

SCHEDULES

SCHEDULE 17

DISCLOSURE OF TAX AVOIDANCE SCHEMES: VAT AND OTHER INDIRECT TAXES

PART 2

PENALTIES

Penalty for failure to comply with duties under Part 1 (apart from paragraph 26)

- 39 (1) A person who fails to comply with any of the provisions of Part 1 of this Schedule mentioned in sub-paragraph (2) is liable—
- (a) to a penalty not exceeding—
 - (i) in the case of a failure to comply with paragraph 11(1), 12(1), 17(2), 18(2) or 19, £600 for each day during the initial period for which the failure continues (but see also paragraphs 40(4) and 41), and
 - (ii) in any other case, £5,000, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a), to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under paragraph (a) was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (2) Those provisions are—
- (a) paragraph 11(1) (duty of promoter in relation to notifiable proposal),
 - (b) paragraph 12(1) (duty of promoter in relation to notifiable arrangements),
 - (c) paragraph 17(2) (duty of person dealing with promoter outside United Kingdom),
 - (d) paragraph 18(2) (duty of parties to notifiable arrangements not involving promoter),
 - (e) paragraph 19 (duty to provide further information requested by HMRC),
 - (f) paragraph 21 (duty of promoters to provide updated information),
 - (g) paragraph 23(2) (duty of promoter to notify client of reference number),
 - (h) paragraph 24(3) (duty of client to notify parties of reference number),
 - (i) paragraph 25(2) (duty of client to provide information to promoter),
 - (j) paragraph 27(3) (duty of promoter to provide details of clients),
 - (k) paragraph 28(3) (enquiry following disclosure of client details),
 - (l) paragraphs 29(4) and 30(2) (duty of promoter to respond to inquiry)
 - (m) paragraph 31(4) (duty of introducer to give details of persons who have provided information or have been provided with information, and
 - (n) paragraph 33 (duty to provide additional information).

Status: This is the original version (as it was originally enacted).

- (3) In this paragraph “the initial period” means the period—
- (a) beginning with the relevant day, and
 - (b) ending with the earlier of the day on which the penalty under sub-paragraph (1)(a)(i) is determined and the last day before the failure ceases.
- (4) For the purposes of sub-paragraph (3)(a) “the relevant day” is the day specified in relation to the failure in the following table—

<i>Failure</i>	<i>Relevant day</i>
A failure to comply with paragraph 11(1) or 12(1) in so far as it applies by virtue of an order under paragraph 5	The first day after the end of the relevant period described in paragraph 5(6)
A failure to comply with paragraph 11(1) or 12(1) in so far as it applies by virtue of an order under paragraph 16(2)	The first day after the end of the relevant period (whether that is the period described in sub-paragraph 16(5)(a) or that period as extended by a direction under paragraph 16(5)(b))
Any other failure to comply with sub-paragraph (1) of paragraph 11	The first day after the end of the relevant period described in paragraph 11(2)
Any other failure to comply with sub-paragraph (1) of paragraph 12	The first day after the end of the relevant period described in paragraph 12(2)
A failure to comply with paragraph 17(2)	The first day after the end of the relevant period described in paragraph 17(3)
A failure to comply with paragraph 18(2)	The first day after the latest time by which paragraph 18(2) should have been complied with in the case concerned
A failure to comply with paragraph 19	The first day after the end of the period within which the person must comply with paragraph 19

- 40 (1) In the case of a failure to comply with paragraph 11(1), 12(1), 17(2), 18(2) or 19, the amount of the penalty under paragraph 39(1)(a)(i) is to be arrived at after taking account of all relevant considerations.
- (2) Those considerations include the desirability of the penalty being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions having regard (in particular)—
- (a) in the case of a penalty for a promoter’s failure to comply with paragraph 11(1), 12(1) or 19, to the amount of any fees received, or likely to have been received, by the promoter in connection with the notifiable proposal (or arrangements implementing the notifiable proposal), or with the notifiable arrangements, and
 - (b) in the case of a penalty for a relevant person’s failure to comply with paragraph 17(2), 18(2) or 19, to the amount of any advantage gained, or sought to be gained, by the person in relation to any tax prescribed under paragraph 3(1)(b) in relation to the notifiable arrangements
- (3) In sub-paragraph (2)(b) “relevant person” means a person who enters into any transaction forming part of notifiable arrangements.

