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## SCHEDULES

### SCHEDULE 18

#### REQUIREMENT TO CORRECT CERTAIN OFFSHORE TAX 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).

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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. 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\(a\)](#)