

1 Penalties for failure to pay tax

- (1) Schedule 1 contains provision for imposing penalties on persons in respect of failures to make certain payments on time.
- (2) Schedule 1 comes into force on such day as the Treasury may by regulations appoint.
- (3) Regulations under subsection (2) –
 - (a) may commence a provision generally or for specified purposes, and
 - (b) may appoint different days for different provisions or for different purposes.
- (4) The Treasury may by regulations make any incidental, supplemental, consequential, transitional, transitory or saving provision which may appear appropriate in consequence of, or otherwise in connection with, Schedule 1.
- (5) Regulations under subsection (4) may include provision amending, repealing or revoking any provision of an Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it).
- (6) Regulations under subsection (4) may make different provision for different purposes.
- (7) Regulations under this section are to be made by statutory instrument.
- (8) A statutory instrument containing regulations under subsection (4) which includes provision amending or repealing any provision of an Act is subject to annulment in pursuance of a resolution of the House of Commons.

SCHEDULE 1

Section 1

PENALTIES FOR FAILURE TO PAY TAX

PART 1

INTRODUCTION

Introduction

- 1 This Schedule makes provision for penalties to be payable by a person who fails to pay an amount of tax specified in column 3 of the Table (“the tax due”) on or before the date specified in column 4 of the Table (“the specified date”).

PRINCIPAL AMOUNTS

<i>Item no</i>	<i>Relevant tax</i>	<i>Amount of tax</i>	<i>Specified date</i>
1	Corporation tax	Amount payable under regulations under section 59E of TMA 1970 (except an amount falling within item 19, 20 or 21)	The day following the expiry of nine months from the end of the accounting period for which the tax is due
2	Corporation tax	Amount payable under an exit charge payment plan entered into in accordance with Schedule 3ZB to TMA 1970	The date on which the amount is payable under the plan
3	Corporation tax	Amount shown in company tax return under paragraph 3 of Schedule 18 to FA 1998	The day following the expiry of nine months from the end of the accounting period for which the tax is due
4	Corporation tax	Amount payable under section 357YQ of CTA 2010	The end of the period within which, in accordance with section 357YQ(5), the amount must be paid
5	Income tax	Amount payable under PAYE regulations	The date determined by or under PAYE regulations as the date by which the amount must be paid
6	Income tax	Amount payable under regulations under section 244L(2)(a) of FA 2004	The due date determined by or under the regulations
7	Income tax	Amount shown in return under section 254(1) of FA 2004	The date specified in section 254(5) of FA 2004 as the date by which the amount must be paid

PRINCIPAL AMOUNTS

<i>Item no</i>	<i>Relevant tax</i>	<i>Amount of tax</i>	<i>Specified date</i>
8	Income tax or capital gains tax	Amount payable under section 59B(3) or (4) of TMA 1970	The date specified in section 59B(3) or (4) of TMA 1970 as the date by which the amount must be paid
9	Income tax or capital gains tax	Amount payable under section 59BA(4) or (5) of TMA 1970	The date specified in section 59BA(4) or (5) of TMA 1970 as the date by which the amount must be paid
10	Value added tax	Amount payable under section 25(1) of VATA 1994 (except an amount falling within item 11, 16, 25 or 26)	The date determined – (a) by or under regulations under section 25 of VATA 1994, or (b) in accordance with an order under section 28 of VATA 1994, as the date by which the amount must be paid
11	Value added tax	Amount payable under section 25(1) of VATA 1994 which is an instalment of an amount due in respect of a period of 9 months or more (“amount A”)	The date by which any balancing payment, or other outstanding payment due in respect of amount A, must be paid
12	Value added tax	Amount payable under relevant special scheme return (as defined in paragraph 16(3) of Schedule 3B to VATA 1994) (except an amount falling within item 16, 17, 18, 25 or 26)	The date by which the amount must be paid under the law of the member State which has established the special scheme
13	Value added tax	Amount payable under relevant non-UK return (as defined in paragraph 20(3) of Schedule 3BA to VATA 1994) (except an amount falling within item 16, 17, 18, 25 or 26)	The date by which the amount must be paid under the law of the member State which has established the non-UK special scheme

