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## SCHEDULES

### SCHEDULE 22

Section 165

#### ASSET-BASED PENALTY FOR OFFSHORE INACCURACIES AND FAILURES

##### PART 1

##### LIABILITY FOR PENALTY

###### *Circumstances in which asset-based penalty is payable*

- 1 (1) An asset-based penalty is payable by a person (P) where—
- (a) one or more standard offshore tax penalties have been imposed on P in relation to a tax year (see paragraphs 2 and 3), and
  - (b) the potential lost revenue threshold is met in relation to that tax year (see paragraph 4).
- (2) But this is subject to paragraph 6 (restriction on imposition of multiple asset-based penalties in relation to the same asset).

###### **Commencement Information**

- II** Sch. 22 para. 1 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), **reg. 2(b)**

###### *Meaning of standard offshore tax penalty*

- 2 (1) A standard offshore tax penalty is a penalty that falls within sub-paragraph (2), (3) [<sup>F1</sup>(4) or (4A)] .
- (2) A penalty falls within this sub-paragraph if—
- (a) it is imposed under paragraph 1 of Schedule 24 to FA 2007 (inaccuracy in taxpayer's document),
  - (b) the inaccuracy for which the penalty is imposed involves an offshore matter or an offshore transfer,
  - (c) it is imposed for deliberate action (whether concealed or not), and
  - (d) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.
- (3) A penalty falls within this sub-paragraph if—
- (a) it is imposed under paragraph 1 of Schedule 41 to FA 2008 (penalty for failure to notify),
  - (b) the failure for which the penalty is imposed involves an offshore matter or an offshore transfer,
  - (c) it is imposed for a deliberate failure (whether concealed or not), and

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(d) the tax at stake is (or includes) capital gains tax or asset-based income tax.

(4) A penalty falls within this sub-paragraph if—

- (a) it is imposed under paragraph 6 of Schedule 55 to FA 2009 (penalty for failure to make return more than 12 months after filing date),
- (b) it is imposed for the withholding of information involving an offshore matter or an offshore transfer,
- (c) it is imposed for a deliberate withholding of information (whether concealed or not), and
- (d) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.

[<sup>F2</sup>(4A) A penalty falls within this paragraph if—

- (a) it is imposed on a person under paragraph 1 of Schedule 18 to FA 2017 (requirement to correct relevant offshore tax non-compliance),
- (b) the person was aware at any time during the RTC period that at the end of the 2016-17 tax year P had relevant offshore tax non-compliance to correct, and
- (c) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.]

(5) In a case where the inaccuracy, failure or withholding of information for which a penalty is imposed involves both an offshore matter or an offshore transfer and a domestic matter, the standard offshore tax penalty is only that part of the penalty that involves the offshore matter or offshore transfer.

[<sup>F3</sup>(5A) Sub-paragraph (5) does not apply to a penalty imposed under paragraph 1 of Schedule 18 to FA 2017.]

(6) In a case where the tax at stake in relation to a penalty includes a tax other than capital gains tax, inheritance tax or asset-based income tax, the standard offshore tax penalty is only that part of the penalty which relates to capital gains tax, inheritance tax or asset-based income tax.

(7) “Asset-based income tax” means income tax that is charged under any of the provisions mentioned in column 1 of the table in paragraph 13(2).

#### Textual Amendments

- F1** Words in Sch. 22 para. 2(1) substituted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 18 para. 28(2)(a)**
- F2** Sch. 22 para. 2(4A) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 18 para. 28(2)(b)**
- F3** Sch. 22 para. 2(5A) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 18 para. 28(2)(c)**

#### Commencement Information

- I2** Sch. 22 para. 2 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), **reg. 2(b)**

#### *Tax year to which standard offshore tax penalty relates*

3 (1) Where a standard offshore tax penalty is imposed under paragraph 1 of Schedule 24 to FA 2007, the tax year to which that penalty relates is—

