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## SCHEDULES

### SCHEDULE 18

Section 67

#### REQUIREMENT TO CORRECT CERTAIN OFFSHORE TAX NON-COMPLIANCE

##### PART 1

###### LIABILITY FOR PENALTY FOR FAILURE TO CORRECT

###### *Failure to correct relevant offshore tax non-compliance*

- 1 A penalty is payable by a person who—
- (a) has any relevant offshore tax non-compliance to correct at the end of the tax year 2016-17, and
  - (b) fails to correct the relevant offshore tax non-compliance within the period beginning with 6 April 2017 and ending with 30 September 2018 (referred to in this Schedule as “the RTC period”).

###### *Main definitions: general*

- 2 Paragraphs 3 to 13 have effect for the purposes of this Schedule.

###### *“Relevant offshore tax non-compliance”*

- 3 (1) At the end of the 2016-17 tax year a person has “relevant offshore tax non-compliance” to correct if—
- (a) Conditions A and B are satisfied in respect of any offshore tax non-compliance committed by that person on or before 5 April 2017 (“the original offshore tax non-compliance”), and
  - (b) Condition C will be satisfied on the relevant date (see paragraph 6).
- (2) Where the original offshore tax non-compliance committed by a person has been corrected in part by the end of the tax year 2016-17, the person's “relevant offshore tax non-compliance” is the uncorrected part of the original offshore tax non-compliance.
- 4 Condition A is that the original offshore tax non-compliance has not been fully corrected before the end of the tax year 2016-17 (see paragraph 13).
- 5 Condition B is that—
- (a) the original offshore tax non-compliance involved a potential loss of revenue when it was committed, and
  - (b) if the original offshore tax non-compliance has been corrected in part by the end of the tax year 2016-17, the uncorrected part at that time involved a potential loss of revenue.

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- 6 (1) Condition C is that on the relevant date it is lawful, on the assumptions set out in sub-paragraph (2), for HMRC to assess the person concerned to any tax the liability to which would have been disclosed to or discovered by HMRC if on that date—
- (a) where none of the original offshore tax non-compliance was corrected before the end of the 2016-17 tax year, HMRC were aware of the information missing as a result of the failure to correct that tax non-compliance, or
  - (b) where the original offshore tax non-compliance was corrected in part before that time, HMRC were aware of the information missing as a result of the failure to correct the rest of that tax non-compliance.
- (2) The assumptions are—
- (a) that paragraph 26 is to be disregarded, and
  - (b) where the tax at stake is inheritance tax, that the relevant offshore tax non-compliance is not corrected before the relevant date
- (3) In this paragraph “the relevant date” is—
- (a) where the tax at stake is income tax or capital gains tax, 6 April 2017, and
  - (b) where the tax at stake is inheritance tax, the day after the day on which this Act is passed.

*“Offshore tax-non compliance” etc*

- 7 (1) “Offshore tax non-compliance” means tax non-compliance which involves an offshore matter or an offshore transfer, whether or not it also involves an onshore matter.
- (2) Tax non-compliance “involves an onshore matter” if and to the extent that it does not involve an offshore matter or an offshore transfer.
- (3) For the meaning of “involves an offshore matter or an offshore transfer” (in relation to the different descriptions of tax non-compliance) see paragraphs 9 to 11.

*“Tax non-compliance”*

- 8 (1) “Tax non-compliance” means any of the following—
- (a) a failure to comply on or before the filing date with an obligation under section 7 of TMA 1970 to give notice of chargeability to income tax or capital gains tax,
  - (b) a failure to comply on or before the filing date with an obligation to deliver to HMRC a return or other document which is listed in sub-paragraph (3), or
  - (c) delivering to HMRC a return or other document which is listed in sub-paragraph (3) or (4) and contains an inaccuracy which amounts to, or leads to—
    - (i) an understatement of a liability to tax,
    - (ii) a false or inflated statement of a loss, or
    - (iii) a false or inflated claim to repayment of tax.
- (2) In sub-paragraph (1)—
- (a) “filing date”, in relation to a notice of chargeability or a return or other document, means the date by which it is required to be given, made or delivered to HMRC,

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- (b) “loss” includes a charge, expense, deficit and any other amount which may be available for, or relied on to claim, a deduction or relief, and
- (c) “repayment of tax” includes a reference to allowing a credit against tax.
- (3) The documents relevant for the purposes of both of paragraphs (b) and (c) of sub-paragraph (1) are (so far as they relate to the tax or taxes shown in the first column)—

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<i><b>Tax to which document relates</b></i>	<i><b>Document</b></i>
Income tax or capital gains tax	Return, accounts, statement or document required under section 8(1) of TMA 1970 (personal return)
Income tax or capital gains tax	Return, accounts, statement or document required under section 8A(1) of TMA 1970 (trustee's return)
Income tax	Return, accounts, statement or document required under section 12AA(2) or (3) of TMA 1970 (partnership return)
Income tax	Return under section 254 of FA 2004 (pension schemes)
Income tax	Particulars or documents required under regulation 12 of the Retirement Benefits Schemes (Information Powers) Regulations 1995 (SI 1995/3101) (information relating to pension schemes)
Capital gains tax	NRCGT return under section 12ZB of TMA 1970
Inheritance tax	Account under section 216 or 217 of IHTA 1984.

