

SCHEDULES

SCHEDULE 38

TAX AGENTS: DISHONEST CONDUCT

PART 4

SANCTIONS FOR DISHONEST CONDUCT

Penalty for dishonest conduct

- 26 (1) An individual who engages in dishonest conduct is liable to a penalty.
- (2) Subject to paragraph 27, the penalty to which the individual is liable is to be—
- (a) no less than £5,000, and
 - (b) no more than £50,000.
- (3) In assessing the amount of the penalty, regard must be had to—
- (a) whether the individual disclosed the dishonest conduct,
 - (b) whether that disclosure was prompted or unprompted,
 - (c) the quality of that disclosure, and
 - (d) the quality of the individual's compliance with any file access notice in connection with the dishonest conduct.
- (4) An individual “discloses” dishonest conduct by—
- (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in identifying the client or clients concerned and in quantifying the loss of tax revenue (if any) brought about by it, and
 - (c) allowing HMRC access to records for the purpose of ensuring that any such loss is recovered or otherwise properly accounted for.
- (5) A disclosure is “unprompted” if it is made at a time when the individual has no reason to believe that HMRC have discovered or are about to discover the dishonest conduct.
- (6) Otherwise, a disclosure is “prompted”.
- (7) In relation to disclosure or compliance, “quality” includes timing, nature and extent.

Special reduction

- 27 (1) This paragraph applies if HMRC propose to assess an individual to a penalty under paragraph 26 of £5,000.
- (2) If they think it right because of special circumstances, HMRC may take one or more of the following steps—
- (a) reduce the penalty to an amount below £5,000 (which may be nil),

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- (b) stay the penalty, or
 - (c) agree a compromise in relation to proceedings for the penalty.
- (3) “Special circumstances” does not include—
- (a) ability to pay, or
 - (b) the fact that a loss of tax revenue from a client is balanced by an overpayment by another person (whether or not a client).

Power to publish details

- 28 (1) The Commissioners may publish information about an individual if the individual incurs a penalty under paragraph 26.
- (2) The information that may be published is—
- (a) the individual’s name (including any trading name, previous name or pseudonym),
 - (b) the individual’s address,
 - (c) the nature of any business carried on by the individual,
 - (d) the amount of the penalty,
 - (e) the periods or times to which the dishonest conduct relates,
 - (f) any other information the Commissioners consider it appropriate to publish in order to make clear the individual’s identity, and
 - (g) the link (if there is one) between the dishonest conduct and any inaccuracy, failure or action as a result of which information is published under section 94 of FA 2009 (which relates to deliberate tax defaulters).
- (3) No information may be published under this paragraph if the penalty incurred by the individual is £5,000 or less.
- (4) Subsections (5) to (9) and (11) of section 94 of FA 2009 apply to publishing information about an individual under this paragraph as they apply to publishing information about a person under that section.
- (5) If, in acting as a tax agent, the individual works or worked for an organisation, subparagraph (2)(f) includes power to publish such information about that organisation as the Commissioners consider appropriate in order to make clear the individual’s identity.
- (6) Before publishing information about the organisation, the Commissioners must—
- (a) inform the organisation that they are considering doing so, and
 - (b) afford the organisation reasonable opportunity to make representations about whether it should be published.