

SCHEDULES

SCHEDULE 14

Section 99

STAMP DUTY LAND TAX: DETERMINATION OF PENALTIES AND RELATED APPEALS

Determination of penalties and appeals

- 1 The provisions of this Schedule apply in relation to penalties under this Part.

Determination of penalty by officer of the Board

- 2 (1) An officer of the Board authorised for the purposes of this paragraph may make a determination—
- (a) imposing the penalty, and
 - (b) setting it at such amount as in the officer's opinion is correct or appropriate.
- (2) Notice of the determination must be served on the person liable to the penalty.
- (3) The notice must also state—
- (a) the date on which the notice is issued, and
 - (b) the time within which an appeal against the determination may be made.
- (4) A penalty determined under this paragraph is due and payable at the end of the period of 30 days beginning with the date of issue of the notice of determination.
- (5) Where an officer of the Board has decided to impose a penalty, and has taken all other decisions needed for arriving at the amount of the penalty, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the determination.

Alteration of penalty determination

- 3 (1) After notice has been served of the determination of a penalty, the determination cannot be altered except in accordance with this paragraph or on appeal.
- (2) If it is discovered by an authorised officer that the amount of the penalty is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which in the officer's opinion is correct or appropriate.
- (3) If in the case of a tax-related penalty it is discovered by an authorised officer that the amount taken into account as the amount of tax is or has become excessive, he may revise the determination so that the penalty is set at the amount that is correct.
- Where more than the correct amount has already been paid the appropriate amount shall be repaid.
- (4) In this paragraph an "authorised officer" means an officer of the Board authorised by the Board for the purposes of this paragraph.

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Liability of personal representatives

- 4 If a person liable to a penalty has died—
- (a) any determination that could have been made in relation to that person may be made in relation to his personal representatives, and
 - (b) any penalty imposed on them is a debt due from and payable out of the person's estate.

Appeal against penalty determination

- 5
- (1) An appeal lies to the General or Special Commissioners against the determination of a penalty.
 - (2) Notice of appeal must be given in writing to the officer of the Board by whom the determination was made within 30 days of the date of issue of the notice of determination.
 - (3) The notice of appeal must specify the grounds of appeal, but on the hearing of the appeal the Commissioners may allow the appellant to put forward a ground not specified in the notice of appeal, and take it into consideration, if satisfied that the omission was not deliberate or unreasonable.
 - (4) On an appeal under this paragraph the Commissioners may—
 - (a) if it appears to them that no penalty has been incurred, set the determination aside;
 - (b) if the amount determined appears to them to be appropriate, confirm the determination;
 - (c) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as appears to them to be appropriate;
 - (d) if the amount determined appears to them to be insufficient, increase it to such amount, not exceeding the permitted maximum, as they consider appropriate.

Further appeal

- 6
- (1) An appeal lies against the amount of a penalty determined by the Commissioners on an appeal under paragraph 5, at the instance of the person liable to the penalty—
 - (a) to the High Court, or
 - (b) in Scotland, to the Court of Session sitting as the Court of Exchequer.
 - (2) On an appeal under this paragraph the court has the same powers as are conferred on the Commissioners by paragraph 5(4) above.
 - (3) The right of appeal under this paragraph is in addition to any right of appeal conferred by regulations under paragraph 9 of Schedule 17 (general power to provide for appeals on points of law).

Penalty proceedings before the court

- 7
- (1) Where in the opinion of the Board the liability of a person for a penalty arises by reason of his fraud, or the fraud of another person, proceedings for the penalty may be brought—
 - (a) in the High Court, or

(b) in Scotland, in the Court of Session sitting as the Court of Exchequer.

- (2) Proceedings under this paragraph in England and Wales shall be brought—
- (a) by and in the name of the Board as an authorised department for the purposes of the Crown Proceedings Act 1947 (c. 44), or
 - (b) in the name of the Attorney General.

Any such proceedings shall be deemed to be civil proceedings by the Crown within the meaning of Part 2 of the Crown Proceedings Act 1947.

- (3) Proceedings under this paragraph in Scotland shall be brought in the name of the Advocate General for Scotland.
- (4) Proceedings under this paragraph in Northern Ireland shall be brought—
- (a) by and in the name of the Board as an authorised department for the purposes of the Crown Proceedings Act 1947 as for the time being in force in Northern Ireland, or
 - (b) in the name of the Advocate General for Northern Ireland.

Any such proceedings shall be deemed to be civil proceedings within the meaning of Part 2 of the Crown Proceedings Act 1947 as for the time being in force in Northern Ireland.

- (5) If in proceedings under this paragraph the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.
- (6) Paragraph 2 (determination of penalty by officer of the Board) does not apply where proceedings are brought under this paragraph.
- (7) In relation to any time before the coming into force of section 2(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the reference in sub-paragraph (4)(b) to the Advocate General for Northern Ireland shall be read as a reference to the Attorney General for Northern Ireland.

Time limit for determination of penalties

- 8 (1) The following time limits apply in relation to the determination of penalties under this Schedule.
- (2) The general rule is that—
- (a) no penalty may be determined under paragraph 2 (determination by officer of Board), and
 - (b) no proceedings for a penalty may be brought under paragraph 7 (penalty proceedings before the court),
- more than six years after the date on which the penalty was incurred or, in the case of a daily penalty, began to be incurred.

This rule is subject to the following provisions of this paragraph.

- (3) Where the amount of a penalty is to be ascertained by reference to the tax chargeable in respect of a transaction, a penalty may be determined under paragraph 2, or proceedings for a penalty may be begun under paragraph 7, at any time within three

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years after the final determination of the amount of tax by reference to which the amount of the penalty is to be determined.

- (4) Sub-paragraph (3) does not apply where a person has died and the determination would be made in relation to his personal representatives if the tax was charged in an assessment made more than six years after the effective date of the transaction to which it relates.
- (5) A penalty under section 96 (penalty for assisting in preparation of incorrect return) may be determined by an officer of the Board, or proceedings for such a penalty may be commenced before a court, at any time within 20 years after the date on which the penalty was incurred.