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## SCHEDULES

### SCHEDULE 35

#### PROMOTERS OF TAX AVOIDANCE SCHEMES: PENALTIES

##### *Penalties for failure to comply*

- 2 (1) A person who
- [<sup>F1</sup>(a)] fails to comply with a duty imposed by or under this Part mentioned in column 1 of the Table is liable to a penalty not exceeding the amount shown in relation to that [<sup>F2</sup>duty] in column 2 of the Table<sup>[F3]</sup>, or-
- (b) deliberately obstructs an officer of Revenue and Customs in the course of an inspection under paragraph 10 of Schedule 36 to FA 2008, as it has effect as a result of section 272A, that has been approved by the tribunal is liable to a penalty not exceeding the relevant amount (see sub-paragraph (3A)).]

#### TABLE

<i>Column 1</i>	<i>Column 2</i>
<i>Provision [<sup>F4</sup> or duty]</i>	<i>Maximum penalty (£)</i>
[ <sup>F5</sup> Section 236B(1) (promotion of arrangements or proposal of a description specified in a stop notice)	the relevant amount (see subparagraphs (2A) and (2B))
Section 236B(3)(a), (4)(a) or (5)(a) (requirement to notify persons who are subject to a stop notice)	£10,000
Section 236B(3)(b), (4)(b) or (5)(b) (requirement to notify HMRC of persons who are subject to a stop notice)	£25,000
Section 236C(1) (duty to make return to HMRC)	£5,000
Section 236J(1) (requirement to notify clients and intermediaries of stop notice)	£5,000]
Section 249(1) (duty to notify clients of monitoring notice)	5,000
Section 249(3) (duty to publicise monitoring notice)	1,000,000
Section 249(10) (duty to include information on correspondence etc)	1,000,000
Section 251 (duty of promoter to notify clients and intermediaries of reference number)	5,000
Section 252 (duty of those notified to notify others of promoter's number)	5,000

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Section 253 (duty to notify HMRC of reference number)	the relevant amount (see subparagraph (3))
Section 255 (duty to provide information or produce document)	1,000,000
Section 257 (ongoing duty to provide information or produce document)	1,000,000
Section 258 (duty of person dealing with non-resident promoter)	1,000,000
Section 259 (monitored promoter: duty to provide information about clients)	5,000
Section 260 (intermediaries: duty to provide information about clients)	5,000
Section 261 (duty to provide information about clients following an enquiry)	10,000
F6	F6
...	...
Section 263 (duty to provide information about address)	5,000
Section 265 (duty to provide information to promoter)	5,000
[ <sup>F7</sup> Duty to comply with a notice given under paragraph 1 of Schedule 36 to FA 2008 as it has effect as a result of section 272A	the relevant amount (see subparagraph (3A))
Duty to comply with a notice given under paragraph 2, 5 or 5A of Schedule 36 to FA 2008 as it has effect as a result of section 272A	the relevant amount (see subparagraph (3B))]

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- [<sup>F8</sup>(1A) In relation to a failure to comply with section 236C(1) the maximum penalty specified in column 2 of the Table is a maximum penalty which may be imposed—
- (a) in respect of each failure to provide the required information or statement (see section 236C(6)) about a relevant client (within the meaning given by that section), and
  - (b) for each day on which a complete return is not provided after the end of the period within which it must be provided (see section 236C(7)).]
- (2) In relation to a failure to comply with section [<sup>F9</sup>236B(3), (4) or (5), 236J(1),] 249(1), 251, 252, 259 or 260 the maximum penalty specified in column 2 of the Table is a maximum penalty which may be imposed in respect of each person to whom the failure relates.
- [<sup>F10</sup>(2A) In relation to a failure to comply with section 236B(1), the “relevant amount” is the sum of—
- (a) £100,000 in respect of one or more failures relating to a particular stop notice, and
  - (b) £5,000 for each person to whom arrangements of a description specified in that stop notice, or a proposal for such arrangements, were promoted (within the meaning it has in that section).

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- (2B) Where a person fails to comply with section 236B(1) at a time when the person, or another person who the person controls or has significant influence over, is subject to a monitoring notice, sub-paragraph (2A) applies as if—
- (a) in paragraph (a), for “£100,000” there were substituted “ £250,000 ”, and
  - (b) in paragraph (b), for “£5,000” there were substituted “ £10,000 ”.
- (2C) If the maximum penalty that would apply as a result of sub-paragraph (2B) in a particular case appears inappropriately low after taking account of the considerations in sub-paragraph (4), sub-paragraph (2B)(a) applies as if for “£250,000” there were substituted “ £1,000,000 ”.]
- (3) In relation to a failure to comply with section 253, the “relevant amount” is—
- (a) £5,000, unless paragraph (b) or (c) applies;
  - (b) £7,500, where a person has previously failed to comply with section 253 on one (and only one) occasion during the period of 36 months ending with the date on which the current failure occurred;
  - (c) £10,000, where a person has previously failed to comply with section 253 on two or more occasions during the period mentioned in paragraph (b).
- [<sup>F11</sup>(3A) Where a person fails to comply with a notice given under paragraph 1 of Schedule 36 to FA 2008 (as it has effect as a result of section 272A) or deliberately obstructs an officer of Revenue and Customs in the course of an inspection under paragraph 10 of that Schedule (as it has effect as a result of that section) that has been approved by the tribunal, the “relevant amount” is—
- (a) in the case of a failure by a person who was subject to a monitoring notice at the time of the failure, or who had control of or had significant influence over such a person, £1,000,000, and
  - (b) in any other case, £5,000.
- (3B) In relation to a failure to comply with a notice given under paragraph 2, 5 or 5A of that Schedule as it has effect as a result of section 272A, the “relevant amount” is the amount for the time being specified in paragraph 39(2) of that Schedule.]
- (4) The amount of a penalty imposed under sub-paragraph (1) is to be arrived at after taking account of all relevant considerations, including the desirability of setting it 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)—
- (a) in the case of a penalty imposed for a failure [<sup>F12</sup>relating to any arrangements or proposal promoted by a person], to the amount of fees received, or likely to have been received, by the person in connection with the [<sup>F13</sup>those arrangements or that proposal];
  - (b) in [<sup>F14</sup>such a case], to the amount of any tax advantage gained, or sought to be gained, <sup>F15</sup>... in relation to the <sup>F16</sup>... arrangements or the arrangements implementing the <sup>F16</sup>... proposal [<sup>F17</sup>(including, where the person liable to the penalty is the promoter of those arrangements or that proposal, any advantage that was gained or sought to be gained by the persons to whom the arrangements or proposal were promoted)].
- [<sup>F18</sup>(5) The references in sub-paragraph (4) to arrangements or a proposal being “promoted” are to be construed in accordance with section 236A(7).