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- (a) if the tax at stake as a result of the inaccuracy is income tax or capital gains tax, the tax year to which the document containing the inaccuracy relates;
  - (b) if the tax at stake as a result of the inaccuracy is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.
- (2) Where a standard offshore tax penalty is imposed under paragraph 1 of Schedule 41 to FA 2008 for a failure to comply with an obligation specified in the table in that paragraph, the tax year to which that penalty relates is the tax year to which the obligation relates.
- (3) Where a standard offshore tax penalty is imposed under paragraph 6 of Schedule 55 to FA 2009 for a failure to make a return or deliver a document specified in the table of paragraph 1 of that Schedule, the tax year to which that penalty relates is—
  - (a) if the tax at stake is income tax or capital gains tax, the tax year to which the return or document relates;
  - (b) if the tax at stake is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.
- [<sup>F4</sup>(4) Where a standard offshore penalty is imposed under paragraph 1 of Schedule 18 to FA 2017, the tax year to which that penalty relates is—
  - (a) if the tax at stake in relation to the uncorrected relevant offshore tax non-compliance is income tax or capital gains tax, the tax year or years to which the failure or inaccuracy constituting the relevant offshore tax non-compliance in question relates;
  - (b) if the tax at stake in relation to the uncorrected relevant offshore tax non-compliance is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.
- (5) In sub-paragraph (4) references to uncorrected relevant offshore tax non-compliance are to the relevant offshore tax non-compliance in respect of which the standard offshore penalty is imposed.]

#### Textual Amendments

- F4** Sch. 22 para. 3(4)(5) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(3\)](#)

#### Commencement Information

- I3** Sch. 22 para. 3 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

#### *Potential lost revenue threshold*

- 4 (1) The potential lost revenue threshold is reached where the offshore PLR in relation to a tax year exceeds £25,000.
- (2) The Treasury may by regulations change the figure for the time being specified in sub-paragraph (1).
- (3) Regulations under sub-paragraph (2) are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under sub-paragraph (2) is subject to annulment in pursuance of a resolution of the House of Commons.

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- (5) Regulations under sub-paragraph (2)—
- (a) may make different provision for different purposes;
  - (b) may contain supplemental, incidental, consequential, transitional and transitory provision.

**Commencement Information**

**I4** Sch. 22 para. 4 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

*Offshore PLR*

- 5 (1) The offshore PLR, in relation to a tax year, is the total of—
- (a) the potential lost revenue (in the case of a standard offshore tax penalty imposed under Schedule 24 to FA 2007 or Schedule 41 to FA 2008 [<sup>F5</sup>or Schedule 18 to FA 2017]), and
  - (b) the liability to tax (in the case of a standard offshore tax penalty imposed under Schedule 55 to FA 2009),
- by reference to which all of the standard offshore tax penalties imposed on P in relation to the tax year are assessed.

- (2) Sub-paragraphs (3) to (5) apply where—
- (a) a penalty is imposed on P under paragraph 1 of Schedule 24 to FA 2007, paragraph 1 of Schedule 41 to FA 2008 or paragraph 6 of Schedule 55 to FA 2009, and
  - (b) the potential lost revenue or liability to tax by reference to which the penalty is assessed relates to a standard offshore tax penalty and one or more other penalties.

In this paragraph, such a penalty is referred to as a “combined penalty”.

- (3) Only the potential lost revenue or liability to tax relating to the standard offshore tax penalty is to be taken into account in calculating the offshore PLR.
- (4) Where the calculation of the potential lost revenue or liability to tax by reference to which a combined penalty is assessed depends on the order in which income or gains are treated as having been taxed, for the purposes of calculating the offshore PLR—
- (a) income and gains relating to domestic matters are to be taken to have been taxed before income and gains relating to offshore matters and offshore transfers;
  - (b) income and gains relating to taxes that are not capital gains tax, inheritance tax or asset-based income tax are to be taken to have been taxed before income and gains relating to capital gains tax, inheritance tax and asset-based income tax.
- (5) In a case where it cannot be determined—
- (a) whether income or gains relate to an offshore matter or offshore transfer or to a domestic matter, or
  - (b) whether income or gains relate to capital gains tax, asset-based income tax or inheritance tax or not,

for the purposes of calculating the offshore PLR, the potential lost revenue or liability to tax relating to the standard offshore tax penalty is to be taken to be such share of

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the total potential lost revenue or liability to tax by reference to which the combined penalty was calculated as is just and reasonable.

- (6) Sub-paragraph (7) applies where—
- (a) a standard offshore tax penalty or a combined penalty is imposed on P, and
  - (b) there are two or more taxes at stake, including capital gains tax and asset-based income tax.
- (7) Where the calculation of the potential lost revenue or liability to tax by reference to which the penalty is assessed depends on the order in which income or gains are treated as having been taxed, for the purposes of calculating the offshore PLR, income and gains relating to asset-based income tax are to be taken to have been taxed before income and gains relating to capital gains tax.

