
Changes to legislation: Finance Act 2016, PART 3 is up to date with all changes known to be in force on or before 02 June 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 3

IDENTIFICATION AND VALUATION OF ASSETS

Introduction

- 10 (1) This Part makes provision about the identification and valuation of the asset for the purposes of calculating the amount of the asset-based penalty.
- (2) An asset-based penalty may relate to more than one asset.
- (3) The identification and valuation of the asset is to be determined—
- (a) under paragraph 11 where the principal tax at stake is capital gains tax,
 - (b) under paragraph 12 where the principal tax at stake is inheritance tax, and
 - (c) under paragraph 13 where the principal tax at stake is asset-based income tax.

See also paragraph 14 (jointly held assets).

- (4) The principal tax at stake—
- (a) in a case where the standard offshore tax penalty (or penalties) relates to only one type of tax, is the tax to which that standard offshore tax penalty (or penalties) relates;
 - (b) in a case where the standard offshore tax penalty (or penalties) relate to more than one type of tax, is the tax which gives rise to the highest offshore PLR value.
- (5) The offshore PLR value, in relation to a type of tax, is the potential lost revenue or liability to tax by reference to which the part of the penalty relating to that type of tax was assessed.
- (6) The rules in paragraph 5(2) to (7) apply for the purposes of calculating the offshore PLR value, in relation to a type of tax, as they apply for the purposes of calculating the offshore PLR.

Commencement Information

II [Sch. 22 para. 10](#) in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, [reg. 2\(b\)](#)

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Capital gains tax

- 11 (1) This paragraph applies where the principal tax at stake is capital gains tax.
- (2) The asset is the asset that is the subject of the disposal (or deemed disposal) on or by reference to which the capital gains tax to which the standard offshore penalty relates is charged.
- (3) For the purposes of calculating the amount of the asset-based penalty, the value of the asset is to be taken to be the consideration for the disposal of the asset that would be used in the computation of the gain under TCGA 1992 (other than in a case where sub-paragraph (4) applies).
- (4) In a case where the disposal on or by reference to which the capital gains tax is charged is a part disposal of an asset, the asset-based penalty is to be calculated by reference to the full market value of the asset immediately before the part disposal took place.
- (5) Terms used in this paragraph have the same meaning as in TCGA 1992.

Commencement Information

I2 [Sch. 22 para. 11](#) in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), **reg. 2(b)**

Inheritance tax

- 12 (1) This paragraph applies where the principal tax at stake is inheritance tax.
- (2) The asset is the property the disposition of which gave rise to the transfer of value by reason of which the inheritance tax to which the standard offshore penalty relates became chargeable.
- (3) For the purposes of calculating the amount of the asset-based penalty, the value of the property is to be the value of the property used by HMRC in assessing the liability to inheritance tax.
- (4) Terms used in this paragraph have the same meaning as in IHTA 1984.

Commencement Information

I3 [Sch. 22 para. 12](#) in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), **reg. 2(b)**

Asset-based income tax

- 13 (1) This paragraph applies where the principal tax at stake is asset-based income tax.
- (2) Where the standard offshore tax penalty relates to income tax charged under a provision shown in column 1 of the Table, the asset is the asset mentioned in column 2 of the Table.

| <i>Provision under which income tax is charged</i> | <i>Asset</i> |
|---|---|
| Chapters 3, 7 and 10 of Part 3 of ITTOIA 2005 (property businesses) | The estate, interest or right in or over the land that generates the income for |

