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SCHEDULES

SCHEDULE 20

PENALTIES FOR ENABLERS OF OFFSHORE TAX EVASION OR NON-COMPLIANCE

PART 1

LIABILITY FOR PENALTY

Liability for penalty

- 1 (1) A penalty is payable by a person (P) who has enabled another person (Q) to carry out offshore tax evasion or non-compliance, where conditions A and B are met.
- (2) For the purposes of this Schedule—
- (a) Q carries out “offshore tax evasion or non-compliance” by—
 - (i) committing a relevant offence, or
 - (ii) engaging in conduct that makes Q liable (if the applicable conditions are met) to a relevant civil penalty,where the tax at stake is income tax, capital gains tax or inheritance tax, and
 - (b) P “has enabled” Q to carry out offshore tax evasion or non-compliance if P has encouraged, assisted or otherwise facilitated conduct by Q that constitutes offshore tax evasion or non-compliance.
- (3) The relevant offences are—
- (a) an offence of cheating the public revenue involving offshore activity, or
 - (b) an offence under section 106A of TMA 1970 (fraudulent evasion of income tax) involving offshore activity,
 - (c) an offence under section 106B, 106C or 106D of TMA 1970 (offences relating to certain failures to comply with section 7 or 8 by a taxpayer chargeable to income tax or capital gains tax on or by reference to offshore income, assets or liabilities).
- (4) The relevant civil penalties are—
- (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 (errors in taxpayer's document) involving an offshore matter or an offshore transfer (within the meaning of that Schedule),
 - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 (failure to notify etc) in relation to a failure to comply with section 7(1) of TMA 1970 involving offshore activity,
 - (c) a penalty under paragraph 6 of Schedule 55 to FA 2009 (failure to make return for 12 months) involving offshore activity,
 - (d) a penalty under paragraph 1 of Schedule 21 to FA 2015 (penalties in connection with relevant offshore asset moves).

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- (5) Condition A is that P knew when P's actions were carried out that they enabled, or were likely to enable, Q to carry out offshore tax evasion or non-compliance.
- (6) Condition B is that—
- (a) in the case of offshore tax evasion or non-compliance consisting of the commission of a relevant offence, Q has been convicted of the offence and the conviction is final, or
 - (b) in the case of offshore tax evasion or non-compliance consisting of conduct that makes Q liable to a relevant penalty—
 - (i) Q has been found to be liable to such a penalty, assessed and notified, and the penalty is final, or
 - (ii) a contract has been made between the Commissioners for Her Majesty's Revenue and Customs and Q under which the Commissioners undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover it.
- (7) For the purposes of sub-paragraph (6)(a)—
- (a) “convicted of the offence” means convicted of the full offence (and not for example of an attempt), and
 - (b) a conviction becomes final when the time allowed for bringing an appeal against it expires or, if later, when any appeal against conviction has been determined.
- (8) For the purposes of sub-paragraph (6)(b)(i) a penalty becomes final when the time allowed for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is determined.
- (9) It is immaterial for the purposes of condition B that—
- (a) any offence of which Q was convicted, or
 - (b) any penalty for which Q was found to be liable,
- relates also to other tax evasion or non-compliance by Q.
- (10) In this Schedule “other tax evasion or non-compliance by Q” means conduct by Q that—
- (a) constitutes an offence of cheating the public revenue or an offence of fraudulent evasion of tax, or
 - (b) makes Q liable to a penalty under any provision of the Taxes Acts,
- but does not constitute offshore tax evasion or non-compliance.
- (11) Nothing in condition B affects the law of evidence as to the relevance if any of a conviction, assessment of a penalty or contract mentioned in sub-paragraph (6) for the purpose of proving that condition A is met in relation to P.
- (12) In this Schedule “conduct” includes a failure to act.

