



Finance (No. 2) Act 2017

2017 CHAPTER 32

PART 4

ADMINISTRATION, AVOIDANCE AND ENFORCEMENT

Avoidance etc

68 Penalty for transactions connected with VAT fraud etc

- (1) VATA 1994 is amended as follows.
- (2) After section 69B (penalty for breach of record-keeping requirements imposed by directions) insert—

“69C Transactions connected with VAT fraud

- (1) A person (T) is liable to a penalty where—
 - (a) T has entered into a transaction involving the making of a supply by or to T (“the transaction”), and
 - (b) conditions A to C are satisfied.
- (2) Condition A is that the transaction was connected with the fraudulent evasion of VAT by another person (whether occurring before or after T entered into the transaction).
- (3) Condition B is that T knew or should have known that the transaction was connected with the fraudulent evasion of VAT by another person.
- (4) Condition C is that HMRC have issued a decision (“the denial decision”) in relation to the supply which—
 - (a) prevents T from exercising or relying on a VAT right in relation to the supply,
 - (b) is based on the facts which satisfy conditions A and B in relation to the transaction, and

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- (c) applies a relevant principle of EU case law (whether or not in circumstances that are the same as the circumstances in which any relevant case was decided by the European Court of Justice).
- (5) In this section “VAT right” includes the right to deduct input tax, the right to apply a zero rate to international supplies and any other right connected with VAT in relation to a supply.
- (6) The relevant principles of EU case law for the purposes of this section are the principles established by the European Court of Justice in the following cases—
 - (a) joined Cases C-439/04 and C-440/04 *Axel Kittel v. Belgian State; Belgium v. Recolta Recycling* (denial of right to deduct input tax), and
 - (b) Case C-273/11 (*b*) *Mecsek-Gabona Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága* (denial of right to zero rate),
 as developed or extended by that Court (whether before or after the coming into force of this section) in other cases relating to the denial or refusal of a VAT right in order to prevent abuses of the VAT system.
- (7) The penalty payable under this section is 30% of the potential lost VAT.
- (8) The potential lost VAT is—
 - (a) the additional VAT which becomes payable by T as a result of the denial decision,
 - (b) the VAT which is not repaid to T as a result of that decision, or
 - (c) in a case where as a result of that decision VAT is not repaid to T and additional VAT becomes payable by T, the aggregate of the VAT that is not repaid and the additional VAT.
- (9) Where T is liable to a penalty under this section the Commissioners may assess the amount of the penalty and notify it to T accordingly.
- (10) No assessment of a penalty under this section may be made more than two years after the denial decision is issued.
- (11) The assessment of a penalty under this section may be made immediately after the denial decision is made (and notice of the assessment may be given to T in the same document as the notice of the decision).
- (12) Where by reason of actions involved in making a claim to exercise or rely on a VAT right in relation to a supply T—
 - (a) is liable to a penalty for an inaccuracy under paragraph 1 of Schedule 24 to the Finance Act 2007 for which T has been assessed (and the assessment has not been successfully appealed against by T or withdrawn), or
 - (b) is convicted of an offence (whether under this Act or otherwise), those actions do not give rise to liability to a penalty under this section.

69D Penalties under section 69C: officers' liability

- (1) Where—
 - (a) a company is liable to a penalty under section 69C, and

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- (b) the actions of the company which give rise to that liability were attributable to an officer of the company (“the officer”),
the officer is liable to pay such portion of the penalty (which may be equal to or less than 100%) as HMRC may specify in a notice given to the officer (a “decision notice”).
- (2) Before giving the officer a decision notice HMRC must—
- (a) inform the officer that they are considering doing so, and
 - (b) afford the officer the opportunity to make representations about whether a decision notice should be given or the portion that should be specified.
- (3) A decision notice—
- (a) may not be given before the amount of the penalty due from the company has been assessed (but it may be given immediately after that has happened), and
 - (b) may not be given more than two years after the denial decision relevant to that penalty was issued.
- (4) Where the Commissioners have specified a portion of the penalty in a decision notice given to the officer—
- (a) section 70 applies to the specified portion as to a penalty under section 69C,
 - (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
 - (c) section 76(9) applies as if the decision notice were an assessment notified under section 76, and
 - (d) a further decision notice may be given in respect of a portion of any additional amount assessed in an additional assessment.
- (5) HMRC may not recover more than 100% of the penalty through issuing decision notices in relation to two or more persons.
- (6) A person is not liable to pay an amount by virtue of this section if the actions of the company concerned are attributable to the person by reference to conduct for which the person has been convicted of an offence.
- In this subsection “conduct” includes omissions.
- (7) In this section “company” means a body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association.
- (8) In its application to a body corporate other than a limited liability partnership “officer” means—
- (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006),
 - (b) a manager, or
 - (c) a secretary.
- (9) In its application to a limited liability partnership “officer” means a member.
- (10) In its application in any other case, “officer” means—
- (a) a director,

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- (b) a manager,
- (c) a secretary, or
- (d) any other person managing or purporting to manage any of the company's affairs.