#### Textual Amendments

- F5** Words in Sch. 22 para. 5(1)(a) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(4\)](#)

#### Commencement Information

- I5** Sch. 22 para. 5 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

#### *Restriction on imposition of multiple asset-based penalties in relation to the same asset*

- 6 (1) Sub-paragraphs (2) and (3) apply where—
- (a) a standard offshore tax penalty [<sup>F6</sup>(other than one imposed under paragraph 1 of Schedule 18 to FA 2017)] has been imposed on P, and
  - (b) the potential lost revenue threshold is met,
- in relation to more than one tax year falling within the same investigation period.
- (2) Only one asset-based penalty is payable by P in the investigation period in relation to any given asset.
- (3) The asset-based penalty is to be charged by reference to the tax year in the investigation period with the highest offshore PLR.
- (4) An “investigation period” is—
- (a) the period starting with the day on which this Schedule comes into force and ending with the last day of the last tax year before P was notified of an asset-based penalty in respect of an asset, and
  - (b) subsequent periods beginning with the day after the previous period ended and ending with the last day of the last tax year before P is notified of a subsequent asset-based penalty in respect of the asset,
- and different investigation periods may apply in relation to different assets.

#### Textual Amendments

- F6** Words in Sch. 22 para. 6(1)(a) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(5\)](#)

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#### Commencement Information

**I6** Sch. 22 para. 6 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), **reg. 2(b)**

[<sup>F7</sup>6A Where—

- (a) a penalty has been imposed on a person under paragraph 1 of Schedule 18 to FA 2017, and
- (b) the potential loss of revenue threshold has been met,

only one asset-based penalty is payable by the person in relation to any given asset.]

#### Textual Amendments

**F7** Sch. 22 para. 6A inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 18 para. 28(6)**

## PART 2

### AMOUNT OF PENALTY

#### *Standard amount of asset-based penalty*

- 7 (1) The standard amount of the asset-based penalty is the lower of—
- (a) 10% of the value of the asset, and
  - (b) offshore PLR x 10.
- (2) See also—
- (a) paragraphs 8 and 9, which provide for reductions in the standard amount, and
  - (b) Part 3, which makes provision about the identification and valuation of the asset.

#### Commencement Information

**I7** [Sch. 22 para. 7](#) in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), **reg. 2(b)**

#### *Reductions for disclosure and co-operation*

- 8 (1) HMRC must reduce the standard amount of the asset-based penalty where P does all of the following things—
- (a) makes a disclosure of the inaccuracy or failure relating to the standard offshore tax penalty;
  - (b) provides HMRC with a reasonable valuation of the asset;
  - (c) provides HMRC with information or access to records that HMRC requires from P for the purposes of valuing the asset.
- (2) A reduction under sub-paragraph (1) must reflect the quality of the disclosure, valuation and information provided (and for these purposes “quality” includes timing, nature and extent).
- (3) The Treasury must make regulations setting out the maximum amount of the penalty reduction under sub-paragraph (1).

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- (4) The maximum amount may differ according to whether the case involves only unprompted disclosures or involves prompted disclosures.
- (5) A case involves only unprompted disclosures where—
  - (a) in a case where the asset-based penalty relates to only one standard offshore tax penalty, that standard offshore tax penalty was reduced on the basis of an unprompted disclosure, or
  - (b) in a case where the asset-based penalty relates to more than one standard offshore tax penalty, all of those standard offshore tax penalties were reduced on the basis of unprompted disclosures.
- (6) A case involves prompted disclosures where any of the standard offshore tax penalties to which the asset-based penalty relates was reduced on the basis of a prompted disclosure.
- (7) Regulations under sub-paragraph (3) are to be made by statutory instrument.
- (8) A statutory instrument containing regulations under sub-paragraph (3) is subject to annulment in pursuance of a resolution of the House of Commons.
- (9) Regulations under sub-paragraph (3)—
  - (a) may make different provision for different purposes;
  - (b) may contain supplemental, incidental, consequential, transitional and transitory provision.

#### Commencement Information

- I8** Sch. 22 para. 8 in force at 8.3.2017 for specified purposes by [S.I. 2017/277, reg. 2\(a\)](#)
- I9** Sch. 22 para. 8 in force at 1.4.2017 in so far as not already in force and with effect in accordance with reg. 2(b) of the commencing S.I. by [S.I. 2017/277, reg. 2\(b\)](#)

#### *Special reduction*

- 9
- (1) If HMRC think it right because of special circumstances, they may reduce the standard amount of the asset-based penalty.
  - (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 over-payment by another.
  - (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
    - (a) staying a penalty, and
    - (b) agreeing a compromise in relation to proceedings for a penalty.

