

## CHAPTER 6 Other sanctions

Surcharge for late returns. FA86 s48; FA88 s16; FA90 s25(1); FA92 s245; FA95 s30(1) 1084.—(1) (a) In this section—

“chargeable person”, in relation to a year of assessment or an accounting period, means a person who is a chargeable person for the purposes of Part 41;

“return of income” means a return, statement, declaration or list which a person is required to deliver to the inspector by reason of a notice given by the inspector under any one or more of the specified provisions, and includes a return which a chargeable person is required to deliver under section 951;

“specified return date for the chargeable period” has the same meaning as in section 950;

“specified provisions” means sections 877 to 881 and 884, paragraphs (a) and (d) of section 888 (2), and section 1023;

“tax” means income tax, corporation tax or capital gains tax, as may be appropriate.

(b) For the purposes of this section—

(i) where a person fraudulently or negligently delivers an incorrect return of income on or before the specified return date for the chargeable period, the person shall be deemed to have failed to deliver the return of income on or before that date unless the error in the return of income is remedied on or before that date,

(ii) where a person delivers an incorrect return of income on or before the specified return date for the chargeable period but does so neither fraudulently nor negligently and it comes to the person's notice (or, if he or she has died, to the notice of his or her personal representatives) that it is incorrect, the person shall be deemed to have failed to deliver the return of income on or before the specified return date for the chargeable period unless the error in the return of income is remedied without unreasonable delay,

(iii) where a person delivers a return of income on or before the specified return date for the chargeable period but the inspector, by reason of being dissatisfied with any statement of profits or gains arising to the person from any trade or profession which is contained in the return of income, requires the person, by notice in writing served on the person under section 900, to do any thing, the person shall be deemed not to have delivered the return of income on or before the specified return date for the chargeable period unless the person does that thing within the time specified in the notice, and

(iv) references to such of the specified provisions as are applied, subject to any necessary modifications, in relation to capital gains tax by section 913 shall be construed as including references to those provisions as so applied.

(2) (a) Subject to paragraph (b), where in relation to a year of assessment or accounting period a chargeable person fails to deliver a return of income on or before the specified return date for the chargeable period, any amount of tax for that year of assessment or accounting period which apart from this section is or would be contained in an assessment to tax made or to be made on the chargeable person shall be increased by an amount (in this subsection referred to as “the surcharge”) equal to—

(i) 5 per cent of that amount of tax, subject to a maximum increased amount of £10,000, where the return of income is delivered before the expiry of 2 months from the specified return date for the chargeable period, and

(ii) 10 per cent of that amount of tax, subject to a maximum increased amount of £50,000, where the return of income is not delivered before the expiry of 2 months from the specified return date for the chargeable period,

and, if the tax contained in the assessment is not the amount of tax as so increased, then, the provisions of the Tax Acts and the Capital Gains Tax Acts (apart from this section), including in particular those provisions relating to the collection and recovery of tax and the payment of interest on unpaid tax, shall apply as if the tax contained in the assessment to tax were the amount of tax as so increased.

(b) In determining the amount of the surcharge, the tax contained in the assessment to tax shall be deemed to be reduced by the aggregate of—

(i) any tax deducted by virtue of any of the provisions of the Tax Acts or the Capital Gains Tax Acts from any income, profits or chargeable gains charged in the assessment to tax in so far as that tax has not been repaid or is not repayable to the chargeable person and in so far as the tax so deducted may be set off against the tax contained in the assessment to tax,

(ii) the amount of any tax credit to which the chargeable person is entitled in respect of any income, profits or chargeable gains charged in the assessment to tax, and

(iii) any other amounts which are set off in the assessment to tax against the tax contained in that assessment.

(3) In the case of a person—

(a) who is a director within the meaning of section 116, or

(b) to whom section 1017 applies and whose spouse is a director within the meaning of section 116,

subsection (2) (b) (i) shall not apply in respect of any tax deducted under Chapter 4 of Part 42 in determining the amount of a surcharge under this section.

(4) (a) Notwithstanding subsections (1) to (3), the specified return date for the chargeable period, being a year of assessment (in paragraph (b) referred to as “the first-mentioned year of assessment”) to which section 66 (1) applies, shall be the date which is the specified return date for the year of assessment

following that year.

(b) Paragraph (a) shall only apply if throughout the first-mentioned year of assessment the chargeable person or that person's spouse, not being a spouse in relation to whom section 1016 applies for that year of assessment, was not carrying on a trade or profession set up and commenced in a previous year of assessment.

(5) This section shall apply in relation to an amount of preliminary tax ) whether paid under section 952 or specified in a notice under section 953 as it applies to an amount of tax specified in an assessment.