

**Changes to legislation:** Finance Act 2008, Paragraph 6A is up to date with all changes known to be in force on or before 10 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### SCHEDULE 41

#### PENALTIES: FAILURE TO NOTIFY AND CERTAIN VAT AND EXCISE WRONGDOING

##### Modifications etc. (not altering text)

- C1 Sch. 41 applied (with modifications) (22.7.2020) by Finance Act 2020 (c. 14), Sch. 16 para. 13
- C1 Sch. 41 modified (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 paras. 33, 34
- C1 Sch. 41 applied (with modifications) (22.7.2020) by Finance Act 2020 (c. 14), Sch. 16 para. 11(6) (with Sch. 16 para. 11(7))

##### *Amount of penalty: standard amount*

- [<sup>F1</sup>6A] (1) A failure is in category 1 if—
- (a) it involves a domestic matter, or
  - (b) it involves an offshore matter and—
    - (i) the territory in question is a category 1 territory, or
    - (ii) the tax at stake is a tax other than income tax or capital gains tax.
- (2) A failure is in category 2 if—
- (a) it involves an offshore matter [<sup>F2</sup>or an offshore transfer],
  - (b) the territory in question is a category 2 territory, and
  - (c) the tax at stake is income tax or capital gains tax.
- (3) A failure is in category 3 if—
- (a) it involves an offshore matter [<sup>F3</sup>or an offshore transfer],
  - (b) the territory in question is a category 3 territory, and
  - (c) the tax at stake is income tax or capital gains tax.
- (4) A failure “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 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.
- [<sup>F4</sup>4A] A failure “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 tax at stake is income tax or capital gains tax, and

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- (d) the applicable condition in paragraph 6AA is satisfied.]
- (5) A failure “involves a domestic matter” if it results in a potential loss of revenue [<sup>F5</sup>and does not involve either an offshore matter or an offshore transfer].
- (6) If a single failure is in more than one category (each referred to as a “relevant category”)—
- (a) it is to be treated for the purposes of this Schedule as if it were separate failures, one in each relevant category according to the matters [<sup>F6</sup>or transfers] that it involves, and
  - (b) the potential lost revenue in respect of each separate failure is taken to be such share of the potential lost revenue in respect of the single failure (see paragraphs 7 and 11) as is just and reasonable.
- (7) 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 relevant obligations that are to be complied with by a date before the date on which the order comes into force.
- <sup>F7</sup>(8) .....
- (9) In this paragraph [<sup>F8</sup>and paragraph 6AA]—
- “assets” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling;
- “UK” means the United Kingdom, including the territorial sea of the United Kingdom.]

#### Textual Amendments

- F1** Sch. 41 paras. 6-6D substituted for Sch. 41 para. 6 (6.4.2011) by [Finance Act 2010 \(c. 13\), s. 35\(2\)](#), [Sch. 10 para. 8](#); S.I. 2011/975, art. 2(1) (with art. 4)
- F2** Words in [Sch. 41 para. 6A\(2\)\(a\)](#) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(3\)](#); S.I. 2016/456, art. 4(1)
- F3** Words in [Sch. 41 para. 6A\(3\)\(a\)](#) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(4\)](#); S.I. 2016/456, art. 4(1)
- F4** [Sch. 41 para. 6A\(4A\)](#) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(5\)](#); S.I. 2016/456, art. 4(1)
- F5** Words in [Sch. 41 para. 6A\(5\)](#) substituted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(6\)](#); S.I. 2016/456, art. 4(1)
- F6** Words in [Sch. 41 para. 6A\(6\)\(a\)](#) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(7\)](#); S.I. 2016/456, art. 4(1)
- F7** [Sch. 41 para. 6A\(8\)](#) omitted (with effect in accordance with art. 4(2) of the commencing S.I.) by virtue of [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(8\)](#); S.I. 2016/456, art. 4(1)
- F8** Words in [Sch. 41 para. 6A\(9\)](#) inserted (with effect in accordance with art. 4(2) of the commencing S.I.) by [Finance Act 2015 \(c. 11\), s. 120\(2\)](#), [Sch. 20 para. 11\(9\)](#); S.I. 2016/456, art. 4(1)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 41 para. 6(1A) inserted by [2015 c. 11 Sch. 20 para. 10\(2\)](#)
- Sch. 41 para. 6A(A1)(1) substituted for Sch. 41 para. 6A(1) by [2015 c. 11 Sch. 20 para. 11\(2\)](#)