

**1 Penalties for failure to make returns and deliberately withholding information**

- (1) Schedule 1 contains provision for imposing penalties on persons in respect of failures to make certain returns.
- (2) Schedule 2 contains provision for imposing penalties on persons who, by failing to make certain returns, deliberately withhold information which would enable or assist HMRC to assess that person's liability to tax.
- (3) Schedules 1 and 2 come into force on such day as the Treasury may by regulations appoint.
- (4) Regulations under subsection (3)–
  - (a) may commence a provision generally or for specified purposes, and
  - (b) may appoint different days for different provisions or for different purposes.
- (5) The Treasury may by regulations make any incidental, supplemental, consequential, transitional, transitory or saving provision which may appear appropriate in consequence of, or otherwise in connection with, Schedule 1 or 2.
- (6) Regulations under subsection (5) may include provision amending, repealing or revoking any provision of an Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it).
- (7) Regulations under subsection (5) may make different provision for different purposes.
- (8) Regulations under this section are to be made by statutory instrument.
- (9) A statutory instrument containing regulations under subsection (5) which includes provision amending or repealing any provision of an Act is subject to annulment in pursuance of a resolution of the House of Commons.

## SCHEDULE 1

Section 1

## PENALTIES FOR FAILURE TO MAKE RETURNS ETC

## PART 1

## INTRODUCTION

*Introduction*

- 1 (1) This Schedule provides for a person who fails to make or deliver a return to be liable to penalty points and penalties.
- (2) Part 1 of this Schedule –
  - (a) identifies groups of returns, and the returns falling within each group, and
  - (b) makes provision about the interpretation of this Schedule.
- (3) Part 2 of this Schedule provides for a person to be liable to penalty points, and penalties, in respect of each group of returns.
- (4) Part 3 of this Schedule makes supplementary provision.

*Returns*

- 2 (1) Tables 1, 2 and 3 list groups of returns (according to the frequency with which they are required to be made), and the returns in each group.

*Table 1: annual etc returns*

<i>Group of returns</i>	<i>Relevant tax</i>	<i>Returns in group</i>
1	Aggregates levy	Return under the Aggregates Levy (General) Regulations 2002 (S.I. 2002/761) for a period which – <ol style="list-style-type: none"> <li>(a) is more than 3 months, and</li> <li>(b) is the period for which returns are (or are to be) usually made by the person in question</li> </ol>
2	Air passenger duty	Return under the Air Passenger Duty Regulations 1994 (S.I. 1994/1738), in the case of a person authorised to pay and account for duty in accordance with the annual accounting scheme
3	Annual tax on enveloped dwellings	<ol style="list-style-type: none"> <li>(1) Annual tax on enveloped dwellings return under section 159 of FA 2013</li> <li>(2) Return of adjusted chargeable amount under section 160 of FA 2013</li> </ol>

Table 1: annual etc returns

<i>Group of returns</i>	<i>Relevant tax</i>	<i>Returns in group</i>
4	Climate change levy	Return under the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838) for an accounting period which – (a) is more than 3 months, and (b) is the period for which returns are (or are to be) usually made by the person in question
5	Excise duties	Return under regulation 9 of the Hydrocarbon Oil (Registered Dealers in Controlled Oil) Regulations 2002 (S.I. 2002/3057) for a period of 12 months
6	Income tax	Statement under regulations under paragraph 8 of Schedule A1 to TMA 1970, in a case where there is no requirement to provide information under regulations under paragraph 7 of that Schedule in relation to the business
7	Income tax or capital gains tax	(1) Return under section 8 of TMA 1970 (2) Accounts, statement or document required under section 8(1)(b) of TMA 1970 or (when paragraph 3 of Schedule 14 to F(No 2)A 2017 comes into force) section 8(1AB)(b) of TMA 1970
8	Income tax or capital gains tax	(1) Return under section 8A of TMA 1970 (2) Accounts, statement or document required under section 8A(1)(b) of TMA 1970 or (when paragraph 4 of Schedule 14 to F(No 2)A 2017 comes into force) section 8A(1AB)(b) of TMA 1970
9	Income tax or corporation tax	(1) Return under section 12AA(2)(a) or (3)(a) of TMA 1970 (2) Accounts, statement or document required under section 12AA(2)(b) or (3)(b) of TMA 1970
10	Income tax or corporation tax	Return under regulations under paragraph 10 of Schedule A1 to TMA 1970, in a case where there is no requirement to provide information under regulations under paragraph 7 of that Schedule in relation to the business
11	Insurance premium tax	Return under the Insurance Premium Tax Regulations 1994 (S.I. 1994/1774) for a period which – (a) is more than 3 months, and (b) is the period for which returns are (or are to be) usually made by the person in question
12	Landfill tax	Return under the Landfill Tax Regulations 1996 (S.I. 1996/1527) for a period which – (a) is more than 3 months, and (b) is the period for which returns are (or are to be) usually made by the person in question

Table 1: annual etc returns

<i>Group of returns</i>	<i>Relevant tax</i>	<i>Returns in group</i>
13	Value added tax	<p>(1) Return under regulation 50 of the Value Added Tax Regulations 1995 (S.I. 1995/2518) for a current accounting year</p> <p>(2) Return under regulation 25(1)(c) of those regulations for a period which is more than 3 months, and is the period for which returns are (or are to be) usually made by the person in question</p>

