



# Finance Act 2016

## 2016 CHAPTER 24

### PART 10

#### TAX AVOIDANCE AND EVASION

##### *Offshore activities*

#### **162 Penalties for enablers of offshore tax evasion or non-compliance**

- (1) Schedule 20 makes provision for penalties for persons who enable offshore tax evasion or non-compliance by other persons.
- (2) Subsection (1) and that Schedule come into force on such day as the Treasury may appoint by regulations made by statutory instrument.
- (3) Regulations under this section may—
  - (a) commence a provision generally or only for specified purposes,
  - (b) appoint different days for different purposes, and
  - (c) make supplemental, incidental and transitional provision in connection with the coming into force of any provision of the Schedule.

#### **Commencement Information**

- I1** [S. 162\(2\)\(3\)](#) in force at Royal Assent, see. [s. 162\(2\)](#)  
**I2** [S. 162\(1\)](#) in force at 1.1.2017 by [S.I. 2016/1249](#), [reg. 2](#)

#### **163 Penalties in connection with offshore matters and offshore transfers**

- (1) Schedule 21 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).

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- (2) That Schedule comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (3) Regulations under this section may—
  - (a) commence a provision generally or only for specified purposes,
  - (b) appoint different days for different provisions or for different purposes, and
  - (c) make supplemental, incidental and transitional provision.

## 164 Offshore tax errors etc: publishing details of deliberate tax defaulters

- (1) Section 94 of FA 2009 (publishing details of deliberate tax defaulters) is amended as follows.
- (2) After subsection (4), insert—
  - “(4A) Subsection (4B) applies where a person who is a body corporate or a partnership has incurred—
    - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or
    - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).
  - (4B) The Commissioners may publish the information mentioned in subsection (4) in respect of any individual who—
    - (a) controls the body corporate or the partnership (within the meaning of section 1124 of CTA 2010), and
    - (b) has obtained a tax advantage as a result of the inaccuracy or failure.
  - (4C) Subsection (4D) applies where one or more trustees of a settlement have incurred—
    - (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or
    - (b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).
  - (4D) The Commissioners may publish the information mentioned in subsection (4) in respect of any trustee who is an individual and who has obtained a tax advantage as a result of the inaccuracy or failure.”
- (3) In subsection (6), after “information” insert “ about a person under subsection (1), ”.
- (4) After subsection (6), insert—
  - “(6A) Before publishing any information about an individual under subsection (4B) or (4D), the Commissioners—
    - (a) must inform the individual that they are considering doing so, and

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- (b) afford the individual reasonable opportunity to make representations about whether it should be published.”
- (5) In subsection (10)—
  - (a) omit the word “or” at the end of paragraph (a), and after that paragraph insert—
    - “(aa) paragraph 10A of that Schedule to the full extent permitted following an unprompted disclosure.”;
  - (b) after paragraph (b) insert “, or
  - (c) paragraph 13A of that Schedule to the full extent permitted following an unprompted disclosure.”
- (6) For subsection (16) substitute—
  - “(16) In this section—
    - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
    - “tax advantage” has the meaning given by section 208 of FA 2013.”
- (7) The amendments made by this section come into force on such day as the Treasury may by regulations made by statutory instrument appoint.

#### Commencement Information

- I3** [S. 164](#) in force at 1.4.2017 for the purposes of the amendments made by that section by [S.I. 2017/261](#), [reg. 2](#)

### 165 Asset-based penalties for offshore inaccuracies and failures

- (1) Schedule 22 contains provision imposing asset-based penalties on certain taxpayers who have been charged a penalty for deliberate offshore inaccuracies and failures.
- (2) That Schedule comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (3) Regulations under subsection (2) may—
  - (a) commence a provision generally or only for specified purposes,
  - (b) appoint different days for different provisions or for different purposes, and
  - (c) make supplemental, incidental and transitional provision.

### 166 Offences relating to offshore income, assets and activities

- (1) After section 106A of TMA 1970 insert—

*“Offshore income, assets and activities*

#### **106B Offence of failing to give notice of being chargeable to tax**

- (1) A person who is required by section 7 to give notice of being chargeable to income tax or capital gains tax (or both) for a year of assessment and who has

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not given that notice by the end of the notification period commits an offence if—

- (a) the tax in question is chargeable (wholly or in part) on or by reference to offshore income, assets or activities, and
  - (b) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to give the notice required by section 7.
- (3) In this section “the notification period” has the same meaning as in section 7 (see subsection (1C) of that section).

