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**67 Civil penalties for enablers of offshore tax evasion**

- (1) The Schedule makes provision for civil penalties for persons who enable offshore tax evasion by other persons.
- (2) The Schedule comes into force on such day as the Treasury may appoint by regulations made by statutory instrument.
- (3) Regulations under this section may –
  - (a) appoint different days for different purposes, and
  - (b) make such transitional provision as the Treasury considers appropriate in connection with the coming into force of any provision of this Part.

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## SCHEDULE TO CLAUSE 67

### PENALTIES FOR ENABLERS OF OFFSHORE TAX EVASION

#### PART 1

##### LIABILITY FOR PENALTY

###### *Liability for penalty*

- 1 (1) A penalty is payable by a person (P) where conditions A and B are met.
- (2) Condition A is that P—
  - (a) has enabled another person (Q) to carry out offshore tax evasion, and
  - (b) knew when P's actions were carried out that they enabled, or were likely to enable, Q to carry out offshore tax evasion.
- (3) For the purposes of this Part P enables Q to carry out offshore tax evasion by encouraging, assisting or otherwise facilitating Q to carry out offshore tax evasion.
- (4) Q carries out “offshore tax evasion” by—
  - (a) committing a relevant offence where the tax at stake is income tax, capital gains tax or inheritance tax, or
  - (b) engaging in behaviour that makes Q liable (if the applicable conditions are met) to a relevant penalty where the tax at stake is income tax, capital gains tax or inheritance tax.
- (5) The relevant offences are—
  - (a) an offence of cheating the public revenue involving offshore activity, or
  - (b) an offence under section 106A of TMA 1970 (fraudulent evasion of income tax) involving offshore activity,
  - (c) an offence under section 106B, 106C or 106D of TMA 1970 (offences relating to certain failures to comply with section 7 or 8 by a taxpayer chargeable to income tax or capital gains tax on or by reference to offshore income, assets or liabilities).
- (6) The relevant penalties are—
  - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 (errors in taxpayer's document) involving an offshore matter or an offshore transfer (within the meaning of that Schedule),
  - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 (failure to notify etc) in relation to a failure to comply with section 7(1) of TMA 1970 involving offshore activity,
  - (c) a penalty under paragraph 1 of Schedule 55 to FA 2009 (failure to make returns) involving offshore activity,
  - (d) a penalty under paragraph 1 of Schedule 21 to FA 2015 (penalties in connection with relevant offshore asset moves).

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- (7) Condition B is that –
- (a) in the case of offshore tax evasion consisting of the commission of a relevant offence, Q has been convicted of the offence and the conviction is final, or
  - (b) in the case of offshore tax evasion consisting of behaviour that makes Q liable to a relevant penalty, Q has been found to be liable to such a penalty, assessed and notified, and the penalty is final.
- (8) A conviction becomes final when the time allowed for bringing an appeal against it expires or, if later, when any appeal against conviction has been determined.
- (9) A penalty becomes final –
- (a) when the time allowed for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is determined, or
  - (b) if a contract is made between the Commissioners and the person under which the Commissioners agree not to take proceedings to recover it, at the time the contract is made.

*Meaning of “involving offshore activity” and related expressions*

- 2 (1) This paragraph has effect for the purposes of this Schedule.
- (2) Conduct involves offshore activity if it involves –
- (a) an offshore matter,
  - (b) an offshore transfer, or
  - (c) a relevant offshore asset move.
- (3) Conduct involves an offshore matter if it results in a potential loss of revenue that is charged on or by reference to –
- (a) income arising from a source in a territory outside the United Kingdom,
  - (b) assets situated or held in a territory outside the United Kingdom,
  - (c) activities carried on wholly or mainly in a territory outside the United Kingdom, or
  - (d) anything having effect as if it were income, assets or activities of the kind described above.
- (4) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (3) as situated or held in a territory outside the United Kingdom if they are so held or situated immediately after the transfer of value by reason of which inheritance tax becomes chargeable.
- (5) Conduct involves an offshore transfer if –
- (a) it does not involve an offshore matter,
  - (b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,
  - (c) the condition set out in paragraph 4AA of Schedule 24 to FA 2007 is satisfied.
- (6) Conduct involves a relevant offshore asset move if at a time when Q is the beneficial owner of an asset (“the qualifying time”) –
- (a) the asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory,