Table 2: quarterly etc returns

<i>Group of returns</i>	<i>Relevant tax</i>	<i>Returns in group</i>
1	Aggregates levy	<p>Return under the Aggregates Levy (General) Regulations 2002 (S.I. 2002/761) for a period which—</p> <p>(a) is more than one month but not more than 3 months, and</p> <p>(b) is the period for which returns are (or are to be) usually made by the person in question</p>
2	Alcoholic liquor duties	Return under regulations under section 13 of ALDA 1979 (spirits)
3	Biofuels duty	Return under regulation 19 of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (S.I. 2004/2065)
4	Climate change levy	<p>Return under the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838) for an accounting period which—</p> <p>(a) is more than one month but not more than 3 months, and</p> <p>(b) is the period for which returns are (or are to be) usually made by the person in question</p>
5	Gaming duty	Return under directions under paragraph 10 of Schedule 1 to FA 1997
6	General betting duty	Return under regulations under section 166 of FA 2014, other than a return for a period treated as an accounting period by virtue of transitional arrangements under section 165(4) of that Act
7	Income tax	<p>In a case where a person other than a partnership is required to provide information under regulations under paragraph 7 of Schedule A1 to TMA 1970-</p> <p>(a) information required to be provided under regulations under that paragraph, and</p> <p>(b) a statement under regulations under paragraph 8 of that Schedule</p>

Table 2: quarterly etc returns

<i>Group of returns</i>	<i>Relevant tax</i>	<i>Returns in group</i>
8	Income tax or corporation tax	In a case where a partnership is required to provide information under regulations under paragraph 7 of Schedule A1 to TMA 1970— (a) information required to be provided under regulations under that paragraph, and (b) a return under regulations under paragraph 10 of that Schedule
9	Insurance premium tax	Return under the Insurance Premium Tax Regulations 1994 (S.I. 1994/1774) for a period which— (a) is more than one month but not more than 3 months, and (b) is the period for which returns are (or are to be) usually made by the person in question
10	Landfill tax	Return under the Landfill Tax Regulations 1996 (S.I. 1996/1527) for a period which— (a) is more than one month but not more than 3 months, and (b) is the period for which returns are (or are to be) usually made by the person in question
11	Machine games duty	Return under regulations under paragraph 18 of Schedule 24 to FA 2012, other than a return for a period treated as an accounting period by virtue of transitional arrangements under paragraph 14(5) of that Schedule
12	Pool betting duty	Return under regulations under section 166 of FA 2014, other than a return for a period treated as an accounting period by virtue of transitional arrangements under section 165(4) of that Act
13	Remote gaming duty	Return under regulations under section 166 of FA 2014, other than a return for a period treated as an accounting period by virtue of transitional arrangements under section 165(4) of that Act
14	Soft drinks industry levy	Return under regulation 21 of the Soft Drinks Industry Levy Regulations 2018 (S.I. 2018/41)
15	Value added tax	(1) Return under regulation 25(1) of the Value Added Tax Regulations 1995 (S.I. 1995/2518), other than a return under regulation 25(1)(a), (b) or (c) (2) Return under regulation 25(1)(c) of those regulations for a period which is more than 5 weeks but not more than 3 months, and is the period for which returns are (or are to be) usually made by the person in question

Table 3: monthly etc returns

<i>Group of returns</i>	<i>Relevant tax</i>	<i>Returns in group</i>
1	Aggregates levy	Return under the Aggregates Levy (General) Regulations 2002 (S.I. 2002/761) for a period which— (a) is not more than 1 month, and (b) is the period for which returns are (or are to be) usually made by the person in question
2	Air passenger duty	Return under the Air Passenger Duty Regulations 1994 (S.I. 1994/1738), in the case of a person who is not authorised to pay and account for duty in accordance with the annual accounting scheme and is not an occasional operator
3	Alcoholic liquor duties	Return under regulations under section 49 of ALDA 1979 (beer)
4	Alcoholic liquor duties	Return under regulations under section 56 or 62 of ALDA 1979 (cider and perry; wine and made-wine)
5	Bingo duty	Return under regulations under paragraph 9 of Schedule 3 to BGDA 1981
6	Biofuels duty	Return under regulation 19A of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (S.I. 2004/2065)
7	Climate change levy	Return under the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838) for an accounting period which— (a) is not more than 1 month, and (b) is the period for which returns are (or are to be) usually made by the person in question
8	Deductions on account of tax under Chapter 3 of Part 3 of FA 2004 (construction industry scheme)	Return under regulations under section 70 of FA 2004
9	Excise duties	Return under regulation 9 of the Hydrocarbon Oil (Registered Dealers in Controlled Oil) Regulations 2002 (S.I. 2002/3057) for a period of one month
10	Insurance premium tax	Return under the Insurance Premium Tax Regulations 1994 (S.I. 1994/1774) for a period which— (a) is not more than one month, and (b) is the period for which returns are (or are to be) usually made by the person in question
11	Landfill tax	Return under the Landfill Tax Regulations 1996 (S.I. 1996/1527) for a period which— (a) is not more than 1 month, and (b) is the period for which returns are (or are to be) usually made by the person in question

Table 3: monthly etc returns

<i>Group of returns</i>	<i>Relevant tax</i>	<i>Returns in group</i>
12	Lottery duty	Return under regulations under section 28(2) of FA 1993
13	Value added tax	(1) Return under regulation 25(1)(a) of the Value Added Tax Regulations 1995 (S.I. 1995/2518) (2) Return under regulation 25(1)(c) of those regulations for a period which is not more than 5 weeks, and is the period for which returns are (or are to be) usually made, or a period for which returns are (or are to be) regularly made, by the person in question

- (2) Where an entry in column 3 of Table 1, 2 or 3 which refers to legislation uses terms used in the legislation, the terms have the same meaning in the entry as in the legislation.

