
Conduct of tax agents

1 Conduct of tax agents

- (1) Schedule 1 contains provision about the conduct of tax agents.
- (2) Schedule 1 comes into force on 1 April 2026.
- (3) The Treasury may by regulations make transitional or saving provision in connection with the coming into force of any provision in Schedule 1.
- (4) The power to make regulations under subsection (3) includes power to make different provision for different purposes.
- (5) Regulations under this section are to be made by statutory instrument.

SCHEDULE 1

Section 1

CONDUCT OF TAX AGENTS

PART 1

AMENDMENTS TO SCHEDULE 38 TO THE FINANCE ACT 2012

Introduction

- 1 Schedule 38 to FA 2012 (tax agents: dishonest conduct) is amended as follows.

Meaning of “tax agent”

- 2 In paragraph 2 (tax agent) –
- (a) in sub-paragraph (1), for “an individual” substitute “a person”;
 - (b) in sub-paragraph (2) –
 - (i) for “Individuals” substitute “Persons”;
 - (ii) for “the organisations” substitute “any organisation”.

Deliberate conduct

- 3 For paragraph 3 and the italic heading before it (dishonest conduct), substitute –

“Deliberate conduct

- 3 (1) A person “engages in deliberate conduct” if, in the course of acting as a tax agent, the person deliberately does, or omits to do, something with a view to bringing about a loss of tax revenue.
- (2) It does not matter whether –
- (a) a loss is actually brought about, or
 - (b) the person is acting on the instruction of clients.
- (3) A loss of tax revenue would be brought about for these purposes if clients were to –
- (a) account for less tax than they are required to account for by law,
 - (b) obtain more tax relief than they are entitled to obtain by law,
 - (c) account for tax later than they are required to account for it by law, or
 - (d) obtain tax relief earlier than they are entitled to obtain it by law.
- (4) “Tax relief” includes –
- (a) any exemption from or deduction or credit against or in respect of tax, and

- (b) any repayment of tax.”

Conduct notices etc

- 4 (1) Omit Part 2 (establishing dishonest conduct).
- (2) After Part 3 insert –

“PART 3A

CONDUCT NOTICES

- 25B(1) This paragraph applies if HMRC determine that a person is engaging in or has engaged in deliberate conduct.
- (2) An authorised officer (or an officer of Revenue and Customs with the approval of an authorised officer) may notify the person of the determination.
- (3) The notice must state the grounds on which the determination was made.
- (4) For the effect of notifying the person, see paragraph 29(2).
- (5) A notice under this paragraph is referred to as a “conduct notice”.
- (6) In relation to a conduct notice, a reference to “the determination” is to the determination forming the subject of the notice.”
- (3) In paragraph 29 (assessment of penalties) –
 - (a) in sub-paragraph (2), omit from “and either” to the end;
 - (b) omit sub-paragraph (3).

Power to obtain files etc

- 5 (1) In paragraph 7 (circumstances in which power is exercisable) –
 - (a) in sub-paragraph (1), omit “and only with the approval of the tribunal”;
 - (b) after sub-paragraph (1) insert –
 - “(1A) An officer of Revenue and Customs –
 - (a) may ask for the approval of the tribunal before exercising the power in paragraph 8 in respect of a tax agent (and for the effect of obtaining such approval see paragraph 20 (appeals));
 - (b) may not without the approval of the tribunal exercise the power in paragraph 8 in respect of a person other than a tax agent.”;
 - (c) for sub-paragraph (2) substitute –
 - “(2) Case A is where an officer of Revenue and Customs has reason to suspect that a person is engaging in, or has engaged in, deliberate conduct.”;

- (d) in sub-paragraph (4) –
 - (i) omit “determination or”;
 - (ii) omit “confirmed or”.
- (2) In paragraph 20 (appeal against file access notice) –
 - (a) after sub-paragraph (1) insert –
 - “(1A) If –
 - (a) the document-holder is the tax agent, and
 - (b) the giving of the file access notice was not approved by the tribunal (see paragraph 7(1A)(a)), the document-holder may appeal against the file access notice or any requirement in it.”;
 - (b) in sub-paragraph (2), after “appeal” insert “under sub-paragraph (1) or (1A)”.