AMOUNTS PAYABLE IN DEFAULT OF RETURN BEING MADE

<i>Item no</i>	<i>Relevant tax</i>	<i>Amount of tax</i>	<i>Specified date</i>
14	Corporation tax	Amount shown in determination under paragraph 36 or 37 of Schedule 18 to FA 1998	The date by which the tax due for the accounting period to which the determination relates is due and payable
15	Income tax or capital gains tax	Amount payable under section 59B(5A) of TMA 1970	The date specified in section 59B(5A) of TMA 1970 as the date by which the amount must be paid

AMOUNTS PAYABLE IN DEFAULT OF RETURN BEING MADE

<i>Item no</i>	<i>Relevant tax</i>	<i>Amount of tax</i>	<i>Specified date</i>
16	Value added tax	Amount assessed under section 73(1) of VATA 1994 in the absence of a return	The date falling 30 days after the date on which the assessment is made
17	Value added tax	Amount assessed under section 73(1) of VATA 1994, by virtue of paragraph 16 of Schedule 3B to that Act, in the absence of a value added tax return (as defined in paragraph 23(1) of that Schedule)	The date by which the amount would have been required to be paid under the law of the member State under whose law the return was required
18	Value added tax	Amount assessed under section 73(1) of VATA 1994, by virtue of paragraph 20 of Schedule 3BA to that Act, in the absence of a relevant non-UK return (as defined in paragraph 38(1) of that Schedule)	The date by which the amount would have been required to be paid under the law of the member State under whose law the return was required
19	Tax falling within any of items 1 to 9	Amount (not falling within item 14 or 15) which is shown in an assessment or determination made by HMRC in the circumstances set out in paragraph 2	The date by which the amount would have been required to be paid if it had been shown in the return in question

AMOUNTS SHOWN TO BE DUE IN OTHER ASSESSMENTS, DETERMINATIONS ETC

<i>Item no</i>	<i>Relevant tax</i>	<i>Amount of tax</i>	<i>Specified date</i>
20	Corporation tax	Amount shown in an amendment or correction of a return showing an amount falling within items 1 to 4	The date falling 30 days after the date on which the amendment or correction is made
21	Corporation tax	Amount shown in an assessment or determination made by HMRC in circumstances other than those set out in paragraph 2	The date falling 30 days after the date on which the assessment or determination is made
22	Income tax or capital gains tax	Amount payable under section 55 of TMA 1970	The date determined in accordance with section 55(3), (4), (6) or (9) of TMA 1970 as the date by which the amount must be paid

AMOUNTS SHOWN TO BE DUE IN OTHER ASSESSMENTS, DETERMINATIONS ETC

Item no	Relevant tax	Amount of tax	Specified date
23	Income tax or capital gains tax	Amount payable under section 59B(5) or (6) of TMA 1970	The date specified in section 59B(5) or (6) of TMA 1970 as the date by which the amount must be paid
24	Income tax or capital gains tax	Amount (not falling within item 22 or 23) shown in an amendment or correction of a return showing an amount falling within any of items 5 to 9	The later of— (a) the date by which the amount must be paid, and (b) the date on which the amendment or correction is made
25	Value added tax	Amount shown in an amendment or correction of a return showing an amount falling within item 10	The date falling 30 days after the date on which the amendment or correction is made
26	Value added tax	Amount shown in an assessment or determination made by HMRC in circumstances other than those set out in paragraph 2	The date falling 30 days after the date on which the assessment or determination is made
27	Tax falling within any of items 5 to 9	Amount (not falling within item 22 or 23) shown in an assessment or determination made by HMRC in circumstances other than those set out in paragraph 2	The later of— (a) the date by which the amount must be paid, or (b) the date on which the assessment or determination is made

Assessments and determinations in default of return

- 2 The circumstances referred to in items 19, 21, 26 and 27 are where—
- (a) a person is required to make or deliver a return which falls within—
 - (i) any item in the Table in Schedule 55 to FA 2009, or
 - (ii) any group of returns in Table 1, 2 or 3 of Schedule [*Penalties for failure to make returns*],
 - (b) that person fails to make or deliver the return on or before the date by which it is required to be made or delivered, and
 - (c) if the return had been made or delivered as required, the return would have shown that an amount falling within any of items 1 to 13 was due and payable.

Different specified date for certain payments

- 3 (1) This paragraph applies where—
- (a) an amount falling within item 3 of the Table in paragraph 1 is not paid in full on or before the date determined in accordance with column 4 of that Table, but
 - (b) an amount is paid on or before that date which represents a reasonable estimate of the amount due.

