

SCHEDULES

SCHEDULE 20

Section 120

PENALTIES IN CONNECTION WITH OFFSHORE MATTERS AND OFFSHORE TRANSFERS

Penalties for errors

- 1 Schedule 24 to FA 2007 is amended as follows.
- 2 (1) Paragraph 4 (penalties payable under paragraph 1) is amended as follows.
 - (2) After sub-paragraph (1) insert—
 - “(1A) If the inaccuracy is in category 0, 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) In sub-paragraph (2)—
 - (a) in paragraph (a), for “30%” substitute “37.5%”,
 - (b) in paragraph (b), for “70%” substitute “87.5%”, and
 - (c) in paragraph (c), for “100%” substitute “125%”.
 - (4) In sub-paragraph (5), for “3” substitute “4”.
- 3 (1) Paragraph 4A (categorisation of inaccuracies) is amended as follows.
 - (2) For sub-paragraph (1) substitute—
 - “(A1) An inaccuracy is in category 0 if—
 - (a) it involves a domestic matter,
 - (b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and the tax at stake is income tax, capital gains tax or inheritance tax, or
 - (c) it involves an offshore matter and the tax at stake is a tax other than income tax, capital gains tax or inheritance tax.
 - (1) An inaccuracy is in category 1 if—
 - (a) it involves an offshore matter or an offshore transfer,
 - (b) the territory in question is a category 1 territory, and
 - (c) the tax at stake is income tax, capital gains tax or inheritance tax.”
 - (3) In sub-paragraph (2)—
 - (a) in paragraph (a), after “matter” insert “or an offshore transfer”, and
 - (b) in paragraph (c), for “or capital gains tax” substitute “, capital gains tax or inheritance tax”.

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- (4) In sub-paragraph (3)—
 - (a) in paragraph (a), after “matter” insert “or an offshore transfer”, and
 - (b) in paragraph (c), for “or capital gains tax” substitute “, capital gains tax or inheritance tax”.
 - (5) After sub-paragraph (4) insert—
 - “(4A) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (4) as situated or held in a territory outside the UK if they are so situated or held immediately after the transfer of value by reason of which inheritance tax becomes chargeable.
 - (4B) An inaccuracy “involves an offshore transfer” if—
 - (a) it does not involve an offshore matter,
 - (b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,
 - (c) the tax at stake is income tax, capital gains tax or inheritance tax, and
 - (d) the applicable condition in paragraph 4AA is satisfied.”
 - (6) In sub-paragraph (5), for the words following “revenue” substitute “and does not involve either an offshore matter or an offshore transfer”.
 - (7) In sub-paragraph (6)(a), after “matters” insert “or transfers”.
 - (8) In sub-paragraph (7), for ““Category 1”” substitute ““Category 0 territory”, “category 1”.
- 4 After paragraph 4A insert—
- “4AA (1) This paragraph makes provision in relation to offshore transfers.
 - (2) Where the tax at stake is income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income—
 - (a) is received in a territory outside the UK, or
 - (b) is transferred before the filing date to a territory outside the UK.
 - (3) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—
 - (a) are received in a territory outside the UK, or
 - (b) are transferred before the filing date to a territory outside the UK.
 - (4) Where the tax at stake is inheritance tax, the applicable condition is satisfied if—
 - (a) the disposition that gives rise to the transfer of value by reason of which the tax becomes chargeable involves a transfer of assets, and
 - (b) after that disposition but before the filing date the assets, or any part of the assets, are transferred to a territory outside the UK.

- (5) In the case of a transfer falling within sub-paragraph (2)(b), (3)(b) or (4)(b), references to the income, proceeds or assets transferred are to be read as including references to any assets derived from or representing the income, proceeds or assets.
- (6) In relation to an offshore transfer, the territory in question for the purposes of paragraph 4A is the highest category of territory by virtue of which the inaccuracy involves an offshore transfer.
- (7) “Filing date” means the date when the document containing the inaccuracy is given to HMRC.
- (8) “Assets” has the same meaning as in paragraph 4A.”
- 5 In paragraph 10 (standard percentage reductions for disclosure), in the Table in sub-paragraph (2), at the appropriate places insert—
- | | | |
|--------|--------|-----------|
| “37.5% | 18.75% | 0%”. |
| “87.5% | 43.75% | 25%”, and |
| ““125% | 62.5% | 40%”. |
- 6 In paragraph 12(5) (interaction with other penalties and late payment surcharges: the relevant percentage)—
- (a) before paragraph (a) insert—
- “*(za)* if the penalty imposed under paragraph 1 is for an inaccuracy in category 0, 100%,”, and
- (b) in paragraph (a), for “100%” substitute “125%”.
- 7 (1) Paragraph 21A (classification of territories) is amended as follows.
- (2) Before sub-paragraph (1) insert—
- “(A1) A category 0 territory is a territory designated as a category 0 territory by order made by the Treasury.”
- (3) For sub-paragraph (2) substitute—
- “(2) A category 2 territory is a territory that is not any of the following—
- (a) a category 0 territory;
- (b) a category 1 territory;
- (c) a category 3 territory.”
- (4) For sub-paragraph (7) substitute—
- “(7) An instrument containing (whether alone or with other provisions) the first order to be made under sub-paragraph (A1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”
- 8 (1) Paragraph 21B (location of assets etc) is amended as follows.
- (2) After sub-paragraph (1) insert—