File access notice: daily penalties

- 6 (1) After paragraph 23 insert –

“Increased daily default penalty

- 23A(1) This paragraph applies if –
- (a) a penalty under paragraph 23 is assessed in respect of a person's failure to comply with a file access notice,
 - (b) the failure continues for more than 30 days beginning with the date on which notification of that assessment was issued, and
 - (c) HMRC has (at any time) told the person that an application may be made under this paragraph for an increased daily penalty to be assessable.
- (2) An officer of Revenue and Customs may make an application to the tribunal for an increased daily penalty to be assessable on the person.
- (3) If the tribunal decides that an increased daily penalty should be assessable –
- (a) the tribunal must determine the day from which the increased daily penalty is to apply and the maximum amount of that penalty (“the new maximum amount”), and
 - (b) from that day, paragraph 23 has effect in the person's case as if the new maximum amount were substituted for the amount for the time being specified there.
- (4) The new maximum amount may not be more than £1,000.
- (5) But subject to that, in determining the new maximum amount the tribunal must have regard to –
- (a) the likely cost to the person of complying with the notice,

- (b) any benefits to the person of not complying with it, and
 - (c) any benefits to anyone else resulting from the person's non-compliance.
- (6) If the tribunal makes a determination under this paragraph, HMRC must notify the person.
- (7) The notification must specify the new maximum amount and the day from which it applies.”
- (2) In paragraph 31 (appeal against penalty), after sub-paragraph (1) insert—
 - “(1A) But sub-paragraph (1)(b) does not give a right of appeal against the amount of an increased daily penalty payable as a result of paragraph 23A (increased daily default penalty).”

File access notice: penalties for inaccurate documents etc

- 7 (1) After paragraph 25 insert—

“Penalties for inaccurate documents

- 25A(1) If a person, in purported compliance with a file access notice, provides a document that contains an inaccuracy, the person is liable to a penalty not exceeding £3,000 where—
 - (a) the inaccuracy is deliberate or due to a failure by the person to take reasonable care,
 - (b) the person knows of the inaccuracy at the time the document is provided but does not inform HMRC at that time, or
 - (c) the person discovers the inaccuracy some time later and fails to take reasonable steps to inform HMRC.
- (2) Where the document contains more than one inaccuracy, a penalty is payable for each inaccuracy.”
- (2) In paragraph 24 (failure to comply with time limit), for “or 23” substitute “, 23 or 25A”.
- (3) In paragraph 25(1) (reasonable excuse), for “or 23” substitute “, 23 or 25A”.

Sanctions for deliberate conduct

- 8 (1) For paragraph 26 and the italic heading before it (penalty for dishonest conduct) substitute—

“Penalty for deliberate conduct

- 26 (1) A person who engages in deliberate conduct is liable to a penalty.
- (2) The penalty to which the person is liable is—
 - (a) in a case where there is potential lost revenue—
 - (i) 70% of the potential lost revenue, or

- (ii) if the person disclosed the deliberate conduct, the percentage of the potential lost revenue determined in accordance with sub-paragraphs (3) and (4), or
 - (b) in a case where there is no potential lost revenue, £7,500.
- (3) If a person who is liable to a penalty under this paragraph disclosed the deliberate conduct, HMRC must reduce the penalty from 70% of the potential lost revenue to a percentage of the potential lost revenue that reflects the quality of the disclosure.
- (4) But the percentage may not be reduced to a percentage that is below –
 - (a) in the case of a prompted disclosure, 35%, and
 - (b) in the case of an unprompted disclosure, 20%.
- (5) Where a person would, but for this sub-paragraph, be liable to a penalty under this paragraph of an amount that is lower than £7,500, the person is instead liable to a penalty of that amount.
- (6) Where a person would, but for this sub-paragraph, be liable to a penalty under this paragraph of an amount that is higher than £1,000,000, the person is instead liable to a penalty of that amount.
- (7) This paragraph is subject to paragraphs 26B (increased penalties) and 27 (special reduction).

Disclosure of conduct

- 26A(1) For the purposes of paragraph 26, a person “discloses” deliberate conduct by –
- (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in identifying the client or clients concerned and in quantifying the loss of tax revenue (if any) brought about by it, and
 - (c) allowing HMRC access to records for the purpose of ensuring that any such loss is recovered or otherwise properly accounted for.
- (2) A disclosure is “unprompted” if it is made at a time when the person has no reason to believe that HMRC have discovered or are about to discover the deliberate conduct.
 - (3) Otherwise, a disclosure is “prompted”.
 - (4) In relation to disclosure, “quality” includes timing, nature and extent.