Commencement Information

II Sch. 20 para. 1 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Meaning of “involving offshore activity” and related expressions

- 2 (1) This paragraph has effect for the purposes of this Schedule.
- (2) Conduct involves offshore activity if it involves—
- (a) an offshore matter,
 - (b) an offshore transfer, or
 - (c) a relevant offshore asset move.
- (3) Conduct 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 United Kingdom,
 - (b) assets situated or held in a territory outside the United Kingdom,
 - (c) activities carried on wholly or mainly in a territory outside the United Kingdom, or
 - (d) anything having effect as if it were income, assets or activities of the kind described above.
- (4) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (3) as situated or held in a territory outside the United Kingdom if they are so held or situated immediately after the transfer of value by reason of which inheritance tax becomes chargeable.
- (5) Conduct 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 condition set out in paragraph 4AA of Schedule 24 to FA 2007 is satisfied.
- (6) Conduct involves a relevant offshore asset move if at a time when Q is the beneficial owner of an asset (“the qualifying time”)—
- (a) the asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory,
 - (b) the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory, or
 - (c) there is a change in the arrangements for the ownership of the asset,
- and Q remains the beneficial owner of the asset, or any part of it, immediately after the qualifying time.
- (7) Paragraphs 4(2) to (4) of Schedule 21 to FA 2015 apply for the purposes of sub-paragraph (6) above as they apply for purposes of paragraph 4 of that Schedule.
- (8) In sub-paragraph (6) above, “specified territory” has the same meaning as in paragraph 4(5) of Schedule 21 to FA 2015.

Commencement Information

I2 Sch. 20 para. 2 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

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Amount of penalty

- 3 (1) The penalty payable under paragraph 1 is (except in a case mentioned in sub-paragraph (2)) the higher of—
- (a) 100% of the potential lost revenue, or
 - (b) £3,000.
- (2) In a case where P has enabled Q to engage in conduct which makes Q liable to a penalty under paragraph 1 of Schedule 21 to FA 2015, the penalty payable under paragraph 1 is the higher of—
- (a) 50% of the potential lost revenue in respect of the original tax non-compliance, and
 - (b) £3,000.
- (3) In sub-paragraph (2)(a) “the original tax non-compliance” means the conduct that incurred the original penalty and “the potential lost revenue” (in respect of that non-compliance) is—
- (a) the potential lost revenue under Schedule 24 to FA 2007,
 - (b) the potential lost revenue under Schedule 41 to FA 2008, or
 - (c) the liability to tax which would have been shown on the return (within the meaning of Schedule 55 to FA 2009),
- according to whether the original penalty was incurred under paragraph 1 of Schedule 24, paragraph 1 of Schedule 41 or paragraph 6 of Schedule 55.

Commencement Information

I3 Sch. 20 para. 3 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

Potential lost revenue: enabling Q to commit relevant offence

- 4 (1) The potential lost revenue in a case where P is liable to a penalty under paragraph 1 for enabling Q to commit a relevant offence is the same amount as the potential lost revenue applicable for the purposes of the corresponding relevant civil penalty (determined in accordance with the relevant sub-paragraph of paragraph 5).
- (2) Where Q's offending conduct is—
- (a) an offence of cheating the public revenue involving offshore activity, or
 - (b) an offence under section 106A of TMA 1970 involving offshore activity,
- the corresponding relevant civil penalty is the penalty which Q is liable for as a result of that offending conduct.
- (3) Where Q's offending conduct is an offence under section 106B, 106C or 106D of TMA 1970, the corresponding relevant civil penalty is—
- (a) for an offence under section 106B of TMA 1970, a penalty under paragraph 1 of Schedule 41 to FA 2008,
 - (b) for an offence under section 106C of TMA 1970, a penalty under paragraph 6 of Schedule 55 to FA 2009, and
 - (c) for an offence under section 106D of TMA 1970, a penalty under paragraph 1 of Schedule 24 to FA 2007.

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- (4) In determining any amount of potential lost revenue for the purposes of this paragraph, the fact Q has been prosecuted for the offending conduct is to be disregarded.