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- (b) the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory, or
  - (c) there is a change in the arrangements for the ownership of the asset, and Q remains the beneficial owner of the asset, or any part of it, immediately after the qualifying time.
- (7) Paragraphs 4(2) to (4) of Schedule 21 to FA 2015 apply for the purposes of sub-paragraph (6) above as they apply for purposes of paragraph 4 of that Schedule.
- (8) In sub-paragraph (6) above, “specified territory” has the same meaning as in paragraph 4 of Schedule 21 to FA 2015.

*Amount of penalty*

- 3 The penalty payable under paragraph 1 is the higher of—
- (a) 100% of the potential lost revenue, or
  - (b) £3,000.

*Meaning of “potential lost revenue”*

- 4 (1) The potential lost revenue in respect of conduct resulting in a liability to a penalty under paragraph 1 is the additional amount due or payable in respect of the tax at stake as a result of correcting any inaccuracy in information in a document (including an inaccuracy attributable to a supply of false information or withholding information) or a failure to notify an under-assessment
- (2) The reference in sub-paragraph (1) to the additional amount due or payable includes a reference to—
- (a) an amount payable to HMRC having been erroneously paid by way of repayment of tax,
  - (b) an amount which would have been repayable by HMRC had the inaccuracy or assessment not been corrected.
- (3) Paragraphs 6 to 8 of Schedule 24 to FA 2007 apply (so far as relevant) for the purposes of this Schedule as they apply for the purposes of Schedule 24.

*Reduction of penalty for disclosure etc by P*

- 5 (1) If P (who would otherwise be liable to a penalty under paragraph 1)—
- (a) makes a disclosure to HMRC of—
    - (i) a matter relating to an inaccuracy in a document, a supply of false information or a failure to disclose an under-assessment,
    - (ii) P’s enabling of actions by Q that constituted (or might constitute) a relevant offence or that made (or might make) Q liable to a relevant penalty, or
    - (iii) any other matter HMRC regard as assisting them in relation to the assessment of P’s liability to a penalty under paragraph 1, or
  - (b) assists HMRC in any investigation leading to Q being charged with a relevant offence or found liable to a relevant penalty,

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HMRC must reduce the penalty to one that reflects the quality of the disclosure or assistance.

- (2) But the penalty may not be reduced –
    - (a) in the case of unprompted disclosure or assistance, below whichever is the higher of –
      - (i) 10% of the potential lost revenue, or
      - (ii) £1,000, or
    - (b) in the case of prompted disclosure or assistance, below whichever is the higher of –
      - (i) 30% of potential lost revenue, or
      - (ii) £3,000.
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- (1) This paragraph applies for the purposes of paragraph 5.
  - (2) P discloses a matter 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, an inaccuracy attributable to the supply of false information or withholding of information or an under-assessment), and
    - (c) allowing HMRC access to records for any reasonable purpose connected with resolving the matter (for example for the purpose of ensuring that an inaccuracy in a document, an inaccuracy attributable to the supply of false information or withholding of information or an under-assessment is fully corrected).
  - (3) P assists HMRC in relation to an investigation leading to Q being charged with a relevant offence or found liable to a relevant penalty by –
    - (a) assisting or encouraging Q to disclose all relevant facts to HMRC,
    - (b) allowing HMRC access to records, or
    - (c) any other conduct which HMRC considers assisted them in investigating or assessing Q’s liability to such a penalty.
  - (4) Disclosure or assistance by P –
    - (a) is “unprompted” if made at a time when P has no reason to believe that HMRC have discovered or are about to discover Q’s offshore tax evasion (including any inaccuracy in a document, supply of false information or withholding of information, or under-assessment), and
    - (b) otherwise is “prompted”.
  - (5) In relation to disclosure or assistance, “quality” includes timing, nature and extent.
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- (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 –

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- (a) staying a penalty, or
  - (b) agreeing a compromise in relation to proceedings for a penalty.