### Interpretation

- 3 (1) This paragraph applies for the interpretation of this Schedule.
- (2) References to the Tables, or a particular Table, are to the Tables or that Table in paragraph 2 (unless otherwise specified).
- (3) References to “return” include any return, information, statement, account or other document specified in column 3 of Table 1, 2 or 3.
- (4) References to a group of returns are to a group of returns listed in one of the Tables, and references to returns in or belonging to a group of returns are to be read accordingly.
- (5) Any reference to making a return includes a reference to delivering or submitting a return.
- (6) “Filing date”, in relation to a return, means the date by which it is required to be made to HMRC.
- (7) A failure to file a return on or before the filing date is treated as occurring on the filing date.
- (8) Where a person is required to file an end of period statement for a tax year under regulations under paragraph 8 of Schedule A1 to TMA 1970, for the purposes of this Schedule the statement is to be treated as filed on or before its filing date only if—
- it is actually filed on or before its filing date, and
  - the person’s return for that tax year under section 8 or 8A of TMA 1970 is made on or before the filing date for that return.
- (9) References to months are to—
- tax months, in relation to returns in group 8 in Table 3 (construction industry scheme), and
  - calendar months, in relation to returns in any other group.

(10) “HMRC” means Her Majesty’s Revenue and Customs.

*Application of Schedule to persons with multiple businesses*

- 4 (1) This paragraph applies for the interpretation of this Schedule where a person –
- (a) carries on more than one business, and
  - (b) in relation to two or more of those businesses (the “relevant businesses”), makes returns belonging to the same group of returns.
- (2) If the person makes separate returns for each of the relevant businesses, treat the person as having a separate group of returns of that description (and so a separate liability for points and penalties) for each of the relevant businesses.
- (3) If the person makes a single return for all of the relevant businesses, treat the person as having a single group of returns of that description (and so a single liability for points and penalties) for all of the relevant businesses.
- (4) If sub-paragraph (2) or (3) does not apply, treat the person as having a separate group of returns of that description (and so a separate liability for points and penalties) –
- (a) for each relevant business for which the person makes a separate return (if any), and
  - (b) for each set of relevant businesses for which the person makes a single return.
- (5) A “set of relevant businesses” means two or more relevant businesses for which the person makes a single return.

PART 2

LIABILITY TO A PENALTY

*Liability to penalty points*

- 5 (1) If a person fails to file a return on or before the filing date, the person is liable to one penalty point for the group of returns to which the return belongs (but see sub-paragraphs (2) and (3)).
- (2) A person is not liable to more than one penalty point per month for a group of returns, even if in that month there is more than one failure to file a return in that group on or before the filing date.
- (3) A person is not liable to a penalty point for a group of returns if the person already has the maximum number of penalty points for that group of returns.
- (4) The maximum number of penalty points for a group of returns is –
- (a) if the group is in Table 1, 2 points,
  - (b) if the group is in Table 2, 4 points, and
  - (c) if the group is in Table 3, 5 points.
- (5) See paragraphs 20 to 23 for further rules about liability to a penalty point.



*Award of penalty points*

- 6 (1) Where a person is liable to a penalty point for a group of returns, HMRC may award the person a penalty point for that group.
- (2) Where HMRC award a penalty point they must notify the person, and state in the notice –
- (a) the failure (or failures) in respect of which the penalty point is awarded, and
  - (b) the group of returns for which the penalty point is awarded.
- (3) HMRC may not award a penalty point after the end of the appropriate number of months beginning with the first day of the month after the month in which the failure, in respect of which the person became liable for the penalty point, occurred.
- (4) The appropriate number of months is –
- (a) if the group is in Table 1, 12 months,
  - (b) if the group is in Table 2, 3 months, and
  - (c) if the group is in Table 3, 1 month.

*Expiry of individual penalty points*

- 7 (1) A penalty point for a group of returns expires at the end of the relevant period, unless immediately before the end of that period the person has the maximum number of penalty points for that group of returns.
- (2) The relevant period is the period of 24 months beginning with the first day of the month after the month in which the failure, in respect of which the point was awarded, occurred.

*Expiry of all penalty points for a group of returns*

- 8 (1) Each of a person's penalty points for a group of returns expires at the beginning of the first day on which both condition A and condition B are met.
- (2) Condition A is that the person has delivered each return in the group on or before its filing date for the relevant length of time (or longer).
- (3) The relevant length of time is x months beginning with the first day of the month after the month in which the most recent failure to file a return in the group on or before its filing date occurred.
- (4) In sub-paragraph (3) "x months" means –
- (a) if the group of returns is in Table 1, 24 months,
  - (b) if the group of returns is in Table 2, 12 months, and
  - (c) if the group of returns is in Table 3, 6 months.
- (5) Condition B is met on any day if the person has made all the returns in the group whose filing date fell in the period of 24 calendar months ending with the previous day (whether or not those returns were made on or before their filing date).
- (6) Where each of a person's penalty points for a group of returns expires under this paragraph, HMRC must notify the person.

*Penalty points: effect of moving between groups of returns*

- 9 (1) Paragraphs 10 to 14 apply where a person required to file returns in any of the groups of returns listed in the table below –
- (a) ceases to be required to file returns in that group (the “old” group of returns), and
  - (b) instead becomes required to file returns in another group of returns (the “new” group of returns) in the same class as the old group of returns.
- (2) But where the returns in the old group of returns relate to a business or businesses carried on by the person, paragraphs 10 to 14 apply only if the returns in the new group of returns also relate to that business or all of those businesses.
- (3) The table below lists classes of groups of returns, and the groups of returns in each class.

