

Penalty for deliberately or carelessly making incorrect returns, etc. VATA s. 27A

116.—(1) In this section—

“carelessly” means failure to take reasonable care;

“liability to tax” means a liability to the amount of the difference specified in subsection (11) or (12) arising from any matter referred to in subsection (2), (3), (5) or (6);

“period” means taxable period, accounting period or other period, as the context requires;

“prompted qualifying disclosure”, in relation to a person, means a qualifying disclosure that has been made to the Revenue Commissioners or to a Revenue officer in the period between—

(a) the date on which a person is notified by a Revenue officer of the date on which an investigation or inquiry into any matter occasioning a liability to tax of that person will start, and

(b) the date that the investigation or inquiry starts;

“qualifying disclosure”, in relation to a person, means—

(a) in relation to a penalty referred to in subsection (4), a disclosure that the Revenue Commissioners are satisfied is a disclosure of—

(i) complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty referred to in subsection (4), and

(ii) full particulars of all matters occasioning any liability to tax or duty that gives rise to—

(I) a penalty referred to in section 1077E(4) of the Taxes Consolidation Act 1997 ,

(II) a penalty referred to in section 134A(2) of the Stamp Duties Consolidation Act 1999 , and

(III) the application of section 1077E(4) of the Taxes Consolidation Act 1997 to the Capital Acquisitions Tax Consolidation Act 2003 ,

and

(b) in relation to a penalty referred to in subsection (7), a disclosure that the Revenue Commissioners are satisfied is a disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty referred to in subsection (7) for the relevant period,

and which is made in writing to the Revenue Commissioners or to a Revenue officer and signed by or on behalf of that person and is accompanied by—

(A) a declaration, to the best of that person's knowledge, information and belief, made in writing that all matters contained in the disclosure are correct and complete, and

(B) a payment of the tax and duty payable in respect of any matter contained in the disclosure and the interest on late payment of that tax and duty;

"Revenue officer" means an officer of the Revenue Commissioners;

"unprompted qualifying disclosure", in relation to a person, means a qualifying disclosure that the Revenue Commissioners are satisfied has been voluntarily furnished to them—

(a) before an investigation or inquiry had been started by them or by a Revenue officer into any matter occasioning a liability to tax of that person, or

(b) where the person is notified by a Revenue officer of the date on which an investigation or inquiry into any matter occasioning a liability to tax of that person will start, before that notification.

(2) Where a person furnishes a return or makes a claim or declaration for the purposes of this Act or of regulations and, in so doing, the person deliberately—

(a) furnishes an incorrect return, or

(b) makes an incorrect claim or declaration,

then that person shall be liable to a penalty.

(3) Where a person deliberately fails to comply with a requirement in accordance with this Act or regulations to furnish a return, then the person shall be liable to a penalty.

(4) The penalty referred to—

(a) in subsection (2), shall be the amount specified in subsection (11), and

(b) in subsection (3), shall be the amount specified in subsection (12),

reduced, where the person liable to the penalty cooperated fully with any investigation or inquiry started by the Revenue Commissioners or by a Revenue officer into any matter occasioning a liability to tax of that person, to—

(i) 75 per cent of that amount where paragraph (ii) or (iii) does not apply,

(ii) 50 per cent of that amount where a prompted qualifying disclosure is made by that person,

(iii) 10 per cent of that amount where an unprompted qualifying disclosure has been made by that person.

(5) Where a person furnishes a return or makes a claim or declaration for the purposes of this Act or of regulations and, in so doing, the person carelessly but not deliberately—

(a) furnishes an incorrect return, or

(b) makes an incorrect claim or declaration,

then that person shall be liable to a penalty.

(6) Where a person carelessly but not deliberately fails to comply with a requirement in accordance with this Act or regulations to furnish a return, then the person shall be liable to a penalty.

(7)(a) The penalty referred to—

(i) in subsection (5), shall be the amount specified in subsection (11), and

(ii) in subsection (6), shall be the amount specified in subsection (12),

reduced to 40 per cent in cases where the excess referred to in subparagraph (i) of paragraph (b) applies and to 20 per cent in other cases.