Commencement Information

I4 [Sch. 20 para. 4](#) in force at 1.1.2017 by [S.I. 2016/1249, reg. 2](#)

Potential lost revenue: enabling Q to engage in conduct incurring relevant civil penalty

- 5 (1) The potential lost revenue in a case where P is liable to a penalty under paragraph 1 for enabling Q to engage in conduct that makes Q liable (if the applicable conditions are met) to a relevant civil penalty is to be determined as follows.
- (2) In the case of a penalty under paragraph 1 of Schedule 24 to FA 2007 involving an offshore matter or an offshore transfer, the potential lost revenue is the amount that under that Schedule is the potential lost revenue in respect of Q's conduct.
- (3) In the case of a penalty under paragraph 1 of Schedule 41 to FA 2008 in relation to a failure to comply with section 7(1) of TMA 1970 involving offshore activity, the potential lost revenue is the amount that under that Schedule is the potential lost revenue in respect of Q's conduct.
- (4) In the case of a penalty under paragraph 6 of Schedule 55 to FA 2009 involving offshore activity, the potential lost revenue is the liability to tax which would have been shown in the return in question (within the meaning of that Schedule).

Commencement Information

I5 [Sch. 20 para. 5](#) in force at 1.1.2017 by [S.I. 2016/1249, reg. 2](#)

Treatment of potential lost revenue attributable to both offshore tax evasion or non-compliance and other tax evasion or non-compliance

- 6 (1) This paragraph applies where any amount of potential lost revenue in a case falling within paragraph 4 or 5 is attributable not only to Q's offshore tax evasion or non-compliance but also to any other tax evasion or non-compliance by Q.
- (2) In that case the potential lost revenue in respect of Q's offshore tax evasion or non-compliance is to be taken for the purposes of assessing the penalty to which P is liable as being or (as the case may be) including such share as is just and reasonable of the amount mentioned in sub-paragraph (1).

Commencement Information

I6 [Sch. 20 para. 6](#) in force at 1.1.2017 by [S.I. 2016/1249, reg. 2](#)

Reduction of penalty for disclosure etc by P

- 7 (1) If P (who would otherwise be liable to a penalty under paragraph 1)—
(a) makes a disclosure to HMRC of—

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- (i) a matter relating to an inaccuracy in a document, a supply of false information or a failure to disclose an under-assessment,
 - (ii) P's enabling of actions by Q that constituted (or might constitute) a relevant offence or that made (or might make) Q liable to a relevant penalty, or
 - (iii) any other matter HMRC regard as assisting them in relation to the assessment of P's liability to a penalty under paragraph 1, or
- (b) assists HMRC in any investigation leading to Q being charged with a relevant offence or found liable to a relevant penalty,

HMRC must reduce the penalty to one that reflects the quality of the disclosure or assistance.

- (2) But the penalty may not be reduced—
- (a) in the case of unprompted disclosure or assistance, below whichever is the higher of—
 - (i) 10% of the potential lost revenue, or
 - (ii) £1,000, or
 - (b) in the case of prompted disclosure or assistance, below whichever is the higher of—
 - (i) 30% of the potential lost revenue, or
 - (ii) £3,000.

Commencement Information

I7 Sch. 20 para. 7 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

- 8 (1) This paragraph applies for the purposes of paragraph 7.
- (2) P discloses a matter by—
- (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in relation to the matter (for example by quantifying an inaccuracy in a document, an inaccuracy attributable to the supply of false information or withholding of information or an under-assessment), and
 - (c) allowing HMRC access to records for any reasonable purpose connected with resolving the matter (for example for the purpose of ensuring that an inaccuracy in a document, an inaccuracy attributable to the supply of false information or withholding of information or an under-assessment is fully corrected).
- (3) P assists HMRC in relation to an investigation leading to Q being charged with a relevant offence or found liable to a relevant penalty by—
- (a) assisting or encouraging Q to disclose all relevant facts to HMRC,
 - (b) allowing HMRC access to records, or
 - (c) any other conduct which HMRC considers assisted them in investigating or assessing Q's liability to such a penalty.
- (4) Disclosure or assistance by P—
- (a) is “unprompted” if made at a time when P has no reason to believe that HMRC have discovered or are about to discover Q's offshore tax evasion

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- or non-compliance (including any inaccuracy in a document, supply of false information or withholding of information, or under-assessment), and
- (b) otherwise is “prompted”.

(5) In relation to disclosure or assistance, “quality” includes timing, nature and extent.