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- (4) The documents relevant for the purposes only of paragraph (c) of sub-paragraph (1) are (so far as they relate to the tax or taxes shown in the first column)—

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<i><b>Tax to which document relates</b></i>	<i><b>Document</b></i>
Income tax or capital gains tax	Return, statement or declaration in connection with a claim for an allowance, deduction or relief
Income tax or capital gains tax	Accounts in connection with ascertaining liability to tax
Income tax or capital gains tax	Statement or declaration in connection with a partnership return
Income tax or capital gains tax	Accounts in connection with a partnership return
Inheritance tax	Information or document under regulations under section 256 of IHTA 1984
Inheritance tax	Statement or declaration in connection with a deduction, exemption or relief.
Income tax, capital gains tax or inheritance tax	Any other document given to HMRC by a person (“P”) which is likely to be relied on by HMRC to determine, without further inquiry, a question about— (a) P's liability to tax;

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- (b) payments by P by way of or in connection with tax;
  - (c) any other payment by P (including penalties);
  - (d) repayments, or any other kind of payment or credit, to P.
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*“Involves an offshore matter” and “involves an offshore transfer”*

- 9 (1) This paragraph applies to any tax non-compliance consisting of a failure to comply with an obligation under section 7 of TMA 1970 to notify chargeability to income tax or capital gains tax.
- (2) The tax non-compliance “involves an offshore matter” if the potential loss of revenue 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.
- (3) The tax non-compliance “involves an offshore transfer” if—
- (a) it does not involve an offshore matter, and
  - (b) the applicable condition is satisfied (see sub-paragraphs (4) and (5)).
- (4) Where the tax at stake is income tax the applicable condition is satisfied if the income on or by reference to which tax is charged, or any part of the income—
- (a) was received in a territory outside the UK, or
  - (b) was transferred on or before 5 April 2017 to a territory outside the UK.
- (5) 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) were received in a territory outside the UK, or
  - (b) were transferred on or before 5 April 2017 to a territory outside the UK.
- (6) In the case of a transfer falling within sub-paragraph (4)(b) or (5)(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.
- (7) In this paragraph and paragraphs 10 and 11 “assets” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling.
- 10 (1) This paragraph applies where—
- (a) any tax non-compliance by a person consists of a failure to comply with an obligation to deliver a return or other document, and
  - (b) a complete and accurate return or other document would have included information that would have enabled or assisted HMRC to assess the person's liability to tax.
- (2) The tax non-compliance “involves an offshore matter” if the liability to tax that would have been shown in the return or other document is or includes a liability to tax charged on or by reference to—
- (a) income arising from a source in a territory outside the UK,

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- (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.
- (3) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (2) 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.
- (4) The tax non-compliance “involves an offshore transfer” if—
  - (a) it does not involve an offshore matter, and
  - (b) the applicable condition is satisfied in respect of the liability to tax that would have been shown by the return or other document (see sub-paragraphs (5) to (7)).
- (5) Where the tax at stake is income tax the applicable condition is satisfied if the income on or by reference to which tax is charged, or any part of the income—
  - (a) was received in a territory outside the UK, or
  - (b) was transferred on or before 5 April 2017 to a territory outside the UK.
- (6) 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) was received in a territory outside the UK, or
  - (b) was transferred on or before 5 April 2017 to a territory outside the UK.
- (7) Where the liability to tax which would have been shown in the document 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 on or before 5 April 2017 the assets, or any part of the assets, are transferred to a territory outside the UK.
- (8) In the case of a transfer falling within sub-paragraph (5)(b), (6)(b) or (7)(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.
- 11 (1) This paragraph applies to any tax non-compliance by a person if—
  - (a) the tax non-compliance consists of delivering or giving HMRC a return or other document which contains an inaccuracy, and
  - (b) the inaccuracy relates to information that would have enabled or assisted HMRC to assess the person's liability to tax.
- (2) The tax non-compliance to which this paragraph applies “involves an offshore matter” if the information that should have been given in the tax document relates 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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- (3) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (2) 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.
- (4) Tax non-compliance to which this paragraph applies “involves an offshore transfer” if—
  - (a) it does not involve an offshore matter, and
  - (b) the applicable condition is satisfied in respect of the liability to tax that would have been shown by the return or other document (see sub-paragraphs (5) to (7)).
- (5) 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) was received in a territory outside the UK, or
  - (b) was transferred on or before 5 April 2017 to a territory outside the UK.
- (6) Where the tax at stake is capital gains tax, the applicable condition is satisfied if—
  - (a) the information that should have been given in the tax document relates to the proceeds of the disposal on or by reference to which the tax is charged, and
  - (b) the proceeds, or any part of the proceeds—
    - (i) were received in a territory outside the UK, or
    - (ii) were transferred on or before 5 April 2017 to a territory outside the UK.
- (7) Where the tax at stake is inheritance tax, the applicable condition is satisfied if—
  - (a) the information that should have been given in the tax document relates to the disposition that gives rise to the transfer of value by reason of which the tax becomes payable relates to a transfer of assets, and
  - (b) after that disposition but on or before 5 April 2017 the assets or any part of the assets are transferred to a territory outside the UK.
- (8) In the case of a transfer falling within sub-paragraph (5)(b), (6)(b) or (7)(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.