<i>Class</i>	<i>Relevant tax</i>	<i>Groups of returns in class</i>
1	Aggregates levy	(1) Table 1, group 1 (2) Table 2, group 1 (3) Table 3, group 1
2	Air passenger duty	(1) Table 1, group 2 (2) Table 3, group 2
3	Biofuels duty	(1) Table 2, group 3 (2) Table 3, group 6
4	Climate change levy	(1) Table 1, group 4 (2) Table 2, group 4 (3) Table 3, group 7
5	Excise duties	(1) Table 1, group 5 (2) Table 3, group 9
6	Income tax	(1) Table 1, group 6 (2) Table 2, group 7
7	Income tax or corporation tax	(1) Table 1, group 9 (2) Table 1, group 10 (3) Table 2, group 8
8	Insurance premium tax	(1) Table 1, group 11 (2) Table 2, group 9 (3) Table 3, group 10
9	Landfill tax	(1) Table 1, group 12 (2) Table 2, group 10 (3) Table 3, group 11
10	Value added tax	(1) Table 1, group 13 (2) Table 2, group 15 (3) Table 3, group 13

- 10 (1) This paragraph applies to determine the penalty points the person has for the new group of returns, on becoming required to file returns for the new group of returns.

- (2) If the person has no penalty points for the old group of returns, the person has no penalty points for the new group of returns.
- (3) If the person has penalty points for the old group of returns, the number of penalty points the person has for the new group of returns is determined by taking the number of penalty points the person has for the old group of returns and adjusting it in accordance with the table below.
- (4) If the adjustment gives a number of less than zero, treat the adjusted number of penalty points as zero.

<i>Old group of returns</i>	<i>New group of returns</i>	<i>Adjustment</i>
Any group in Table 1	Any group in Table 1	No adjustment
	Any group in Table 2	Add 2 penalty points
	Any group in Table 3	Add 3 penalty points
Any group in Table 2	Any group in Table 1	Deduct 2 penalty points
	Any group in Table 3	Add 1 penalty point
Any group in Table 3	Any group in Table 1	Deduct 3 penalty points
	Any group in Table 2	Deduct 1 penalty point

- 11 (1) This paragraph applies if the adjusted number of penalty points for the new group of returns is the same as the actual number of penalty points for the old group of returns (and is not zero).
  - (2) Treat the penalty points for the old group of returns as penalty points for the new group of returns.
- 12 (1) This paragraph applies if the adjusted number of penalty points for the new group of returns is greater than zero, but less than the actual number of penalty points for the old group of returns.
  - (2) Treat the person as having, for the new group of returns, the penalty points which were awarded in respect of the x most recent relevant failures.
  - (3) For this purpose “x” is the adjusted number of penalty points for the new group of returns.
  - (4) Treat the penalty points in respect of the other relevant failures as having expired (so that the person has no penalty points for the old group of returns).
  - (5) In this paragraph “relevant failure” means a failure to file a return in the old group of returns on or before its filing date, in respect of which a penalty point was awarded.
- 13 (1) This paragraph applies if the adjusted number of penalty points for the new group of returns is greater than the actual number of penalty points for the old group of returns.
  - (2) Treat all the penalty points for the old group of returns as penalty points for the new group of returns.

- (3) Treat the additional penalty points as having been awarded in respect of relevant failures occurring on the same day as the most recent relevant failure.
  - (4) For this purpose the additional penalty points are the penalty points added by way of adjustment to the actual number of penalty points for the old group of returns.
  - (5) In this paragraph “relevant failure” means a failure to file a return in the old group of returns on or before its filing date, in respect of which a penalty point was awarded.
- 14 (1) Paragraph 8 applies in relation to the new group of returns with the following modifications.
- (2) Sub-paragraph (3) applies as if for the words from “month in which” to the end there were substituted “first month for all or part of which a return in the new group of returns is required to be made”.
  - (3) The reference in sub-paragraph (5) to returns in the group includes returns in the old group of returns.

*Penalty points: effect of moving between groups of returns for some businesses only*

- 15 (1) This paragraph applies where –
- (a) a person is required to file returns in any of the groups of returns listed in the table in paragraph 9 and those returns deal with two or more businesses in the same return, and
  - (b) in relation to some but not all of those businesses, the person –
    - (i) ceases to be required to file returns in that group (the “old” group of returns), and
    - (ii) instead becomes required to file returns in another group of returns (the “new” group of returns) in the same class as the old group of returns.
- (2) If the person has penalty points for the old group of returns, treat those points as having expired (so that the person has no penalty points for the old group of returns or the new group of returns).

*Liability to penalties*

- 16 (1) If a person fails to file a return on or before its filing date and condition A or condition B is met, the person is liable to a penalty.
- (2) Condition A is that –
- (a) the person is awarded a penalty point in respect of the failure, and
  - (b) on being awarded that penalty point, or on being awarded after that failure a penalty point in respect of an earlier failure, the person has the maximum number of penalty points for the group of returns to which the return belongs.
- (3) Condition B is that the failure occurs on a day on which the person has the maximum number of penalty points for the group of returns to which the return belongs.
- (4) The amount of a penalty under this paragraph is £[x].

- (5) See paragraphs 20 to 23 for further rules about liability to a penalty.

#### *Assessments*

- 17 (1) Where a person is liable for a penalty under this Schedule HMRC may assess the penalty.
- (2) Where HMRC assess a penalty they must –
- (a) notify the person, and
  - (b) state in the notice the failure (or failures) for which the person is liable to a penalty.
- (3) Notice of an assessment of a penalty may not be issued before (but may be issued at the same time as) notice under paragraph 6 of the award of the penalty point as a result of which the person is liable to a penalty.
- (4) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (5) An assessment of a penalty under this Schedule –
- (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 in this Schedule),
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with an assessment to tax.

#### *Time limit for assessments*

- 18 An assessment of a penalty under this Schedule may not be made after the end of the period of 2 years beginning with the first day of the month after the month in which the failure, in respect of which the person became liable for the penalty, occurred.

