

Changes to legislation: Finance Act 2016, PART 1 is up to date with all changes known to be in force on or before 08 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 22

ASSET-BASED PENALTY FOR OFFSHORE INACCURACIES AND FAILURES

PART 1

LIABILITY FOR PENALTY

Circumstances in which asset-based penalty is payable

- 1 (1) An asset-based penalty is payable by a person (P) where—
- (a) one or more standard offshore tax penalties have been imposed on P in relation to a tax year (see paragraphs 2 and 3), and
 - (b) the potential lost revenue threshold is met in relation to that tax year (see paragraph 4).
- (2) But this is subject to paragraph 6 (restriction on imposition of multiple asset-based penalties in relation to the same asset).

Commencement Information

II Sch. 22 para. 1 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), **reg. 2(b)**

Meaning of standard offshore tax penalty

- 2 (1) A standard offshore tax penalty is a penalty that falls within sub-paragraph (2), (3) [F1(4) or (4A)] .
- (2) A penalty falls within this sub-paragraph if—
- (a) it is imposed under paragraph 1 of Schedule 24 to FA 2007 (inaccuracy in taxpayer's document),
 - (b) the inaccuracy for which the penalty is imposed involves an offshore matter or an offshore transfer,
 - (c) it is imposed for deliberate action (whether concealed or not), and
 - (d) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.
- (3) A penalty falls within this sub-paragraph if—
- (a) it is imposed under paragraph 1 of Schedule 41 to FA 2008 (penalty for failure to notify),
 - (b) the failure for which the penalty is imposed involves an offshore matter or an offshore transfer,
 - (c) it is imposed for a deliberate failure (whether concealed or not), and

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(d) the tax at stake is (or includes) capital gains tax or asset-based income tax.

(4) A penalty falls within this sub-paragraph if—

- (a) it is imposed under paragraph 6 of Schedule 55 to FA 2009 (penalty for failure to make return more than 12 months after filing date),
- (b) it is imposed for the withholding of information involving an offshore matter or an offshore transfer,
- (c) it is imposed for a deliberate withholding of information (whether concealed or not), and
- (d) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.

[^{F2}(4A) A penalty falls within this paragraph if—

- (a) it is imposed on a person under paragraph 1 of Schedule 18 to FA 2017 (requirement to correct relevant offshore tax non-compliance),
- (b) the person was aware at any time during the RTC period that at the end of the 2016-17 tax year P had relevant offshore tax non-compliance to correct, and
- (c) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.]

(5) In a case where the inaccuracy, failure or withholding of information for which a penalty is imposed involves both an offshore matter or an offshore transfer and a domestic matter, the standard offshore tax penalty is only that part of the penalty that involves the offshore matter or offshore transfer.

[^{F3}(5A) Sub-paragraph (5) does not apply to a penalty imposed under paragraph 1 of Schedule 18 to FA 2017.]

(6) In a case where the tax at stake in relation to a penalty includes a tax other than capital gains tax, inheritance tax or asset-based income tax, the standard offshore tax penalty is only that part of the penalty which relates to capital gains tax, inheritance tax or asset-based income tax.

(7) “Asset-based income tax” means income tax that is charged under any of the provisions mentioned in column 1 of the table in paragraph 13(2).

Textual Amendments

- F1** Words in Sch. 22 para. 2(1) substituted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(2\)\(a\)](#)
- F2** Sch. 22 para. 2(4A) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(2\)\(b\)](#)
- F3** Sch. 22 para. 2(5A) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(2\)\(c\)](#)

Commencement Information

- I2** Sch. 22 para. 2 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

Tax year to which standard offshore tax penalty relates

- 3 (1) Where a standard offshore tax penalty is imposed under paragraph 1 of Schedule 24 to FA 2007, the tax year to which that penalty relates is—

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- (a) if the tax at stake as a result of the inaccuracy is income tax or capital gains tax, the tax year to which the document containing the inaccuracy relates;
 - (b) if the tax at stake as a result of the inaccuracy is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.
- (2) Where a standard offshore tax penalty is imposed under paragraph 1 of Schedule 41 to FA 2008 for a failure to comply with an obligation specified in the table in that paragraph, the tax year to which that penalty relates is the tax year to which the obligation relates.
- (3) Where a standard offshore tax penalty is imposed under paragraph 6 of Schedule 55 to FA 2009 for a failure to make a return or deliver a document specified in the table of paragraph 1 of that Schedule, the tax year to which that penalty relates is—
- (a) if the tax at stake is income tax or capital gains tax, the tax year to which the return or document relates;
 - (b) if the tax at stake is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.
- [^{F4}(4) Where a standard offshore penalty is imposed under paragraph 1 of Schedule 18 to FA 2017, the tax year to which that penalty relates is—
- (a) if the tax at stake in relation to the uncorrected relevant offshore tax non-compliance is income tax or capital gains tax, the tax year or years to which the failure or inaccuracy constituting the relevant offshore tax non-compliance in question relates;
 - (b) if the tax at stake in relation to the uncorrected relevant offshore tax non-compliance is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.
- (5) In sub-paragraph (4) references to uncorrected relevant offshore tax non-compliance are to the relevant offshore tax non-compliance in respect of which the standard offshore penalty is imposed.]