*“Tax”*

- 12 (1) References to “tax” are (unless in the context the reference is more specific) to income tax, capital gains tax or inheritance tax.
- (2) References to “capital gains tax” do not include capital gains tax payable by companies in respect of chargeable gains accruing to them to the extent that those gains are NRCGT gains in respect of which the companies are chargeable to capital gains tax under section 14D or 188D of TCGA 1992 (see section 1(2A)(b) of that Act).
- (3) In sub-paragraph (2) “company” has the same meaning as in TCGA 1992.

*Correcting offshore tax non-compliance*

- 13 (1) This paragraph sets out how offshore tax non-compliance may be corrected.

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- (2) References to the correction of offshore tax non-compliance of any description are to the taking of any action specified in this paragraph as a means of correcting offshore tax non-compliance of that description.
- (3) Offshore tax non-compliance consisting of a failure to notify chargeability may be corrected by—
  - (a) giving the requisite notice to HMRC (unless before doing so the person has received a notice requiring the person to make and deliver a tax return) and giving HMRC the relevant information by any means mentioned in paragraph (b),
  - (b) giving HMRC the relevant information—
    - (i) by making and delivering a tax return,
    - (ii) using the digital disclosure service or any other service provided by HMRC as a means of correcting tax non-compliance,
    - (iii) communicating it to an officer of Revenue and Customs in the course of an enquiry into the person's tax affairs, or
    - (iv) using a method agreed with an officer of Revenue and Customs.
- (4) In sub-paragraph (3) “relevant information” means information relating to offshore tax that—
  - (a) had the requisite notice been given in time and the person given a notice to make and deliver a tax return, would have been required to be included in the tax return, and
  - (b) would have enabled or assisted HMRC to calculate the offshore tax due.
- (5) Offshore tax non-compliance consisting of a failure to make or deliver a return or other document may be corrected by giving HMRC the relevant information by—
  - (a) making or delivering the requisite return or document,
  - (b) using the digital disclosure service or any other service provided by HMRC as a means of correcting tax non-compliance,
  - (c) communicating it to an officer of Revenue and Customs in the course of an enquiry into the person's tax affairs, or
  - (d) using a method agreed with an officer of Revenue and Customs.
- (6) In subsection (5) “relevant information” means information relating to offshore tax that—
  - (a) should have been included in the return or other document, and
  - (b) would have enabled or assisted HMRC to calculate the offshore tax due.
- (7) Offshore tax non-compliance consisting of making and delivering a return or other document containing an inaccuracy may be corrected by giving HMRC the relevant information by—
  - (a) in the case of an inaccurate tax document, amending the document or delivering a new document,
  - (b) using the digital disclosure service or any other service provided by HMRC as a means of correcting tax non-compliance,
  - (c) communicating it to an officer of Revenue and Customs in the course of an enquiry into the person's tax affairs, or
  - (d) using a method agreed with an officer of Revenue and Customs.

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- (8) In sub-paragraph (7) “relevant information” means information relating to offshore tax that—
- (a) should have been included in the return but was not (whether due to an omission or the giving of inaccurate information), and
  - (b) would have enabled or assisted HMRC to calculate the offshore tax due.
- (9) In this paragraph “offshore tax”, in relation to any offshore tax non-compliance, means tax corresponding to the offshore PLR in respect of the non-compliance.

