
STATUTORY INSTRUMENTS

2020 No. 25

**The International Tax Enforcement
(Disclosable Arrangements) Regulations 2020**

PART 3

Penalties for breach of obligations

Penalties for failure to comply with Regulations

14.—(1) A person who fails to comply with any of the provisions of these Regulations specified in paragraph (2) is liable—

- (a) to a penalty not exceeding—
 - (i) £5,000, or
 - (ii) in the case of a provision mentioned in sub-paragraph (a), (c), (d) or (f) of that paragraph, if that amount appears to an officer of Revenue and Customs to be inappropriately low after taking into account all relevant considerations, £600 for each day during the initial period, and
- (b) if the failure continues after a penalty is imposed under sub-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 sub-paragraph (a) was imposed (but excluding any day for which a penalty under this regulation has already been imposed).

(2) The provisions are—

- (a) regulation 3(1) (UK intermediary's obligation to make a return of reportable information),
- (b) regulation 3(4) (UK intermediary's obligation to make a return of new reportable information),
- (c) regulation 4(1) (UK relevant taxpayer's obligation to make a return of reportable information),
- (d) regulation 7(2) (UK intermediary's obligation to notify where legal professional privilege exclusion applies),
- (e) regulation 8(2) (intermediary's obligation to notify arrangement reference number),
- (f) regulation 11 (requirement to provide information).

(3) For the purposes of this regulation and regulation 16, "relevant considerations" include—

- (a) the desirability of a 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)—
 - (i) in the case of a penalty for a UK intermediary's failure to comply with any obligation, to the amount of any fees received, or likely to have been received, by the UK intermediary in connection with the reportable cross-border arrangement, and

- (ii) in the case of a penalty for a UK relevant taxpayer's failure to comply with any obligation, to the amount of any advantage gained, or sought to be gained, by the UK relevant taxpayer in relation to any tax in relation to the reportable cross-border arrangement,
- (b) whether the failure giving rise to the penalty was deliberate,
- (c) any procedures maintained by the person liable to the penalty to secure the identification of reportable cross-border arrangements and compliance with obligations under these Regulations,
- (d) the reasonably foreseeable consequences of the failure.
- (4) In this regulation, "the initial period" means the period—
- (a) beginning with the relevant day, and
- (b) ending on the earlier of—
- (i) the day on which the penalty under paragraph (1)(a)(ii) is determined, and
- (ii) the last day before the failure ceases.
- (5) For the purpose of paragraph (4), "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 regulation 3(1)	The first day after the end of the specified period prescribed in regulation 3(3)
A failure to comply with regulation 4(1)	The first day after the end of the specified period prescribed in regulation 4(4)
A failure to comply with regulation 7(2)	The day after the day the notification should have been made
A failure to comply with regulation 11	The first day after the latest time by which regulation 11 must be complied with as specified in the notice under that regulation

(6) A UK relevant taxpayer who fails to comply with regulation 5 (relevant taxpayer's obligation to make an annual report) is liable to a penalty not exceeding the relevant sum.

- (7) In paragraph (6), "the relevant sum" means—
- (a) in relation to a UK relevant taxpayer not falling within sub-paragraph (b) or (c), £5,000 in respect of each reportable cross-border arrangement to which the failure relates,
- (b) in relation to a UK relevant taxpayer who has previously failed to comply with regulation 5 on one (and only one) occasion during the period of 36 months ending with the date on which the current failure to comply with that provision began, £7,500 in respect of each reportable cross-border arrangement to which the current failure relates (whether or not the same as the reportable cross-border arrangement to which the previous failure relates), or
- (c) in relation to a UK relevant taxpayer who has previously failed to comply with regulation 5 on two or more occasions during the period of 36 months ending with the date on which the current failure to comply with that provision began, £10,000 in respect of each reportable cross-border arrangement to which the current failure relates (whether or not the same as the reportable cross-border arrangement to which any of the previous failures relates).

Determination of penalty by HMRC: initial penalty under regulation 14(1)(a)(i)

15.—(1) Subject to paragraph (2), an officer of Revenue and Customs may make a determination imposing a penalty under regulation 14(1)(a)(i) and setting it at such amount as, in the opinion of that officer, is correct or appropriate.

(2) Notice of a determination of a penalty under this regulation must be given to the person liable to the penalty and must state the date on which it is issued and the time within which an appeal against the determination may be made.

(3) After the notice of determination under this regulation has been given the determination must not be altered except on appeal.

Determination of penalty by First-tier Tribunal: daily penalty under regulation 14(1)(a)(ii)

16.—(1) An officer of Revenue and Customs may commence proceedings before the First-tier Tribunal for a penalty under regulation 14(1)(a)(ii).

(2) The person liable to the penalty must be a party to the proceedings.

(3) The First-tier Tribunal may determine a penalty in proceedings under this regulation.

(4) The amount of a penalty under regulation 14(1)(a)(ii) is to be arrived at after taking account of all relevant considerations.

(5) If the maximum penalty under regulation 14(1)(a)(ii) appears inappropriately low after taking account of those considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.

(6) Where it appears to an officer of Revenue and Customs that a penalty under regulation 14(1)(a)(ii) has been determined on the basis that the initial period begins 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.

(7) In addition to any right of appeal on a point of law under section 11(2) of TCEA 2007(1), the person liable to the penalty may appeal to the Upper Tribunal against the determination of a penalty in proceedings under paragraph (1), but not against any decision which falls under section 11(5)(d) and (e) of that Act and was made in connection with the determination of the amount of the penalty.

