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## SCHEDULES

### SCHEDULE 10

#### PENALTIES: OFFSHORE INCOME ETC

##### *Schedule 24 to FA 2007*

- 1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- 2 For paragraph 4 substitute—
- “4 (1) This paragraph sets out the penalty payable under paragraph 1.
- (2) If the inaccuracy is in category 1, the penalty is—
- (a) for careless action, 30% of the potential lost revenue,
  - (b) for deliberate but not concealed action, 70% of the potential lost revenue, and
  - (c) for deliberate and concealed action, 100% of the potential lost revenue.
- (3) If the inaccuracy is in category 2, the penalty is—
- (a) for careless action, 45% of the potential lost revenue,
  - (b) for deliberate but not concealed action, 105% of the potential lost revenue, and
  - (c) for deliberate and concealed action, 150% of the potential lost revenue.
- (4) If the inaccuracy is in category 3, the penalty is—
- (a) for careless action, 60% of the potential lost revenue,
  - (b) for deliberate but not concealed action, 140% of the potential lost revenue, and
  - (c) for deliberate and concealed action, 200% of the potential lost revenue.
- (5) Paragraph 4A explains the 3 categories of inaccuracy.
- 4A (1) An inaccuracy is in category 1 if—
- (a) it involves a domestic matter, or
  - (b) it involves an offshore matter and—
    - (i) the territory in question is a category 1 territory, or
    - (ii) the tax at stake is a tax other than income tax or capital gains tax.
- (2) An inaccuracy is in category 2 if—
- (a) it involves an offshore matter,
  - (b) the territory in question is a category 2 territory, and
  - (c) the tax at stake is income tax or capital gains tax.

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- (3) An inaccuracy is in category 3 if—
    - (a) it involves an offshore matter,
    - (b) the territory in question is a category 3 territory, and
    - (c) the tax at stake is income tax or capital gains tax.
  - (4) An inaccuracy “involves an offshore matter” if it results in a potential loss of revenue that is charged on or by reference to—
    - (a) income arising from a source in a territory outside the UK,
    - (b) assets situated or held in a territory outside the UK,
    - (c) activities carried on wholly or mainly in a territory outside the UK, or
    - (d) anything having effect as if it were income, assets or activities of a kind described above.
  - (5) An inaccuracy “involves a domestic matter” if it results in a potential loss of revenue that is charged on or by reference to anything not mentioned in sub-paragraph (4)(a) to (d).
  - (6) If a single inaccuracy is in more than one category (each referred to as a “relevant category”)—
    - (a) it is to be treated for the purposes of this Schedule as if it were separate inaccuracies, one in each relevant category according to the matters that it involves, and
    - (b) the potential lost revenue is to be calculated separately in respect of each separate inaccuracy.
  - (7) “Category 1 territory”, “category 2 territory” and “category 3 territory” are defined in paragraph 21A.
  - (8) “Assets” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling.
- 4B The penalty payable under paragraph 1A is 100% of the potential lost revenue.
- 4C The penalty payable under paragraph 2 is 30% of the potential lost revenue.
- 4D Paragraphs 5 to 8 define “potential lost revenue”.
- 3 For paragraph 10 substitute—
- “10 (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.
- 4 In paragraph 12 (interaction with other penalties), for sub-paragraph (4) substitute—

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“(4) Where penalties are imposed under paragraphs 1 and 1A in respect of the same inaccuracy, the aggregate of the amounts of the penalties must not exceed the relevant percentage of the potential lost revenue.

- (5) The relevant percentage is—
- (a) if the penalty imposed under paragraph 1 is for an inaccuracy in category 1, 100%,
  - (b) if the penalty imposed under paragraph 1 is for an inaccuracy in category 2, 150%, and
  - (c) if the penalty imposed under paragraph 1 is for an inaccuracy in category 3, 200%.”

5 In Part 5 (general), before the heading “Interpretation” insert—

*“Classification of territories*

21A(1) A category 1 territory is a territory designated as a category 1 territory by order made by the Treasury.

- (2) A category 2 territory is a territory that is neither—
- (a) a category 1 territory, nor
  - (b) a category 3 territory.
- (3) A category 3 territory is a territory designated as a category 3 territory by order made by the Treasury.
- (4) In considering how to classify a territory for the purposes of this paragraph, the Treasury must have regard to—
- (a) the existence of any arrangements between the UK and that territory for the exchange of information for tax enforcement purposes,
  - (b) the quality of any such arrangements (in particular, whether they provide for information to be exchanged automatically or on request), and
  - (c) the benefit that the UK would be likely to obtain from receiving information from that territory, were such arrangements to exist with it.

- (5) An order under this paragraph is to be made by statutory instrument.
- (6) Subject to sub-paragraph (7), an instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) If the order is—
- (a) the first order to be made under sub-paragraph (1), or
  - (b) the first order to be made under sub-paragraph (3),
- it may not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (8) An order under this paragraph does not apply to inaccuracies in a document given to HMRC (or, in a case within paragraph 3(2), inaccuracies discovered by P) before the date on which the order comes into force.

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*Location of assets etc*

- 21B(1) The Treasury may by regulations make provision for determining for the purposes of paragraph 4A where—
- (a) a source of income is located,
  - (b) an asset is situated or held, or
  - (c) activities are wholly or mainly carried on.
- (2) Different provision may be made for different cases and for income tax and capital gains tax.
- (3) Regulations under this paragraph are to be made by statutory instrument.
- (4) An instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.”

6 After paragraph 23A insert—

“23B UK” means the United Kingdom, including the territorial sea of the United Kingdom.”

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