

Status: Point in time view as at 06/04/2024.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 25. (See end of Document for details)

SCHEDULES

SCHEDULE 25 **U.K.**

Section 116

PENALTIES FOR DELIBERATELY WITHHOLDING INFORMATION

PART 1 **U.K.**

INTRODUCTION

Introduction

- 1 (1) This Schedule provides for penalties to be payable by a person who, by failing to make a return listed in the third column of the Table below on or before the due date, deliberately withholds information which would enable or assist HMRC to assess the person's liability to tax.
- (2) Paragraph 20 provides for this Schedule to apply with modifications where the return relates to a partnership.

	<i>Tax to which return relates</i>	<i>Return</i>
1	Income tax or capital gains tax	(1) Return under section 8 of TMA 1970 (2) Accounts, statement or document required under section 8(1AB)(b) of TMA 1970
2	Income tax or capital gains tax	(1) Return under section 8A of TMA 1970 (2) Accounts, statement or document required under section 8A(1AB)(b) of TMA 1970
3	Income tax or corporation tax	(1) Return under section 12AA(2)(a) or (3)(a) of TMA 1970 (2) Accounts, statement or document required under section 12AA(2)(b) or (3)(b) of TMA 1970
4	Income tax or corporation tax	Return under regulations under paragraph 10 of Schedule A1 to TMA 1970

- (3) Before the coming into force of paragraph 3 of Schedule 14 to F(No.2)A 2017, the reference in the Table to section 8(1AB)(b) of TMA 1970 is to be read as a reference to section 8(1)(b) of TMA 1970.
- (4) Before the coming into force of paragraph 4 of Schedule 14 to F(No.2)A 2017, the reference in the Table to section 8A(1AB)(b) of TMA 1970 is to be read as a reference to section 8A(1)(b) of TMA 1970.

Status: Point in time view as at 06/04/2024.

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Commencement Information

II Sch. 25 para. 1 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Interpretation

- 2 (1) This paragraph applies for the interpretation of this Schedule.
- (2) “Return” means any return, statement, account or other document specified in the third column of the Table in paragraph 1.
- (3) Any reference to making a return includes a reference to filing, delivering or submitting a return.
- (4) “Due date”, in relation to a return, means the date by which it is required to be made.
- (5) “HMRC” means Her Majesty's Revenue and Customs.

Commencement Information

I2 Sch. 25 para. 2 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

PART 2 U.K.

LIABILITY TO A PENALTY

Penalty for deliberately withholding information

- 3 (1) A person who fails to make a return on or before the due date is liable to a penalty under this paragraph if (and only if) the condition in sub-paragraph (2) is met.
- (2) The condition is that at any time (including any time after the due date), by failing to make the return, the person deliberately withholds information which would enable or assist HMRC to assess the person's liability to tax.
- (3) If the withholding of the information is deliberate and concealed, the penalty is—
- (a) the relevant percentage of any liability to tax which would have been shown in the return in question, or
 - (b) if the amount in paragraph (a) is less than £300, £300.
- (4) For the purposes of sub-paragraph (3)(a) the relevant percentage is—
- (a) for the withholding of category 1 information, 100%,
 - (b) for the withholding of category 2 information, 150%, and
 - (c) for the withholding of category 3 information, 200%.
- (5) If the withholding of the information is deliberate but not concealed, the penalty is—
- (a) the relevant percentage of any liability to tax which would have been shown in the return in question, or
 - (b) if the amount in paragraph (a) is less than £300, £300.
- (6) For the purposes of sub-paragraph (5)(a) the relevant percentage is—

Status: Point in time view as at 06/04/2024.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 25. (See end of Document for details)

- (a) for the withholding of category 1 information, 70%,
- (b) for the withholding of category 2 information, 105%, and
- (c) for the withholding of category 3 information, 140%.

(7) Paragraph 4 explains the categories of information.

(8) The withholding of information by a person is—

- (a) deliberate and concealed, if the person deliberately withholds the information and makes arrangements to conceal the fact that the information has been withheld;
- (b) deliberate but not concealed, if the person deliberately withholds the information but does not make arrangements to conceal the fact that the information has been withheld.

(9) See paragraphs 15 and 16 for further rules about liability to a penalty.

