

## Explanatory Note

### Clause 68 and Schedule: Penalties in connection with offshore matters and offshore transfers

#### Summary

1. This measure increases minimum penalties for inaccuracies, failure to notify a charge to tax or failure to deliver a return, where the penalty relates to an offshore matter or transfer. For the increased penalties to apply, the behaviour that led to the penalty must have been deliberate or deliberate and concealed.

#### Details of the clause and Schedule

##### Section 1: Part 1:

2. Paragraph (1) amends Schedule 24 Finance Act 2007, Schedule 41 Finance Act 2008 and Schedule 55 Finance Act 2009, to as provided for by Schedule X.
3. Paragraph (2) and (3) provides that the Schedule comes into force on a day appointed by regulations, and that different days may be appointed in respect of different provisions for specified purposes.

##### Schedule : Para 2-5: Amendments to Schedule 24 to the Finance Act 2007

4. Paragraph 1 provides that Schedule 24 to Finance Act 2001 is amended as set out in the following paragraphs.
5. Paragraph 2(1), (2) and (3) amends the penalties for errors in a taxpayer's document rules in Schedule 24 Finance Act 2007, so that paragraph 9 (reductions for disclosure) applies to only inaccuracies that involve domestic matters (that is, those that do not involve an offshore matter).
6. Paragraph 2(4) amends the provisions for reducing penalties for deliberate offshore inaccuracy under Schedule 24 Finance Act 2007, requiring the taxpayer to provide HMRC with "additional information", in addition to that which is already requirement to make a full disclosure of the inaccuracy. Sub-paragraphs (1C) and (1D) requires the Treasury to set out what is meant by "additional information" by statutory instrument.
7. Paragraph (5) applies the current rules in paragraph 4A(4) to (5) Schedule 24 Finance 2007 to determine whether the inaccuracy involves an offshore matter, an offshore transfer or domestic matter.

8. Paragraph 3 amends paragraph 10(2) of Schedule 24 Finance Act 2007 so that the table shows penalty rates levied where the failure involves a domestic matter. These rates are unchanged from current legislation
9. Paragraph 4 inserts paragraph 10A(1) into Schedule 24 Finance Act 2007 which provides maximum and minimum penalty rates for inaccuracies involving an offshore matter or offshore transfer. For inaccuracies involving offshore transfers or deliberate offshore matters, the minimum penalty rates are increased from the minimum penalty rates applicable before the amendments come into effect.

## **Schedule : Para 5-8: Amendments to Schedule 41 to the Finance Act 2008**

10. Paragraph 5 provides that Schedule 41 to Finance Act 2008 (penalties: failure to notify etc.) is to be amended.
11. Paragraph 6(1) to (4) amends the penalties for failure to notify rules in Schedule 41 Finance Act 2008, so that failures involving an offshore transfer, or an offshore matter with deliberate behaviour, require the taxpayer to provide "additional information" to HMRC in order to receive the maximum penalty reduction. The requirements for penalty reduction in other cases (such as cases involving domestic matters) remain unchanged.
12. Paragraph 12(2C) to (2E) of Schedule 41 to Finance Act 2008 provide for the Treasury to set out what is meant by "additional information" in a statutory instrument.
13. Paragraph 6(5) applies the current rules in paragraph 6A(4) to (5) Schedule 41 Finance 2008 for the purposes of paragraph 12 of that Schedule to determine whether the inaccuracy involves an offshore matter, an offshore transfer or domestic matter.
14. Paragraph 7 amends paragraph 13 of Schedule 41 Finance Act 2008 so that the substituted table shows penalty rates levied where the failure involves a domestic matter. These rates are unchanged from current legislation.
15. Paragraph 8 inserts a new paragraph 13A into Schedule 41 Finance Act 2008 which provides maximum and minimum penalty rates for failures involving an offshore matter or offshore transfer. For failures involving offshore transfers or deliberate offshore matters, the minimum penalty rates are increased.

## **Schedule : Para 9-12: Amendments to Schedule 55 to the Finance Act 2009**

16. Paragraph 9 provides that Schedule 55 to Finance Act 2009 (penalties for failure to make returns etc.) is to be amended.
17. Paragraph 10(1) to (4) amends the failure to make a return rules in Schedule 55 Finance Act 2009, so that failures involving an offshore transfer, or an offshore matter with deliberate behaviour, require the taxpayer to provide "additional information" to HMRC in order to receive the maximum penalty reduction. The requirements for penalty reduction in other cases (such as cases involving domestic matters) remain unchanged.
18. Paragraph 10(5) inserts paragraphs 14(2A) to 2(E) into Schedule 55 Finance Act 2009, which

make provision for the Treasury to set out what is meant by "additional information" in a statutory instrument.

19. Paragraph 10(6) provides that the current rules in paragraph 6A(4) to (5) Schedule 55 Finance 2009 apply for the purposes of paragraph 14 of that Schedule to determine whether the failure is an offshore matter, offshore transfer or domestic matter.
20. Paragraph 11 amends paragraph 13 so that the substituted table shows penalty rates levied where the failure involves a domestic matter. These rates are unchanged from current legislation.
21. Paragraph 12 inserts paragraph 15A into Schedule 55 Finance 2009 which provides maximum and minimum penalty rates for failures involving an offshore matter or offshore transfer. For failures involving offshore transfers or deliberate offshore matters, the minimum penalty rates are increased.

## Background note

22. Following consultation, which ran from July 2015 to October 2015, this clause has been introduced to support the Government's wider strategy to tackle offshore tax evasion. In order to achieve the objectives set out in this strategy, there needs to be a strong deterrent against offshore non-compliance, including robust civil sanctions.
23. The clause will increase minimum penalties for cases of deliberate offshore inaccuracies in a return, failure to notify a liability to tax and failure to deliver a return. The clause will also require taxpayers to disclose additional details of the offshore inaccuracy or failure in order to receive maximum penalty reductions.
24. The sanctions will apply to a liability to income tax, capital gains tax or inheritance tax that arises offshore, or income or gains that arise in the UK, but are transferred offshore and not declared to HMRC.
25. Discussed in the consultation document and during consultation meetings was an additional penalty charged on the value of the underlying asset used in the offshore inaccuracy or failure. The Government will be holding further, informal consultation on the draft clauses of this asset-based penalty, which will be published in early 2016.
26. If you have any questions about this change, or comments on the legislation, please contact Timothy Holmes on 03000 522 637 (email: [timothy.holmes@hmrc.gsi.gov.uk](mailto:timothy.holmes@hmrc.gsi.gov.uk)).