



# Finance Act 2003

## 2003 CHAPTER 14

### PART 3

#### TAXES AND DUTIES ON IMPORTATION AND EXPORTATION: PENALTIES

##### *Preliminary*

#### **24** **Introductory**

- (1) This Part makes provision for and in connection with the imposition of liability to a penalty where a person—
  - (a) engages in any conduct for the purpose of evading any relevant tax or duty, or
  - (b) engages in any conduct by which he contravenes a duty, obligation, requirement or condition imposed by or under legislation relating to any relevant tax or duty.
- (2) For the purposes of this Part “relevant tax or duty” means any of the following—
  - (a) customs duty;
  - (b) Community export duty;
  - (c) Community import duty;
  - (d) import VAT;
  - (e) customs duty of a preferential tariff country.
- (3) In this Part—
  - “appeal tribunal” means a VAT and duties tribunal;
  - “the Commissioners” means the Commissioners of Customs and Excise;
  - “the Community Customs Code” means Council Regulation 2913/92/EEC establishing the Community Customs Code;
  - “Community export duty” means any of the duties, charges or levies which are export duties within the meaning of the Community Customs Code (as at 9th April 2003, see the definition of “export duties” in Article 4(11) of that Code);

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“Community import duty” means any of the duties, charges or levies which are import duties within the meaning of the Community Customs Code (as at 9th April 2003, see the definition of “import duties” in Article 4(10) of that Code);

“contravene” includes fail to comply with;

“customs duty of a preferential tariff country” includes a reference to any charge imposed by a preferential tariff country and having an equivalent effect to customs duty payable on the importation of goods into the territory of that country;

“demand notice” means a demand notice within the meaning of section 30;

“import VAT” means value added tax chargeable by virtue of section 1(1) (c) of the Value Added Tax Act 1994 (c. 23) (importation of goods from places outside the member States);

“notice” means notice in writing;

“preferential tariff country” means a country outside the European Community which is, or is a member of a group of countries which is, party to an agreement falling within Article 20(3)(d) of the Community Customs Code (preferential tariff agreements with the Community);

“prescribed” means specified in, or determined in accordance with, regulations made by the Treasury;

“relevant rule”, in relation to any relevant tax or duty, has the meaning given by subsection (8) of section 26 (as read with subsection (9) of that section);

“representative”, in relation to any person, means—

- (a) his personal representative,
- (b) his trustee in bankruptcy or interim or permanent trustee,
- (c) any receiver or liquidator appointed in relation to that person or any of his property,

or any other person acting in a representative capacity in relation to that person.

- (4) References in this Part to the Community Customs Code are references to that Code as from time to time amended, whether before or after the coming into force of this Part.
- (5) The Treasury may by order amend this Part for the purpose of replacing any reference to, or to a provision of,—
  - (a) the Community Customs Code, or
  - (b) any instrument referred to in this Part by virtue of an order under this subsection,
 with a reference to, or (as the case may be) to a provision of, a different instrument.
- (6) A statutory instrument containing an order under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (7) Except for this subsection and section 41 (which accordingly come into force on the passing of this Act), this Part comes into force on such day as the Treasury may by order appoint.