Commencement Information

I8 Sch. 20 para. 8 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

- 9 (1) If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1.
- (2) In sub-paragraph 1 “special circumstances” does not include—
- (a) ability to pay, or
- (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
- (a) staying a penalty, or
- (b) agreeing a compromise in relation to proceedings for a penalty.

Commencement Information

I9 Sch. 20 para. 9 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

Procedure for assessing penalty, etc

- 10 (1) Where a person is found liable for a penalty under paragraph 1 HMRC must—
- (a) assess the penalty,
- (b) notify the person, and
- (c) state in the notice the period in respect of which the penalty is assessed.
- (2) A penalty must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment of a penalty—
- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule), and
- (b) may be enforced as if it were an assessment to tax.
- (4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax that would have been shown in a return.
- (5) Sub-paragraph (6) applies if—
- (a) an assessment in respect of a penalty is based on a liability to tax that would have been shown on a return, and
- (b) that liability is found by HMRC to have been excessive.
- (6) HMRC may amend the assessment so that it is based upon the correct amount.

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- (7) But an amendment under sub-paragraph (6)—
- (a) does not affect when the penalty must be paid, and
 - (b) may be made after the last day on which the assessment in question could have been made under paragraph 11.

Commencement Information

I10 Sch. 20 para. 10 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

- 11 An assessment of a person as liable to a penalty under paragraph 1 may not take place more than 2 years after the fulfilment of the conditions mentioned in paragraph 1(1) (in relation to that person) first came to the attention of an officer of Revenue and Customs.

Commencement Information

I11 Sch. 20 para. 11 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

Appeals

- 12 A person may appeal against—
- (a) a decision of HMRC that a penalty under paragraph 1 is payable by that person, or
 - (b) a decision of HMRC as to the amount of a penalty under paragraph 1 payable by the person.

Commencement Information

I12 Sch. 20 para. 12 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

- 13 (1) An appeal under paragraph 12 is to be treated in the same way as an appeal against an assessment to the tax at stake (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (2) Sub-paragraph (1) does not apply—
- (a) so as to require the person bringing the appeal to pay a penalty before an appeal against the assessment of the penalty is determined,
 - (b) in respect of any other matter expressly provided for by this Schedule.

Commencement Information

I13 Sch. 20 para. 13 in force at 1.1.2017 by S.I. 2016/1249, reg. 2

- 14 (1) On an appeal under paragraph 12(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 12(b) that is notified to the tribunal, the tribunal may—
- (a) affirm HMRC's decision, or
 - (b) substitute for that decision another decision that HMRC had power to make.

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- (3) If the tribunal substitutes its own decision for HMRC's, the tribunal may rely on paragraph 7 or 9 (or both)—
- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point),
 - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of that paragraph was flawed.
- (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (5) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 13(1)).

Commencement Information

I14 [Sch. 20 para. 14](#) in force at 1.1.2017 by [S.I. 2016/1249](#), [reg. 2](#)

Double jeopardy

- 15 A person is not liable to a penalty under paragraph 1 in respect of conduct for which the person—
- (a) has been convicted of an offence, or
 - (b) has been assessed to a penalty under any provision other than paragraph 1.

Commencement Information

I15 [Sch. 20 para. 15](#) in force at 1.1.2017 by [S.I. 2016/1249](#), [reg. 2](#)

Application of provisions of TMA 1970

- 16 Subject to the provisions of this Part of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Part of this Schedule as they apply for the purposes of the Taxes Acts—
- (a) section 108 (responsibility of company officers),
 - (b) section 114 (want of form), and
 - (c) section 115 (delivery and service of documents).

Commencement Information

I16 [Sch. 20 para. 16](#) in force at 1.1.2017 by [S.I. 2016/1249](#), [reg. 2](#)

Interpretation of Part 1

- 17 (1) This paragraph applies for the purposes of this Schedule.
- (2) References to an assessment to tax, in relation to inheritance tax, are to a determination.

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I17 [Sch. 20 para. 17](#) in force at 1.1.2017 by [S.I. 2016/1249](#), [reg. 2](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)