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“(1A) The Treasury may by regulations make provision for determining for the purposes of paragraph 4AA where—

- (a) income is received or transferred,
- (b) the proceeds of a disposal are received or transferred, or
- (c) assets are transferred.”

(3) In sub-paragraph (2), for “and capital gains tax” substitute “, capital gains tax and inheritance tax”.

Penalties for failure to notify

9 Schedule 41 to FA 2008 is amended as follows.

10 (1) Paragraph 6 (amount of penalty: standard amount) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) If the failure is in category 0, 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) In sub-paragraph (2)—

- (a) in paragraph (a), for “100%” substitute “125%”,
- (b) in paragraph (b), for “70%” substitute “87.5%”, and
- (c) in paragraph (c), for “30%” substitute “37.5%”.

(4) In sub-paragraph (5), for “3” substitute “4”.

11 (1) Paragraph 6A (categorisation of failures) is amended as follows.

(2) For sub-paragraph (1) substitute—

“(A1) A failure is in category 0 if—

- (a) it involves a domestic matter,
- (b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and the tax at stake is income tax or capital gains tax, or
- (c) it involves an offshore matter and the tax at stake is a tax other than income tax or capital gains tax.

(1) A failure is in category 1 if—

- (a) it involves an offshore matter or an offshore transfer,
- (b) the territory in question is a category 1 territory, and
- (c) the tax at stake is income tax or capital gains tax.”

(3) In sub-paragraph (2)(a), after “matter” insert “or an offshore transfer”.

(4) In sub-paragraph (3)(a), after “matter” insert “or an offshore transfer”.

(5) After sub-paragraph (4) insert—

“(4A) A failure “involves an offshore transfer” if—

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- (a) it does not involve an offshore matter,
 - (b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,
 - (c) the tax at stake is income tax or capital gains tax, and
 - (d) the applicable condition in paragraph 6AA is satisfied.”
- (6) In sub-paragraph (5), for the words following “revenue” substitute “and does not involve either an offshore matter or an offshore transfer”.
- (7) In sub-paragraph (6)(a), after “matters” insert “or transfers”.
- (8) Omit sub-paragraph (8).
- (9) In sub-paragraph (9), after “paragraph” insert “and paragraph 6AA”.
- 12 After paragraph 6A insert—
 - “6AA (1) This paragraph makes provision in relation to offshore transfers.
 - (2) Where the tax at stake is income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income—
 - (a) is received in a territory outside the UK, or
 - (b) is transferred before the calculation date to a territory outside the UK.
 - (3) Where the tax at stake is capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—
 - (a) are received in a territory outside the UK, or
 - (b) are transferred before the calculation date to a territory outside the UK.
 - (4) In the case of a transfer falling within sub-paragraph (2)(b) or (3)(b), references to the income or proceeds transferred are to be read as including references to any assets derived from or representing the income or proceeds.
 - (5) In relation to an offshore transfer, the territory in question for the purposes of paragraph 6A is the highest category of territory by virtue of which the failure involves an offshore transfer.
 - (6) In this paragraph “calculation date” means the date by reference to which the potential lost revenue is to be calculated (see paragraph 7).
- 6AB Regulations under paragraph 21B of Schedule 24 to FA 2007 (location of assets etc) apply for the purposes of paragraphs 6A and 6AA of this Schedule as they apply for the purposes of paragraphs 4A and 4AA of that Schedule.”
- 13 In paragraph 13 (standard percentage reductions for disclosure), in the Table in sub-paragraph (3), at the appropriate places insert—

“37.5%	case A: 12.5%	case A: 0%
	case B: 25%	case B: 12.5%”,

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“87.5%	43.75%	25%”, and
“125%	62.5%	40%”.

