

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2010, Cross Heading: Schedule 55 to FA 2009. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 10

#### PENALTIES: OFFSHORE INCOME ETC

##### *Schedule 55 to FA 2009*

- 10 Schedule 55 to FA 2009 (penalties for failure to make returns etc) is amended as follows.

#### Commencement Information

- II** Sch. 10 para. 10 partly in force; Sch. 10 para. 10 not in force at Royal Assent see s. 35(2); Sch. 10 para. 10 in force for certain purposes at 6.4.2011 by S.I. 2011/975, art. 2(2) (with art. 5)

- 11 (1) Paragraph 6 (amount of penalty if failure continues more than 12 months) is amended as follows.
- (2) In sub-paragraph (3)(a), for “100%” substitute “ the relevant percentage ”.
- (3) After sub-paragraph (3) insert—
- “(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—
- (a) for the withholding of category 1 information, 100%,
- (b) for the withholding of category 2 information, 150%, and
- (c) for the withholding of category 3 information, 200%.”
- (4) In sub-paragraph (4)(a), for “70%” substitute “ the relevant percentage ”.
- (5) After sub-paragraph (4) insert—
- “(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—
- (a) for the withholding of category 1 information, 70%,
- (b) for the withholding of category 2 information, 105%, and
- (c) for the withholding of category 3 information, 140%.”
- (6) After sub-paragraph (5) insert—
- “(6) Paragraph 6A explains the 3 categories of information.”

#### Commencement Information

- II** Sch. 10 para. 11 partly in force; Sch. 10 para. 11 not in force at Royal Assent see s. 35(2); Sch. 10 para. 11 in force for certain purposes at 6.4.2011 by S.I. 2011/975, art. 2(2) (with art. 5)

- 12 After paragraph 6 insert—
- “6A (1) Information is category 1 information if—

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- (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) it is information which would enable or assist HMRC to assess P's liability to a tax other than income tax or capital gains tax.
- (2) Information is category 2 information if—
- (a) it involves an offshore matter,
  - (b) the territory in question is a category 2 territory, and
  - (c) it is information which would enable or assist HMRC to assess P's liability to income tax or capital gains tax.
- (3) Information is category 3 information if—
- (a) it involves an offshore matter,
  - (b) the territory in question is a category 3 territory, and
  - (c) it is information which would enable or assist HMRC to assess P's liability to income tax or capital gains tax.
- (4) Information “involves an offshore matter” if the liability to tax which would have been shown in the return includes a liability to tax 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) Information “involves a domestic matter” if the liability to tax which would have been shown in the return includes a liability to tax charged on or by reference to anything not mentioned in sub-paragraph (4)(a) to (d).
- (6) If the information which P withholds falls into more than one category—
- (a) P's failure to make the return is to be treated for the purposes of this Schedule as if it were separate failures, one for each category of information according to the matters which the information involves, and
  - (b) for each separate failure, the liability to tax which would have been shown in the return in question is taken to be such share of the liability to tax which would have been shown in the return mentioned in paragraph (a) 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 a failure if the filing date is 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.

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(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.”

#### Commencement Information

**I3** Sch. 10 para. 12 partly in force; Sch. 10 para. 12 not in force at Royal Assent see s. 35(2); Sch. 10 para. 12 in force for certain purposes at 6.4.2011 by S.I. 2011/975, art. 2(2) (with art. 5)

13 (1) Paragraph 15 (reductions for disclosure) is amended as follows.

(2) For sub-paragraphs (1) and (2) substitute—

“(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) in the case of a prompted disclosure, in column 2 of the Table, and
- (b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
70%	35%	20%
105%	52.5%	30%
140%	70%	40%
100%	50%	30%
150%	75%	45%
200%	100%	60%”.

(3) Omit sub-paragraphs (3) and (4).

#### Commencement Information

**I4** Sch. 10 para. 13 partly in force; Sch. 10 para. 13 not in force at Royal Assent see s. 35(2); Sch. 10 para. 13 in force for certain purposes at 6.4.2011 by S.I. 2011/975, art. 2(2) (with art. 5)

14 In paragraph 17 (interaction with other penalties)—

- (a) in sub-paragraph (3), for “100%” substitute “the relevant percentage”, and
- (b) after that sub-paragraph insert—

“(4) The relevant percentage is—

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- (a) if one of the penalties is a penalty under paragraph 6(3) or (4) and the information withheld is category 3 information, 200%,
- (b) if one of the penalties is a penalty under paragraph 6(3) or (4) and the information withheld is category 2 information, 150%, and
- (c) in all other cases, 100%.”

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**Commencement Information**

**I5** Sch. 10 para. 14 partly in force; Sch. 10 para. 14 not in force at Royal Assent see s. 35(2); Sch. 10 para. 14 in force for certain purposes at 6.4.2011 by S.I. 2011/975, art. 2(2) (with art. 5)

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