Increased penalties

- 26B(1) Sub-paragraph (6) applies where –
- (a) a person is liable to a penalty under paragraph 26, and

- (b) in the period of 20 years ending with the day on which the person became liable to the penalty, either condition A or B is met.
- (2) Condition A is that the person has been given a notice of assessment to a penalty under paragraph 26 on more than 2, but fewer than 6, occasions.
- (3) Condition B is that the person has been given a notice of assessment to a penalty under paragraph 26 on 6 or more occasions.
- (4) For the purposes of sub-paragraphs (2) and (3), a notice of assessment to a penalty under paragraph 26 is not to be taken into account if—
 - (a) the notice was given to the person more than 4 years before the day mentioned in sub-paragraph (1)(b), and
 - (b) in the period of 4 years after the notice was given, the person was not given another such notice of assessment.
- (5) Where—
 - (a) a notice of assessment to a penalty under paragraph 26 is not to be taken into account in accordance with sub-paragraph (4), and
 - (b) the person had previously been given one or more other notices of assessment to a penalty under paragraph 26, those previous notices are also not to be taken into account for the purposes of sub-paragraphs (2) and (3).
- (6) Paragraph 26 applies in relation to the penalty mentioned in sub-paragraph (1)(a) as if—
 - (a) where condition A is met—
 - (i) each reference to 70% of the potential lost revenue were a reference to 85% of the potential lost revenue;
 - (ii) the reference to £1,000,000 were a reference to £5,000,000;
 - (b) where condition B is met—
 - (i) each reference to 70% of the potential lost revenue were a reference to 100% of the potential lost revenue;
 - (ii) sub-paragraph (6) (maximum amount) were omitted.

Potential lost revenue

- 26C(1) For the purposes of paragraph 26 the “potential lost revenue” in relation to a person who engages in deliberate conduct means the potential lost revenue attributable to that deliberate conduct.

- (2) The potential lost revenue attributable to any deliberate conduct is determined in accordance with sub-paragraphs (3) to (6).
- (3) If the deliberate conduct relates to –
 - (a) giving a return or other document containing an inaccuracy to HMRC, or
 - (b) a failure to notify an under-assessment to HMRC,
 the potential lost revenue is the potential lost revenue under the applicable provisions of paragraphs 5 to 8 of Schedule 24 to FA 2007.
- (4) If the deliberate conduct relates to a failure to comply with an obligation specified in the table in paragraph 1 of Schedule 41 to FA 2008 (failure to notify etc), the potential lost revenue is the potential lost revenue under the applicable provisions of paragraph 7 of that Schedule.
- (5) If the deliberate conduct relates to a failure to make or deliver a return, or to deliver any other document, specified in the table in paragraph 1 of Schedule 55 to FA 2009 (failure to make returns etc), the potential lost revenue is the amount of the liability to tax under the applicable provisions of paragraph 24 of that Schedule.
- (6) If the deliberate conduct relates to a failure to make a return listed in the table in paragraph 1 of Schedule 25 to FA 2021 (deliberately withholding information) where the condition in paragraph 3(2) of that Schedule is met, the potential lost revenue is the amount of the liability to tax under the applicable provisions of paragraph 11 of that Schedule.
- (7) In its application for the purposes of sub-paragraph (3), paragraph 6 of Schedule 24 to FA 2007 has effect as if –
 - (a) sub-paragraph (1) were omitted;
 - (b) in sub-paragraph (4), for paragraphs (b) to (d) there were substituted –

“(b) other understatements.”

Quantifying amount of potential lost revenue

- 26D In the case of a penalty which is assessed at a time before HMRC has been given any return or other information required to quantify the potential lost revenue to which the penalty relates –
- (a) HMRC is to determine the potential lost revenue to the best of HMRC's information and belief, and
 - (b) if the return or other information is subsequently provided to HMRC, the penalty must be re-assessed by reference to the amount of tax shown to be due and payable in that return or other information (but subject to any amendments or corrections to the return).”

- (2) In paragraph 27(1) and (2)(a) (special reduction), for “£5,000” substitute “£7,500”.
- (3) In paragraph 28 (power to publish details) –
 - (a) for sub-paragraph (1), substitute –

“(1) The Commissioners must publish information about a person if the person incurs a penalty under paragraph 26 of more than £7,500.”;
 - (b) omit sub-paragraph (3);
 - (c) in sub-paragraph (4), after “(5)” insert “, (7)”.