(b) Where the person liable to the penalty cooperated fully with any investigation or inquiry started by the Revenue Commissioners or by a Revenue officer into any matter occasioning a liability to tax of that person, the penalty referred to—

(i) in subsection (5), shall be the amount specified in subsection (11), and

(ii) in subsection (6), shall be the amount specified in subsection (12),

reduced—

(i) where the difference referred to in subsection (11) or (12), as the case may be, exceeds 15 per cent of the amount referred to in paragraph (b) of subsection (11) or paragraph (b) of subsection (12), to—

(A) 30 per cent of that difference where clause (B) or (C) does not apply,

(B) 20 per cent of that difference where a prompted qualifying disclosure is made by that person,

(C) 5 per cent of that difference where an unprompted qualifying disclosure is made by that person,

or

(ii) where the difference referred to in subsection (11) or (12), as the case may be, does not exceed 15

per cent of the amount referred to in paragraph (b) of subsection (11) or paragraph (b) of subsection (12) to—

(A) 15 per cent of that difference where clause (B) or (C) does not apply,

(B) 10 per cent of that difference where a prompted qualifying disclosure is made by that person,

(C) 3 per cent of that difference where an unprompted qualifying disclosure is made by that person.

(8) Where, for the purposes of this Act or of regulations, a person deliberately or carelessly produces, furnishes, gives, sends or otherwise makes use of, any incorrect invoice, registration number, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information, book, document or record, then the person shall be liable to—

(a) a penalty of €3,000 where that person has acted carelessly,

(b) a penalty of €5,000 where that person has acted deliberately.

(9) Where any return, claim or declaration as is referred to in subsection (2) or (5) was furnished or made by a person, neither deliberately nor carelessly, and it comes to the person's notice that it was incorrect, then, unless the error is remedied without unreasonable delay, the return, claim or declaration shall be treated for the purposes of this section as having been deliberately made or submitted by that person.

(10) Subject to section 1077D(2) of the Taxes Consolidation Act 1997, proceedings or applications for the recovery of any penalty under this section shall not be out of time by reason that they are commenced after the time allowed by section 113.

(11) The amount referred to in paragraph (a) of subsection (4) and in paragraph (a)(i) of subsection (7) shall be the difference between—

(a) the amount of tax (if any) paid or claimed by the person concerned for the relevant period on the basis of the incorrect return, claim or declaration as furnished or otherwise made, and

(b) the amount properly payable by, or refundable to, that person for that period.

(12) The amount referred to in paragraph (b) of subsection (4) and in paragraph (b)(ii) of subsection (7) shall be the difference between—

(a) the amount of tax (if any) paid by that person for the relevant period before the start, by the Revenue Commissioners or by any Revenue officer, of any inquiry or investigation where the Revenue Commissioners had announced publicly that they had started an inquiry or investigation or where the Revenue Commissioners have, or a Revenue officer has, carried out an inquiry or investigation in respect of any matter that would have been included in the return if the return had been furnished by that person and the return had been correct, and

(b) the amount of tax properly payable by that person for that period.

(13) Where a second qualifying disclosure is made by a person within 5 years of that person's first qualifying disclosure, then, as regards matters pertaining to that second disclosure—

(a) in relation to subsection (4)—

(i) paragraph (ii) shall apply as if “75 per cent” were substituted for “50 per cent”, and

(ii) paragraph (iii) shall apply as if “55 per cent” were substituted for “10 per cent”,

and

(b) in relation to subparagraph (I) of subsection (7)(b)—

(i) clause (B) shall apply as if “30 per cent” were substituted for “20 per cent”, and

(ii) clause (C) shall apply as if “20 per cent” were substituted for “5 per cent”.

(14) Where a third or subsequent qualifying disclosure is made by a person within 5 years of that person's second qualifying disclosure, then, as regards matters pertaining to that third or subsequent disclosure, as the case may be—

(a) the penalty referred to in paragraphs (a) and (b) of subsection (4) shall not be reduced, and

(b) the reduction referred to in subparagraph (I) of subsection (7)(b) shall not apply.

(15) A disclosure in relation to a person shall not be a qualifying disclosure where—

(a) before the disclosure is made, a Revenue officer had started an inquiry or investigation into any matter contained in that disclosure and had contacted or notified that person, or a person representing that person, in this regard, or

(b) matters contained in the disclosure are matters—

(i) that have become known, or are about to become known, to the Revenue Commissioners through their own investigations or through an investigation conducted by a statutory body or agency,

(ii) that are within the scope of an inquiry being carried out wholly or partly in public, or

(iii) to which the person who made the disclosure is linked, or about to be linked, publicly.

(16) For the purposes of this section, any return, claim or declaration submitted on behalf of a person shall be deemed to have been submitted by that person unless that person proves that it was submitted without that person's consent or knowledge.

(17) Where a person referred to in subsection (2), (3), (5) or (6) is a body of persons, the secretary shall be liable to a separate penalty of €1,500 or, in the case of deliberate behaviour, €3,000.