## PART 2

### AMOUNT OF PENALTY

#### *Amount of penalty*

- 14 (1) The penalty payable under paragraph 1 is 200% of the offshore PLR attributable to the uncorrected offshore tax non-compliance (subject to any reduction under a provision of this Part of this Schedule).
- (2) In this Part of this Schedule “the uncorrected offshore tax non-compliance” means—
- (a) the relevant offshore tax non-compliance, in a case where none of it is corrected within the RTC period, or
  - (b) so much of the relevant offshore tax non-compliance as has not been corrected within the RTC period, in a case where part of it is corrected within that period.

#### *Offshore PLR*

- 15 (1) In this Schedule “offshore PLR”, in relation to any offshore tax non-compliance means the potential loss of revenue attributable to that non-compliance, to be determined as follows.
- (2) The potential lost revenue attributable to any offshore tax non-compliance is (subject to sub-paragraphs (5) and (6)) —
- (a) if the non-compliance is a failure to notify chargeability, the potential lost revenue under the applicable provisions of paragraph 7 of Schedule 41 to FA 2008 (or, where the original offshore tax non-compliance took place before 1 April 2010, the amount referred to in section 7(8) of TMA 1970),
  - (b) if the non-compliance is a failure to deliver a return or other document, the amount of the liability to tax under the applicable provisions of paragraph 24 of Schedule 55 to FA 2009 (or, where the original offshore tax non-compliance took place before 1 April 2011, the amount of liability to tax that would have been shown in the return as defined in section 93(9) of TMA 1970), and
  - (c) if the non-compliance is delivering a return or other document containing an inaccuracy, the potential lost revenue under the applicable provisions of paragraphs 5 to 8 of Schedule 24 to FA 2007 (or, where the original offshore tax non-compliance took place before 1 April 2008, the difference described in section 95(2) of TMA 1970).



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(3) In its application for the purposes of sub-paragraph (2)(c) above, paragraph 6 of Schedule 24 to FA 2007 has effect as if—

(a) for sub-paragraph (1) there were substituted—

“(1) Where—

- (a) P is liable to a penalty in respect of two or more inaccuracies (each being an inaccuracy in a return or other document listed in paragraph 8(3) or (4) of Schedule 18) to F(No.2)A 2017) in relation to a tax year or, in the case of inheritance tax, a single transfer of value,
- (b) in relation to any one (or more than one) of those inaccuracies, the delivery of the return or other document containing it constitutes offshore tax non-compliance, and
- (c) the calculation of potential lost revenue attributable to each of those inaccuracies depends on the order in which they are corrected,

the potential lost revenue attributable to any offshore tax non-compliance constituted by any one of those inaccuracies is to be taken to be such amount as is just and reasonable.

(1A) In sub-paragraph (1) “offshore tax non-compliance” has the same meaning as in Schedule 18 to F(No2)A 2017.”; and

(b) in sub-paragraph (4), for paragraphs (b) to (d) there were substituted—  
“(b) other understatements.”

(4) In sub-paragraphs (5) and (6) “combined tax non-compliance” is tax non-compliance that—

- (a) involves an offshore matter or an offshore transfer, but
- (b) also involves an onshore matter.

(5) Any combined tax non-compliance is to be treated for the purposes of this Schedule as if it were two separate acts of tax non-compliance, namely—

- (a) the combined tax non-compliance so far as it involves an offshore matter or an offshore transfer (which is then offshore tax non-compliance within the meaning of this Schedule), and
- (b) the combined tax non-compliance so far as it involves an onshore matter.

(6) The potential lost revenue attributable to the offshore tax non-compliance referred to in sub-paragraph (5)(a) is to be taken to be such share of the potential lost revenue attributable to the combined tax non-compliance as is just and reasonable.

*Reduction of penalty for disclosure etc by person liable to penalty*

16 (1) This paragraph provides for a reduction in a penalty under paragraph 1 for any uncorrected relevant offshore tax non-compliance if the person (“P”) who is liable to the penalty discloses any matter mentioned in sub-paragraph (2) that is relevant to the non-compliance or its correction or to the assessment or enforcement of the offshore tax attributable to it.

(2) The matters are—

- (a) chargeability to income tax or capital gains tax (where the tax non-compliance is a failure to notify chargeability),

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- (b) a missing tax return,
  - (c) an inaccuracy in a document,
  - (d) a supply of false information or a withholding of information, or
  - (e) a failure to disclose an under-assessment.
- (3) A person discloses a matter for the purposes of this paragraph only 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),
  - (c) informing HMRC of any person who acted as an enabler of the relevant offshore tax non-compliance or the failure to correct it, and
  - (d) allowing HMRC access to records—
    - (i) for any reasonable purpose connected with resolving the matter (for example for the purpose of ensuring that an inaccuracy in a document is fully corrected), and
    - (ii) for the purpose of ensuring that HMRC can identify all persons who may have acted as an enabler of the relevant offshore tax non-compliance or the failure to correct it.
- (4) Where a person liable to a penalty under paragraph 1 discloses a matter HMRC must reduce the penalty to one that reflects the quality of the disclosure.
- (5) But the penalty may not be reduced below 100% of the offshore PLR.
- (6) In relation to disclosure or assistance, “quality” includes timing, nature and extent.
- (7) For the purposes of sub-paragraph (3) a person “acted as an enabler” of relevant offshore tax non-compliance by another if the person encouraged, assisted or otherwise facilitated the conduct by the other person that constituted the offshore tax non-compliance.
- 17 (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.

