

SCHEDULES

SCHEDULE 10

Section 46.

AGGREGATES LEVY: ASSESSMENT OF CIVIL PENALTIES AND INTEREST ON THEM

Preliminary

- 1 (1) In this Schedule “civil penalty” means any penalty liability to which—
- (a) is imposed by or under this Part of this Act; and
 - (b) arises otherwise than in consequence of a person’s conviction for a criminal offence.
- (2) In this Schedule—
- (a) references to a person’s being liable to a civil penalty include references to his being a person from whom the whole or any part of a civil penalty is recoverable by virtue of paragraph 8 of Schedule 6 to this Act; and
 - (b) references, in relation to a person from whom the whole or any part of a civil penalty is so recoverable, to the penalty to which he is liable are references to so much of the penalty as is recoverable from him.
- (3) Any notification of an assessment under any provision of this Schedule to a person’s representative shall be treated for the purposes of this Part of this Act as notification to the person in relation to whom the representative acts.
- (4) In this paragraph “representative”, in relation to any person, means—
- (a) any of that person’s personal representatives;
 - (b) that person’s trustee in bankruptcy or liquidator;
 - (c) any person holding office as a receiver in relation to that person or any of his property;
 - (d) that person’s tax representative or any other person for the time being acting in a representative capacity in relation to that person.
- (5) In this paragraph “trustee in bankruptcy” includes, as respects Scotland—
- [^{F1}(a) a trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of a person’s estate;] and
 - (b) a trustee acting under a trust deed (within the meaning of that Act).

Textual Amendments

- F1** Sch. 10 para. 1(5)(a) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 24\(5\)](#)

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Assessments to penalties etc.

- 2
- (1) Where a person is liable to a civil penalty, the Commissioners may assess the amount due by way of penalty and notify it to him accordingly.
 - (2) If, where an assessment has been notified to any person under sub-paragraph (1) above or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.
 - (3) The fact that any conduct giving rise to a civil penalty may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.
 - (4) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were aggregates levy due from him.
 - (5) Sub-paragraph (4) above—
 - (a) shall not apply so as to require any interest to be payable on a penalty otherwise than in accordance with this Schedule; and
 - (b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.
 - (6) Subject to sub-paragraph (7) below, where a person—
 - (a) is assessed under this paragraph to an amount due by way of a penalty, and
 - (b) is also assessed under any one or more provisions of Schedule 5 to this Act for an accounting period to which the conduct attracting the penalty is referable,
 the assessments may be combined and notified to him as one assessment.
 - (7) A notice of a combined assessment under sub-paragraph (6) above must separately identify the penalty being assessed.
 - (8) The power to make an assessment under this paragraph is subject to paragraph 8(4) of Schedule 6 to this Act.

Further assessments to daily penalties

- 3
- (1) This paragraph applies where an assessment is made under paragraph 2 above to an amount of a civil penalty to which any person is liable—
 - (a) under paragraph 1(3) of Schedule 7 to this Act (failure to provide information); or
 - (b) under paragraph 4(4) of that Schedule (failure to produce a document).
 - (2) The notice of assessment shall specify a time, not later than the end of the day of the giving of the notice of assessment, to which the amount of any daily penalty is calculated.
 - (3) For the purposes of sub-paragraph (2) above “daily penalty” means—
 - (a) in a case within sub-paragraph (1)(a) above, a penalty imposed by virtue of paragraph 1(3)(b) of Schedule 7 to this Act; and
 - (b) in a case within sub-paragraph (1)(b) above, a penalty imposed by virtue of paragraph 4(4)(b) of that Schedule.

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- (4) If further penalties accrue in respect of a continuing failure after that date to provide the information or, as the case may be, produce the document, a further assessment or further assessments may be made under paragraph 2 above in respect of the amounts so accruing.
- (5) Where—
- (a) an assessment to a civil penalty is made specifying a date for the purposes of sub-paragraph (2) above, and
 - (b) the failure in question is remedied within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the penalty,
- the failure shall be deemed for the purposes of any further liability to civil penalties to have been remedied on the specified date.

Time limits on penalty assessments

- 4 (1) Subject to sub-paragraphs (2) and (3) below, an assessment under paragraph 2 above to a civil penalty shall not be made more than [^{F2}4 years] after the conduct to which the penalty relates.
- [^{F3}(2) An assessment of a person to a civil penalty in a case involving a loss of aggregates levy—
- (a) brought about deliberately by the person (or by another person acting on that person's behalf), or
 - (b) attributable to a failure by the person to comply with an obligation under section 24(2) or paragraph 1 of Schedule 4,
- may be made at any time not more than 20 years after the conduct to which the penalty relates (subject to sub-paragraph (3)).
- (2A) In sub-paragraph (2)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.]
- (3) Where, after a person's death, the Commissioners propose to assess an amount of a civil penalty due by reason of some conduct of the deceased—
- (a) the assessment shall not be made more than [^{F4}4 years] after the death; ^{F5}...
 - ^{F5}(b)