#### *Power to amend figures by regulations*

- 19 The Commissioners for HMRC may by regulations –
- (a) amend paragraph 5(4) so as to increase or reduce the maximum number of penalty points for a group of returns;
  - (b) amend paragraph 8(4) so as to increase or reduce the number of months;
  - (c) amend paragraph 8(5) so as to increase or reduce the number of months;
  - (d) amend paragraph 16(4) so as to increase or reduce the amount of the penalty.

### PART 3

#### SUPPLEMENTARY PROVISION

#### *Familiarisation period*

- 20 (1) The Commissioners for HMRC may by regulations make provision for persons specified in the regulations to be entitled to a familiarisation period for a group of returns specified in the regulations.

- (2) The regulations may make different provision for different purposes.
- (3) If a person is entitled to a familiarisation period for a group of returns, the person is not liable to a penalty point or a penalty under this Schedule in respect of any failure to file a return in that group which occurs during the familiarisation period.

#### *Reasonable excuse*

- 21 (1) Liability to a penalty point or a penalty under this Schedule does not arise in respect of a failure to make a return if the person satisfies HMRC (or on appeal, the tribunal) that there is a reasonable excuse for the failure.
- (2) For this purpose –
  - (a) an insufficiency of funds is not a reasonable excuse, unless the person satisfies HMRC (or on appeal, the tribunal) that it was attributable to events outside the person's control,
  - (b) where the person relies on another to do anything, that is not a reasonable excuse unless the person satisfies HMRC (or on appeal, the tribunal) that the person took reasonable care to avoid the failure, and
  - (c) where the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse only if the person satisfies HMRC (or on appeal, the tribunal) that the failure was remedied without unreasonable delay after the excuse ceased.
- (3) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 25(1)).

#### *Double jeopardy*

- 22 A person is not liable to a penalty point or a penalty under this Schedule in respect of a failure in respect of which the person has been convicted of an offence.

#### *Withdrawal of notice to file a return*

- 23 (1) This paragraph applies where –
  - (a) a person is liable for a penalty point or a penalty under this Schedule in relation to a failure to make a return within group 7 or 8 in Table 1, and
  - (b) HMRC decide (on the request of the person or otherwise) to give the person a notice under section 8B of TMA 1970 withdrawing a notice under section 8 or 8A of that Act.
- (2) This paragraph also applies where –
  - (a) a person is liable for a penalty point or a penalty under this Schedule in relation to a failure to make a return falling within group 9 in Table 1, and
  - (b) HMRC decide (on a request under section 12AAA of TMA 1970) to give a notice under that section withdrawing a notice under section 12AA of that Act.

- (3) The notice under section 8B or 12AAA of TMA 1970 may include provision cancelling liability to the penalty point or the penalty from the date specified in the notice.

### *Appeals*

- 24 A person may appeal against a decision of HMRC that the person is liable under this Schedule to –
- (a) a penalty point, or
  - (b) a penalty.
- 25 (1) An appeal under paragraph 24 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC’s 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 to pay a penalty before an appeal against the assessment of the penalty is determined, or
  - (b) in respect of any other matter expressly provided for by this Schedule.
- 26 (1) On an appeal under paragraph 24 that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision –
- (a) that the person is liable to a penalty point, or
  - (b) that a penalty is payable by the person.
- (2) If the appeal relates to a penalty, the tribunal may also affirm or cancel HMRC’s decision that the person was liable to any of the penalty points by virtue of which the person was liable to the penalty.
- (3) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 25(1)).

### *Regulations: supplementary provision*

- 27 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under paragraph 19 (power to amend figures in Part 2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (3) A statutory instrument containing regulations under paragraph 20 (familiarisation periods) is subject to annulment in pursuance of a resolution of the House of Commons.
- (4) Regulations under this Schedule may include transitional, transitory and saving provision.

## SCHEDULE 2

Section 1

## PENALTIES FOR DELIBERATELY WITHHOLDING INFORMATION

## PART 1

## INTRODUCTION

*Introduction*

- 1 This Schedule provides for penalties to be payable by a person who, by failing to make a return listed in the Table below on or before the filing date, deliberately withholds information which would enable or assist HMRC to assess the person's liability to tax.

	<i>Tax to which return etc relates</i>	<i>Return or other document</i>
1	Aggregates levy	Return under regulations under section 25 of FA 2001
2	Air passenger duty	Return under regulations under section 38 of FA 1994
3	Alcoholic liquor duties	Return under regulations under section 13, 49, 56 or 62 of ALDA 1979
4	Annual tax on enveloped dwellings	Annual tax on enveloped dwellings return under section 159 of FA 2013
5	Annual tax on enveloped dwellings	Return of adjusted chargeable amount under section 160 of FA 2013
6	Bingo duty	Return under regulations under paragraph 9 of Schedule 3 to BGDA 1981
7	Capital gains tax	NRCGT return under section 12ZB of TMA 1970
8	Climate change levy	Return under regulations under paragraph 41 of Schedule 6 to FA 2000
9	Corporation tax	Company tax return under paragraph 3 of Schedule 18 to FA 1998
10	Deductions on account of tax under Chapter 3 of Part 3 of FA 2004 (construction industry scheme)	Return under regulations under section 70 of FA 2004
11	Excise duties	Return under regulations under section 60A of the Customs and Excise Management Act 1979
12	Excise duties	Return under regulations under section 93 of the Customs and Excise Management Act 1979
13	Excise duties	Return under regulations under section 100G or 100H of the Customs and Excise Management Act 1979
14	Gaming duty	Return under directions under paragraph 10 of Schedule 1 to FA 1997
15	General betting duty	Return under regulations under section 166 of FA 2014