*Procedure for assessing penalty, etc*

- 18 (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—
    - (i) the uncorrected relevant offshore tax non-compliance to which the penalty relates, and
    - (ii) the tax period to which that offshore tax non-compliance relates.

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- (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),
    - (b) may be enforced as if it were an assessment to tax, and
    - (c) may be combined with 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 offshore 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.
  - (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 19.
- 19
- (1) An assessment of a penalty under paragraph 1 in respect of uncorrected relevant offshore tax non-compliance must be made before the end of the relevant period for that non-compliance.
  - (2) If the non-compliance consists of a failure to notify chargeability, the relevant period is the period of 12 months beginning with—
    - (a) the end of the appeal period for the assessment of tax unpaid by reason of the failure, or
    - (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the failure is ascertained.
  - (3) If the non-compliance consists of a failure to submit a return or other document, the relevant period is the period of 12 months beginning with—
    - (a) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
    - (b) if there is no such assessment, the date on which that liability is ascertained.
  - (4) If the non-compliance consists of making and delivering a tax document containing an inaccuracy, the relevant period is the period of 12 months beginning with—
    - (a) the end of the appeal period for the decision correcting the inaccuracy, or
    - (b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.
  - (5) In this paragraph references to the appeal period are to the period during which—
    - (a) an appeal could be brought, or
    - (b) an appeal that has been brought has not been finally determined or withdrawn.

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### *Appeals*

- 20 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.
- 21 (1) An appeal under paragraph 20 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.
- 22 (1) On an appeal under paragraph 20(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 20(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.
- (3) If the tribunal substitutes its own decision for HMRC's, the tribunal may rely on paragraph 16 or 17 (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 21(1)).

### *Reasonable excuse*

- 23 (1) Liability to a penalty under paragraph 1 does not arise in relation to a particular failure to correct any relevant offshore tax non-compliance within the RTC period if the person concerned (P) satisfies HMRC or the relevant tribunal (as the case may be) that there is a reasonable excuse for the failure.
- (2) For this purpose—
- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
  - (b) where P relied on any other person to do anything, that cannot be a reasonable excuse unless P took reasonable care to avoid the failure,
  - (c) where P had a reasonable excuse but the excuse has ceased, P is to be treated as continuing to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased, and

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- (d) reliance on advice is to be taken automatically not to be a reasonable excuse if it is disqualified under sub-paragraph (3).
- (3) Advice is disqualified (subject to sub-paragraph (4)) if—
- (a) the advice was given to P by an interested person,
  - (b) the advice was given to P as a result of arrangements made between an interested person and the person who gave the advice,
  - (c) the person who gave the advice did not have appropriate expertise for giving the advice,
  - (d) the advice failed to take account of all P's individual circumstances (so far as relevant to the matters to which the advice relates), or
  - (e) the advice was addressed to, or was given to, a person other than P.
- (4) Where advice would otherwise be disqualified under any of paragraphs (a) to (d) of sub-paragraph (3) the advice is not disqualified if at the end of the RTC period P—
- (a) has taken reasonable steps to find out whether or not the advice falls within that paragraph, and
  - (b) reasonably believes that it does not.
- (5) In sub-paragraph (3) “an interested person” means, in relation to any relevant offshore tax non-compliance—
- (a) a person (other than P) who participated in relevant avoidance arrangements or any transaction forming part of them, or
  - (b) a person who for any consideration (whether or not in money) facilitated P's entering into relevant avoidance arrangements.
- (6) In this paragraph “avoidance arrangements” means arrangements as respects which, in all the circumstances, it would be reasonable to conclude that their main purpose, or one of their main purposes, is the obtaining of a tax advantage.
- (7) But arrangements are not avoidance arrangements for the purposes of this paragraph if (although they fall within sub-paragraph (6))—
- (a) they are arrangements which accord with established practice, and
  - (b) HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice.
- (8) Where any relevant offshore tax non-compliance arose originally because information was submitted to HMRC on the basis that particular avoidance arrangements had an effect which they did not have, those avoidance arrangements are “relevant avoidance arrangements” in relation to that tax non-compliance.
- (9) In sub-paragraph (6)—
- (a) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
  - (b) a “tax advantage” includes—
    - (i) relief or increased relief from tax,
    - (ii) repayment or increased repayment of tax,
    - (iii) avoidance or reduction of a charge to tax or an assessment to tax,
    - (iv) avoidance of a possible assessment to tax,
    - (v) deferral of a payment of tax or advancement of a repayment of tax.