- (2) In relation to so much of the amount due as was not paid on or before that date, treat the specified date as the filing date for the company tax return for the accounting period for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998).
- 4 PAYE regulations may provide that, in relation to payments of tax falling within item 5 of the Table in paragraph 1 and specified in the regulations, the specified date is a date later than that determined in accordance with column 4 of that Table.

PART 2

LIABILITY TO A PENALTY

No penalty if payment in full before end of 15 day period

- 5 No penalty is payable if—
- (a) the tax due is paid in full before the end of the 15 day period, or
 - (b) the 15 day time to pay condition is met,
- (but see paragraph 8).

First penalty: tax remains due at end of 15 day period

- 6 (1) A penalty is payable under this paragraph if—
- (a) the tax due is not paid in full before the end of the 15 day period, and
 - (b) the 15 day time to pay condition is not met.
- (2) If the tax due is paid in full after the end of the 15 day period but before the end of the 30 day period, the amount of the penalty is amount A.
- (3) If the tax due is not paid in full before the end of the 30 day period, the amount of the penalty is—
- (a) if the 30 day time to pay condition is met, amount A, and
 - (b) if the 30 day time to pay condition is not met, the total of amount A and amount B,
- (but see paragraph 8).
- (4) Amount A is $[0.5x]\%$ of so much of the tax due as is unpaid at the end of the 15 day period.
- (5) Amount B is $[0.5x]\%$ of so much of the tax due as is unpaid at the end of the 30 day period.

Meaning of “15 day time to pay condition” and “30 day time to pay condition”

- 7 (1) The 15 day time to pay condition is met if a time to pay agreement is made (whether before or after the end of the 15 day period) as a result of proposals for paying the tax due made by the person before the end of the 15 day period.
- (2) The 30 day time to pay condition is met if a time to pay agreement is made (whether before or after the end of the 30 day period) as a result of proposals for paying the tax due made by the person after the end of the 15 day period, but before the end of the 30 day period.

First penalty: effect of breaking time to pay agreement

- 8 (1) This paragraph applies where –
- (a) the 15 day time to pay condition or the 30 day time to pay condition is met, and
 - (b) the person breaks the time to pay agreement by virtue of which the condition was met.
- (2) If HMRC gives the person notice that a penalty is payable under paragraph 6, a penalty is payable under that paragraph as if the condition in question had never been met.

Second penalty: tax remains due at end of 30 day period

- 9 (1) A penalty is payable under this paragraph if any amount of the tax due is unpaid at the end of the 30 day period.
- (2) The amount of the penalty is calculated by applying the penalty rate, during the further penalty period, to so much of the tax due as is from time to time unpaid.
- (3) The penalty rate is [x]% per annum.
- (4) The further penalty period is the period –
- (a) beginning with the day after the last day of the 30 day period, and
 - (b) ending with the day on which the tax due is paid in full.
- (5) But if a time to pay agreement has effect during the further penalty period, the further penalty period does not include the period –
- (a) beginning with the relevant day, and
 - (b) ending with the day on which the tax due is paid in full,
- (but see paragraph 10).
- (6) The relevant day is the day on which the person makes the proposals to HMRC for paying the tax due, as a result of which the time to pay agreement is made.

Second penalty: effect of breaking time to pay agreement

- 10 (1) This paragraph applies where –
- (a) a time to pay agreement has effect during the further penalty period, and
 - (b) the person breaks the time to pay agreement.
- (2) If HMRC gives the person notice that a penalty is payable under paragraph 9, a penalty is payable under that paragraph as if the time to pay agreement had never had effect.

Interpretation of Part 2

- 11 (1) This paragraph gives the meaning of terms used in this Part of this Schedule.
- (2) The “15 day period”, in relation to tax due, is the period of 15 days beginning with the day after the specified date.
- (3) The “30 day period”, in relation to tax due, is the period of 30 days beginning with the day after the specified date.