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	<i>Tax to which return etc relates</i>	<i>Return or other document</i>
16	Hydrocarbon oil duties	Return under regulations under section 21 of HODA 1979
17	Income tax	Statement under regulations under paragraph 8 of Schedule A1 to TMA 1970
18	Income tax	Return under any of the following provisions of the Income Tax (PAYE) Regulations 2003 (SI 2003/2682)– (a) regulation 67B (real time returns) (b) regulation 67D (exceptions to regulation 67B)
19	Income tax	Return under section 254 of FA 2004 (pension schemes)
20	Income tax or capital gains tax	(1) Return under section 8 of TMA 1970 (2) Accounts, statement or document required under section 8(1)(b) of TMA 1970 or (when paragraph 3 of Schedule 14 to F(No 2)A 2017 comes into force) section 8(1AB)(b) of TMA 1970
21	Income tax or capital gains tax	(1) Return under section 8A of TMA 1970 (2) Accounts, statement or document required under section 8A(1)(b) of TMA 1970 or (when paragraph 4 of Schedule 14 to F(No 2)A 2017 comes into force) section 8A(1AB)(b) of TMA 1970
22	Income tax or corporation tax	(1) Return under section 12AA(2)(a) or (3)(a) of TMA 1970 (2) Accounts, statement or document required under section 12AA(2)(b) or (3)(b) of TMA 1970
23	Income tax or corporation tax	Return under regulations under paragraph 10 of Schedule A1 to TMA 1970
24	Inheritance tax	Account under section 216 or 217 of IHTA 1984
25	Insurance premium tax	Return under regulations under section 54 of FA 1994
26	Landfill tax	Return under regulations under section 49 of FA 1996
27	Lottery duty	Return under regulations under section 28(2) of FA 1993
28	Machine games duty	Return under regulations under paragraph 18 of Schedule 24 to FA 2012
29	Petroleum revenue tax	Return under paragraph 2 of Schedule 2 to OTA 1975
30	Petroleum revenue tax	Statement under section 1(1)(a) of PRTA 1980
31	Pool betting duty	Return under regulations under section 166 of FA 2014
32	Remote gaming duty	Return under regulations under section 166 of FA 2014
33	Soft drinks industry levy	Return under regulation 21 of the Soft Drinks Industry Levy Regulations 2018 (S.I. 2018/41)

	<i>Tax to which return etc relates</i>	<i>Return or other document</i>
34	Stamp duty land tax	Land transaction return under section 76 of FA 2003 or further return under section 81 of that Act
35	Stamp duty land tax	Return under paragraph 3, 4 or 8 of Schedule 17A to FA 2003
36	Stamp duty reserve tax	Notice of charge to tax under regulations under section 98 of FA 1986
37	Tobacco products duty	Return under regulations under section 7 of TPGA 1979

*Interpretation*

- 2 (1) This paragraph applies for the interpretation of this Schedule.
- (2) “Return” means any return, statement, account or other document specified in column 3 of the Table in paragraph 1.
- (3) Any reference to making a return includes a reference to delivering or submitting a return.
- (4) “Filing date”, in relation to a return, means the date by which it is required to be made to HMRC.
- (5) References to a liability to tax, in relation to a return falling within item 10 in the Table in paragraph 1 (construction industry scheme) are to a liability to make payments in accordance with Chapter 3 of Part 3 of FA 2004.
- (6) References to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.
- (7) “HMRC” means Her Majesty’s Revenue and Customs.

## PART 2

## LIABILITY TO A PENALTY

*Penalty for deliberately withholding information*

- 3 (1) A person who fails to make a return on or before the filing date is liable to a penalty under this paragraph if (and only if) the condition in sub-paragraph (2) is met.
- (2) The condition is that at any time (including any time after the filing date), by failing to make the return the person deliberately withholds information which would enable or assist HMRC to assess the person’s liability to tax.
- (3) If the withholding of the information is deliberate and concealed, the penalty is –
  - (a) the relevant percentage of any liability to tax which would have been shown in the return in question, or
  - (b) if the amount in paragraph (a) is less than £300, £300.
- (4) For the purposes of sub-paragraph (3)(a) the relevant percentage is –
  - (a) for the withholding of category 0 information, 100%,

- (b) for the withholding of category 1 information, 125%,
  - (c) for the withholding of category 2 information, 150%, and
  - (d) for the withholding of category 3 information, 200%.
- (5) If the withholding of the information is deliberate but not concealed, the penalty is –
- (a) the relevant percentage of any liability to tax which would have been shown in the return in question, or
  - (b) if the amount in paragraph (a) is less than £300, £300.
- (6) For the purposes of sub-paragraph (5)(a) the relevant percentage is –
- (a) for the withholding of category 0 information, 70%,
  - (b) for the withholding of category 1 information, 87.5%,
  - (c) for the withholding of category 2 information, 105%, and
  - (d) for the withholding of category 3 information, 140%.
- (7) Paragraph 4 explains the 4 categories of information.
- (8) The withholding of information by a person is –
- (a) deliberate and concealed, if the person deliberately withholds the information and makes arrangements to conceal the fact that the information has been withheld;
  - (b) deliberate but not concealed, if the person deliberately withholds the information but does not make arrangements to conceal the fact that the information has been withheld.
- (9) See paragraphs 14 and 15 for further rules about liability to a penalty.

#### *Categories of information*

- 4 (1) Information is category 0 information if –
- (a) it involves a domestic matter,
  - (b) it involves an offshore transfer and the territory in question is a category 0 territory,
  - (c) it involves an offshore matter, the territory in question is a category 0 territory and it is information which would enable or assist HMRC to assess the person’s liability to income tax, capital gains tax or inheritance tax, or
  - (d) it involves an offshore matter and it is information which would enable or assist HMRC to assess the person’s liability to a tax other than income tax, capital gains tax or inheritance tax.
- (2) 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 the person’s liability to income tax, capital gains tax or inheritance tax.
- (3) Information is category 2 information if –
- (a) it involves an offshore matter or an offshore transfer,
  - (b) the territory in question is a category 2 territory, and
  - (c) it is information which would enable or assist HMRC to assess the person’s liability to income tax, capital gains tax or inheritance tax.