#### Commencement Information

- I10** Sch. 22 para. 9 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277, reg. 2\(b\)](#)

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### PART 3

#### IDENTIFICATION AND VALUATION OF ASSETS

##### *Introduction*

- 10 (1) This Part makes provision about the identification and valuation of the asset for the purposes of calculating the amount of the asset-based penalty.
- (2) An asset-based penalty may relate to more than one asset.
- (3) The identification and valuation of the asset is to be determined—
- (a) under paragraph 11 where the principal tax at stake is capital gains tax,
  - (b) under paragraph 12 where the principal tax at stake is inheritance tax, and
  - (c) under paragraph 13 where the principal tax at stake is asset-based income tax.

See also paragraph 14 (jointly held assets).

- (4) The principal tax at stake—
- (a) in a case where the standard offshore tax penalty (or penalties) relates to only one type of tax, is the tax to which that standard offshore tax penalty (or penalties) relates;
  - (b) in a case where the standard offshore tax penalty (or penalties) relate to more than one type of tax, is the tax which gives rise to the highest offshore PLR value.
- (5) The offshore PLR value, in relation to a type of tax, is the potential lost revenue or liability to tax by reference to which the part of the penalty relating to that type of tax was assessed.
- (6) The rules in paragraph 5(2) to (7) apply for the purposes of calculating the offshore PLR value, in relation to a type of tax, as they apply for the purposes of calculating the offshore PLR.

#### **Commencement Information**

**III** Sch. 22 para. 10 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

##### *Capital gains tax*

- 11 (1) This paragraph applies where the principal tax at stake is capital gains tax.
- (2) The asset is the asset that is the subject of the disposal (or deemed disposal) on or by reference to which the capital gains tax to which the standard offshore penalty relates is charged.
- (3) For the purposes of calculating the amount of the asset-based penalty, the value of the asset is to be taken to be the consideration for the disposal of the asset that would be used in the computation of the gain under TCGA 1992 (other than in a case where sub-paragraph (4) applies).
- (4) In a case where the disposal on or by reference to which the capital gains tax is charged is a part disposal of an asset, the asset-based penalty is to be calculated by



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reference to the full market value of the asset immediately before the part disposal took place.

(5) Terms used in this paragraph have the same meaning as in TCGA 1992.

**Commencement Information**

**I12** Sch. 22 para. 11 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

*Inheritance tax*

- 12 (1) This paragraph applies where the principal tax at stake is inheritance tax.
- (2) The asset is the property the disposition of which gave rise to the transfer of value by reason of which the inheritance tax to which the standard offshore penalty relates became chargeable.
- (3) For the purposes of calculating the amount of the asset-based penalty, the value of the property is to be the value of the property used by HMRC in assessing the liability to inheritance tax.
- (4) Terms used in this paragraph have the same meaning as in IHTA 1984.

**Commencement Information**

**I13** Sch. 22 para. 12 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

*Asset-based income tax*

- 13 (1) This paragraph applies where the principal tax at stake is asset-based income tax.
- (2) Where the standard offshore tax penalty relates to income tax charged under a provision shown in column 1 of the Table, the asset is the asset mentioned in column 2 of the Table.

**Provision under which income tax is charged**      **Asset**

Chapters 3, 7 and 10 of Part 3 of ITTOIA 2005 (property businesses)	The estate, interest or right in or over the land that generates the income for the business (see sections 264 to 266 of ITTOIA 2005)
Chapter 8 of Part 3 of ITTOIA 2005 (rent receivable in connection with a s.12(4) concern)	The estate, interest or right in or over the land that generates the rent receivable in connection with a UK section 12(4) concern (see sections 335 and 336 of ITTOIA 2005)
Chapters 2 and 2A of Part 4 of ITTOIA 2005 (interest and disguised interest)	The asset that generates the interest

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Chapters 3 to 5 of Part 4 of ITTOIA 2005 (dividends etc)	The shares or other securities in relation to which the dividend or distribution is paid
Chapter 7 of Part 4 of ITTOIA 2005 (purchased life annuity payments)	The annuity that gives rise to the payments
Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities)	The deeply discounted securities that are disposed of (see sections 427 to 430 of ITTOIA 2005)
Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc)	The policy or contract from which the gain is treated as arising
Chapter 11 of Part 4 of ITTOIA 2005 (transactions in deposits)	The deposit right which is disposed of (see sections 551 and 552 of ITTOIA 2005)
Chapter 2 of Part 5 of ITTOIA 2005 (receipts from intellectual property)	The intellectual property, know-how or patent rights which generate the income (see sections 579, 583 and 587 of ITTOIA 2005)
Chapter 4 of Part 5 of ITTOIA 2005 (certain telecommunication rights: non-trading income)	The relevant telecommunication right from which the income derives (see section 614 of ITTOIA 2005)
Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor)	The settlement which gives rise to the income or capital sums treated as income of a settlor