69E Publication of details of persons liable to penalties under section 69C

- (1) The Commissioners may publish information about a person if—
 - (a) in consequence of an investigation the person has been found liable to one or more penalties under section 69C (the amount of which has been assessed), and
 - (b) the potential lost VAT in relation to the penalty (or the aggregate of the potential lost VAT in relation to each of the penalties) exceeds £50,000.
- (2) The information that may be published under subsection (1) is—
 - (a) the person's name (including any trading name, previous name or pseudonym),
 - (b) the person's address (or registered office),
 - (c) the nature of any business carried on by the person,
 - (d) the amount of the penalty or penalties in question,
 - (e) the periods or times to which the actions giving rise to the penalty or penalties relate,
 - (f) any other information that the Commissioners consider it appropriate to publish in order to make clear the person's identity.
- (3) In a case where—
 - (a) the requirements in subsection (1)(a) and (b) are met in relation to a penalty or penalties for which a company is liable,
 - (b) information about the company is published by virtue of this section,
 - (c) a person (“the officer”) has been given a decision notice under section 69D specifying a portion of the penalty (or, if there is more than one penalty, of any of the penalties) payable by the company as a portion which the officer is liable to pay, and
 - (d) the amount (or, if the decision notice specifies portions of more than one penalty, the aggregate amount) which the officer is liable to pay under the decision notice exceeds £25, 000,
 the Commissioners may publish information about the officer.
- (4) The information that may be published under subsection (3) is—
 - (a) the officer's name,
 - (b) the officer's address,
 - (c) the officer's position (or former position) in the company,
 - (d) the amount of any penalty imposed on the company of which a portion is payable by the officer under the decision notice and the portion so payable,
 - (e) the periods or times to which the actions giving rise to any such penalty relate,
 - (f) any other information that the Commissioners consider it appropriate to publish in order to make clear the officer's identity.

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- (5) Information published under this section may be published in any manner that the Commissioners consider appropriate.
 - (6) Before publishing any information under this section the Commissioners must—
 - (a) inform the person or officer to which it relates that they are considering doing so (in the case of an officer, on the assumption that they publish information about the company), and
 - (b) afford the person or officer the opportunity to make representations about whether it should be published.
 - (7) No information may be published under subsection (1) before the day on which the penalty becomes final or, where more than one penalty is involved, the latest day on which any of the penalties becomes final.
 - (8) No information may be published under subsection (1) for the first time after the end of the period of one year beginning with that day.
 - (9) No information may be published under subsection (3) before whichever is the later of—
 - (a) the day mentioned in subsection (7), and
 - (b) the day on which the decision notice given to the officer becomes final.
 - (10) No information may be published under subsection (3) for the first time after the end of the period of one year beginning with the later of the two days mentioned in subsection (9).
 - (11) No information may be published (or continue to be published) under subsection (1) or (3) after the end of the period of three years beginning with the day mentioned in subsection (7).
 - (12) For the purposes of this section a penalty or a decision notice becomes final when the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined.
 - (13) The Treasury may by regulations made by statutory instrument—
 - (a) amend subsection (1) to vary the amount for the time being specified in paragraph (b), or
 - (b) amend subsection (3) to vary the amount for the time being specified in paragraph (d).
 - (14) A statutory instrument containing regulations under subsection (13) is subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) In section 70 (mitigation of penalties)—
- (a) in the heading, for “and 67” substitute “, 67, 69A and 69C”,
 - (b) in subsection (1) for “or 69A” substitute “, 69A or 69C”, and
 - (c) after subsection (4) insert—
 - “(5) In the application of subsections (3) and (4) in relation to a penalty under section 69C, subsection (4) has effect with the omission of paragraphs (b) and (c).”

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- (4) In section 76 (assessment of amounts due by way of penalty etc), in subsection (1)(b) for “to 69B” (in both places) substitute “ to 69C ”.
- (5) In section 83(1) (appeals), after paragraph (n) insert—
- “(na) any liability to a penalty under section 69C, any assessment of a penalty under that section or the amount of such an assessment;
 - (nb) the giving of a decision notice under section 69D or the portion of a penalty assessed under section 69C which is specified in such a notice;”.
- (6) After paragraph 21 of Schedule 24 to FA 2007 (penalties for errors: double jeopardy) insert—
- “21ZA (1) A person is not liable to a penalty under paragraph 1 in respect of an inaccuracy if—
- (a) the inaccuracy involves a claim by the person to exercise or rely on a VAT right (in relation to a supply) that has been denied or refused by HMRC as mentioned in subsection (4) of section 69C of VATA 1994, and
 - (b) the person has been assessed to a penalty under that section (and the assessment has not been successfully appealed against or withdrawn).
- (2) In sub-paragraph (1)(a) “VAT right” has the same meaning as in section 69C of VATA 1994.”
- (7) Section 69C does not apply in relation to transactions entered into before this section comes into force.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. A1 para. 8(6)(b) omitted by [2022 c. 3 Sch. 1 para. 32\(b\)](#)
- Sch. A1 para. 8(2) substituted by [2022 c. 3 Sch. 1 para. 32\(a\)](#)