



Tax Collection and Management (Wales) Act 2016

2016 anaw 6

PART 5

PENALTIES

CHAPTER 2

PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX

Penalties under Chapter 2: general

124 Interaction of penalties

- (1) Where a person is liable to more than one penalty under sections 118 to 120 which is determined by reference to a liability to a devolved tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to the devolved tax.
- (2) Where a person is liable to—
 - (a) a penalty under this Chapter which is determined by reference to a liability to a devolved tax, and
 - (b) any other penalty (other than a penalty under this Chapter) which is determined by reference to the same liability to a devolved tax,the amount of the penalty under this Chapter is to be reduced by the amount of that other penalty.

125 Special reduction in penalty under Chapter 2

- (1) WRA may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.

Status: This is the original version (as it was originally enacted).

- (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 person 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 a reference to a penalty include a reference to any interest in relation to a penalty.

126 Reasonable excuse for failure to make tax return or pay tax

- (1) If a person satisfies WRA or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a tax return, the person is not liable to a penalty under sections 118 to 120 in relation to the failure.
- (2) If a person satisfies WRA or (on appeal) the tribunal that there is a reasonable excuse for a failure to pay a devolved tax, the person is not liable to a penalty under section 122 in relation to the failure.
- (3) For the purposes of subsections (1) and (2)—
 - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person’s control;
 - (b) where a person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure;
 - (c) where a 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 if the failure is remedied without unreasonable delay after the excuse ceased.

127 Assessment of penalties under Chapter 2

- (1) Where a person becomes liable to a penalty under this Chapter, WRA must—
 - (a) assess the penalty,
 - (b) issue notice to the person of the penalty assessed, and
 - (c) state in the notice the period or transaction in respect of which the penalty has been assessed.
- (2) An assessment of a penalty under this Chapter may be combined with an assessment to a devolved tax.
- (3) A supplementary assessment may be made in respect of a penalty under section 119 or 120 if an earlier assessment operated by reference to an underestimate of the amount of devolved tax to which a person would have been liable if a tax return had been made.
- (4) If—
 - (a) an assessment in respect of a penalty under section 119 or 120 is based on the amount of devolved tax to which a person would have been liable if a tax return had been made, and
 - (b) that liability is found by WRA to be excessive,

WRA may issue a notice to the person liable to the penalty amending the assessment so that it is based on the correct amount.

- (5) A supplementary assessment may be made in respect of a penalty under section 122 if an earlier assessment operated by reference to an underestimate of the amount of devolved tax which was payable.
- (6) If an assessment in respect of a penalty under section 122 is based on an amount of tax payable that is found by WRA to be excessive, WRA may issue a notice to the person liable to the penalty amending the assessment so that it is based on the correct amount.
- (7) An amendment made under subsection (4) or (6)—
 - (a) does not affect when the penalty must be paid, and
 - (b) may be made after the last day on which the assessment in question could have been made under section 128.

128 Time limit for assessment of penalties under Chapter 2

- (1) An assessment of a penalty under this Chapter in respect of any amount must be made on or before the later of date A and (where it applies) date B.
- (2) Date A is the last day of the period of 2 years beginning with—
 - (a) in the case of failure to make a tax return, the filing date, or
 - (b) in the case of failure to pay a devolved tax, the penalty date.
- (3) Date B is the last day of the period of 12 months beginning with—
 - (a) in the case of a failure to make a tax return—
 - (i) the end of the appeal period for the assessment of the amount of devolved tax to which a person would have been liable if the tax return had been made, or
 - (ii) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil;
 - (b) in the case of a failure to pay a devolved tax—
 - (i) the end of the appeal period for the assessment of the amount of devolved tax in respect of which the penalty is assessed, or
 - (ii) if there is no such assessment, the date on which that amount of devolved tax is ascertained.
- (4) In subsection (2)(b), “penalty date” has the meaning given by section 122(2).
- (5) In subsection (3)(a) and (b), “appeal period” means the later of the following periods—
 - (a) if no appeal is made, the period during which an appeal could be made, and
 - (b) if an appeal is made, the period ending with its final determination or withdrawal.