

SCHEDULES

SCHEDULE 18

REQUIREMENT TO CORRECT CERTAIN OFFSHORE TAX NON-COMPLIANCE

PART 3

FURTHER PROVISIONS RELATING TO THE REQUIREMENT TO CORRECT

Extension of period for assessment etc of offshore tax

- 26 (1) This paragraph applies where—
- (a) at the end of the tax year 2016-17 a person has relevant offshore tax non-compliance to correct, and
 - (b) the last day on which it would (disregarding this paragraph) be lawful for HMRC to assess the person to any offshore tax falls within the period beginning with 6 April 2017 and ending with 4 April 2021.
- (2) The period in which it is lawful for HMRC to assess the person to the offshore tax is extended by virtue of this paragraph to end with 5 April 2021.
- (3) In this paragraph “offshore tax”, in relation to any relevant offshore tax non-compliance, means tax corresponding to the offshore PLR in respect of the non-compliance.

Further penalty in connection with offshore asset moves

- 27 (1) Schedule 21 to FA 2015 (penalties in connection with offshore asset moves) is amended as follows.
- (2) In paragraph 2 (original penalties triggering penalties under Schedule 21) omit “and” after paragraph (b) and after paragraph (c) insert “, and
- (d) a penalty under paragraph 1 of Schedule 18 to FA 2017 (requirement to correct relevant offshore tax non-compliance).”
- (3) In paragraph 3 (meaning of deliberate failure) after paragraph (c) insert—
- “(d) in the case of a penalty within paragraph 2(d), P 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 terms used in paragraph (d) have the same meaning as in Schedule 18 to FA 2017.”
- (4) In paragraph 5 (meaning of “relevant time”) after sub-paragraph (4) insert—
- “(5) Where the original penalty is under paragraph 1 of Schedule 18 to FA 2017, the relevant time is the time when that Schedule comes into force.”

Status: This is the original version (as it was originally enacted).

Asset-based penalty in addition to penalty under paragraph 1

28 (1) Schedule 22 to FA 2016 (asset-based penalty for offshore inaccuracies and failures) is amended as follows.

(2) In paragraph 2 (meaning of standard offshore penalty)—

- (a) in sub-paragraph (1) for “or (4)” substitute “(4) or (4A)”,
- (b) after sub-paragraph (4) insert—

“(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.”, and

(c) after sub-paragraph (5) insert—

“(5A) Sub-paragraph (5) does not apply to a penalty imposed under paragraph 1 of Schedule 18 to FA 2017.”

(3) In paragraph 3 (tax year to which standard offshore penalty relates) after sub-paragraph (3) insert—

“(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.”

(4) In paragraph 5 (meaning of offshore PLR), in sub-paragraph (1)(a) after “FA 2008” insert “or Schedule 18 to FA 2017”.

(5) In paragraph 6 (restriction on imposition of multiple asset-based penalties for same asset), in sub-paragraph (1)(a) after “penalty” insert “(other than one imposed under paragraph 1 of Schedule 18 to FA 2017)”.

(6) After paragraph 6 insert—

“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,

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

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

(7) In paragraph 13 (asset-based income tax) after sub-paragraph (2) insert—

“(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.”

(8) In paragraph 19(2) (interpretation: incorporation of definitions from other legislation for “or Schedule 55 to FA 2009” substitute “Schedule 55 to FA 2009 or Part 1 of Schedule 18 to FA 2017”.

29 (1) TMA 1970 is amended as follows.

(2) In section 103ZA (disapplication of sections 100 to 103 in the case of certain penalties) omit the “or” after paragraph (j) and after paragraph (k) insert “, or
(l) Schedule 18 to the Finance Act 2017.”

(3) In section 107A (relevant trustees)—

- (a) in subsection (2)(a) after “Finance Act 2009” insert “or Schedule 18 to the Finance Act 2017”, and
 - (b) in subsection (3), after paragraph (c) insert—
 - “(d) in relation to—
 - (i) a penalty under Schedule 18 to the Finance Act 2017, or
 - (ii) interest under section 101 of the Finance Act 2009 on a penalty within sub-paragraph (i),
- the end of the RTC period (within the meaning of Schedule 18 to the Finance Act 2017);”.

Publishing details of persons assessed to penalty or penalties under paragraph 1

30 (1) The Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) may publish information about a person (P) if in consequence of an investigation they consider that sub-paragraph (2) or (3) applies in relation to P.

(2) This sub-paragraph applies if—

- (a) P has been found to have incurred one or more relevant penalties under paragraph 1 (and has been assessed or is the subject of a contract settlement), and

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

- (b) the offshore potential lost revenue in relation to the penalty, or the aggregate of the offshore potential lost revenue in relation to each of the penalties, exceeds £25,000.
- (3) This sub-paragraph applies if P has been found to have incurred 5 or more relevant penalties under paragraph 1.
- (4) A penalty incurred by P under paragraph 1 is “relevant” if—
 - (a) P was aware at any time during the RTC period that at the end of the 2016-17 tax year the person had relevant offshore tax non-compliance to correct, and
 - (b) the penalty relates to the failure to correct that non-compliance.
- (5) The information that may be published is—
 - (a) P’s name (including any trading name, previous name or pseudonym),
 - (b) P’s address (or registered office),
 - (c) the nature of any business carried on by P,
 - (d) the amount of the penalty or penalties,
 - (e) the offshore potential lost revenue in relation to the penalty or the aggregate of the offshore potential lost revenue in relation to each of the penalties,
 - (f) the periods or times to which the uncorrected relevant offshore tax non-compliance relates,
 - (g) any other information that the Commissioners consider it appropriate to publish in order to make clear the person’s identity.
- (6) In sub-paragraph (5)(f) the reference to the uncorrected relevant offshore tax non-compliance is to so much of P’s relevant offshore tax non-compliance at the end of the 2016-17 tax year as P failed to correct within the RTC period.
- (7) The information may be published in any manner that the Commissioners consider appropriate.
- (8) Before publishing any information the Commissioners must—
 - (a) inform P that they are considering doing so, and
 - (b) afford P the opportunity to make representations about whether it should be published.
- (9) No information may be published before the day on which the penalty becomes final or, where more than one penalty is involved, the latest day on which any of the penalties becomes final.
- (10) No information may be published for the first time after the end of the period of one year beginning with that day.
- (11) No information may be published (or continue to be published) after the end of the period of one year beginning with the day on which it is first published.
- (12) No information may be published if the amount of the penalty—
 - (a) is reduced under paragraph 16 to the minimum permitted amount (being 100% of the offshore PLR), or
 - (b) is reduced under paragraph 17 to nil or stayed.
- (13) For the purposes of this paragraph a penalty becomes final—

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

- (a) if it has been assessed, when the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined, and
 - (b) if a contract settlement has been made, at the time when the contract is made.
- (14) In this paragraph “contract settlement”, in relation to a penalty, means a contract between the Commissioners and the person under which the Commissioners undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover it.
- 31 (1) The Treasury may by regulations amend paragraph 30(2) to vary the amount for the time being specified in paragraph (b).
- (2) Regulations under this paragraph are to be made by statutory instrument.
- (3) A statutory instrument under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.