Penalties for failure to make returns etc

- 14 Schedule 55 to FA 2009 is amended as follows.
- 15 (1) Paragraph 6 (penalty for failure continuing 12 months after penalty date) is amended as follows.
- (2) In sub-paragraph (3A)—
- (a) before paragraph (a) insert—
- “(za) for the withholding of category 0 information, 100%,”, and
- (b) in paragraph (a), for “100%” substitute “125%”.
- (3) In sub-paragraph (4A)—
- (a) before paragraph (a) insert—
- “(za) for the withholding of category 0 information, 70%,”, and
- (b) in paragraph (a), for “70%” substitute “87.5%”.
- (4) In sub-paragraph (6), for “3” substitute “4”.
- 16 (1) Paragraph 6A (categorisation of information) is amended as follows.
- (2) For sub-paragraph (1) substitute—
- “(A1) Information is category 0 information if—
- (a) it involves a domestic matter,
- (b) it involves an offshore matter or an offshore transfer, the territory in question is a category 0 territory and it is information which would enable or assist HMRC to assess P’s liability to income tax, capital gains tax or inheritance tax, or
- (c) it involves an offshore matter and it is information which would enable or assist HMRC to assess P’s liability to a tax other than income tax, capital gains tax or inheritance tax.
- (1) Information is category 1 information if—
- (a) it involves an offshore matter or an offshore transfer,
- (b) the territory in question is a category 1 territory, and
- (c) it is information which would enable or assist HMRC to assess P’s liability to income tax, capital gains tax or inheritance tax.”
- (3) In sub-paragraph (2)—
- (a) in paragraph (a), after “matter” insert “or an offshore transfer”, and
- (b) in paragraph (c), for “or capital gains tax” substitute “, capital gains tax or inheritance tax”.
- (4) In sub-paragraph (3)—
- (a) in paragraph (a), after “matter” insert “or an offshore transfer”, and
- (b) in paragraph (c), for “or capital gains tax” substitute “, capital gains tax or inheritance tax”.

(5) After sub-paragraph (4) insert—

“(4A) If the liability to tax which would have been shown in the return is a liability to inheritance tax, assets are treated for the purposes of sub-paragraph (4) as situated or held in a territory outside the UK if they are so situated or held immediately after the transfer of value by reason of which inheritance tax becomes chargeable.

(4B) Information “involves an offshore transfer” if—

- (a) it does not involve an offshore matter,
- (b) it is information which would enable or assist HMRC to assess P’s liability to income tax, capital gains tax or inheritance tax,
- (c) by failing to make the return, P deliberately withholds the information (whether or not the withholding of the information is also concealed), and
- (d) the applicable condition in paragraph 6AA is satisfied.”

(6) In sub-paragraph (5), for the words following “if” substitute “it does not involve an offshore matter or an offshore transfer”.

(7) In sub-paragraph (6)(a), after “matters” insert “or transfers”.

(8) Omit sub-paragraph (8).

(9) In sub-paragraph (9), after “paragraph” insert “and paragraph 6AA”.

17 After paragraph 6A insert—

“6AA (1) This paragraph makes provision in relation to offshore transfers.

(2) Where the liability to tax which would have been shown in the return is a liability to income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income—

- (a) is received in a territory outside the UK, or
- (b) is transferred before the relevant date to a territory outside the UK.

(3) Where the liability to tax which would have been shown in the return is a liability to capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—

- (a) are received in a territory outside the UK, or
- (b) are transferred before the relevant date to a territory outside the UK.

(4) Where the liability to tax which would have been shown in the return is a liability to inheritance tax, the applicable condition is satisfied if—

- (a) the disposition that gives rise to the transfer of value by reason of which the tax becomes chargeable involves a transfer of assets, and
- (b) after that disposition but before the relevant date the assets, or any part of the assets, are transferred to a territory outside the UK.

Status: This is the original version (as it was originally enacted).

(5) In the case of a transfer falling within sub-paragraph (2)(b), (3)(b) or (4)(b), references to the income, proceeds or assets transferred are to be read as including references to any assets derived from or representing the income, proceeds or assets.

(6) In relation to an offshore transfer, the territory in question for the purposes of paragraph 6A is the highest category of territory by virtue of which the information involves an offshore transfer.

(7) “Relevant date” means the date on which P becomes liable to a penalty under paragraph 6.

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

18 In paragraph 15 (standard percentage reductions for disclosure), in the Table in sub-paragraph (2), at the appropriate places insert—

“87.5%	43.75%	25%”, and
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“125%	62.5%	40%”.
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19 In paragraph 17(4) (interaction with other penalties and late payment surcharges), omit the “and” at the end of paragraph (b) and after that paragraph insert—

“(ba) if one of the penalties is a penalty under paragraph 6(3) or (4) and the information withheld is category 1 information, 125%, and”.