Assessment and appeals

- 9 (1) In paragraph 30(3)(a) (deadline for assessment), omit “(see paragraph 29(2))”.
- (2) In paragraph 31 (appeals), in sub-paragraph (1)(a), after “Part 3” insert “or 4”.

Power to change amount of penalties

- 10 In paragraph 35 (power to change amount of penalties) –
 - (a) for sub-paragraph (1), substitute –

“(1) The Treasury may by regulations amend an amount for the time being specified in any of paragraphs 22(1), 23, 23A(4), 25A(1), 26(5) and (6), 26B(6), 27(1) and (2)(a) and 28(1) to reflect a change in the value of money.”;
 - (b) omit sub-paragraph (2).

Meaning of “tax”

- 11 In paragraph 37 (tax) –
 - (a) in sub-paragraph (1), after paragraph (la) insert –
 - “(lb) diverted profits tax,
 - (lc) multinational top-up tax,
 - (ld) domestic top-up tax,
 - (le) insurance premium tax,
 - (lf) annual tax on enveloped dwellings,
 - (lg) plastic packaging tax,
 - (lh) economic crime (anti-money laundering) levy,
 - (li) relevant foreign tax,
 - (lj) digital services tax,
 - (lk) soft drinks industry levy,”;

(b) after sub-paragraph (4) insert –

“(5) In this paragraph “relevant foreign tax” has the same meaning as in Schedule 36 to FA 2008 (see paragraph 63(4) of that Schedule).”

Minor and consequential amendments

12 In paragraph 1 (overview) –

- (a) omit sub-paragraph (b);
- (b) after sub-paragraph (c) insert –

“(ca) Part 3A confers power on HMRC to issue conduct notices,”.

13 In each of the following provisions, for “dishonest” substitute “deliberate” –

- (a) the Schedule heading;
- (b) paragraph 1(a) and (d) (overview);
- (c) paragraph 9(3)(b) (relevant documents);
- (d) paragraph 13(2) (file access notice: approval by tribunal);
- (e) the Part 4 heading;
- (f) paragraph 28(2)(e) and (g) (power to publish details);
- (g) paragraph 30(4) and (5) (assessment of penalties);
- (h) paragraph 40 (loss of tax revenue).

14 (1) In each of the following provisions, for “an individual” substitute “a person” –

- (a) paragraph 7(3)(a) (file access notice: circumstances in which power is exercisable);
- (b) paragraph 13(2) (file access notice: approval by tribunal);
- (c) paragraph 27(1) (special reduction);
- (d) paragraph 28(4) (power to publish details).

(2) In each of the following provisions, for “the individual” (in each place it occurs) substitute “the person” –

- (a) paragraph 7(3)(b), (5)(a) and (b) and (6) (file access notice: circumstances in which power is exercisable);
- (b) paragraph 28(2)(c) and (5) (power to publish details).

(3) In paragraph 28(2)(a), (b) and (f) and (5), for “the individual’s” substitute “the person’s”.

PART 2

CONSEQUENTIAL AMENDMENTS

Taxes Management Act 1970

- 15 In section 103ZA of TMA 1970 (disapplication of sections 100 to 103 in the case of certain penalties), in paragraph (g), for “dishonest” substitute “deliberate”.

Finance Act 2012

- 16 In section 223 of FA 2012 (tax agents: dishonest conduct) –
- (a) in the heading, for “dishonest” substitute “deliberate”;
 - (b) in subsection (1), for “dishonest” substitute “deliberate”.

Finance Act 2014

- 17 In Schedule 34 to FA 2014 (promoters of tax avoidance schemes: threshold conditions), for paragraph 4 and the italic heading before it (dishonest tax agents) substitute –

“Tax agents

- 4 A person meets this condition if the person is given a notification of a penalty under paragraph 26 of Schedule 38 to FA 2012 (tax agents: deliberate conduct) and either –
- (a) the time period during which a notice of appeal may be given in relation to the penalty has expired, or
 - (b) an appeal against the penalty has been made and the tribunal has confirmed the decision that a penalty is payable under that paragraph (whether or not the amount of the penalty is varied).”