

Status: Point in time view as at 01/01/2017.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2015, SCHEDULE 21. (See end of Document for details)

SCHEDULES

SCHEDULE 21

Section 121

PENALTIES IN CONNECTION WITH OFFSHORE ASSET MOVES

Penalty linked to offshore asset moves

- 1 (1) A penalty is payable by a person (“P”) where Conditions A, B and C are met.
- (2) Condition A is that—
 - (a) P is liable for a penalty specified in paragraph 2 (“the original penalty”), and
 - (b) the original penalty is for a deliberate failure (see paragraph 3).
- (3) Condition B is that there is a relevant offshore asset move (see paragraph 4) which occurs after the relevant time (see paragraph 5).
- (4) Condition C is that—
 - (a) the main purpose, or one of the main purposes, of the relevant offshore asset move is to prevent or delay the discovery by Her Majesty's Revenue and Customs (“HMRC”) of a potential loss of revenue, and
 - (b) the original penalty relates to an inaccuracy or failure which relates to the same potential loss of revenue.

Original penalties triggering penalties under this Schedule

- 2 The penalties referred to in paragraph 1(2) are—
 - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 (penalty for error in taxpayer's document) in relation to an inaccuracy in a document of a kind listed in the Table in paragraph 1 of that Schedule, where the tax at stake is income tax, capital gains tax or inheritance tax,
 - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 (penalty for failure to notify etc) in relation to the obligation under section 7 of TMA 1970 (obligation to give notice of liability to income tax or capital gains tax), and
 - (c) a penalty under paragraph 6 of Schedule 55 to FA 2009 (penalty for failures to make return etc where failure continues after 12 months), where the tax at stake is income tax, capital gains tax or inheritance tax.

“Deliberate failure”

- 3 The original penalty is for a “deliberate failure” if—
 - (a) in the case of a penalty within paragraph 2(a), the inaccuracy to which it relates was deliberate on P's part (whether or not concealed);
 - (b) in the case of a penalty within paragraph 2(b), the failure by P was deliberate (whether or not concealed);

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- (c) in the case of a penalty within paragraph 2(c), the withholding of the information, resulting from the failure to make the return, is deliberate (whether or not concealed).

“Relevant offshore asset move”

- 4 (1) There is a “relevant offshore asset move” if, at a time when P 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,
 - (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 P remains the beneficial owner of the asset, or any part of it, immediately after the qualifying time.
- (2) Whether a territory is a “specified territory” or “non-specified territory” is to be determined, for the purposes of sub-paragraph (1), as at the qualifying time.
- (3) Where—
- (a) an asset of which P is the beneficial owner (“the original asset”) is disposed of, and
 - (b) all or part of any proceeds from the sale of the asset are (directly or indirectly) reinvested in another asset of which P is also the beneficial owner (“the new asset”),
- the original asset and the new asset are to be treated as the same asset for the purposes of determining whether there is a relevant offshore asset move.
- (4) “Asset” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling.
- (5) “Specified territory” means a territory specified in regulations made by the Treasury by statutory instrument; and references to “non-specified territory” are to be construed accordingly.
- (6) Regulations under sub-paragraph (5) are subject to annulment in pursuance of a resolution of the House of Commons.

Modifications etc. (not altering text)

- C1** Sch. 21 para. 4(2)-(4) applied (1.1.2017) by Finance Act 2016 (c. 24), s. 162(2), Sch. 20 para. 2(7); S.I. 2016/1249, reg. 2

“Relevant time”

- 5 (1) “The relevant time” has the meaning given by this paragraph.
- (2) Where the original penalty is under Schedule 24 to FA 2007, the relevant time is—
- (a) if the tax at stake as a result of the inaccuracy is income tax or capital gains tax, the beginning of the tax year to which the document containing the inaccuracy relates, and

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- (b) if the tax at stake as a result of the inaccuracy is inheritance tax, the time when liability to the tax first arises.
- (3) Where the original penalty is for a failure to comply with an obligation specified in the table in paragraph 1 of Schedule 41 of FA 2008, the relevant time is the beginning of the tax year to which that obligation relates.
- (4) Where the original penalty is for a failure to make a return or deliver a document specified in the table in paragraph 1 of Schedule 55 to FA 2009, the relevant time is—
 - (a) if the tax at stake is income tax or capital gains tax, the beginning of the tax year to which the return or document relates, and
 - (b) if the tax at stake is inheritance tax, the time when liability to the tax first arises.

Amount of the penalty

- 6 (1) The penalty payable under paragraph 1(1) is 50% of the amount of the original penalty payable by P.
- (2) The penalty payable under paragraph 1(1) is not a penalty determined by reference to a liability to tax (despite the fact that the original penalty by reference to which it is calculated may be such a penalty).

Assessment

- 7 (1) Where a person becomes liable for a penalty under paragraph 1(1), HMRC must—
 - (a) assess the penalty,
 - (b) notify the person, and
 - (c) state in the notice the tax period in respect of which the penalty is assessed.
- (2) A penalty under paragraph 1(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 a penalty under paragraph 1(1) must be made within the same period as that allowed for the assessment of the original penalty.
- (5) If, after an assessment of a penalty is made under this paragraph, HMRC amends the assessment, or makes a supplementary assessment, in respect of the original penalty, it must also at the same time amend the assessment, or make a supplementary assessment, in respect of the penalty under paragraph 1(1) to ensure that it is based on the correct amount of the original penalty.
- (6) In this paragraph—
 - (a) a reference to an assessment to tax, in relation to inheritance tax, is to a determination, and
 - (b) “tax period” means a tax year, accounting period or other period in respect of which tax is charged.

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Appeal

- 8
- (1) A person may appeal against a decision of HMRC that a penalty is payable by the person.
 - (2) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to, or determination of, 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 Upper Tribunal).
 - (3) Sub-paragraph (2) does not apply in respect of a matter expressly provided for by this Schedule.
 - (4) On an appeal under this paragraph, the tribunal may affirm or cancel HMRC's decision.

Commencement and transitionals

- 9
- (1) This Schedule has effect in relation to relevant offshore asset moves occurring after the day on which this Act is passed.
 - (2) For the purposes of this Schedule, it does not matter if liability for the original penalty first arose on or before that day, unless the case is one to which sub-paragraph (3) applies.
 - (3) The original penalty is to be ignored if P's liability for it for arose before the day on which this Act is passed and before that day—
 - (a) if the original penalty was under Schedule 24 to FA 2007, any tax which was unpaid as a result of the inaccuracy has been assessed or determined;
 - (b) if the original penalty was under Schedule 41 to FA 2008 or Schedule 55 to FA 2009, the failure to which it related was remedied and any tax which was unpaid as a result of the failure has been assessed or determined.

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