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**68 Penalties in connection with offshore matters and offshore transfers**

- (1) The Schedule contains provisions amending –
  - (a) Schedule 24 to FA 2007 (penalties for errors in tax returns etc),
  - (b) Schedule 41 to FA 2008 (penalties for failure to notify etc), and
  - (c) Schedule 55 to FA 2009 (penalties for failure to make return etc).
- (2) The Schedule comes into force on such day as the Treasury may appoint by regulations made by statutory instrument.
- (3) Regulations under subsection (2) –
  - (a) may commence a provision generally or only for specified purposes, and
  - (b) may appoint different days for different provisions or for different purposes.

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## SCHEDULE TO CLAUSE 68

### PENALTIES IN CONNECTION WITH OFFSHORE MATTERS AND OFFSHORE TRANSFERS

#### *Amendments to Schedule 24 to the Finance Act 2007 (c. 11)*

- 1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- 2 (1) Paragraph 9 (reductions for disclosure) is amended as follows.
  - (2) For sub-paragraph (A1) substitute –
    - “(A1) Paragraph 10 provides for reductions in penalties –
      - (a) under paragraph 1 where a person discloses an inaccuracy that involves a domestic matter,
      - (b) under paragraph 1A where a person discloses a supply of false information or withholding of information, and
      - (c) under paragraph 2 where a person discloses a failure to disclose an under-assessment.
    - (A2) Paragraph 10A provides for reductions in penalties under paragraph 1 where a person discloses an inaccuracy that involves an offshore matter or an offshore transfer.
    - (A3) Sub-paragraph (1) applies where a person discloses –
      - (a) an inaccuracy that involves a domestic matter,
      - (b) a careless inaccuracy that involves an offshore matter,
      - (c) a supply of false information or withholding of information, or
      - (d) a failure to disclose an under-assessment.”
  - (3) In sub-paragraph (1), in the words before paragraph (a), for the words from “an inaccuracy” to “under-assessment” substitute “the matter”.
  - (4) After sub-paragraph (1) insert –
    - “(1A) Sub-paragraph (1B) applies where a person discloses –
      - (a) a deliberate inaccuracy (whether concealed or not) that involves an offshore matter, or
      - (b) an inaccuracy that involves an offshore transfer.
    - (1B) A person discloses the inaccuracy by –
      - (a) telling HMRC about it,
      - (b) giving HMRC reasonable help in quantifying the inaccuracy,
      - (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy is fully corrected, and
      - (d) providing HMRC with additional information.

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(1C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (1B)(d).

(1D) Regulations under sub-paragraph (1C) are to be made by statutory instrument.

(1E) An instrument containing regulations under sub-paragraph (1C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(5) At the end insert –

“(4) Paragraph 4A(4) to (5) applies to determine whether an inaccuracy involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.”

3 In paragraph 10 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
70%	35%	20%
100%	50%	30%”

4 After paragraph 10 insert –

“10A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (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 %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
37.5%	18.75%	0%
45%	22.5%	0%

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
60%	30%	0%
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

*Amendments to Schedule 41 to the Finance Act 2008 (c. 9)*

- 5 Schedule 41 to FA 2008 (penalties: failure to notify etc) is amended as follows.
- 6 (1) Paragraph 12 (reductions for disclosure) is amended as follows.
- (2) For sub-paragraph (1) substitute –
- “(1) Paragraph 13 provides for reductions in penalties –
- (a) under paragraph 1 where P discloses a relevant failure that involves a domestic matter, and
- (b) under paragraphs 2 to 4 where P discloses a relevant act or failure.
- (1A) Paragraph 13A provides for reductions in penalties under paragraph 1 where P discloses a relevant failure that involves an offshore matter or an offshore transfer.
- (1B) Sub-paragraph (2) applies where P discloses –
- (a) a relevant failure that involves a domestic matter,
- (b) a non-deliberate relevant failure that involves an offshore matter, or
- (c) a relevant act or failure giving rise to a penalty under any of paragraphs 2 to 4.”
- (3) In sub-paragraph (2), for “a” substitute “the”.
- (4) After sub-paragraph (2) insert –
- “(2A) Sub-paragraph (2B) applies where P discloses –
- (a) a deliberate relevant failure (whether concealed or not) that involves an offshore matter, or
- (b) a relevant failure that involves an offshore transfer.
- (2B) P discloses the failure by –

- 
- (a) telling HMRC about it,
  - (b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it,
  - (c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and
  - (d) providing HMRC with additional information.

(2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).

(2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.

(2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(5) At the end insert –

“(5) Paragraph 6A(4) to (5) applies to determine whether a failure involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.

(6) In this paragraph “relevant failure” means a failure to comply with a relevant obligation.”

7 In paragraph 13 (amount of reduction for disclosure), for the Table in sub-paragraph (3) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
70%	35%	20%
100%	50%	30%”

8 After paragraph 13 insert –

“13A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (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) for a prompted disclosure, in column 2 of the Table, and
- (b) for an unprompted disclosure, in column 3 of the Table.

(3) Where the Table shows a different minimum for case A and case B –

- (a) the case A minimum applies if HMRC becomes aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure;
- (b) otherwise, the case B minimum applies.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
37.5%	case A: 12.5% case B: 25%	case A: 0% case B: 12.5%
45%	case A: 15% case B: 30%	case A: 0% case B: 15%
60%	case A: 20% case B: 40%	case A: 0% case B: 20%
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

*Amendments to Schedule 55 to the Finance Act 2009 (c.10)*

- 9 Schedule 55 to FA 2009 (penalty for failure to make returns etc) is amended as follows
- 10 (1) Paragraph 14 (reductions for disclosure) is amended as follows.
  - (2) At the beginning insert –
    - “(A1) In this paragraph, “relevant information” means information which has been withheld by a failure to make a return.”
  - (3) In sub-paragraph (1) –
    - (a) after “6(3) or (4)” insert “where P discloses relevant information that involves a domestic matter”;
    - (b) for the words from “information which” to the end substitute “relevant information”.

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(4) After sub-paragraph (1) insert –

“(1A) Paragraph 15A provides for reductions in the penalty under paragraph 6(3) or (4) where P discloses relevant information that involves an offshore matter or an offshore transfer.

(1B) Sub-paragraph (2) applies where –

- (a) P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves a domestic matter, or
- (b) P is liable to a penalty under any of the other provisions mentioned in sub-paragraph (1) and P discloses relevant information.”

(5) After sub-paragraph (2) insert –

“(2A) Sub-paragraph (2B) applies where P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves an offshore matter or an offshore transfer.

(2B) P discloses relevant information 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.

(2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).

(2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.

(2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons.”

(6) At the end insert –

“(5) Paragraph 6A(4) to (5) applies to determine whether relevant information involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.”

11 In paragraph 15 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute –

<i>“Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
70%	35%	20%
100%	50%	30%”

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12 After paragraph 15 insert –

“15A(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (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 %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

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