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*Double jeopardy*

- 24 (1) Where by reason of any conduct a person—
- (a) has been convicted of an offence, or
  - (b) is liable to a penalty otherwise than under paragraph 1 for which the person has been assessed (and the assessment has not been successfully appealed against or withdrawn),
- that conduct does not give rise to liability to a penalty under paragraph 1.
- (2) In sub-paragraph (1) the reference to a penalty otherwise than under paragraph 1—
- (a) includes a penalty under paragraph 6 of Schedule 55 to FA 2009, but does not include penalties under any other provision of that Schedule, and
  - (b) includes a penalty under subsection (5) of section 93 of TMA 1970 but, does not include penalties under any other provision of that section.
- (3) But the aggregate of—
- (a) the amount of a penalty under paragraph 1, and
  - (b) the amount of a penalty under paragraph 5 of Schedule 55 which is determined by reference to a liability to tax,
- must not exceed 200% of that liability to tax.
- (4) In sub-paragraph (1) “conduct” includes a failure to act.

*Application of provisions of TMA 1970*

- 25 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).

**PART 3**

FURTHER PROVISIONS RELATING TO THE REQUIREMENT TO CORRECT

*Extension of period for assessment etc of offshore tax*

- 26 (1) This paragraph applies where—
- (a) at the end of the tax year 2016-17 a person has relevant offshore tax non-compliance to correct, and
  - (b) the last day on which it would (disregarding this paragraph) be lawful for HMRC to assess the person to any offshore tax falls within the period beginning with 6 April 2017 and ending with 4 April 2021.
- (2) The period in which it is lawful for HMRC to assess the person to the offshore tax is extended by virtue of this paragraph to end with 5 April 2021.
- (3) In this paragraph “offshore tax”, in relation to any relevant offshore tax non-compliance, means tax corresponding to the offshore PLR in respect of the non-compliance.

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*Further penalty in connection with offshore asset moves*

- 27 (1) Schedule 21 to FA 2015 (penalties in connection with offshore asset moves) is amended as follows.
- (2) In paragraph 2 (original penalties triggering penalties under Schedule 21) omit “and” after paragraph (b) and after paragraph (c) insert “, and
- (d) a penalty under paragraph 1 of Schedule 18 to FA 2017 (requirement to correct relevant offshore tax non-compliance).”
- (3) In paragraph 3 (meaning of deliberate failure) after paragraph (c) insert—
- “(d) in the case of a penalty within paragraph 2(d), P was aware at any time during the RTC period that at the end of the 2016-17 tax year P had relevant offshore tax non-compliance to correct;
- and terms used in paragraph (d) have the same meaning as in Schedule 18 to FA 2017.”
- (4) In paragraph 5 (meaning of “relevant time”) after sub-paragraph (4) insert—
- “(5) Where the original penalty is under paragraph 1 of Schedule 18 to FA 2017, the relevant time is the time when that Schedule comes into force.”

*Asset-based penalty in addition to penalty under paragraph 1*

- 28 (1) Schedule 22 to FA 2016 (asset-based penalty for offshore inaccuracies and failures) is amended as follows.
- (2) In paragraph 2 (meaning of standard offshore penalty)—
- (a) in sub-paragraph (1) for “or (4)” substitute “(4) or (4A)”,
- (b) after sub-paragraph (4) insert—
- “(4A) A penalty falls within this paragraph if—
- (a) it is imposed on a person under paragraph 1 of Schedule 18 to FA 2017 (requirement to correct relevant offshore tax non-compliance),
- (b) the person was aware at any time during the RTC period that at the end of the 2016-17 tax year P had relevant offshore tax non-compliance to correct, and
- (c) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.”, and
- (c) after sub-paragraph (5) insert—
- “(5A) Sub-paragraph (5) does not apply to a penalty imposed under paragraph 1 of Schedule 18 to FA 2017.”
- (3) In paragraph 3 (tax year to which standard offshore penalty relates) after sub-paragraph (3) insert—
- “(4) Where a standard offshore penalty is imposed under paragraph 1 of Schedule 18 to FA 2017, the tax year to which that penalty relates is—
- (a) if the tax at stake in relation to the uncorrected relevant offshore tax non-compliance is income tax or capital gains tax, the tax year or years to which the failure or inaccuracy constituting the relevant offshore tax non-compliance in question relates;