Textual Amendments

- F2** Words in Sch. 10 para. 4(1) substituted (1.4.2010) by [Finance Act 2009 \(c. 10\), s. 99\(2\), Sch. 51 para. 31\(2\)](#); S.I. 2010/867, art. 2(1) (with art. 13)
- F3** Sch. 10 para. 4(2) (2A) substituted for Sch. 10 para. 4(2) (1.4.2010) by [Finance Act 2009 \(c. 10\), s. 99\(2\), Sch. 51 para. 31\(3\)](#); S.I. 2010/867, art. 2(1) (with art. 14)
- F4** Words in Sch. 10 para. 4(3)(a) substituted (1.4.2010) by [Finance Act 2009 \(c. 10\), s. 99\(2\), Sch. 51 para. 31\(4\)\(a\)](#); S.I. 2010/867, art. 2(1) (with art. 15)
- F5** Sch. 10 para. 4(3)(b) and word omitted (1.4.2010) by virtue of [Finance Act 2009 \(c. 10\), s. 99\(2\), Sch. 51 para. 31\(4\)\(b\)](#); S.I. 2010/867, art. 2(1) (with art. 15)

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Penalty interest on unpaid penalties

- 5 (1) Subject to sub-paragraph (2) below, where the Commissioners make an assessment under paragraph 2 above of any civil penalty to which a person is liable the amount of that penalty shall carry penalty interest for the period which—
- (a) begins with the day on which the assessment is notified to the person on whom the assessment is made; and
 - (b) ends with the day before the day on which the assessed penalty is paid.
- (2) Where—
- (a) the Commissioners make an assessment under paragraph 2 above of an amount of any civil penalty to which any person is liable,
 - (b) they also specify a date for the purposes of this sub-paragraph, and
 - (c) the amount of the penalty assessed is paid on or before that date,
- the amount paid before that date shall not carry penalty interest under this paragraph.
- (3) Penalty interest under this paragraph shall be compound interest calculated—
- (a) at the penalty rate; and
 - (b) with monthly rests.
- (4) For this purpose the penalty rate is the rate found by—
- (a) taking the rate applicable under section 197 of the Finance Act 1996 (c. 8) for the purposes of paragraph 8(3)(a) of Schedule 5 to this Act; and
 - (b) adding 10 percentage points to that rate.
- (5) Where a person is liable under this paragraph to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.
- (6) Subject to sub-paragraph (7) below, where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (5) above.
- (7) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (6) above, no account shall be taken of any of the following matters, that is to say—
- (a) the insufficiency of the funds available to any person for paying any aggregates levy or penalty due or for paying the amount of the interest;
 - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of aggregates levy;
 - (c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.
- (8) In the case of interest reduced by the Commissioners under sub-paragraph (5) above, an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

Supplemental provisions about interest

- 6 (1) Interest under paragraph 5 above shall be paid without any deduction of income tax.
- (2) Sub-paragraph (3) below applies where—

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- (a) an amount carries interest under paragraph 5 above (or would do so apart from that sub-paragraph); and
 - (b) all or part of the amount turns out not to be due.
- (3) In such a case—
- (a) the amount or part that turns out not to be due shall not carry interest under paragraph 5 above and shall be treated as never having done so; and
 - (b) all such adjustments as are reasonable shall be made, including (subject to section 32 of, and Schedule 8 to, this Act) adjustments by way of repayment.

Assessments to penalty interest on unpaid penalties

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- (1) Where a person is liable for interest under paragraph 5 above, the Commissioners may assess the amount due by way of interest and notify it to him accordingly.
 - (2) If, where an assessment has been notified to any person under sub-paragraph (1) above or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.
 - (3) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were aggregates levy due from him.
 - (4) Sub-paragraph (3) above—
 - (a) shall not apply so as to require any interest to be payable on interest (except in so far as it falls to be compounded in accordance with paragraph 5(3) above); and
 - (b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.
 - (5) Paragraph 4 above shall apply in relation to assessments under this paragraph as if any assessment to interest on a penalty were an assessment under paragraph 2 above to the penalty in question.
 - (6) Subject to sub-paragraph (7) below, where a person—
 - (a) is assessed under this paragraph to an amount due by way of any interest on a penalty, and
 - (b) is also assessed under any one or more provisions of Schedule 5 to this Act for the accounting period to which the conduct attracting the penalty is referable,the assessments may be combined and notified to him as one assessment.
 - (7) A notice of a combined assessment under sub-paragraph (6) above must separately identify the interest being assessed.

Further assessments to interest on penalties

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- (1) Where an assessment is made under paragraph 7 above to an amount of penalty interest under paragraph 5 above—
 - (a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and

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- (b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under paragraph 7 above in respect of the amounts so accruing.

(2) Where—

- (a) an assessment to penalty interest is made specifying a date for the purposes of sub-paragraph (1)(a) above, and
- (b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,

that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

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