(8) Section 11(3) and (4) of TCEA 2007 applies to the right of appeal under paragraph (7) as it applies to the right of appeal under section 11(2) of that Act.

(9) On any such appeal the Upper Tribunal may—

- (a) if it appears that no penalty has been incurred, set the determination aside,
- (b) if the amount determined appears to be appropriate, confirm the determination,
- (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the Upper Tribunal considers appropriate, or
- (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the Upper Tribunal considers appropriate.

Determination of penalty by HMRC: further daily penalty under regulation 14(1)(b) and penalty in relation to annual report

17.—(1) An officer of Revenue and Customs may make a determination imposing a penalty under regulation 14(1)(b) or (6) and setting it at such amount as, in the opinion of that officer, is correct or appropriate.

(1) Section 11 of TCEA 2007 was amended by paragraph 5 of Schedule 2 to the Crime and Security Act 2010 (c. 17), paragraph 130 and 131 of Schedule 19 to the Data Protection Act 2018 (c. 12) and sections 116(1) and 181I(1) of Tax Collection and Management (Wales) Act 2016 (2016 anaw 6).

(2) Notice of a determination of a penalty under this regulation must be given to the person liable to the penalty and must state the date on which it is issued and the time within which an appeal against the determination may be made.

(3) After the notice of determination under this regulation has been given the determination must not be altered except in accordance with paragraph (4) or on appeal.

(4) If it is discovered by an officer of Revenue and Customs that the amount of a penalty determined under this regulation is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which, in the opinion of that officer, is correct or appropriate.

Time limits and treatment of penalties

18.—(1) Proceedings in relation to a penalty under regulation 14(1)(a)(ii) must be commenced, or a determination of a penalty under regulation 14(1)(a)(i) or (b) or (6) must be made, before the latest of the following dates—

- (a) the date 24 months after the date on which the inaccuracy or failure first came to the attention of an officer of Revenue and Customs,
- (b) the date six years after the date on which the person became liable to the penalty, and
- (c) in the case of a determination of a penalty under regulation 14(1)(b), the date three years after the date of determination of a penalty under regulation 14(1)(a).

(2) A penalty determined under this Part is due and payable at the end of the period of 30 days beginning with the date of determination of the penalty by the First-tier Tribunal or issue of the notice of determination, as the case may be.

(3) A penalty determined under this Part is to be treated for all purposes as if it were tax charged in an assessment and due and payable.

Appeals against penalty determinations by HMRC

19.—(1) An appeal may be brought against the determination of a penalty under regulation 15 or 17 and, subject to the following provisions of this regulation, the provisions of the Taxes Management Act 1970(2) relating to appeals have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax, except that references to the tribunal shall be taken to be references to the First-tier Tribunal.

(2) On any such appeal, section 50(6) to (8) of the Taxes Management Act 1970(3) does not apply but the First-tier Tribunal may—

- (a) if it appears that no penalty has been incurred, set the determination aside,
- (b) if the amount determined appears to be appropriate, confirm the determination,
- (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the First-tier Tribunal considers appropriate, or
- (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the First-tier Tribunal considers appropriate.

(3) In addition to any right of appeal on a point of law under section 11(2) of TCEA 2007, the person liable to the penalty may appeal to the Upper Tribunal against the amount of the penalty which has been determined under paragraph (2), but not against any decision which falls under

(2) 1970 c. 9. Part 5 of the Act contains provisions relating to appeals.

(3) Section 50(6) to (8) of the Taxes Management Act 1970 was amended by section 67(2) of the Finance (No. 2) Act 1975 (c. 45), paragraph 17 of Schedule 19 to Finance Act 1994 (c. 9), paragraph 7 of Schedule 19 to the Finance Act 1996 (c. 8), paragraph 30 of Schedule 29 to the Finance Act 2001 (c. 9) and S.I. 2009/56.

section 11(5)(d) and (e) of that Act and was made in connection with the determination of the amount of the penalty.

(4) Section 11(3) and (4) of TCEA 2007 applies to the right of appeal under paragraph (3) as it applies to the right of appeal under section 11(2) of that Act.

(5) On an appeal under this section the Upper Tribunal has the same powers as are conferred on the First-tier Tribunal by virtue of this regulation.

Special reduction

20.—(1) If an officer of Revenue and Customs thinks it right because of special circumstances, the officer may reduce a penalty under this Part.

(2) In paragraph (1), “special circumstances” does not include—

- (a) ability to pay, or
- (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In paragraph (1), the reference to reducing a penalty includes a reference to—

- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

Matters to be disregarded in relation to liability to penalties

21.—(1) Liability to a penalty under regulation 14 does not arise if the person satisfies an officer of Revenue and Customs or, on a determination by the First-tier Tribunal or an appeal notified to the tribunal, the tribunal that there is a reasonable excuse for a failure to do anything required to be done under these Regulations.

(2) For the purposes of this regulation none of the following is a reasonable excuse—

- (a) that there is an insufficiency of funds to do something,
- (b) that the person relies on legal advice if—
 - (i) the advice was given or procured by a person who is an intermediary within the first paragraph of Article 3(21) of the DAC in relation to the reportable cross-border arrangement to which the failure relates,
 - (ii) the advice was not based on a full and accurate description of the facts, or
 - (iii) the conclusions in the advice that the person relied upon were unreasonable.

(3) In considering whether a person had a reasonable excuse, the officer of Revenue and Customs or the tribunal must consider whether the person maintains such procedures as it is reasonable in all the circumstances to have in place to secure the identification of reportable cross-border arrangements and compliance with obligations under these Regulations.

(4) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.