Commencement Information

I3 Sch. 25 para. 3 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Categories of information

- 4 (1) Information is category 1 information if—
- (a) it involves a domestic matter, or
 - (b) it involves an offshore matter and the territory in question is a category 1 territory.
- (2) Information is category 2 information if—
- (a) it involves an offshore matter or an offshore transfer,
 - (b) the territory in question is a category 2 territory, and
 - (c) it is information which would enable or assist HMRC to assess the person's liability to the tax in question.
- (3) Information is category 3 information if—
- (a) it involves an offshore matter or an offshore transfer,
 - (b) the territory in question is a category 3 territory, and
 - (c) it is information which would enable or assist HMRC to assess the person's liability to the tax in question.
- (4) Information “involves an offshore matter” if the liability to tax which would have been shown in the return includes a liability to tax 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.
- (5) Information “involves an offshore transfer” if—
- (a) it does not involve an offshore matter,
 - (b) it is information which would enable or assist HMRC to assess the person's liability to the tax in question,

Status: Point in time view as at 06/04/2024.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 25. (See end of Document for details)

- (c) by failing to make the return, the person deliberately withholds the information (whether or not the withholding of the information is also concealed), and
 - (d) the applicable condition in paragraph 6 is satisfied.
- (6) Information “involves a domestic matter” if it does not involve an offshore matter or an offshore transfer.
- (7) If the information which the person withholds falls into more than one category—
- (a) the person's failure to make the return is to be treated for the purposes of this Schedule as if it were separate failures, one for each category of information according to the matters or transfers which the information involves, and
 - (b) for each separate failure, the liability to tax which would have been shown in the return in question is taken to be such share of the liability to tax which would have been shown in the return mentioned in paragraph (a) as is just and reasonable.
- (8) 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 a failure if the due date is before the date on which the order comes into force.
- (9) In this paragraph and paragraph 6—
- (a) “assets” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling;
 - (b) “UK” means the United Kingdom, including the territorial sea of the United Kingdom.

Commencement Information

I4 Sch. 25 para. 4 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Power to make changes relating to categories of information by regulations

- 5 (1) The Treasury may by regulations amend this Part of this Schedule so as to—
- (a) add, amend or remove categories of information for the purposes of determining the amount of a penalty under paragraph 3;
 - (b) amend the relevant percentage specified in that paragraph for the withholding of information in any category.
- (2) Regulations under this paragraph may include consequential provision, including provision amending, repealing or revoking any provision of an Act or subordinate legislation whenever passed or made (including this Act and any Act amended by it).
- (3) In sub-paragraph (2) “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

Commencement Information

I5 Sch. 25 para. 5 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Status: Point in time view as at 06/04/2024.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 25. (See end of Document for details)

Offshore transfers

- 6
- (1) This paragraph makes provision in relation to offshore transfers.
 - (2) Where the liability to tax which would have been shown in the return is a liability to income tax, the applicable condition is satisfied if the income on or by reference to which the tax is charged, or any part of the income—
 - (a) is received in a territory outside the UK, or
 - (b) is transferred before the relevant date to a territory outside the UK.
 - (3) Where the liability to tax which would have been shown in the return is a liability to capital gains tax, the applicable condition is satisfied if the proceeds of the disposal on or by reference to which the tax is charged, or any part of the proceeds—
 - (a) are received in a territory outside the UK, or
 - (b) are transferred before the relevant date to a territory outside the UK.
 - (4) In the case of a transfer falling within sub-paragraph (2)(b) or (3)(b), references to the income or proceeds transferred are to be read as including references to any assets derived from or representing the income or proceeds.
 - (5) In relation to an offshore transfer, the territory in question for the purposes of paragraph 4 is the highest category of territory by virtue of which the information involves an offshore transfer.
 - (6) “Relevant date” means the date on which the person becomes liable to a penalty under this Schedule.

Commencement Information

I6 Sch. 25 para. 6 in force at 6.4.2024 for specified purposes by [S.I. 2024/440](#), **reg. 2(1)**

Reductions for disclosure

- 7
- (1) Paragraph 8 provides for reductions in the penalty under this Schedule where the person discloses information which has been withheld by a failure to make a return (“relevant information”).
 - (2) A person discloses relevant information that involves a domestic matter by—
 - (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
 - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.
 - (3) A person discloses relevant information that involves an offshore matter or an offshore transfer by—
 - (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld,
 - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and
 - (d) providing HMRC with additional information.

Status: Point in time view as at 06/04/2024.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 25. (See end of Document for details)

- (4) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (3)(d).
- (5) Disclosure of relevant information—
- (a) is “unprompted” if made at a time when the person has no reason to believe that HMRC have discovered or are about to discover the relevant information, and
 - (b) otherwise, is “prompted”.
- (6) In relation to disclosure “quality” includes timing, nature and extent.
- (7) Paragraph 4(4) to (6) applies to determine whether relevant information involves an offshore matter, an offshore transfer or a domestic matter.

