

SCHEDULES

SCHEDULE 18

REQUIREMENT TO CORRECT CERTAIN OFFSHORE TAX NON-COMPLIANCE

PART 2

AMOUNT OF PENALTY

Reasonable excuse

- 23 (1) Liability to a penalty under paragraph 1 does not arise in relation to a particular failure to correct any relevant offshore tax non-compliance within the RTC period 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 it is disqualified under sub-paragraph (3).
- (3) Advice is disqualified (subject to sub-paragraph (4)) if—
- (a) the advice was given to P by an interested person,
 - (b) the advice was given to P as a result of arrangements made between an interested person and the person who gave the advice,
 - (c) the person who gave the advice did not have appropriate expertise for giving the advice,
 - (d) the advice failed to take account of all P’s individual circumstances (so far as relevant to the matters to which the advice relates), or
 - (e) the advice was addressed to, or was given to, a person other than P.
- (4) Where advice would otherwise be disqualified under any of paragraphs (a) to (d) of sub-paragraph (3) the advice is not disqualified if at the end of the RTC period P—
- (a) has taken reasonable steps to find out whether or not the advice falls within that paragraph, and
 - (b) reasonably believes that it does not.
- (5) In sub-paragraph (3) “an interested person” means, in relation to any relevant offshore tax non-compliance—

Status: This is the original version (as it was originally enacted).

- (a) a person (other than P) who participated in relevant avoidance arrangements or any transaction forming part of them, or
 - (b) a person who for any consideration (whether or not in money) facilitated P's entering into relevant avoidance arrangements.
- (6) In this paragraph "avoidance arrangements" means arrangements as respects which, in all the circumstances, it would be reasonable to conclude that their main purpose, or one of their main purposes, is the obtaining of a tax advantage.
- (7) But arrangements are not avoidance arrangements for the purposes of this paragraph if (although they fall within sub-paragraph (6))—
 - (a) they are arrangements which accord with established practice, and
 - (b) HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice.
- (8) Where any relevant offshore tax non-compliance arose originally because information was submitted to HMRC on the basis that particular avoidance arrangements had an effect which they did not have, those avoidance arrangements are "relevant avoidance arrangements" in relation to that tax non-compliance.
- (9) In sub-paragraph (6)—
 - (a) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
 - (b) a "tax advantage" includes—
 - (i) relief or increased relief from tax,
 - (ii) repayment or increased repayment of tax,
 - (iii) avoidance or reduction of a charge to tax or an assessment to tax,
 - (iv) avoidance of a possible assessment to tax,
 - (v) deferral of a payment of tax or advancement of a repayment of tax.