- (4) If the maximum penalty under paragraph 39(1)(a)(i) appears inappropriately low after taking account of all relevant considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.
- 41 (1) This paragraph applies where a failure to comply with a provision mentioned in paragraph 39(2) concerns a proposal or arrangements in respect of which an order has been made under paragraph 4 or 5.
- (2) The amounts specified in paragraph 39(1)(a)(i) and (b) are increased to £5,000 in relation to days falling after the end of the period of 11 days beginning with the day on which the order is made.
- 42 (1) The Treasury may by regulations vary—
- (a) any of the sums for the time being specified in paragraph 39(1);
 - (b) the sum for the time being specified in paragraph 40(4);
 - (c) the period for the time being specified in paragraph 41(2);
 - (d) the sum for the time being specified in paragraph 41(2).
- (2) Regulations under this paragraph may include incidental or transitional provision.
- 43 Where it appears to an officer of Revenue and Customs that—
- (a) a penalty under paragraph 39(1)(a) has been imposed in a case where the maximum penalty is set by paragraph 39(1)(a)(i), and
 - (b) the maximum penalty was calculated on the basis that the initial period began with a day later than that which the officer considers to be the relevant day,
- an officer of Revenue and Customs may commence proceedings for a re-determination of the penalty.

Penalty for failure to comply with duties under paragraph 26

- 44 (1) A person who fails to comply with—
- (a) paragraph 26(1), or
 - (b) regulations under paragraph 26(3),
- is liable to a penalty not exceeding the relevant sum.
- (2) The relevant sum is £5,000 in respect of each scheme to which the failure relates unless the person falls within sub-paragraph (3) or (4).
- (3) If the person has previously failed to comply with paragraph 26(1) or regulations under paragraph 26(3) on one (and only one) occasion during the period of 36 months ending with the date on which the current failure began, the relevant sum is £7,500 in respect of each scheme to which the current failure relates (whether or not the same as any scheme to which the previous failure relates).
- (4) If the person has previously failed to comply with paragraph 26(1) or regulations under paragraph 26(3) on two or more occasions during the period of 36 months ending with the date on which the current failure began, the relevant sum is £10,000 in respect of each scheme to which the current failure relates (whether or not the same as any scheme to which any of the previous failures relates).
- (5) In this paragraph “scheme” means any notifiable arrangements.

Status: This is the original version (as it was originally enacted).

Penalty proceedings before First-tier tribunal

- 45 (1) An authorised officer may commence proceedings before the First-tier Tribunal for any penalty under paragraph 39(1)(a).
- (2) In sub-paragraph (1) “authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of this paragraph.
- (3) Proceedings for a penalty may not be commenced more than 12 months after evidence of facts sufficient to justify the bringing of proceedings comes to the knowledge of HMRC.
- (4) If the First-tier Tribunal decide that the penalty is payable by the person—
- (a) the penalty is for all purposes to be treated as if it were tax charged in an assessment and due and payable,
 - (b) the person may appeal to the Upper Tribunal against the decision that the penalty is payable, and
 - (c) the person may appeal to the Upper Tribunal against the decision as to the amount of the penalty.
- (5) On an appeal under sub-paragraph (4)(b) the Upper Tribunal may, if it appears that no penalty has been incurred, cancel the decision of the First-tier Tribunal.
- (6) On an appeal under sub-paragraph (4)(c) the Upper Tribunal may—
- (a) affirm the decision of the First-tier Tribunal as to the amount of the penalty, or
 - (b) substitute for that decision a decision that the First-tier Tribunal had power to make.