- (4) A “time to pay agreement” is an agreement between HMRC and a person that payment of an amount of tax due (the “deferred amount”) may be deferred for a period (the “deferral period”).
- (5) A person breaks a time to pay agreement if –
 - (a) the person fails to pay the deferred amount when the deferral period ends, or
 - (b) the deferral is subject to the person complying with a condition (including a condition that part of the deferred amount be paid during the deferral period) and the person fails to comply with it.
- (6) If a time to pay agreement is varied at any time by a further agreement between the person and HMRC, references in this Schedule to the agreement include the agreement as varied.

Power to amend figures by regulations

- 12 The Commissioners for HMRC may by regulations amend this Part of this Schedule so as to –
 - (a) change references to 15 days (or to another number of days resulting from the previous exercise of powers under this sub-paragraph) to references to a greater or lesser number of days;
 - (b) change references to 30 days (or to another number of days resulting from the previous exercise of powers under this sub-paragraph) to references to a greater or lesser number of days;
 - (c) increase or reduce the percentage specified in paragraph 6(4);
 - (d) increase or reduce the percentage specified in paragraph 6(5);
 - (e) increase or reduce the percentage specified in paragraph 9(3).

PART 3

SUPPLEMENTARY PROVISION

Reasonable excuse

- 13 (1) Liability to a penalty under this Schedule does not arise in respect of a failure to make a payment if the person shows HMRC (or on appeal, the tribunal) that there is a reasonable excuse for the failure.
- (2) For this purpose –
 - (a) an insufficiency of funds is not a reasonable excuse, unless the person shows it was attributable to events outside the person’s control,
 - (b) where the person relies on another to do anything, that is not a reasonable excuse unless the person shows that the person took reasonable care to avoid the failure, and
 - (c) where the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse only if the person shows that the failure was remedied without unreasonable delay after the excuse ceased.
- (3) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 20(1)).

Double jeopardy

- 14 A person is not liable to a penalty under this Schedule in respect of a failure in respect of which the person has been convicted of an offence.

Interaction with other penalties

- 15 In the application of the following provisions, no account is to be taken of a penalty under this Schedule –
- (a) section 97A of TMA 1970 (multiple penalties),
 - (b) paragraph 12(2) of Schedule 24 to FA 2007 (interaction with other penalties), and
 - (c) paragraph 15(1) of Schedule 41 to FA 2008 (interaction with other penalties).

Assessments

- 16 (1) Where a person is liable for a penalty under this Schedule HMRC may assess the penalty.
- (2) HMRC may by regulations make provision for HMRC to assess a penalty under paragraph 9 at times or intervals before the end of the further penalty period.
- (3) Where HMRC assess a penalty they must notify the person and state in the notice –
- (a) the failure to pay tax due, for which the person is liable for the penalty,
 - (b) the amount of the penalty, and
 - (c) how that amount has been calculated (including, in the case of a penalty under paragraph 9, the period to which the penalty relates).
- (4) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (5) An assessment of a penalty under this Schedule –
- (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 in this Schedule),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.
- 17 (1) 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.
- (2) If an assessment in respect of a penalty is based on an amount of tax due or payable that is found by HMRC to be excessive, HMRC may by notice amend the assessment so that it is based upon the correct amount.
- (3) An amendment under sub-paragraph (2) –
- (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 paragraph 18.

Time limit for assessments

- 18 An assessment of a penalty under this Schedule in respect of any amount must be made before the end of the period of 12 months beginning with the day after the day on which the amount is paid in full.

Appeals

- 19 (1) A person may appeal against a decision of HMRC that the person is liable to a penalty under this Schedule.
- (2) A person liable to a penalty under this Schedule may appeal against a decision of HMRC as to the amount of the penalty.
- 20 (1) An appeal under paragraph 19 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (2) Sub-paragraph (1) does not apply –
- (a) so as to require the person to pay a penalty before an appeal against the assessment of the penalty is determined, or
- (b) in respect of any other matter expressly provided for by this Schedule.
- 21 (1) On an appeal under paragraph 19(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 19(2) that is notified to the tribunal, the tribunal may –
- (a) affirm HMRC's decision, or
- (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 20(1)).

Regulations: supplementary provision

- 22 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under paragraph 12 (powers to amend Part 2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (3) A statutory instrument containing regulations under paragraph 16 (assessments) is subject to annulment in pursuance of a resolution of the House of Commons.
- (4) Regulations under this Schedule may include transitional, transitory and saving provision.

Interpretation

- 23 In this Schedule "HMRC" means Her Majesty's Revenue and Customs.

