

AMENDMENTS MADE BY SCH34 FA13 IN BOLD

*Earlier amendments no longer in bold
(omissions without replacement not normally shown)*

PENALTIES FOR ERRORS

PART 1

LIABILITY FOR PENALTY

Error in taxpayer's document

- 1 (1) A penalty is payable by a person (P) where—
- (a) P gives HMRC a document of a kind listed in the Table below, and
 - (b) Conditions 1 and 2 are satisfied.
- (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
- (a) an understatement of a liability to tax,
 - (b) a false or inflated statement of a loss, or
 - (c) a false or inflated claim to repayment of tax.
- (3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.
- (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

<i>Tax</i>	<i>Document</i>
Income tax or capital gains tax	Return under section 8 of TMA 1970 (personal return).
Income tax or capital gains tax	Return under section 8A of TMA 1970 (trustee's return).
Income tax or capital gains tax	Return, statement or declaration in connection with a claim for an allowance, deduction or relief.
Income tax or capital gains tax	Accounts in connection with ascertaining liability to tax.
Income tax or capital gains tax	Partnership return.
Income tax or capital gains tax	Statement or declaration in connection with a partnership return.
Income tax or capital gains tax	Accounts in connection with a partnership return.
Income tax	Return under section 254 of FA 2004.
Income tax	Return for the purposes of PAYE regulations.
Construction industry deductions	Return for the purposes of regulations under section 70(1)(a) of FA 2004 in connection with deductions on account of tax under the Construction Industry Scheme.

<i>Tax</i>	<i>Document</i>
Corporation tax	Company tax return under paragraph 3 of Schedule 18 to FA 1998.
Corporation tax	Return, statement or declaration in connection with a claim for an allowance, deduction or relief.
Corporation tax	Accounts in connection with ascertaining liability to tax.
VAT	VAT return under regulations made under paragraph 2 of Schedule 11 to VATA 1994.
VAT	Return, statement or declaration in connection with a claim.
Insurance premium tax	Return under regulations under section 54 of FA 1994.
Insurance premium tax	Return, statement or declaration in connection with a claim.
Inheritance tax	Account under section 216 or 217 of IHTA 1984.
Inheritance tax	Information or document under regulations under section 256 of IHTA 1984.
Inheritance tax	Statement or declaration in connection with a deduction, exemption or relief.
Stamp duty land tax	Return under section 76 of FA 2003.
Stamp duty reserve tax	Return under regulations under section 98 of FA 1986.
Annual tax on enveloped dwellings	Annual tax on enveloped dwellings return.
Annual tax on enveloped dwellings	Return of adjusted chargeable amount
Petroleum revenue tax	Return under paragraph 2 of Schedule 2 to the Oil Taxation Act 1975.
Petroleum revenue tax	Statement or declaration in connection with a claim under Schedule 5, 6, 7 or 8 to the Oil Taxation Act 1975.
Petroleum revenue tax	Statement under section 1(1)(a) of the Petroleum Revenue Tax Act 1980.
Aggregates levy	Return under regulations under section 25 of FA 2001.
Climate change levy	Return under regulations under paragraph 41 of Schedule 6 to FA 2000.
Landfill tax	Return under regulations under section 49 of FA 1996.
Air passenger duty	Return under section 38 of FA 1994.
Alcoholic liquor duties	Return under regulations under section 13, 49, 56 or 62 of the Alcoholic Liquor Duties Act 1979.
Alcoholic liquor duties	Statement or declaration in connection with a claim for repayment of duty under section 4(4) of FA 1995.
Tobacco products duty	Return under regulations under section 7 of the Tobacco Products Duties Act 1979.