[<sup>F8</sup>(2A) In relation to cases where the standard offshore penalty is a penalty falling within paragraph 2(4A), each reference to provisions of ITTOIA 2005 in column 1 of the Table in sub-paragraph (2) includes a reference—

- (a) to the corresponding provisions of the legislation in force immediately before those provisions of ITTOIA 2005 came into force (and to any previous text of those corresponding provisions), and
- (b) to any other provision that had the same purpose as, or a similar purpose to, any of those corresponding provisions (or any earlier text mentioned in paragraph (a)), if and so far as that other provision was in force—
  - (i) on or after 6 April 1997, but
  - (ii) before the corresponding provisions (or the earlier text mentioned in paragraph (a)) came into force.]

- (3) For the purposes of calculating the amount of the asset-based penalty, the asset is to be valued as follows.
- (4) In a case where the charge to income tax was triggered by a disposal of the asset, the value of the asset is to be taken as its market value on the date of disposal (and in the case of a part disposal, the value of the asset is to be taken as its full market value immediately before the part disposal took place).
- (5) In any other case—

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- (a) where P still owns the asset on the last day of the tax year to which the standard offshore tax penalty relates, the value of the asset is to be taken as its market value on that day;
  - (b) where P disposed of the asset during the course of the tax year to which the standard offshore tax penalty relates, the value of the asset is to be taken as its market value on the date of disposal;
  - (c) where P disposed of part of the asset during the course of the tax year to which the standard offshore tax penalty relates, the value of the asset is to be taken as the market value of the part disposed on the date (or dates) of disposal plus the market value of the part still owned by the person on the last day of that tax year.
- (6) But if the value of the asset, as determined in accordance with sub-paragraphs (4) and (5), does not appear to HMRC to be a fair and reasonable value, then HMRC may value the asset for the purposes of this Schedule in any other way which appears to them to be fair and reasonable.
- (7) For the purposes of sub-paragraph (5)—
- (a) P owns an asset if P is liable to asset-based income tax in relation to that asset;
  - (b) references to a disposal (and related expressions) have the same meaning as in TCGA 1992.
- (8) In this paragraph “market value” has the same meaning as in TCGA 1992 (see section 272 of that Act).
- (9) Other terms used in this paragraph have the same meaning as in ITTOIA 2005.

#### Textual Amendments

**F8** Sch. 22 para. 13(2A) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(7\)](#)

#### Commencement Information

**I14** Sch. 22 para. 13 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

#### *Jointly held assets*

- 14 (1) This paragraph applies where an asset-based penalty is chargeable in relation to an asset that is jointly held by P and another person (A).
- (2) The value of the asset is to be taken to be the value of P's share of the asset.
- (3) In a case where P and A—
- (a) are married to, or are civil partners of, each other, and
  - (b) live together,
- the asset is to be taken to be jointly owned by P and A in equal shares, unless it appears to HMRC that this is not the case.

#### Commencement Information

**I15** [Sch. 22 para. 14](#) in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

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## PART 4

### PROCEDURE

#### *Assessment*

- 15 (1) Where a person (P) becomes liable for an asset-based penalty under paragraph 1, HMRC must—
- (a) assess the penalty,
  - (b) notify P, and
  - (c) state in the notice—
    - (i) the tax year to which the penalty relates, and
    - (ii) the investigation period within which that tax year falls (see paragraph 6).
- (2) A penalty under paragraph 1 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—
- (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),
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with an assessment to tax.
- (4) An assessment of an asset-based penalty under paragraph 1 must be made within the period allowed for making an assessment of the standard offshore tax penalty to which the asset-based penalty relates (and where an asset-based penalty relates to more than one standard offshore tax penalty, the assessment must be made within the latest of those periods).
- (5) In this Part of this Schedule references to an assessment to tax, in relation to inheritance tax, are to a determination.

#### **Commencement Information**

**I16** Sch. 22 para. 15 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

#### *Appeal*

- 16 (1) P may appeal against a decision of HMRC that a penalty is payable by P.
- (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

#### **Commencement Information**

**I17** Sch. 22 para. 16 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

- 17 (1) An appeal is to be treated in the same way as an appeal against an assessment to the tax concerned (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 the Upper Tribunal).

