

SCHEDULES

SCHEDULE 8

DIGITAL SERVICES TAX: RETURNS, ENQUIRIES, ASSESSMENTS AND APPEALS

PART 9

PENALTIES

Failure to deliver return: flat-rate penalty

- 52 (1) A person who is required to file a DST return and fails to do so by the filing date is liable to a penalty under this paragraph.

The person may also be liable to a penalty under paragraph 53 (tax-related penalties).

- (2) The penalty is—
- (a) £100, if the return is delivered within 3 months after the filing date;
 - (b) £200, in any other case.
- (3) The amounts are increased to £500 and £1,000 (respectively) for a third successive failure.
- (4) For this purpose, a “third successive failure” occurs where—
- (a) the duty under section 56 (duty to file returns) applies in relation to a group for 3 successive accounting periods,
 - (b) a person was liable to a penalty under this paragraph in respect of each of the first 2 accounting periods, and
 - (c) a person is liable to a penalty under this paragraph in respect of the third accounting period.

Failure to deliver return: tax-related penalty

- 53 (1) A person who is required to file a DST return for an accounting period and fails to do so within 18 months from the end of that period is liable to a penalty under this paragraph.

This is in addition to any penalty under paragraph 52 (flat-rate penalty).

- (2) The penalty is—
- (a) 10% of the unpaid tax, if the return is filed within 2 years from the end of the accounting period;
 - (b) 20% of the unpaid tax, in any other case.
- (3) The “unpaid tax” means the total amount of tax payable by members of the group for the accounting period which remains unpaid on the date when the liability to the penalty under this paragraph arises.

Failure to deliver a return: reasonable excuse

- 54 (1) Liability to a penalty under paragraph 52 or 53 in relation to a failure to make a return does not arise if the person (“P”) satisfies HMRC or (on appeal) the tribunal that there is a reasonable excuse for the failure.
- (2) For that purpose—
- (a) an insufficiency of funds is not a reasonable excuse,
 - (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.

Failure to keep and preserve records: penalty

- 55 (1) A person who fails to comply with paragraph 4 in relation to an accounting period is liable to a penalty not exceeding £3,000, subject to the following exception.
- (2) No penalty is incurred if HMRC are satisfied that any facts which they reasonably require to be proved, and which would have been proved by the records, are proved by other documentary evidence provided to HMRC.

Assessment of penalty, etc

- 56 (1) If a person is liable to a penalty under this Part of this Schedule, HMRC must—
- (a) assess the penalty, and
 - (b) notify the person.
- (2) The assessment of a penalty—
- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.
- (3) A supplementary assessment may be made in respect of a penalty if an earlier assessment is based on an amount of tax due and payable that is found by HMRC to be an underestimate or insufficient.
- (4) Sub-paragraph (5) applies if—
- (a) an assessment in respect of a penalty is based on a liability to tax that would have been shown in a return, and
 - (b) that liability is found by HMRC to be excessive.
- (5) HMRC may by notice amend the assessment so it is based on the correct amount.
- (6) An amendment under sub-paragraph (5)—
- (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 sub-paragraph (7)).
- (7) An assessment of a penalty must be made before the end of the period of 12 months beginning with—

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- (a) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
 - (b) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil.
- (8) In sub-paragraph (7) “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.
- (9) A penalty must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

Special reduction

- 57 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under this Part of this Schedule.
- (2) In sub-paragraph (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 sub-paragraph (1) the reference to reducing a penalty includes a reference to—
- (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings in respect of a penalty.

Right to appeal against penalty

- 58 A person may appeal against—
- (a) a decision of HMRC that a penalty under this Part of this Schedule is payable by the person, or
 - (b) a decision of HMRC as to the amount of any such penalty.

Procedure on appeal against penalty

- 59 (1) Part 8 of this Schedule (apart from paragraphs 33, 45 to 47, and 49) applies in relation to an appeal under paragraph 58 as it applies in relation to an appeal under paragraph 33.
- (2) On an appeal under paragraph 58, payment of the penalty is postponed pending determination of the appeal.
- (3) On an appeal under paragraph 58(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (4) On an appeal under paragraph 58(b) that is notified to the tribunal, the tribunal may—
- (a) confirm the decision, or
 - (b) substitute for the decision another decision that HMRC had power to make.
- (5) If the tribunal substitutes its decision for HMRC’s, the tribunal may rely on paragraph 57—
- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

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- (b) to a different extent, but only if the tribunal thinks that HMRC’s decision in respect of the application of that paragraph was flawed.
- (6) In sub-paragraph (5)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (7) On determination of an appeal under paragraph 58, where a penalty is payable it is to be paid before the end of 30 days beginning with the day on which the determination was issued.

Payments in respect of penalties

- 60 (1) This paragraph applies if—
- (a) a person liable to a penalty under this Part of this Schedule has an agreement in relation to the penalty with one or more companies within the charge to corporation tax, and
 - (b) as a result of the agreement, the person receives a payment or payments in respect of the penalty that do not, in total, exceed the amount of the penalty.
- (2) The payment—
- (a) is not to be taken into account in calculating the profits for corporation tax purposes of either the person or the company making the payment, and
 - (b) is not to be regarded as a distribution for corporation tax purposes.