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- (b) if the tax at stake in relation to the uncorrected relevant offshore tax non-compliance is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.
  - (5) In sub-paragraph (4) references to uncorrected relevant offshore tax non-compliance are to the relevant offshore tax non-compliance in respect of which the standard offshore penalty is imposed.”
  - (4) In paragraph 5 (meaning of offshore PLR), in sub-paragraph (1)(a) after “FA 2008” insert “ or Schedule 18 to FA 2017 ”.
  - (5) In paragraph 6 (restriction on imposition of multiple asset-based penalties for same asset), in sub-paragraph (1)(a) after “penalty” insert “ (other than one imposed under paragraph 1 of Schedule 18 to FA 2017) ”.
  - (6) After paragraph 6 insert—
    - “6A Where—
      - (a) a penalty has been imposed on a person under paragraph 1 of Schedule 18 to FA 2017, and
      - (b) the potential loss of revenue threshold has been met,
 only one asset-based penalty is payable by the person in relation to any given asset.”
  - (7) In paragraph 13 (asset-based income tax) after sub-paragraph (2) insert—
    - “(2A) In relation to cases where the standard offshore penalty is a penalty falling within paragraph 2(4A), each reference to provisions of ITTOIA 2005 in column 1 of the Table in sub-paragraph (2) includes a reference—
      - (a) to the corresponding provisions of the legislation in force immediately before those provisions of ITTOIA 2005 came into force (and to any previous text of those corresponding provisions), and
      - (b) to any other provision that had the same purpose as, or a similar purpose to, any of those corresponding provisions (or any earlier text mentioned in paragraph (a)), if and so far as that other provision was in force—
        - (i) on or after 6 April 1997, but
        - (ii) before the corresponding provisions (or the earlier text mentioned in paragraph (a)) came into force.””
  - (8) In paragraph 19(2) (interpretation: incorporation of definitions from other legislation for “or Schedule 55 to FA 2009” substitute “ Schedule 55 to FA 2009 or Part 1 of Schedule 18 to FA 2017 ”.
- 29 (1) TMA 1970 is amended as follows.
- (2) In section 103ZA (disapplication of sections 100 to 103 in the case of certain penalties) omit the “or” after paragraph (j) and after paragraph (k) insert “, or
    - (l) Schedule 18 to the Finance Act 2017.”
  - (3) In section 107A (relevant trustees)—
    - (a) in subsection (2)(a) after “Finance Act 2009” insert or Schedule 18 to the Finance Act 2017”, and



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- (b) in subsection (3), after paragraph (c) insert—
    - “(d) in relation to—
      - (i) a penalty under Schedule 18 to the Finance Act 2017, or
      - (ii) interest under section 101 of the Finance Act 2009 on a penalty within sub-paragraph (i),
- the end of the RTC period (within the meaning of Schedule 18 to the Finance Act 2017);”.

*Publishing details of persons assessed to penalty or penalties under paragraph 1*

- 30 (1) The Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) may publish information about a person (P) if in consequence of an investigation they consider that sub-paragraph (2) or (3) applies in relation to P.
- (2) This sub-paragraph applies if—
- (a) P has been found to have incurred one or more relevant penalties under paragraph 1 (and has been assessed or is the subject of a contract settlement), and
  - (b) the offshore potential lost revenue in relation to the penalty, or the aggregate of the offshore potential lost revenue in relation to each of the penalties, exceeds £25,000.
- (3) This sub-paragraph applies if P has been found to have incurred 5 or more relevant penalties under paragraph 1.
- (4) A penalty incurred by P under paragraph 1 is “relevant” if—
- (a) P was aware at any time during the RTC period that at the end of the 2016-17 tax year the person had relevant offshore tax non-compliance to correct, and
  - (b) the penalty relates to the failure to correct that non-compliance.
- (5) The information that may be published is—
- (a) P's name (including any trading name, previous name or pseudonym),
  - (b) P's address (or registered office),
  - (c) the nature of any business carried on by P,
  - (d) the amount of the penalty or penalties,
  - (e) the offshore potential lost revenue in relation to the penalty or the aggregate of the offshore potential lost revenue in relation to each of the penalties,
  - (f) the periods or times to which the uncorrected relevant offshore tax non-compliance relates,
  - (g) any other information that the Commissioners consider it appropriate to publish in order to make clear the person's identity.
- (6) In sub-paragraph (5)(f) the reference to the uncorrected relevant offshore tax non-compliance is to so much of P's relevant offshore tax non-compliance at the end of the 2016-17 tax year as P failed to correct within the RTC period.
- (7) The information may be published in any manner that the Commissioners consider appropriate.
- (8) Before publishing any information the Commissioners must—
- (a) inform P that they are considering doing so, and