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| | |
|---|--|
| | the business (see sections 264 to 266 of ITTOIA 2005) |
| Chapter 8 of Part 3 of ITTOIA 2005 (rent receivable in connection with a s.12(4) concern) | The estate, interest or right in or over the land that generates the rent receivable in connection with a UK section 12(4) concern (see sections 335 and 336 of ITTOIA 2005) |
| Chapters 2 and 2A of Part 4 of ITTOIA 2005 (interest and disguised interest) | The asset that generates the interest |
| Chapters 3 to 5 of Part 4 of ITTOIA 2005 (dividends etc) | The shares or other securities in relation to which the dividend or distribution is paid |
| Chapter 7 of Part 4 of ITTOIA 2005 (purchased life annuity payments) | The annuity that gives rise to the payments |
| Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) | The deeply discounted securities that are disposed of (see sections 427 to 430 of ITTOIA 2005) |
| Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc) | The policy or contract from which the gain is treated as arising |
| Chapter 11 of Part 4 of ITTOIA 2005 (transactions in deposits) | The deposit right which is disposed of (see sections 551 and 552 of ITTOIA 2005) |
| Chapter 2 of Part 5 of ITTOIA 2005 (receipts from intellectual property) | The intellectual property, know-how or patent rights which generate the income (see sections 579, 583 and 587 of ITTOIA 2005) |
| Chapter 4 of Part 5 of ITTOIA 2005 (certain telecommunication rights: non-trading income) | The relevant telecommunication right from which the income derives (see section 614 of ITTOIA 2005) |
| Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor) | The settlement which gives rise to the income or capital sums treated as income of a settlor |

[^{F1}(2A) In relation to cases where the standard offshore penalty is a penalty falling within paragraph 2(4A), each reference to provisions of ITTOIA 2005 in column 1 of the Table in sub-paragraph (2) includes a reference—

- (a) to the corresponding provisions of the legislation in force immediately before those provisions of ITTOIA 2005 came into force (and to any previous text of those corresponding provisions), and
- (b) to any other provision that had the same purpose as, or a similar purpose to, any of those corresponding provisions (or any earlier text mentioned in paragraph (a)), if and so far as that other provision was in force—
 - (i) on or after 6 April 1997, but
 - (ii) before the corresponding provisions (or the earlier text mentioned in paragraph (a)) came into force.]

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- (3) For the purposes of calculating the amount of the asset-based penalty, the asset is to be valued as follows.
- (4) In a case where the charge to income tax was triggered by a disposal of the asset, the value of the asset is to be taken as its market value on the date of disposal (and in the case of a part disposal, the value of the asset is to be taken as its full market value immediately before the part disposal took place).
- (5) In any other case—
 - (a) where P still owns the asset on the last day of the tax year to which the standard offshore tax penalty relates, the value of the asset is to be taken as its market value on that day;
 - (b) where P disposed of the asset during the course of the tax year to which the standard offshore tax penalty relates, the value of the asset is to be taken as its market value on the date of disposal;
 - (c) where P disposed of part of the asset during the course of the tax year to which the standard offshore tax penalty relates, the value of the asset is to be taken as the market value of the part disposed on the date (or dates) of disposal plus the market value of the part still owned by the person on the last day of that tax year.
- (6) But if the value of the asset, as determined in accordance with sub-paragraphs (4) and (5), does not appear to HMRC to be a fair and reasonable value, then HMRC may value the asset for the purposes of this Schedule in any other way which appears to them to be fair and reasonable.
- (7) For the purposes of sub-paragraph (5)—
 - (a) P owns an asset if P is liable to asset-based income tax in relation to that asset;
 - (b) references to a disposal (and related expressions) have the same meaning as in TCGA 1992.
- (8) In this paragraph “market value” has the same meaning as in TCGA 1992 (see section 272 of that Act).
- (9) Other terms used in this paragraph have the same meaning as in ITTOIA 2005.

Textual Amendments

- F1** Sch. 22 para. 13(2A) 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\(7\)](#)

Commencement Information

- I4** Sch. 22 para. 13 in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

Jointly held assets

- 14 (1) This paragraph applies where an asset-based penalty is chargeable in relation to an asset that is jointly held by P and another person (A).
- (2) The value of the asset is to be taken to be the value of P's share of the asset.
- (3) In a case where P and A—

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- (a) are married to, or are civil partners of, each other, and
- (b) live together,

the asset is to be taken to be jointly owned by P and A in equal shares, unless it appears to HMRC that this is not the case.

Commencement Information

I5 [Sch. 22 para. 14](#) in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

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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\(3\)](#)