### *The penalties*

#### **25 Penalty for evasion**

- (1) In any case where—
  - (a) a person engages in any conduct for the purpose of evading any relevant tax or duty, and
  - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),that person is liable to a penalty of an amount equal to the amount of the tax or duty evaded or, as the case may be, sought to be evaded.
- (2) Subsection (1) is subject to the following provisions of this Part.
- (3) Nothing in this section applies in relation to any customs duty of a preferential tariff country.
- (4) Any reference in this section to a person's "evading" any relevant tax or duty includes a reference to his obtaining or securing, without his being entitled to it,—
  - (a) any repayment, rebate or drawback of any relevant tax or duty,
  - (b) any relief or exemption from, or any allowance against, any relevant tax or duty, or
  - (c) any deferral or other postponement of his liability to pay any relevant tax or duty or of the discharge by payment of any such liability,and also includes a reference to his evading the cancellation of any entitlement to, or the withdrawal of, any such repayment, rebate, drawback, relief, exemption or allowance.
- (5) In relation to any such evasion of any relevant tax or duty as is mentioned in subsection (4), the reference in subsection (1) to the amount of the tax or duty evaded or sought to be evaded is a reference to the amount of—
  - (a) the repayment, rebate or drawback,
  - (b) the relief, exemption or allowance, or
  - (c) the payment which, or the liability to make which, is deferred or otherwise postponed,as the case may be.
- (6) Where, by reason of conduct falling within subsection (1) in the case of any relevant tax or duty, a person—
  - (a) is convicted of an offence,
  - (b) is given, and has not had withdrawn, a demand notice in respect of a penalty to which he is liable under section 26, or
  - (c) is liable to a penalty imposed upon him under any other provision of the law relating to that relevant tax or duty,that conduct does not also give rise to liability to a penalty under this section in respect of that relevant tax or duty.

#### **26 Penalty for contravention of relevant rule**

- (1) If, in the case of any relevant tax or duty, a person of a prescribed description engages in any conduct by which he contravenes—

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- (a) a prescribed relevant rule, or
  - (b) a relevant rule of a prescribed description,
- he is liable to a penalty under this section of a prescribed amount.
- (2) Subsection (1) is subject to the following provisions of this Part.
- (3) The power conferred by subsection (1) to prescribe a description of person includes power to prescribe any person (without further qualification) as such a description.
- (4) Different penalties may be prescribed under subsection (1) for different cases or different circumstances.
- (5) Any amount prescribed under subsection (1) as the amount of a penalty must not be more than £2,500.
- (6) The Treasury may by order amend subsection (5) by substituting a different amount for the amount for the time being specified in that subsection.
- (7) A statutory instrument containing an order under subsection (6) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (8) In this Part “relevant rule”, in relation to any relevant tax or duty, means any duty, obligation, requirement or condition imposed by or under any of the following—
- (a) the Customs and Excise Management Act 1979 (c. 2), as it applies in relation to the relevant tax or duty;
  - (b) any other Act, or any statutory instrument, as it applies in relation to the relevant tax or duty;
  - (c) in the case of customs duty, Community export duty or Community import duty, Community customs rules;
  - (d) in the case of import VAT, Community customs rules as they apply in relation to import VAT;
  - (e) any directly applicable Community legislation relating to the relevant tax or duty;
  - (f) any relevant international rules applying in relation to the relevant tax or duty.
- (9) In subsection (8)—
- “Community customs rules” means customs rules, as defined in Article 1 of the Community Customs Code;
  - “relevant international rules” means international agreements so far as applying in relation to a relevant tax or duty and having effect as part of the law of any part of the United Kingdom by virtue of—
- (a) any Act or statutory instrument, or
  - (b) any directly applicable Community legislation.

## 27 Exceptions from section 26

- (1) A person is not liable to a penalty under section 26 if he satisfies—
- (a) the Commissioners, or
  - (b) on appeal, an appeal tribunal,
- that there is a reasonable excuse for his conduct.
- (2) For the purposes of subsection (1) none of the following is a reasonable excuse—

- (a) an insufficiency of funds available to any person for paying any relevant tax or duty or any penalty due;
  - (b) that reliance was placed by any person on another to perform any task;
  - (c) that the contravention is attributable, in whole or in part, to the conduct of a person on whom reliance to perform any task was so placed.
- (3) Where, by reason of conduct falling within subsection (1) of section 26 in the case of any relevant tax or duty, a person—
- (a) is prosecuted for an offence,
  - (b) is given, and has not had withdrawn, a demand notice in respect of a penalty to which he is liable under section 25, or
  - (c) is liable to a penalty imposed upon him under any other provision of the law relating to that relevant tax or duty,
- that conduct does not also give rise to liability to a penalty under section 26 in respect of that relevant tax or duty.
- (4) A person is not liable to a penalty under section 26 in respect of any conduct, so far as relating to import VAT, if in respect of that conduct—
- (a) he is liable to a penalty under any of sections 62 to 69A of the Value Added Tax Act 1994 (c. 23) (penalty for contravention of statutory requirements as to VAT), or
  - (b) he would be so liable but for section 62(4), 63(11), 64(6), 67(9), 69(9) or 69A(7) of that Act (conduct resulting in conviction, different penalty etc).