#### **106C Offence of failing to deliver return**

- (1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if—
- (a) the return is not delivered by the end of the withdrawal period,
  - (b) an accurate return would have disclosed liability to income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and
  - (c) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to deliver the return.
- (3) In this section “the withdrawal period” has the same meaning as in section 8B (see subsection (6) of that section).

#### **106D Offence of making inaccurate return**

- (1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if, at the end of the amendment period—
- (a) the return contains an inaccuracy the correction of which would result in an increase in the amount of income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and
  - (b) the amount of that increase exceeds the threshold amount.
- (2) It is a defence for a person accused of an offence under this section to prove that the person took reasonable care to ensure that the return was accurate.
- (3) In this section “the amendment period” means the period for amending the return under section 9ZA.

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### **106E Exclusions from offences under sections 106B to 106D**

- (1) A person is not guilty of an offence under section 106B, 106C or 106D if the capacity in which the person is required to give the notice or make and deliver the return is—
  - (a) as a relevant trustee of a settlement, or
  - (b) as the executor or administrator of a deceased person.
- (2) The Treasury may by regulations provide that a person is not guilty of an offence under section 106B, 106C or 106D if—
  - (a) conditions specified in the regulations are met, or
  - (b) circumstances so specified exist.
- (3) The conditions may (in particular) include conditions in relation to the income, assets or activities on or by reference to which the tax in question is chargeable.

### **106F Offences under sections 106B to 106D: supplementary provision**

- (1) Where a period of time is extended under subsection (2) of section 118 by HMRC, the tribunal or an officer (but not where a period is otherwise extended under that subsection), any reference in section 106B, 106C or 106D to the end of the period is to be read as a reference to the end of the period as so extended.
- (2) The Treasury may by regulations specify the amount (which must not be less than £25,000) that is to be the threshold amount for the purposes of sections 106B to 106D.
- (3) The Treasury may by regulations make provision as to the calculation for the purposes of sections 106B to 106D of—
  - (a) the amount of tax that is chargeable on or by reference to offshore income, assets or activities, and
  - (b) the increase in the amount of tax that is so chargeable as a result of correcting an inaccuracy.
- (4) In sections 106B to 106D and this section “offshore income, assets or activities” means—
  - (a) income arising from a source in a territory outside the United Kingdom,
  - (b) assets situated or held in a territory outside the United Kingdom, or
  - (c) activities carried on wholly or mainly in a territory outside the United Kingdom.
- (5) In subsection (4), “assets” has the meaning given in section 21(1) of the 1992 Act, but also includes sterling.

### **106G Penalties for offences under sections 106B to 106D**

- (1) A person guilty of an offence under section 106B, 106C or 106D is liable on summary conviction—

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- (a) in England and Wales, to a fine or to imprisonment for a term not exceeding 51 weeks or to both, and
  - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.
- (2) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (1) (a) to 51 weeks is to be read as a reference to 6 months.

### **106H Regulations under sections 106E and 106F**

- (1) This section makes provision about regulations under sections 106E and 106F.
  - (2) If the regulations contain a reference to a document or any provision of a document and it appears to the Treasury that it is necessary or expedient for the reference to be construed as a reference to that document or that provision as amended from time to time, the regulations may make express provision to that effect.
  - (3) The regulations—
    - (a) may make different provision for different cases, and
    - (b) may include incidental, supplemental, consequential and transitional provision and savings.
  - (4) The regulations are to be made by statutory instrument.
  - (5) An instrument containing the regulations is subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) The amendment made by this section comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (3) The regulations—
- (a) may appoint different days for different purposes, and
  - (b) may include incidental, supplemental, consequential and transitional provision and savings.
- (4) The amendment made by this section does not have effect in relation to—
- (a) a failure to give a notice required by section 7 of TMA 1970,
  - (b) a failure to make and deliver a return required by section 8 of TMA 1970, or
  - (c) a return required by section 8 that contains an inaccuracy,
- if the notice or return relates to a tax year before that in which the amendment comes into force.

#### **Commencement Information**

**I4** [S. 166](#) in force at 7.10.2017 for the purposes of the amendment made by that provision with effect in relation to the tax year commencing on 6.4.2017 and subsequent tax years by [S.I. 2017/970](#), [art. 2](#)

**Changes to legislation:**

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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):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)