(18) Where a person, in a case in which the person represents that he or she is a registered person or that goods imported by him or her were so imported for the purposes of a business carried on by him or her, improperly procures the importation of goods without payment of tax in circumstances in which tax is chargeable, then he or she shall be liable to a penalty of €4,000 and, in addition, he or she shall be liable to pay to the Revenue Commissioners the amount of any tax that should have been paid on the importation.

(19) Where a person acquires goods without payment of value-added tax (as referred to in the VAT Directive) in another Member State as a result of the declaration of an incorrect registration number, the person shall be liable to a penalty of €4,000 and, in addition, he or she shall be liable to pay to the Revenue Commissioners an amount equal to the amount of tax which would have been chargeable on an intra-Community acquisition of those goods if that declaration had been the declaration of a correct registration number.

(20)(a) Where, in pursuance of regulations made for the purposes of section 57 (1), tax on the supply of any goods has been remitted or repaid and—

(i) either—

(I) those goods are found in the State after the date on which they were alleged to have been or were to be exported, or

(II) any condition specified in the regulations or imposed by the Revenue Commissioners is not complied with,

and

(ii) the presence of the goods in the State after that date or the non-compliance with the condition has not been authorised for the purposes of this subsection by the Revenue Commissioners,

then—

(A) the goods shall be liable to forfeiture, and

(B) subject to paragraph (b), the tax which was remitted or repaid shall be charged upon and become payable forthwith by the person to whom the goods were supplied or any person in whose possession the goods are found in the State and sections 960I(1), 960J, 960L and 960N of the Taxes Consolidation Act 1997 shall apply accordingly.

(b) The Revenue Commissioners may, if they think fit, waive payment of the whole or part of the tax referred to in subparagraph (B) of paragraph (a).

(21)(a) For the purposes of this section “the declaration of an incorrect registration number” means—

(i) the declaration by a person of another person's registration number,

(ii) the declaration by a person of a number which is not an actual registration number which the person purports to be his or her registration number,

(iii) the declaration by a person of a registration number which is cancelled,

(iv) the declaration by a person of a registration number which was obtained from the Revenue Commissioners by supplying incorrect information, or

(v) the declaration by a person of a registration number which was obtained from the Revenue Commissioners for the purposes of acquiring goods without payment of value-added tax referred to in the VAT Directive, and not for any bona fide business purpose.

(b) Where goods—

(i) were supplied at the rate of zero per cent subject to the condition that they were to be dispatched or transported outside the State in accordance with paragraph 1(1) or (2), 3(1) or 7(3) of Schedule 2 and the goods were not so dispatched or transported,

(ii) were acquired without payment of value-added tax referred to in the VAT Directive in another Member State as a result of the declaration of an incorrect registration number,

(iii) were acquired in another Member State and those goods are new means of transport in respect of which the acquirer—

(I) makes an intra-Community acquisition in the State,

(II) is not entitled to a deduction under Chapter 1 of Part 8 in respect of the tax chargeable on that acquisition, and

(III) fails to account for the tax due on that acquisition in accordance with Chapter 3 of Part 9,

or

(iv) are being supplied by an accountable person who has not complied with section 65 (3),

then those goods shall be liable to forfeiture.

(c) Where an officer authorised by the Revenue Commissioners reasonably suspects that goods are liable to forfeiture in accordance with paragraph (b), then those goods may be detained by that officer until such examination, inquiries or investigations as may be deemed necessary by that officer, or by another authorised officer of the Revenue Commissioners, have been made for the purpose of determining to the satisfaction of either officer whether or not those goods were so supplied or acquired.

(d) Where a determination referred to in paragraph (c) has been made in respect of any goods, or upon the expiry of a period of 2 months from the date on which the goods were detained under that paragraph, whichever is the earlier, those goods shall be seized as liable to forfeiture or released.

(22) The provisions of the Customs Acts relating to forfeiture and condemnation of goods shall apply to goods liable to forfeiture under subsection (20) or (21) as if they had become liable to forfeiture under those Acts and all powers which may be exercised by an officer of Customs and Excise under those Acts may be exercised by officers of the Revenue Commissioners authorised to exercise those powers for the purposes of those subsections and any provisions in relation to offences under those Acts shall apply, with any necessary modifications, in relation to those subsections.

(23) Where an officer authorised by the Revenue Commissioners for the purposes of this subsection or a member of the Garda Síochána has reasonable grounds for suspecting that a criminal offence has been committed under section 1078 of the Taxes Consolidation Act 1997 in relation to tax, by a person who is not established in the State, or whom that officer believes is likely to leave the State, that officer may arrest the person.