## **28 Liability of directors etc where body corporate liable to penalty for evasion**

- (1) Where it appears to the Commissioners—
- (a) that a body corporate is liable to a penalty under section 25, and
  - (b) that the conduct giving rise to the penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a “relevant officer”),
- the Commissioners may give a notice under this section to the body corporate (or its representative) and to the relevant officer (or his representative).
- (2) A notice under this section must state—
- (a) the amount of the penalty referred to in subsection (1)(a) (the “basic penalty”), and
  - (b) that the Commissioners propose, in accordance with this section, to recover from the relevant officer such portion (which may be the whole) of the basic penalty as is specified in the notice.
- (3) If a notice is given under this section, this Part shall apply in relation to the relevant officer as if he were personally liable under section 25 to a penalty which corresponds to that portion of the basic penalty specified in the notice.
- (4) If a notice is given under this section—
- (a) the amount which may be recovered from the body corporate under this Part is limited to so much (if any) of the basic penalty as is not recoverable from the relevant officer by virtue of subsection (3), and
  - (b) the body corporate is to be treated as discharged from liability for so much of the basic penalty as is so recoverable from the relevant officer.

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- (5) In this section “managing officer”, in relation to a body corporate, means—
- (a) a manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in any such capacity or as a director.
- (6) Where the affairs of a body corporate are managed by its members, this section applies in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

#### *Reduction of amount of penalty*

### **29 Reduction of penalty under section 25 or 26**

- (1) Where a person is liable to a penalty under section 25 or 26—
- (a) the Commissioners (whether originally or on review) or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
  - (b) the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under this subsection may cancel the whole or any part of the reduction previously made by the Commissioners.
- (2) In exercising their powers under subsection (1), neither the Commissioners nor an appeal tribunal are entitled to take into account any of the matters specified in subsection (3).
- (3) Those matters are—
- (a) the insufficiency of the funds available to any person for paying any relevant tax or duty or the amount of the penalty,
  - (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 any relevant tax or duty,
  - (c) the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith.

#### *Demand notices*

### **30 Demands for penalties**

- (1) Where a person is liable to a penalty under this Part, the Commissioners may give to that person or his representative a notice in writing (a “demand notice”) demanding payment of the amount due by way of penalty.
- (2) An amount demanded as due from a person or his representative in accordance with subsection (1) is recoverable as if it were an amount due from the person or, as the case may be, the representative as an amount of customs duty.

This subsection is subject to—

- (a) any appeal under section 36 (appeals to tribunal); and
  - (b) subsection (3).
- (3) An amount so demanded is not recoverable if or to the extent that—
- (a) the demand has subsequently been withdrawn; or
  - (b) the amount has been reduced under section 29.

### **31 Time limits for demands for penalties**

- (1) A demand notice may not be given—
  - (a) in the case of a penalty under section 25, more than 20 years after the conduct giving rise to the liability to the penalty ceased, or
  - (b) in the case of a penalty under section 26, more than 3 years after the conduct giving rise to the liability to the penalty ceased.
- (2) A demand notice may not be given more than 2 years after there has come to the knowledge of the Commissioners evidence of facts sufficient in the opinion of the Commissioners to justify the giving of the demand notice.
- (3) A demand notice—
  - (a) may be given in respect of a penalty to which a person was liable under section 25 or 26 immediately before his death, but
  - (b) in the case of a penalty to which the deceased was so liable under section 25, may not be given more than 3 years after his death.