Textual Amendments

- F4** Sch. 22 para. 3(4)(5) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(3\)](#)

Commencement Information

- I3** Sch. 22 para. 3 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

Potential lost revenue threshold

- 4 (1) The potential lost revenue threshold is reached where the offshore PLR in relation to a tax year exceeds £25,000.
- (2) The Treasury may by regulations change the figure for the time being specified in sub-paragraph (1).
- (3) Regulations under sub-paragraph (2) are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under sub-paragraph (2) is subject to annulment in pursuance of a resolution of the House of Commons.

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(5) Regulations under sub-paragraph (2)—

- (a) may make different provision for different purposes;
- (b) may contain supplemental, incidental, consequential, transitional and transitory provision.

Commencement Information

I4 Sch. 22 para. 4 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

Offshore PLR

- 5 (1) The offshore PLR, in relation to a tax year, is the total of—
- (a) the potential lost revenue (in the case of a standard offshore tax penalty imposed under Schedule 24 to FA 2007 or Schedule 41 to FA 2008 [^{F5}or Schedule 18 to FA 2017]), and
 - (b) the liability to tax (in the case of a standard offshore tax penalty imposed under Schedule 55 to FA 2009),
- by reference to which all of the standard offshore tax penalties imposed on P in relation to the tax year are assessed.

(2) Sub-paragraphs (3) to (5) apply where—

- (a) a penalty is imposed on P under paragraph 1 of Schedule 24 to FA 2007, paragraph 1 of Schedule 41 to FA 2008 or paragraph 6 of Schedule 55 to FA 2009, and
- (b) the potential lost revenue or liability to tax by reference to which the penalty is assessed relates to a standard offshore tax penalty and one or more other penalties.

In this paragraph, such a penalty is referred to as a “combined penalty”.

- (3) Only the potential lost revenue or liability to tax relating to the standard offshore tax penalty is to be taken into account in calculating the offshore PLR.
- (4) Where the calculation of the potential lost revenue or liability to tax by reference to which a combined penalty is assessed depends on the order in which income or gains are treated as having been taxed, for the purposes of calculating the offshore PLR—
 - (a) income and gains relating to domestic matters are to be taken to have been taxed before income and gains relating to offshore matters and offshore transfers;
 - (b) income and gains relating to taxes that are not capital gains tax, inheritance tax or asset-based income tax are to be taken to have been taxed before income and gains relating to capital gains tax, inheritance tax and asset-based income tax.
- (5) In a case where it cannot be determined—
 - (a) whether income or gains relate to an offshore matter or offshore transfer or to a domestic matter, or
 - (b) whether income or gains relate to capital gains tax, asset-based income tax or inheritance tax or not,

for the purposes of calculating the offshore PLR, the potential lost revenue or liability to tax relating to the standard offshore tax penalty is to be taken to be such share of

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the total potential lost revenue or liability to tax by reference to which the combined penalty was calculated as is just and reasonable.

(6) Sub-paragraph (7) applies where—

- (a) a standard offshore tax penalty or a combined penalty is imposed on P, and
- (b) there are two or more taxes at stake, including capital gains tax and asset-based income tax.

(7) Where the calculation of the potential lost revenue or liability to tax by reference to which the penalty is assessed depends on the order in which income or gains are treated as having been taxed, for the purposes of calculating the offshore PLR, income and gains relating to asset-based income tax are to be taken to have been taxed before income and gains relating to capital gains tax.

Textual Amendments

F5 Words in Sch. 22 para. 5(1)(a) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(4\)](#)

Commencement Information

I5 Sch. 22 para. 5 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

Restriction on imposition of multiple asset-based penalties in relation to the same asset

6 (1) Sub-paragraphs (2) and (3) apply where—

- (a) a standard offshore tax penalty [^{F6}(other than one imposed under paragraph 1 of Schedule 18 to FA 2017)] has been imposed on P, and
- (b) the potential lost revenue threshold is met,

in relation to more than one tax year falling within the same investigation period.

(2) Only one asset-based penalty is payable by P in the investigation period in relation to any given asset.

(3) The asset-based penalty is to be charged by reference to the tax year in the investigation period with the highest offshore PLR.

(4) An “investigation period” is—

- (a) the period starting with the day on which this Schedule comes into force and ending with the last day of the last tax year before P was notified of an asset-based penalty in respect of an asset, and
- (b) subsequent periods beginning with the day after the previous period ended and ending with the last day of the last tax year before P is notified of a subsequent asset-based penalty in respect of the asset,

and different investigation periods may apply in relation to different assets.

Textual Amendments

F6 Words in Sch. 22 para. 6(1)(a) inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(5\)](#)

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Commencement Information

I6 Sch. 22 para. 6 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

[^{F7}6A Where—

- (a) a penalty has been imposed on a person under paragraph 1 of Schedule 18 to FA 2017, and
- (b) the potential loss of revenue threshold has been met,

only one asset-based penalty is payable by the person in relation to any given asset.]

Textual Amendments

F7 Sch. 22 para. 6A inserted (with effect in accordance with Sch. 18 paras. 2-13 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 18 para. 28\(6\)](#)

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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\(3\)](#)