

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2010, SCHEDULE 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10 **U.K.**

Section 35

PENALTIES: OFFSHORE INCOME ETC

Schedule 24 to FA 2007

- 1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- 2 For paragraph 4 substitute—
- “4 (1) This paragraph sets out the penalty payable under paragraph 1.
- (2) If the inaccuracy is in category 1, the penalty is—
- (a) for careless action, 30% of the potential lost revenue,
 - (b) for deliberate but not concealed action, 70% of the potential lost revenue, and
 - (c) for deliberate and concealed action, 100% of the potential lost revenue.
- (3) If the inaccuracy is in category 2, the penalty is—
- (a) for careless action, 45% of the potential lost revenue,
 - (b) for deliberate but not concealed action, 105% of the potential lost revenue, and
 - (c) for deliberate and concealed action, 150% of the potential lost revenue.
- (4) If the inaccuracy is in category 3, the penalty is—
- (a) for careless action, 60% of the potential lost revenue,
 - (b) for deliberate but not concealed action, 140% of the potential lost revenue, and
 - (c) for deliberate and concealed action, 200% of the potential lost revenue.
- (5) Paragraph 4A explains the 3 categories of inaccuracy.
- 4A (1) An inaccuracy 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) An inaccuracy 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.

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- (3) An inaccuracy 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) An inaccuracy “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) An inaccuracy “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 inaccuracy 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 inaccuracies, one in each relevant category according to the matters that it involves, and
 - (b) the potential lost revenue is to be calculated separately in respect of each separate inaccuracy.
 - (7) “Category 1 territory”, “category 2 territory” and “category 3 territory” are defined in paragraph 21A.
 - (8) “Assets” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling.
- 4B The penalty payable under paragraph 1A is 100% of the potential lost revenue.
- 4C The penalty payable under paragraph 2 is 30% of the potential lost revenue.
- 4D Paragraphs 5 to 8 define “potential lost revenue”.
- 3 For paragraph 10 substitute—
- “10 (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.
- 4 In paragraph 12 (interaction with other penalties), for sub-paragraph (4) substitute—

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“(4) Where penalties are imposed under paragraphs 1 and 1A in respect of the same inaccuracy, the aggregate of the amounts of the penalties must not exceed the relevant percentage of the potential lost revenue.

(5) The relevant percentage is—

- (a) if the penalty imposed under paragraph 1 is for an inaccuracy in category 1, 100%,
- (b) if the penalty imposed under paragraph 1 is for an inaccuracy in category 2, 150%, and
- (c) if the penalty imposed under paragraph 1 is for an inaccuracy in category 3, 200%.”

5 In Part 5 (general), before the heading “Interpretation” insert—

“Classification of territories

21A(1) A category 1 territory is a territory designated as a category 1 territory by order made by the Treasury.

(2) A category 2 territory is a territory that is neither—

- (a) a category 1 territory, nor
- (b) a category 3 territory.

(3) A category 3 territory is a territory designated as a category 3 territory by order made by the Treasury.

(4) In considering how to classify a territory for the purposes of this paragraph, the Treasury must have regard to—

- (a) the existence of any arrangements between the UK and that territory for the exchange of information for tax enforcement purposes,
- (b) the quality of any such arrangements (in particular, whether they provide for information to be exchanged automatically or on request), and
- (c) the benefit that the UK would be likely to obtain from receiving information from that territory, were such arrangements to exist with it.

(5) An order under this paragraph is to be made by statutory instrument.

(6) Subject to sub-paragraph (7), an instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

(7) If the order is—

- (a) the first order to be made under sub-paragraph (1), or
- (b) the first order to be made under sub-paragraph (3),

it may not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, the House of Commons.

(8) An order under this paragraph does not apply to inaccuracies in a document given to HMRC (or, in a case within paragraph 3(2), inaccuracies discovered by P) before the date on which the order comes into force.

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Location of assets etc

- 21B (1) The Treasury may by regulations make provision for determining for the purposes of paragraph 4A where—
- (a) a source of income is located,
 - (b) an asset is situated or held, or
 - (c) activities are wholly or mainly carried on.
- (2) Different provision may be made for different cases and for income tax and capital gains tax.
- (3) Regulations under this paragraph are to be made by statutory instrument.
- (4) An instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.”

6 After paragraph 23A insert—

“23B UK” means the United Kingdom, including the territorial sea of the United Kingdom.”

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—

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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) 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 subparagraph (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;

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“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.

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

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- (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

I2 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—
 - (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.

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- (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.
- (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%

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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—
 - (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%.”

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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