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- (6) Sub-paragraphs (5) to (11) of paragraph 13A of Schedule 34 (meaning of “control” and “significant influence”) apply to this paragraph as they apply to Part 2 of that Schedule.]

#### Textual Amendments

- F1** Words in [Sch. 35 para. 2\(1\)](#) renumbered as [Sch. 35 para. 2\(1\)\(a\)](#) (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(a\)\(i\)](#)
- F2** Word in [Sch. 35 para. 2\(1\)\(a\)](#) substituted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(a\)\(ii\)](#)
- F3** [Sch. 35 para. 2\(1\)\(b\)](#) and word inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(a\)\(iii\)](#)
- F4** Words in [Sch. 35 para. 2\(1\) Table](#) inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(d\)\(i\)](#)
- F5** Words in [Sch. 35 para. 2\(1\) Table](#) inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(b\)](#)
- F6** Words in [Sch. 35 para. 2\(1\) Table](#) omitted (with effect in accordance with s. 121(6) of the amending Act) by virtue of [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(d\)\(ii\)](#)
- F7** Words in [Sch. 35 para. 2\(1\) Table](#) inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(c\)](#)
- F8** [Sch. 35 para. 2\(1A\)](#) inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(e\)](#)
- F9** Words in [Sch. 35 para. 2\(2\)](#) inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(f\)](#)
- F10** [Sch. 35 para. 2\(2A\)-\(2C\)](#) inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(g\)](#)
- F11** [Sch. 35 para. 2\(3A\)\(3B\)](#) inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(h\)](#)
- F12** Words in [Sch. 35 para. 2\(4\)\(a\)](#) substituted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(i\)\(a\)](#)
- F13** Words in [Sch. 35 para. 2\(4\)\(a\)](#) substituted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(i\)\(b\)](#)
- F14** Words in [Sch. 35 para. 2\(4\)\(b\)](#) substituted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(i\)\(ii\)\(a\)](#)
- F15** Words in [Sch. 35 para. 2\(4\)\(b\)](#) omitted (with effect in accordance with s. 121(6) of the amending Act) by virtue of [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(i\)\(ii\)\(b\)](#)
- F16** Word in [Sch. 35 para. 2\(4\)\(b\)](#) omitted (with effect in accordance with s. 121(6) of the amending Act) by virtue of [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(i\)\(ii\)\(c\)](#)
- F17** Words in [Sch. 35 para. 2\(4\)\(b\)](#) inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(i\)\(ii\)\(d\)](#)
- F18** [Sch. 35 para. 2\(5\)\(6\)](#) inserted (with effect in accordance with s. 121(6) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 30 para. 8\(3\)\(j\)](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 212(4)(f) and word inserted by [2021 c. 26 Sch. 27 para. 43\(b\)\(ii\)](#)
- s. 212(5)(a)(iv) and word inserted by [2021 c. 26 Sch. 27 para. 43\(c\)\(ii\)](#)
- s. 212(5)(b)(iv) and word inserted by [2021 c. 26 Sch. 27 para. 43\(c\)\(iv\)](#)
- s. 212(5)(c)(iv) and word inserted by [2021 c. 26 Sch. 27 para. 43\(c\)\(v\)](#)
- Sch. 31 para. 2(3)(b) inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(iii\)](#)
- Sch. 31 para. 2(4A) inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(c\)](#)
- Sch. 31 para. 3(1A) inserted by [2017 c. 32 Sch. 14 para. 45\(3\)\(b\)](#)
- Sch. 31 para. 5(b) inserted by [2017 c. 32 Sch. 14 para. 45\(4\)\(c\)](#)
- Sch. 31 para. 2(3)(a) words inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(ii\)](#)
- Sch. 31 para. 5(a) words inserted by [2017 c. 32 Sch. 14 para. 45\(4\)\(b\)](#)
- Sch. 31 para. 2(3)(a) words renumbered as Sch. 31 para. 2(3)(a) by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(i\)](#)
- Sch. 31 para. 5(a) words renumbered as Sch. 31 para. 5(a) by [2017 c. 32 Sch. 14 para. 45\(4\)\(a\)](#)
- Sch. 32 para. 1(2)(b) inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(iii\)](#)
- Sch. 32 para. 1(3A) inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(c\)](#)
- Sch. 32 para. 1(2)(a) words inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(ii\)](#)
- Sch. 32 para. 1(2)(a) words renumbered as Sch. 32 para. 1(2)(a) by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(i\)](#)