reduction, rebate or repayment in respect of tax, either for himself or for any other person, or, in any return made with reference to tax, knowingly makes any false statement or false representation, he shall be liable, on summary conviction, to imprisonment for a term not exceeding six months.

(3) Notwithstanding anything in the Summary Jurisdiction (Scotland) Act 1954, proceedings for an offence under this section may be commenced at any time within three years from the time when the offence was committed.

(4) The expression " return " in this section shall be construed without regard to the definition in section 118(1) of this Act.