SCHEDULES

SCHEDULE 10 U.K.

PENALTIES: OFFSHORE INCOME ETC

Schedule 41 to FA 2008

7 Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing) is amended as follows.

8 For paragraph 6 substitute—

“6 (1) This paragraph sets out the penalty payable under paragraph 1.

(2) If the failure is in category 1, the penalty is—

(a) for a deliberate and concealed failure, 100% of the potential lost revenue,

(b) for a deliberate but not concealed failure, 70% of the potential lost revenue, and

(c) for any other case, 30% of the potential lost revenue.

(3) If the failure is in category 2, the penalty is—

(a) for a deliberate and concealed failure, 150% of the potential lost revenue,

(b) for a deliberate but not concealed failure, 105% of the potential lost revenue, and

(c) for any other case, 45% of the potential lost revenue.

(4) If the failure is in category 3, the penalty is—

(a) for a deliberate and concealed failure, 200% of the potential lost revenue,

(b) for a deliberate but not concealed failure, 140% of the potential lost revenue, and

(c) for any other case, 60% of the potential lost revenue.

(5) Paragraph 6A explains the 3 categories of failure.

6A (1) A failure is in category 1 if—

(a) it involves a domestic matter, or

(b) it involves an offshore matter and—

(i) the territory in question is a category 1 territory, or

(ii) the tax at stake is a tax other than income tax or capital gains tax.

(2) A failure is in category 2 if—

(a) it involves an offshore matter,

(b) the territory in question is a category 2 territory, and

(c) the tax at stake is income tax or capital gains tax.

(3) A failure is in category 3 if—

(a) it involves an offshore matter,

(b) the territory in question is a category 3 territory, and

(c) the tax at stake is income tax or capital gains tax.

(4) A failure "involves an offshore matter" if it results in a potential loss of revenue that is charged on or by reference to—

(a) income arising from a source in a territory outside the UK,

(b) assets situated or held in a territory outside the UK,

(c) activities carried on wholly or mainly in a territory outside the UK, or

(d) anything having effect as if it were income, assets or activities of a kind described above.

(5) A failure "involves a domestic matter" if it results in a potential loss of revenue that is charged on or by reference to anything not mentioned in sub-paragraph (4)(a) to (d).

(6) If a single failure is in more than one category (each referred to as a "relevant category")—

(a) it is to be treated for the purposes of this Schedule as if it were separate failures, one in each relevant category according to the matters that it involves, and

(b) the potential lost revenue in respect of each separate failure is taken to be such share of the potential lost revenue in respect of the single failure (see paragraphs 7 and 11) as is just and reasonable.

(7) For the purposes of this Schedule—

(a) paragraph 21A of Schedule 24 to FA 2007 (classification of territories) has effect, but

(b) an order under that paragraph does not apply to relevant obligations that are to be complied with by a date before the date on which the order comes into force.

(8) Regulations under paragraph 21B of Schedule 24 to FA 2007 (location of assets etc) apply for the purposes of paragraph 6A of this Schedule as they apply for the purposes of paragraph 4A of that Schedule.

(9) In this paragraph—

"assets" has the meaning given in section 21(1) of TCGA 1992, but also includes sterling;

"UK" means the United Kingdom, including the territorial sea of the United Kingdom.

6B The penalty payable under any of paragraphs 2, 3(1) and 4 is—

(a) for a deliberate and concealed act or failure, 100% of the potential lost revenue,

(b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue, and

(c) for any other case, 30% of the potential lost revenue.

6C The penalty payable under paragraph 3(2) is 100% of the potential lost revenue.

6D Paragraphs 7 to 11 define "potential lost revenue"."

9 For paragraph 13 substitute—

"13 (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a "standard percentage") has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

(a) for a prompted disclosure, in column 2 of the Table, and

(b) for an unprompted disclosure, in column 3 of the Table.

(3) Where the Table shows a different minimum for case A and case B—

(a) the case A minimum applies if—

(i) the penalty is one under paragraph 1, and

(ii) HMRC become aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure, and

(b) otherwise, the case B minimum applies.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2010, Cross Heading: Schedule 41 to FA 2008.