Commencement Information

I7 Sch. 25 para. 7 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

- 8 (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table in this paragraph (a “standard percentage”) has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.
- (2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—
- (a) in the case of a prompted disclosure, in column 2 of the Table, and
 - (b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard percentage</i>	<i>Minimum percentage for prompted disclosure</i>	<i>Minimum percentage for unprompted disclosure</i>
70%	45%	30%
100%	60%	40%
105%	62.5%	40%
140%	80%	50%
150%	85%	55%
200%	110%	70%

- (3) But HMRC must not under this paragraph reduce a penalty below £300.

Commencement Information

I8 Sch. 25 para. 8 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Special reduction

- 9 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under this Schedule.

Status: Point in time view as at 06/04/2024.

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- (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 a taxpayer is balanced by a potential over-payment by a taxpayer.
- (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

19 Sch. 25 para. 9 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Interaction with other penalties

- 10 (1) This paragraph applies where—
 - (a) a person is liable to a penalty under this Schedule in respect of a failure, and
 - (b) the amount of the penalty is the amount in paragraph 3(3)(a) or 3(5)(a).
- (2) The amount of that penalty is to be reduced by the amount of any other penalty incurred by the person, the amount of which is determined by reference to the same liability to tax.
- (3) In sub-paragraph (2), the reference to “any other penalty” does not include—
 - (a) a penalty under Schedule 26 (penalties for failure to pay tax),
 - (b) a penalty under Schedule 56 to FA 2009 (penalty for late payment of tax), or
 - (c) a penalty under Part 4 of FA 2014 (penalty where corrective action not taken after follower notice etc.).

Commencement Information

110 Sch. 25 para. 10 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Determination of penalty where no return made

- 11 (1) For the purposes of a penalty under this Schedule references to a liability to tax which would have been shown in a return are references to the amount which, if a complete and accurate return had been delivered on the due date, would have been shown to be due or payable by the taxpayer in respect of the tax concerned for the period to which the return relates.
- (2) In the case of a penalty which is assessed at a time before the person makes the return to which the penalty relates, HMRC may either—
 - (a) proceed on the assumption that the amount in paragraph 3(3)(a) is less than the amount in paragraph 3(3)(b), or the amount in paragraph 3(5)(a) is less than the amount in paragraph 3(5)(b), or
 - (b) determine the amount mentioned in sub-paragraph (1) to the best of HMRC's information and belief.

Status: Point in time view as at 06/04/2024.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 25. (See end of Document for details)

- (3) If the person subsequently makes a return, the penalty must be re-assessed by reference to the amount of tax shown to be due and payable in that return (but subject to any amendments or corrections to the return).

Commencement Information

I11 Sch. 25 para. 11 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Assessments

- 12 (1) Where a person is liable to a penalty under this Schedule HMRC may assess the penalty.
- (2) Where HMRC assess a penalty they must—
- (a) notify the person, and
 - (b) state in the notice the failure (or failures) for which the person is liable to a penalty.
- (3) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (4) An assessment of a penalty under this Schedule—
- (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 in this Schedule),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.

Commencement Information

I12 Sch. 25 para. 12 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Supplementary assessments

- 13 (1) A supplementary assessment may be made in respect of a penalty under this Schedule if an earlier assessment—
- (a) is based on a liability to tax that would have been shown in a return, and that liability is found by HMRC to be an underestimate, or
 - (b) is based on a liability to tax that is found by HMRC to be insufficient.
- (2) Sub-paragraph (3) applies if an assessment in respect of a penalty—
- (a) is based on a liability to tax that would have been shown in a return, and that liability is found by HMRC to be an overestimate, or
 - (b) is based on a liability to tax that is found by HMRC to be excessive.
- (3) HMRC may by notice to the person amend the assessment so that it is based upon the correct amount.
- (4) An amendment under sub-paragraph (3)—
- (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 14.

Status: Point in time view as at 06/04/2024.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 25. (See end of Document for details)

Commencement Information

I13 Sch. 25 para. 13 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Time limit for assessments

- 14 (1) An assessment of a penalty under this Schedule may not be made after the later of Date A and (where it applies) Date B.
- (2) Date A is the end of the period of 2 years beginning with the due date.
- (3) Date B is the last day of the period of 12 months beginning with—
- (a) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
 - (b) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil.
- (4) In sub-paragraph (3)(a) “appeal period” means the period during which—
- (a) an appeal could be brought (ignoring any possibility of an appeal out of time), or
 - (b) an appeal that has been brought has not been determined or withdrawn.
- (5) Sub-paragraph (1) does not apply to a re-assessment under paragraph 11(3).
- (6) A re-assessment under that paragraph must be made before the end of the period of 2 years beginning with the day on which the return is made.

