SCHEDULES

SCHEDULE 25

PENALTIES FOR DELIBERATELY WITHHOLDING INFORMATION

PART 3

SUPPLEMENTARY PROVISION

Double jeopardy

15 A person is not liable to a penalty under this Schedule in respect of a failure or action in respect of which the person has been convicted of an offence.

Commencement Information

I1 Sch. 25 para. 15 in force at 6.4.2024 for specified purposes by S.I. 2024/440, **reg. 2(1)**

Withdrawal of notice to make a return

16 (1) This paragraph applies where—

(a) a person is liable to a penalty under this Schedule in relation to a failure to make a return within item 1 or 2 in the Table in paragraph 1, and

(b) HMRC decide (on the request of the person or otherwise) to give the person a notice under section 8B of TMA 1970 withdrawing a notice under section 8 or 8A of that Act.

(2) This paragraph also applies where—

(a) a person is liable to a penalty under this Schedule in relation to a failure to make a return within item 3 in the Table in paragraph 1, and

(b) HMRC decide (on a request under section 12AAA of TMA 1970) to give a notice under that section withdrawing a notice under section 12AA of that Act.

(3) The notice under section 8B or 12AAA of TMA 1970 may include provision under this paragraph cancelling liability to the penalty from the date specified in the notice.

Commencement Information

I2 Sch. 25 para. 16 in force at 6.4.2024 for specified purposes by S.I. 2024/440, **reg. 2(1)**

Appeals

17 (1) A person may appeal against a decision of HMRC that a penalty is payable by the person.

(2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person.

Commencement Information

I3 Sch. 25 para. 17 in force at 6.4.2024 for specified purposes by S.I. 2024/440, **reg. 2(1)**

18 (1) An appeal under paragraph 17 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(2) Sub-paragraph (1) does not apply—

(a) so as to require the person to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b) in respect of any other matter expressly provided for by this Schedule.

Commencement Information

I4 Sch. 25 para. 18 in force at 6.4.2024 for specified purposes by S.I. 2024/440, **reg. 2(1)**

19 (1) On an appeal under paragraph 17(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision that a penalty is payable by the person.

(2) On an appeal under paragraph 17(2) that is notified to the tribunal, the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's decision in relation to a penalty under this Schedule, the tribunal may rely on paragraph 9—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.

(4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(5) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 18(1)).

Commencement Information

I5 Sch. 25 para. 19 in force at 6.4.2024 for specified purposes by S.I. 2024/440, **reg. 2(1)**

Partnerships

20 (1) This paragraph applies where—

(a) the representative partner, or a successor of the representative partner, fails to make a return falling within item 3 in the Table in paragraph 1, or

(b) the nominated partner fails to make a return falling within item 4 in that Table.

(2) In determining whether the representative partner, a successor of the representative partner or the nominated partner (as the case may be) is liable to a penalty under paragraph 3, the condition in sub-paragraph (2) of that paragraph is to be read as if the reference to the person's liability to tax was a reference to the liability to tax of any relevant partner.

(3) If a representative partner, a successor of a representative partner or a nominated partner is liable to a penalty under paragraph 3, every relevant partner is liable to a penalty under that paragraph.

(4) The amount of the penalty to which the representative partner, a successor of the representative partner, the nominated partner or a relevant partner is liable is £300 (and accordingly paragraphs 3(3) to (8), 4 to 8, 10, 11 and 13 do not apply).

(5) An appeal under paragraph 17 in connection with a penalty payable by virtue of this paragraph may be brought only by—

(a) the representative partner or a successor of the representative partner, in a case within sub-paragraph (1)(a), or

(b) the nominated partner, in a case within sub-paragraph (1)(b).

(6) Where such an appeal is brought in connection with a penalty payable in respect of a failure, the appeal is to be treated as if it were an appeal in connection with every penalty payable in respect of that failure.

(7) In this paragraph—

"nominated partner" has the meaning given by paragraph 5(5) of Schedule A1 to TMA 1970;

"relevant partner" means a person who was a partner in the partnership to which the return relates at any time during the period in respect of which the return was required;

"representative partner" means a person who has been required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver any return;

"successor" has the meaning given by section 12AA(11) of TMA 1970.

Commencement Information

I6 Sch. 25 para. 20 in force at 6.4.2024 for specified purposes by S.I. 2024/440, **reg. 2(1)**

Regulations: supplementary provision

21 (1) Regulations under this Schedule are to be made by statutory instrument.

(2) Regulations under this Schedule may include transitional, transitory and saving provision.

(3) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

Commencement Information

I7 Sch. 25 para. 21 in force at 6.4.2024 for specified purposes by S.I. 2024/440, **reg. 2(1)**

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2021, PART 3.