### **32 No prosecution after demand notice for penalty under section 26**

Where a demand notice is given demanding payment of an amount due by way of penalty under section 26 in respect of any conduct of a person, no proceedings may be brought against that person for any offence constituted by that conduct (whether or not the demand notice is subsequently withdrawn).

#### *Reviews*

### **33 Right to review of certain decisions**

- (1) If, in the case of any relevant tax or duty, the Commissioners give a person or his representative a notice informing him—
  - (a) that they have decided that the person has engaged in conduct by which he contravenes a relevant rule, and
  - (b) that the person is, in consequence, liable to a penalty under section 26, but
  - (c) that they do not propose to give a demand notice in respect of the penalty,the person or his representative may give a notice to the Commissioners requiring them to review the decision mentioned in paragraph (a).
- (2) Where the Commissioners give a demand notice to a person or his representative, the person or his representative may by notice require the Commissioners to review—
  - (a) their decision that the person is liable to a penalty under section 25 or 26, or
  - (b) their decision as to the amount of the liability.
- (3) Where the Commissioners give a notice under section 28 to a body corporate and to a relevant officer—
  - (a) subsection (2) does not apply to any demand notice given in respect of the liability of either of them to a penalty under this Part in respect of the conduct in question, but
  - (b) subsections (4) and (5) have effect instead in relation to any such demand notice.

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- (4) Where the Commissioners give a demand notice to the relevant officer or his representative for a penalty which corresponds to the portion of the basic penalty specified in the notice under section 28, the relevant officer or his representative may by notice require the Commissioners to review—
- (a) their decision that the conduct of the body corporate referred to in section 28(1)(b) is, in whole or in part, attributable to the relevant officer's dishonesty, or
  - (b) their decision as to the portion of the basic penalty which the Commissioners are seeking to recover from the relevant officer or his representative.
- (5) Where the Commissioners give a demand notice to the body corporate or its representative for so much of the basic penalty as is not recoverable from the relevant officer by virtue of section 28(3), the body corporate or its representative may by notice require the Commissioners to review—
- (a) their decision that the body corporate is liable to a penalty under section 25, or
  - (b) their decision as to amount of the basic penalty as if it were the amount specified in the demand notice.
- (6) A person may not under this section require a review of a decision under section 35 (decision on review).

#### **34 Time limit and right to further review**

- (1) The Commissioners are not required under section 33 to review any decision unless the notice requiring the review is given before the end of the permitted period.
- (2) For the purposes of this section the “permitted period” is the period of 45 days beginning with the day on which the relevant notice is given.
- (3) For the purposes of subsection (2) the “relevant notice” is—
- (a) in the case of a review by virtue of subsection (1) of section 33, the notice mentioned in that subsection; or
  - (b) in any other case, the demand notice in question.
- (4) Nothing in subsection (1) prevents the Commissioners from agreeing on request to review a decision in a case where the notice required by that subsection is not given within the permitted period.
- (5) A person may give notice under section 33 requiring a decision to be reviewed a second or subsequent time only if—
- (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider any particular facts or matters; and
  - (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review of the decision, except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.

#### **35 Powers of Commissioners on a review**

- (1) Where the Commissioners—
- (a) are required in accordance with section 33 to review a decision, or



- (b) agree to do so on such a request as is mentioned in section 34(4),  
the following provisions of this section apply.
- (2) On any such review, the Commissioners may—
  - (a) confirm the decision,
  - (b) withdraw the decision, or
  - (c) vary the decision.
- (3) Where the Commissioners withdraw or vary the decision, they may also take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.
- (4) If the Commissioners do not within the permitted period give notice of their determination on the review to the person who required the review or his representative, they shall be taken for the purposes of this Part to have confirmed the decision.
- (5) For the purposes of subsection (4), the “permitted period” is the period of 45 days beginning with the day on which the review—
  - (a) is required by the person or his representative in accordance with section 33, or
  - (b) is agreed to by the Commissioners as mentioned in section 34(4).

