
68 Penalties in connection with offshore matters and offshore transfers

- (1) The Schedule contains provisions amending –
 - (a) Schedule 24 to FA 2007 (penalties for errors in tax returns etc),
 - (b) Schedule 41 to FA 2008 (penalties for failure to notify etc), and
 - (c) Schedule 55 to FA 2009 (penalties for failure to make return etc).
- (2) The Schedule comes into force on such day as the Treasury may appoint by regulations made by statutory instrument.
- (3) Regulations under subsection (2) –
 - (a) may commence a provision generally or only for specified purposes, and
 - (b) may appoint different days for different provisions or for different purposes.

SCHEDULE TO CLAUSE 68

PENALTIES IN CONNECTION WITH OFFSHORE MATTERS AND OFFSHORE TRANSFERS

Amendments to Schedule 24 to the Finance Act 2007 (c. 11)

- 1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- 2 (1) Paragraph 9 (reductions for disclosure) is amended as follows.
 - (2) For sub-paragraph (A1) substitute –
 - “(A1) Paragraph 10 provides for reductions in penalties –
 - (a) under paragraph 1 where a person discloses an inaccuracy that involves a domestic matter,
 - (b) under paragraph 1A where a person discloses a supply of false information or withholding of information, and
 - (c) under paragraph 2 where a person discloses a failure to disclose an under-assessment.
 - (A2) Paragraph 10A provides for reductions in penalties under paragraph 1 where a person discloses an inaccuracy that involves an offshore matter or an offshore transfer.
 - (A3) Sub-paragraph (1) applies where a person discloses –
 - (a) an inaccuracy that involves a domestic matter,
 - (b) a careless inaccuracy that involves an offshore matter,
 - (c) a supply of false information or withholding of information, or
 - (d) a failure to disclose an under-assessment.”
 - (3) In sub-paragraph (1), in the words before paragraph (a), for the words from “an inaccuracy” to “under-assessment” substitute “the matter”.
 - (4) After sub-paragraph (1) insert –
 - “(1A) Sub-paragraph (1B) applies where a person discloses –
 - (a) a deliberate inaccuracy (whether concealed or not) that involves an offshore matter, or
 - (b) an inaccuracy that involves an offshore transfer.
 - (1B) A person discloses the inaccuracy by –
 - (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the inaccuracy,
 - (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy is fully corrected, and
 - (d) providing HMRC with additional information.

(1C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (1B)(d).

(1D) Regulations under sub-paragraph (1C) are to be made by statutory instrument.

(1E) An instrument containing regulations under sub-paragraph (1C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(5) At the end insert –

“(4) Paragraph 4A(4) to (5) applies to determine whether an inaccuracy involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.”

3 In paragraph 10 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
70%	35%	20%
100%	50%	30%”

4 After paragraph 10 insert –

“10A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (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 %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
37.5%	18.75%	0%
45%	22.5%	0%

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
60%	30%	0%
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%

Amendments to Schedule 41 to the Finance Act 2008 (c. 9)

- 5 Schedule 41 to FA 2008 (penalties: failure to notify etc) is amended as follows.
- 6 (1) Paragraph 12 (reductions for disclosure) is amended as follows.
- (2) For sub-paragraph (1) substitute –
- “(1) Paragraph 13 provides for reductions in penalties –
- (a) under paragraph 1 where P discloses a relevant failure that involves a domestic matter, and
- (b) under paragraphs 2 to 4 where P discloses a relevant act or failure.
- (1A) Paragraph 13A provides for reductions in penalties under paragraph 1 where P discloses a relevant failure that involves an offshore matter or an offshore transfer.
- (1B) Sub-paragraph (2) applies where P discloses –
- (a) a relevant failure that involves a domestic matter,
- (b) a non-deliberate relevant failure that involves an offshore matter, or
- (c) a relevant act or failure giving rise to a penalty under any of paragraphs 2 to 4.”
- (3) In sub-paragraph (2), for “a” substitute “the”.
- (4) After sub-paragraph (2) insert –
- “(2A) Sub-paragraph (2B) applies where P discloses –
- (a) a deliberate relevant failure (whether concealed or not) that involves an offshore matter, or
- (b) a relevant failure that involves an offshore transfer.
- (2B) P discloses the failure by –

-
- (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it,
 - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and
 - (d) providing HMRC with additional information.
- (2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).
- (2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.
- (2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(5) At the end insert –

“(5) Paragraph 6A(4) to (5) applies to determine whether a failure involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.

(6) In this paragraph “relevant failure” means a failure to comply with a relevant obligation.”

7 In paragraph 13 (amount of reduction for disclosure), for the Table in sub-paragraph (3) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
70%	35%	20%
100%	50%	30%”

8 After paragraph 13 insert –

“13A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (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) for a prompted disclosure, in column 2 of the Table, and
- (b) for an unprompted disclosure, in column 3 of the Table.

(3) Where the Table shows a different minimum for case A and case B –

- (a) the case A minimum applies if HMRC becomes aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure;
- (b) otherwise, the case B minimum applies.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
37.5%	case A: 12.5% case B: 25%	case A: 0% case B: 12.5%
45%	case A: 15% case B: 30%	case A: 0% case B: 15%
60%	case A: 20% case B: 40%	case A: 0% case B: 20%
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%

Amendments to Schedule 55 to the Finance Act 2009 (c.10)

- 9 Schedule 55 to FA 2009 (penalty for failure to make returns etc) is amended as follows
- 10 (1) Paragraph 14 (reductions for disclosure) is amended as follows.
 - (2) At the beginning insert –
 - “(A1) In this paragraph, “relevant information” means information which has been withheld by a failure to make a return.”
 - (3) In sub-paragraph (1) –
 - (a) after “6(3) or (4)” insert “where P discloses relevant information that involves a domestic matter”;
 - (b) for the words from “information which” to the end substitute “relevant information”.

(4) After sub-paragraph (1) insert –

“(1A) Paragraph 15A provides for reductions in the penalty under paragraph 6(3) or (4) where P discloses relevant information that involves an offshore matter or an offshore transfer.

(1B) Sub-paragraph (2) applies where –

(a) P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves a domestic matter, or

(b) P is liable to a penalty under any of the other provisions mentioned in sub-paragraph (1) and P discloses relevant information.”

(5) After sub-paragraph (2) insert –

“(2A) Sub-paragraph (2B) applies where P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves an offshore matter or an offshore transfer.

(2B) P discloses relevant information 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.

(2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).

(2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.

(2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(6) At the end insert –

“(5) Paragraph 6A(4) to (5) applies to determine whether relevant information involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.”

11 In paragraph 15 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
70%	35%	20%
100%	50%	30%”

12 After paragraph 15 insert –

“15A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (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 %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % 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.”