Assessment of penalties under paragraph 39(1)(b) or 44

- 46 (1) Where a person is liable to a penalty under paragraph 39(1)(b) or 44 an authorised officer may assess the amount due by way of a penalty.
- (2) An assessment may not be made more than 12 months after evidence of facts sufficient to justify the making of the assessment first comes to the knowledge of HMRC.
- (3) A notice of an assessment under sub-paragraph (1) stating—
- (a) the date on which it is issued, and
 - (b) the time within which an appeal against the assessment may be made,
- must be served on the person liable to the penalty.
- (4) After the notice has been served the assessment may not be altered except in accordance with this paragraph or on appeal.
- (5) If it is discovered by an authorised officer that the amount of a penalty assessed under this paragraph is or has become insufficient the officer may make an assessment in a further amount so that the penalty is set at the amount which, in the officer’s opinion, is correct or appropriate.
- (6) A penalty imposed by a decision under this paragraph—
- (a) is due and payable at the end of the period of 30 days beginning with the date of the issue of the notice of the decision, and

- (b) is to be treated for all purposes as if it were tax charged in an assessment and due and payable.
- (7) In this paragraph “authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of this paragraph.
- 47 (1) Where a person (P) is served with notice of an assessment under paragraph 46—
- (a) P may appeal against the decision that a penalty is payable by P, and
 - (b) P may appeal against the decision as to the amount of the penalty.
- (2) An appeal under sub-paragraph (1) is to be treated for procedural purposes in the same way as an appeal against an assessment to the relevant tax (including by the application of any provision about the bringing of an 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—
- (a) so as to require P to pay a penalty before an appeal under sub-paragraph (1) is determined, or
 - (b) in respect of any other matter expressly provided for by this Schedule.
- (4) On an appeal under sub-paragraph (1)(a) the tribunal may affirm or cancel the decision that a penalty is payable by P.
- (5) On an appeal under sub-paragraph (1)(b) the tribunal may—
- (a) affirm the decision as to the amount of the penalty, or
 - (b) substitute for that decision another decision that the authorised officer had power to make.
- (6) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (2)).

Reasonable excuse

- 48 (1) Liability to a penalty under this Part of this Schedule does not arise in relation to a particular failure to comply if the person concerned (P) satisfies HMRC or the relevant tribunal (as the case may be) that there is a reasonable excuse for the failure.
- (2) For this purpose—
- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P’s control,
 - (b) where P relied on any other person to do anything, that cannot be a reasonable excuse unless P took reasonable care to avoid the failure,
 - (c) where P had a reasonable excuse but the excuse has ceased, P is to be treated as continuing to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased, and
 - (d) reliance on advice is to be taken automatically not to be a reasonable excuse if the advice was addressed to, or was given to, a person other than P or takes no account of P’s individual circumstances.
- 49 (1) The making of an order under paragraph 4 or 5 against P does not of itself mean that P either did or did not have a reasonable excuse for non-compliance before the order was made.

Status: This is the original version (as it was originally enacted).

- (2) Where an order is made under paragraph 4 or 5 then for the purposes of paragraph 48—
- (a) the person identified in the order as the promoter of the proposal or arrangements cannot, in respect of any time after the end of the prescribed period mentioned in paragraph 41, rely on doubt as to notifiability as a reasonable excuse for failure to comply with paragraph 11(1) or 12(1), and
 - (b) any delay in compliance with that provision after the end of that period is not capable of being a reasonable excuse unless attributable to something other than doubt as to notifiability.
- 50 (1) Where a person fails to comply with—
- (a) paragraph 17(2) and the promoter for the purposes of paragraph 17 is a monitored promoter, or
 - (b) paragraph 18(2) and the arrangements for the purposes of paragraph 18 are arrangements of a monitored promoter,
- then for the purposes of paragraph 48 legal advice which the person took into account is to be disregarded in determining whether the person had a reasonable excuse, if the advice was given or procured by that monitored promoter.
- (2) In determining for the purpose of paragraph 48 whether or not a person who is a monitored promoter had a reasonable excuse for a failure to do something, reliance on legal advice is to be taken automatically not to constitute a reasonable excuse if either—
- (a) the advice was not based on a full and accurate description of the facts, or
 - (b) the conclusions in the advice that the person relied on were unreasonable.
- (3) In this paragraph “monitored promoter” means a person who is a monitored promoter for the purposes of Part 5 of FA 2014