*Procedure for assessing penalty, etc*

- 8 (1) Where a person becomes liable for a penalty under paragraph 1 HMRC must –
- (a) assess the penalty,
  - (b) notify the person, and
  - (c) state in the notice the period in respect of which the penalty is assessed.
- (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), and
  - (b) may be enforced as if it were 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 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,
  - (b) may be made after the last day on which the assessment in question could have been made under paragraph 9.
- 9 An assessment of a person as liable to a penalty under paragraph 1 may not take place more than 2 years after the fulfilment of the conditions mentioned in paragraph 1(1) (in relation to that person) first came to the attention of an officer of Revenue and Customs.

*Appeals*

- 10 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.
- 11 (1) An appeal under paragraph 10 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).

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- (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.
- 12 (1) On an appeal under paragraph 10(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.
- (2) On an appeal under paragraph 10(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 5 or 7 (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 11(1)).

*Double jeopardy*

- 13 A person is not liable to a penalty under paragraph 1 in respect of conduct for which the person –
- (a) has been convicted of an offence, or
  - (b) has been assessed to a penalty under any provision other than paragraph 1.

*Application of provisions of TMA 1970*

- 14 Subject to the provisions of this Part, the following provisions of TMA 1970 apply for the purposes of this Part 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 114 (delivery and service of documents).

*Interpretation of Part 1*

- 15 (1) This paragraph applies for the purposes of this Schedule.
- (2) References to an assessment to tax, in relation to inheritance tax, are to a determination.

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PART 2

PUBLISHING DETAILS OF PERSONS FOUND LIABLE TO PENALTIES

*Naming etc of persons assessed to penalty or penalties under paragraph 1*

- 16 (1) HMRC may publish information about a person if –
- (a) in consequence of an investigation, one or more penalties under paragraph 1 is found to have been incurred by the person, and
  - (b) the potential lost revenue in relation to the penalty (or the aggregate of the potential lost revenue in relation to each of the penalties) exceeds £25,000.
- (2) HMRC may also publish information about a person if the person has been assessed to 5 or more penalties under paragraph 1 in any 5 year period.
- (3) The information that may be published is –
- (a) the person's name (including any trading name, previous name or pseudonym),
  - (b) the person's address (or registered office),
  - (c) the nature of any business carried on by the person,
  - (d) the amount of the penalty or penalties in question,
  - (e) the periods or times to which the actions giving rise to the penalty or penalties relate,
  - (f) any other information that HMRC consider it appropriate to publish in order to make clear the person's identity.
- (4) The information may be published in any manner that HMRC consider appropriate.
- (5) Before publishing any information HMRC must –
- (a) inform the person that they are considering doing so, and
  - (b) afford the person the opportunity to make representations about whether it should be published.
- (6) No information may be published before the day on which the penalty becomes final or, where more than one penalty is involved, the latest day on which any of the penalties becomes final.
- (7) No information may be published for the first time after the end of the period of one year beginning with that day.
- (8) No information may be published about a penalty if the amount of the penalty –
- (a) is reduced under paragraph 5 to –
    - (i) 10% of the potential lost revenue (in the case of unprompted disclosure or assistance), or
    - (ii) 30% of potential lost revenue (in a case of prompted disclosure or assistance),
  - (b) would have been reduced to 10% or 30% of potential lost revenue but for the imposition of the minimum penalty,
  - (c) is reduced under paragraph 7 to nil or stayed.



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- (9) For the purposes of this paragraph a penalty becomes final if it has been assessed and the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined.
- 17 (1) The Treasury may by regulations amend paragraph 16(1) to vary the amount for the time being specified in sub-paragraph (1)(b).
- (2) Regulations under this paragraph are to be made by statutory instrument.
- (3) A statutory instrument under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.