Commencement Information

I14 Sch. 25 para. 14 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

PART 3 U.K.

SUPPLEMENTARY PROVISION

Double jeopardy

- 15 A person is not liable to a penalty under this Schedule in respect of a failure or action in respect of which the person has been convicted of an offence.

Commencement Information

I15 Sch. 25 para. 15 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Withdrawal of notice to make a return

- 16 (1) This paragraph applies where—
- (a) a person is liable to a penalty under this Schedule in relation to a failure to make a return within item 1 or 2 in the Table in paragraph 1, and

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- (b) HMRC decide (on the request of the person or otherwise) to give the person a notice under section 8B of TMA 1970 withdrawing a notice under section 8 or 8A of that Act.
- (2) This paragraph also applies where—
- (a) a person is liable to a penalty under this Schedule in relation to a failure to make a return within item 3 in the Table in paragraph 1, and
 - (b) HMRC decide (on a request under section 12AAA of TMA 1970) to give a notice under that section withdrawing a notice under section 12AA of that Act.
- (3) The notice under section 8B or 12AAA of TMA 1970 may include provision under this paragraph cancelling liability to the penalty from the date specified in the notice.

Commencement Information

I16 Sch. 25 para. 16 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Appeals

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

Commencement Information

I17 Sch. 25 para. 17 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

- 18 (1) An appeal under paragraph 17 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's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (2) Sub-paragraph (1) does not apply—
- (a) so as to require the person 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. 25 para. 18 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

- 19 (1) On an appeal under paragraph 17(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision that a penalty is payable by the person.
- (2) On an appeal under paragraph 17(2) that is notified to the tribunal, the tribunal may—
- (a) affirm HMRC's decision, or
 - (b) substitute for HMRC's decision another decision that HMRC had power to make.

Status: Point in time view as at 06/04/2024.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 25. (See end of Document for details)

- (3) If the tribunal substitutes its decision for HMRC's decision in relation to a penalty under this Schedule, 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)(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 18(1)).

Commencement Information

I19 Sch. 25 para. 19 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Partnerships

- 20 (1) This paragraph applies where—
 - (a) the representative partner, or a successor of the representative partner, fails to make a return falling within item 3 in the Table in paragraph 1, or
 - (b) the nominated partner fails to make a return falling within item 4 in that Table.
- (2) In determining whether the representative partner, a successor of the representative partner or the nominated partner (as the case may be) is liable to a penalty under paragraph 3, the condition in sub-paragraph (2) of that paragraph is to be read as if the reference to the person's liability to tax was a reference to the liability to tax of any relevant partner.
- (3) If a representative partner, a successor of a representative partner or a nominated partner is liable to a penalty under paragraph 3, every relevant partner is liable to a penalty under that paragraph.
- (4) The amount of the penalty to which the representative partner, a successor of the representative partner, the nominated partner or a relevant partner is liable is £300 (and accordingly paragraphs 3(3) to (8), 4 to 8, 10, 11 and 13 do not apply).
- (5) An appeal under paragraph 17 in connection with a penalty payable by virtue of this paragraph may be brought only by—
 - (a) the representative partner or a successor of the representative partner, in a case within sub-paragraph (1)(a), or
 - (b) the nominated partner, in a case within sub-paragraph (1)(b).
- (6) Where such an appeal is brought in connection with a penalty payable in respect of a failure, the appeal is to be treated as if it were an appeal in connection with every penalty payable in respect of that failure.
- (7) In this paragraph—

“nominated partner” has the meaning given by paragraph 5(5) of Schedule A1 to TMA 1970;

Status: Point in time view as at 06/04/2024.

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“relevant partner” means a person who was a partner in the partnership to which the return relates at any time during the period in respect of which the return was required;

“representative partner” means a person who has been required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver any return;

“successor” has the meaning given by section 12AA(11) of TMA 1970.

Commencement Information

I20 Sch. 25 para. 20 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

Regulations: supplementary provision

- 21 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) Regulations under this Schedule may include transitional, transitory and saving provision.
- (3) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

Commencement Information

I21 Sch. 25 para. 21 in force at 6.4.2024 for specified purposes by S.I. 2024/440, reg. 2(1)

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