### *Appeals*

## **36 Appeals to a tribunal**

- (1) Where the Commissioners—
  - (a) are required in accordance with section 33 to review a decision, or
  - (b) agree to do so on such a request as is mentioned in section 34(4),an appeal lies to an appeal tribunal against any decision by the Commissioners on the review (including any confirmation under section 35(4)).
- (2) An appeal lies under this section only if the appellant is one of the following persons—
  - (a) the person who required the review in question,
  - (b) where the person who required the review in question did so as representative of another person, that other person, or
  - (c) a representative of a person falling within paragraph (a) or (b).
- (3) The powers of an appeal tribunal on an appeal under this section include—
  - (a) power to quash or vary a decision; and
  - (b) power to substitute the tribunal’s own decision for any decision so quashed.
- (4) On an appeal under this section—
  - (a) the burden of proof as to the matters mentioned in section 25(1) or 26(1) lies on the Commissioners; but
  - (b) it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established.

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### **37 Appeal tribunals**

- (1) Sections 85 and 87 of the Value Added Tax Act 1994 (c. 23) (settling of appeals by agreement and enforcement of decisions of tribunal) have effect as if—
  - (a) any reference to section 83 of that Act included a reference to section 36 above, and
  - (b) any reference to VAT included a reference to any relevant tax or duty.
- (2) The provision that may be made by rules under paragraph 9 of Schedule 12 to the Value Added Tax Act 1994 (rules of procedure for tribunals) includes provision for costs awarded against an appellant on an appeal by virtue of this Part to be recoverable as if the amount awarded were an amount of customs duty which the appellant is required to pay.

### *Evidence*

### **38 Admissibility of certain statements and documents**

- (1) Statements made or documents produced by or on behalf of a person are not inadmissible in—
  - (a) any criminal proceedings against that person in respect of any offence in connection with or in relation to any relevant tax or duty, or
  - (b) any proceedings against that person for the recovery of any sum due from him in connection with or in relation to any relevant tax or duty,by reason only that any of the matters specified in subsection (2) has been drawn to his attention and that he was, or may have been, induced by that matter having been brought to his attention to make the statements or produce the documents.
- (2) The matters mentioned in subsection (1) are—
  - (a) that the Commissioners have power, in relation to any relevant tax or duty, to demand by means of a written notice an amount by way of a civil penalty, instead of instituting criminal proceedings;
  - (b) that it is the Commissioners' practice, without being able to give an undertaking as to whether they will make such a demand in any case, to be influenced in determining whether to make such a demand by the fact (where it is the case) that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for an investigation;
  - (c) that the Commissioners or, on appeal, an appeal tribunal have power to reduce a penalty under section 25, as provided in subsection (1) of section 29; and
  - (d) that, in determining the extent of such a reduction in the case of any person, the Commissioners or tribunal will have regard to the extent of the co-operation which he has given to the Commissioners in their investigation.
- (3) References in this section to a relevant tax or duty do not include a reference to customs duty of a preferential tariff country.

*Miscellaneous and supplementary*

**39 Service of notices**

Any notice to be given to any person for the purposes of this Part may be given by sending it by post in a letter addressed to that person or his representative at the last or usual residence or place of business of that person or representative.

**40 Penalties not to be deducted for income tax or corporation tax purposes**

In section 827 of the Taxes Act 1988 (no deduction for penalties etc) after subsection (1E) insert—

“(1F) Where a person is liable to make a payment by way of a penalty under section 25 or 26 of the Finance Act 2003 (evasion of, or contravention of relevant rule relating to, certain taxes and duties under the management of the Commissioners of Customs and Excise etc) the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”.

**41 Regulations and orders**

- (1) Any power conferred on the Treasury by this Part to make regulations or an order includes power—
  - (a) to make different provision for different cases, and
  - (b) to make incidental, consequential, supplemental or transitional provision or savings.
- (2) Any power conferred on the Treasury by this Part to make regulations or an order shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations under this Part shall be subject to annulment in pursuance of a resolution of the House of Commons.