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- (b) afford P the opportunity to make representations about whether it should be published.
- (9) No information may be published before the day on which the penalty becomes final or, where more than one penalty is involved, the latest day on which any of the penalties becomes final.
- (10) No information may be published for the first time after the end of the period of one year beginning with that day.
- (11) No information may be published (or continue to be published) after the end of the period of one year beginning with the day on which it is first published.
- (12) No information may be published if the amount of the penalty—
  - (a) is reduced under paragraph 16 to the minimum permitted amount (being 100% of the offshore PLR), or
  - (b) is reduced under paragraph 17 to nil or stayed.
- (13) For the purposes of this paragraph a penalty becomes final—
  - (a) if it has been assessed, when the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined, and
  - (b) if a contract settlement has been made, at the time when the contract is made.
- (14) In this paragraph “contract settlement”, in relation to a penalty, means a contract between the Commissioners and the person under which the Commissioners undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover it.
- 31 (1) The Treasury may by regulations amend paragraph 30(2) to vary the amount for the time being specified in paragraph (b).
- (2) Regulations under this paragraph are to be made by statutory instrument.
- (3) A statutory instrument under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

## PART 4

### SUPPLEMENTARY

#### *Interpretation: minor*

- 32 (1) In this Schedule (apart from the amendments made by Part 3)—
  - “HMRC” means Her Majesty's Revenue and Customs;
  - “tax period” means a tax year or other period in respect of which tax is charged (or in the case of inheritance tax, the year beginning with 6 April and ending on the following 5 April in which the liability to tax first arose);
  - “tax year”, in relation to inheritance tax, means a period of 12 months beginning on 6 April and ending on the following 5 April;
  - “UK” means the United Kingdom, including its territorial sea.
- (2) A reference to making a return or doing anything in relation to a return includes a reference to amending a return or doing anything in relation to an amended return.

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- (3) References to delivery (of a document) include giving, sending and any other similar expressions.
- (4) A reference to delivering a document to HMRC includes—
  - (a) a reference to communicating information to HMRC in any form and by any method (whether by post, fax, email, telephone or otherwise, and
  - (b) a reference to making a statement or declaration in a document.
- (5) References to an assessment to tax, in relation to inheritance tax, are to a determination.
- (6) An expression used in relation to income tax has the same meaning as in the Income Tax Acts.
- (7) An expression used in relation to capital gains tax has the same meaning as in the enactments relating to that tax.
- (8) An expression used in relation to inheritance tax has the same meaning as in IHTA 1984.

TERMS DEFINED OR EXPLAINED FOR PURPOSES OF  
MORE THAN ONE PARAGRAPH OF THIS SCHEDULE

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<b><i>Term</i></b>	<b><i>Paragraph</i></b>
assets (in paragraphs 8 to 10)	paragraph 9(7)
capital gains tax	paragraph 12(2)
HMRC	paragraph 32(1)
involves an offshore matter (in relation to failure to notify chargeability)	paragraph 9(2)
involves an offshore matter (in relation to failure to deliver a return or other document)	paragraph 10(2) and (3)
involves an offshore matter (in relation to delivery of a return or other document containing an inaccuracy)	paragraph 11(2) and (3)
involves an offshore transfer (in relation to failure to notify chargeability)	paragraph 9(3) to (6)
involves an offshore transfer (in relation to failure to deliver a return or other document)	paragraph 10(4) to (8)
involves an offshore transfer (in relation to delivery of a return or other document containing an inaccuracy)	paragraph 11(4) to (8)
involves an onshore matter (in relation to any tax non-compliance)	paragraph 7(2)
offshore tax non-compliance	paragraph 7(1)
offshore PLR	paragraph 15(1)
potential lost revenue	paragraph 15(2)
RTC period	paragraph 1(b)

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relevant offshore tax non-compliance	paragraph 3
tax non-compliance	paragraph 8(1)
tax period	paragraph 32(1)
tax year (in relation to inheritance tax)	paragraph 32(1)
tax	paragraph 12(1)
UK	paragraph 32(1)
uncorrected offshore tax non-compliance (in Part 2)	paragraph 14(2)

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**Changes and effects yet to be applied to :**

- Sch. 18 para. 15(2)(b) words inserted by [2021 c. 26 Sch. 27 para. 51](#)

**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. A1 para. 8(6)(b) omitted by [2022 c. 3 Sch. 1 para. 32\(b\)](#)
- Sch. A1 para. 8(2) substituted by [2022 c. 3 Sch. 1 para. 32\(a\)](#)