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- (4) Information is category 3 information if –
- (a) it involves an offshore matter or an offshore transfer,
  - (b) the territory in question is a category 3 territory, and
  - (c) it is information which would enable or assist HMRC to assess the person’s liability to income tax, capital gains tax or inheritance tax.
- (5) Information “involves an offshore matter” if the liability to tax which would have been shown in the return includes a liability to tax 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.
- (6) 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 (5) 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.
- (7) 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 the person’s liability to income tax, capital gains tax or inheritance tax,
  - (c) by failing to make the return, the person deliberately withholds the information (whether or not the withholding of the information is also concealed), and
  - (d) the applicable condition in paragraph 5 is satisfied.
- (8) Information “involves a domestic matter” if it does not involve an offshore matter or an offshore transfer.
- (9) If the information which the person withholds falls into more than one category –
- (a) the person’s failure to make the return is to be treated for the purposes of this Schedule as if it were separate failures, one for each category of information according to the matters or transfers which the information involves, and
  - (b) for each separate failure, the liability to tax which would have been shown in the return in question is taken to be such share of the liability to tax which would have been shown in the return mentioned in paragraph (a) as is just and reasonable.
- (10) For the purposes of this Schedule –
- (a) paragraph 21A of Schedule 24 to FA 2007 (classification of territories) has effect, but
  - (b) an order under that paragraph does not apply to a failure if the filing date is before the date on which the order comes into force.
- (11) In this paragraph and paragraph 5 –
- (a) “assets” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling;
  - (b) “UK” means the United Kingdom, including the territorial sea of the United Kingdom.

### *Offshore transfers*

- 5 (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.
- (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 4 is the highest category of territory by virtue of which the information involves an offshore transfer.
- (7) “Relevant date” means the date on which the person becomes liable to a penalty under this Schedule.

### *Reductions for disclosure*

- 6 (1) Paragraph 7 provides for reductions in the penalty under this Schedule where the person discloses information which has been withheld by a failure to make a return (“relevant information”).
- (2) A person discloses relevant information that involves a domestic matter by –
- (a) telling HMRC about it,
  - (b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
  - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.
- (3) A person discloses relevant information that involves an offshore matter or an offshore transfer by –
- (a) telling HMRC about it,
  - (b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld,

- (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and
- (d) providing HMRC with additional information.
- (4) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (3)(d).
- (5) Regulations under sub-paragraph (4) are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under sub-paragraph (4) is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) Disclosure of relevant information –
- (a) is “unprompted” if made at a time when the person has no reason to believe that HMRC have discovered or are about to discover the relevant information, and
- (b) otherwise, is “prompted”.
- (8) In relation to disclosure “quality” includes timing, nature and extent.
- (9) Paragraph 4(5) to (8) applies to determine whether relevant information involves an offshore matter, an offshore transfer or a domestic matter.
- 7 (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table in this paragraph (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.
- (2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it –
- (a) in the case of a prompted disclosure, in column 2 of the Table, and
- (b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard percentage</i>	<i>Minimum percentage for prompted disclosure</i>	<i>Minimum percentage for unprompted disclosure</i>
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

- (3) But HMRC must not under this paragraph reduce a penalty below £300.

#### *Special reduction*

- 8 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under this Schedule.

- (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 a taxpayer is balanced by a potential over-payment by a taxpayer.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to –
  - (a) staying a penalty, and
  - (b) agreeing a compromise in relation to proceedings for a penalty.

*Interaction with other penalties*

- 9 (1) This paragraph applies where –
  - (a) a person is liable to a penalty under this Schedule in respect of a failure, and
  - (b) the amount of the penalty is the amount in paragraph 3(3)(a) or 3(5)(a).
- (2) The amount of that penalty is to be reduced by the amount of any other penalty incurred by the person, the amount of which is determined by reference to the same liability to tax.
- (3) In sub-paragraph (2), the reference to “any other penalty” does not include –
  - (a) a penalty under Schedule 56 to FA 2009 (penalty for late payment of tax), or
  - (b) a penalty under Part 4 of FA 2014 (penalty where corrective action not taken after follower notice etc.).

*Determination of penalty where no return made*

- 10 (1) For the purposes of a penalty under this Schedule references to a liability to tax which would have been shown in a return are references to the amount which, if a complete and accurate return had been delivered on the filing date, would have been shown to be due or payable by the taxpayer in respect of the tax concerned for the period to which the return relates.
- (2) In the case of a penalty which is assessed at a time before the person makes the return to which the penalty relates, HMRC may either –
  - (a) proceed on the assumption that the amount in paragraph 3(3)(a) is less than the amount in paragraph 3(3)(b), or the amount in paragraph 3(5)(a) is less than the amount in paragraph 3(5)(b), or
  - (b) determine the amount mentioned in sub-paragraph (1) to the best of HMRC’s information and belief.
- (3) If the person subsequently makes a return, the penalty must be re-assessed by reference to the amount of tax shown to be due and payable in that return (but subject to any amendments or corrections to the return).
- (4) In calculating a liability to tax which would have been shown in a return, no account is to be taken of any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.

*Assessments*

- 11 (1) Where a person is liable for a penalty under this Schedule HMRC may assess the penalty.
- (2) Where HMRC assess a penalty they must –
- (a) notify the person, and
  - (b) state in the notice the failure (or failures) for which the person is liable to a penalty.
- (3) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (4) An assessment of a penalty under this Schedule –
- (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 in this Schedule),
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with an assessment to tax.