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Finance Act 2016, SCHEDULE 22 is up to date with all changes known to be in force on or before 08 September 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)*

- (2) Sub-paragraph (1) does not apply—
- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
  - (b) in respect of any other matter expressly provided for by this Schedule.

**Commencement Information**

**I18** Sch. 22 para. 17 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

- 18 (1) On an appeal under paragraph 16(1), the tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 16(2), the tribunal may—
- (a) affirm HMRC's decision, or
  - (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 9—
- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
  - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.
- (4) In sub-paragraph (3), “flawed” means flawed when considered in the light of the principles applied in proceedings for judicial review.
- (5) In this paragraph “tribunal” means the First-tier Tribunal or the Upper Tribunal (as appropriate by virtue of paragraph 17(1)).

**Commencement Information**

**I19** Sch. 22 para. 18 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

**PART 5**

GENERAL

*Interpretation*

- 19 (1) In this Schedule—
- “asset” has the same meaning as in TCGA 1992 (but also includes currency in sterling);
  - “asset-based income tax” has the meaning given in paragraph 2(7);
  - “HMRC” means Her Majesty's Revenue and Customs;
  - “investigation period” has the meaning given in paragraph 6(4);
  - “offshore PLR” has the meaning given in paragraph 5;
  - “standard amount of the asset-based penalty” has the meaning given in paragraph 7;

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“standard offshore tax penalty” has the meaning given in paragraph 2.

- (2) Terms used in relation to a penalty imposed under Schedule 24 to FA 2007, Schedule 41 to FA 2008 [<sup>F9</sup>Schedule 55 to FA 2009 or Part 1 of Schedule 18 to FA 2017] have the same meaning as in the Schedule under which the penalty was imposed.
- (3) References in this Schedule to capital gains tax do not include capital gains tax payable by companies in respect of chargeable gains accruing to them to the extent that those gains are NRCGT gains in respect of which the companies are chargeable to capital gains tax under section 14D or 188D of TCGA 1992 (see section 1(2A)(b) of that Act).

#### Textual Amendments

- F9** Words in [Sch. 22 para. 19\(2\)](#) substituted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(8\)](#)

#### Commencement Information

- I20** Sch. 22 para. 19 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

#### *Consequential amendments etc*

- 20 (1) In section 103ZA to TMA 1970 (disapplication of sections 100 to 103 in case of certain penalties), omit the “or” at the end of paragraph (h), and at the end insert “, or (j) Schedule 22 to the Finance Act 2016 (asset-based penalty)”.
- (2) In section 107A of that Act (relevant trustees)—
- (a) in subsection (2)(a), after “Schedule 55 to the Finance Act 2009” insert “ or Schedule 22 to the Finance Act 2016 ”;
- (b) after subsection (3)(a) insert—
- “(aa) in relation to a penalty under Schedule 22 to the Finance Act 2016, or to interest under section 101 of the Finance Act 2009 on such a penalty, the time when the relevant act or omission occurred;”;
- (c) in the words after paragraph (c), after “paragraph” insert “ (aa) and ”.
- (3) In Schedule 24 to FA 2007 (penalties for errors), in paragraph 12 (interaction with other penalties etc), in sub-paragraph (2A) at the end insert “ or Schedule 22 to FA 2016 (asset-based penalty) ”.
- (4) In Schedule 41 to FA 2008 (penalties for failure to notify), in paragraph 15 (interaction with other penalties etc), in sub-paragraph (1A) at the end insert “ or Schedule 22 to FA 2016 (asset-based penalty). ”
- (5) In Schedule 55 to FA 2009 (penalty for failure to make return etc), in paragraph 17 (interaction with other penalties etc), in sub-paragraph (2), at the end insert “, or (d) a penalty under Schedule 22 to FA 2016 (asset-based penalty).”

#### Commencement Information

- I21** [Sch. 22 para. 20](#) in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

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*Status: Point in time view as at 31/12/2020.*

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- 21 Section 97A of TMA 1970 (two or more tax-geared penalties in respect of same tax) does not apply in relation to an asset-based penalty imposed under this Schedule.

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**Commencement Information**

**I22** Sch. 22 para. 21 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

**Status:**

Point in time view as at 31/12/2020.

**Changes to legislation:**

Finance Act 2016, SCHEDULE 22 is up to date with all changes known to be in force on or before 08 September 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.