*Supplementary assessments*

- 12 (1) A supplementary assessment may be made in respect of a penalty under this Schedule if an earlier assessment –
- (a) is based on a liability to tax that would have been shown in a return, and that liability is found by HMRC to be an underestimate, or
  - (b) is based on a liability to tax that is found by HMRC to be insufficient.
- (2) Sub-paragraph (3) applies if an assessment in respect of a penalty –
- (a) is based on a liability to tax that would have been shown in a return, and that liability is found by HMRC to be an overestimate, or
  - (b) is based on a liability to tax that is found by HMRC to be excessive.
- (3) HMRC may by notice to the person amend the assessment so that it is based upon the correct amount.
- (4) An amendment under sub-paragraph (3) –
- (a) does not affect when the penalty must be paid;
  - (b) may be made after the last day on which the assessment in question could have been made under paragraph 13.

*Time limit for assessments*

- 13 (1) An assessment of a penalty under this Schedule may not be made after the later of Date A and (where it applies) Date B.
- (2) Date A is the end of the period of 2 years beginning with the filing date.
- (3) Date B is the last day of 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 or it is ascertained that the liability is nil.
- (4) In sub-paragraph (3)(a) “appeal period” means the period during which –



- (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.
- (5) Sub-paragraph (1) does not apply to a re-assessment under paragraph 10(3).
- (6) A re-assessment under that paragraph must be made before the end of the period of 2 years beginning with the day on which the return is made.

### PART 3

#### SUPPLEMENTARY PROVISION

##### *Double jeopardy*

- 14 A person is not liable to a penalty under this Schedule in respect of a failure or action in respect of which the person has been convicted of an offence.

##### *Withdrawal of notice to file a return*

- 15 (1) This paragraph applies where –
- (a) a person is liable for a penalty under this Schedule in relation to a failure to make a return within item 20 or 21 in the Table in paragraph 1, and
  - (b) HMRC decide (on the request of the person or otherwise) to give the person a notice under section 8B of TMA 1970 withdrawing a notice under section 8 or 8A of that Act.
- (2) This paragraph also applies where –
- (a) a person is liable for a penalty under this Schedule in relation to a failure to make a return within item 22 in the Table in paragraph 1, and
  - (b) HMRC decide (on a request under section 12AAA of TMA 1970) to give a notice under that section withdrawing a notice under section 12AA of that Act.
- (3) The notice under section 8B or 12AAA of TMA 1970 may include provision under this paragraph cancelling liability to the penalty from the date specified in the notice.

##### *Appeals*

- 16 (1) A person may appeal against a decision of HMRC that a penalty is payable by the person.
- (2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person.
- 17 (1) An appeal under paragraph 16 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's 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 to pay a penalty before an appeal against the assessment of the penalty is determined, or
  - (b) in respect of any other matter expressly provided for by this Schedule.
- 18 (1) On an appeal under paragraph 16(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision that a penalty is payable by the person.
- (2) On an appeal under paragraph 16(2) that is notified to the tribunal, the tribunal may –
- (a) affirm HMRC’s decision, or
  - (b) substitute for HMRC’s decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its decision for HMRC’s decision in relation to a penalty under this Schedule, the tribunal may rely on paragraph 8 –
- (a) to the same extent as HMRC (which may mean applying the same percentage reductions as HMRC to a different starting point), or
  - (b) to a different extent, but only if the tribunal thinks that HMRC’s decision in respect of the application of paragraph 8 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 17(1)).

### *Partnerships*

- 19 (1) This paragraph applies where –
- (a) the representative partner, or a successor of the representative partner, fails to make a return falling within item 22 in the Table in paragraph 1, or
  - (b) the nominated partner fails to make a return falling within item 23 of that Table.
- (2) A penalty in respect of the failure is payable by every relevant partner.
- (3) In accordance with sub-paragraph (2), any reference in this Schedule to the person is to be read as including the relevant partner.
- (4) An appeal under paragraph 16 in connection with a penalty payable by virtue of this paragraph may be brought only by –
- (a) the representative partner or a successor of the representative partner, in a case within sub-paragraph (1)(a), or
  - (b) the nominated partner, in a case within sub-paragraph (1)(b).
- (5) Where such an appeal is brought in connection with a penalty payable in respect of a failure, the appeal is to be treated as if it were an appeal in connection with every penalty payable in respect of that failure.
- (6) In this paragraph –  
“nominated partner” has the meaning given by paragraph 5(5) of Schedule A1 to TMA 1970;

“relevant partner” means a person who was a partner in the partnership to which the return relates at any time during the period in respect of which the return was required;

“representative partner” means a person who has been required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver any return;

“successor” has the meaning given by section 12AA(11) of TMA 1970.

### *Companies*

- 20 (1) Where a penalty under this Schedule is payable by a company for a deliberate act or failure which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer.
- (2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.
- (3) In the application of sub-paragraph (1) to a body corporate “officer” means—
- (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006),
  - (b) a manager, and
  - (c) a secretary.
- (4) In the application of sub-paragraph (1) in any other case “officer” means—
- (a) a director,
  - (b) a manager,
  - (c) a secretary, and
  - (d) any other person managing or purporting to manage any of the company’s affairs.
- (5) Where HMRC have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1) —
- (a) paragraph 8 (special reduction) applies to the specified portion as to a penalty,
  - (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
  - (c) paragraphs 11(4) and 13 (assessments) apply as if the notice were an assessment of a penalty,
  - (d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 12 (supplementary assessments),
  - (e) paragraph 14 (double jeopardy) applies as if the officer were liable to a penalty, and
  - (f) paragraphs 16 to 18 (appeals) apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer.
- (6) In this paragraph “company” means any body corporate or unincorporated association, but does not include any partnership, a local authority or a local authority association.