<i>Tax</i>	<i>Document</i>
Hydrocarbon oil duties	Return under regulations under section 21 of the Hydrocarbon Oil Duties Act 1979.
Excise duties	Return under regulations under section 93 of CEMA 1979.
Excise duties	Return under regulations under section 100G or 100H of CEMA 1979.
Excise duties	Statement or declaration in connection with a claim.
General betting duty	Return under regulations under paragraph 2 of Schedule 1 to BGDA 1981.
Pool betting duty	Return under regulations under paragraph 2A of Schedule 1 to BGDA 1981.
Bingo duty	Return under regulations under paragraph 9 of Schedule 3 to BGDA 1981.
Lottery duty	Return under regulations under section 28(2) of FA 1993.
Gaming duty	Return under directions under paragraph 10 of Schedule 1 to FA 1997.
Remote gaming duty	Return under regulations under section 26K of BGDA 1981.
Any of the taxes mentioned above	Any document which is likely to be relied upon by HMRC to determine, without further inquiry, a question about— <ul style="list-style-type: none"> (a) P's liability to tax, (b) payments by P by way of or in connection with tax, (c) any other payment by P (including penalties), or (d) repayments, or any other kind of payment or credit, to P.

- (5) In relation to a return under paragraph 2 of Schedule 2 to the Oil Taxation Act 1975, references in this Schedule to P include any person who, after the giving of the return for a taxable field (within the meaning of that Act), becomes the responsible person for the field (within the meaning of that Act).

Error in taxpayer's document attributable to another person

- 1A (1) A penalty is payable by a person (T) where—
- (a) another person (P) gives HMRC a document of a kind listed in the Table in paragraph 1,
 - (b) the document contains a relevant inaccuracy, and
 - (c) the inaccuracy was attributable to T supplying false information to P (whether directly or indirectly), or to T deliberately withholding information from P, with the intention of the document containing the inaccuracy.
- (2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—
- (a) an understatement of a liability to tax,

- (b) a false or inflated statement of a loss, or
 - (c) a false or inflated claim to repayment of tax.
- (3) A penalty is payable under this paragraph in respect of an inaccuracy whether or not P is liable to a penalty under paragraph 1 in respect of the same inaccuracy.

Under-assessment by HMRC

- 2 (1) A penalty is payable by a person (P) where—
- (a) an assessment issued to P by HMRC understates P’s liability to a relevant tax, and
 - (b) P has failed to take reasonable steps to notify HMRC, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.
- (2) In deciding what steps (if any) were reasonable HMRC must consider—
- (a) whether P knew, or should have known, about the underassessment, and
 - (b) what steps would have been reasonable to take to notify HMRC.
- (3) In sub-paragraph (1) “relevant tax” means any tax mentioned in the Table in paragraph 1.
- (4) In this paragraph (and in Part 2 of this Schedule so far as relating to this paragraph)—
- (a) “assessment” includes determination, and
 - (b) accordingly, references to an under-assessment include an under-determination.

Degrees of culpability

- 3 (1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is—
- (a) “careless” if the inaccuracy is due to failure by P to take reasonable care,
 - (b) “deliberate but not concealed” if the inaccuracy is deliberate on P’s part but P does not make arrangements to conceal it, and
 - (c) “deliberate and concealed” if the inaccuracy is deliberate on P’s part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).
- (2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate on P’s part when the document was given, is to be treated as careless if P—
- (a) discovered the inaccuracy at some later time, and
 - (b) did not take reasonable steps to inform HMRC.

PART 2

AMOUNT OF PENALTY

Standard amount

- 4 (1) This paragraph sets out the penalty payable under paragraph 1.
 - (2) If the inaccuracy is in category 1, the penalty is—
 - (a) for careless action, 30% of the potential lost revenue,
 - (b) for deliberate but not concealed action, 70% of the potential lost revenue, and
 - (c) for deliberate and concealed action, 100% of the potential lost revenue.
 - (3) If the inaccuracy is in category 2, the penalty is—
 - (a) for careless action, 45% of the potential lost revenue,
 - (b) for deliberate but not concealed action, 105% of the potential lost revenue, and
 - (c) for deliberate and concealed action, 150% of the potential lost revenue.
 - (4) If the inaccuracy is in category 3, the penalty is—
 - (a) for careless action, 60% of the potential lost revenue,
 - (b) for deliberate but not concealed action, 140% of the potential lost revenue, and
 - (c) for deliberate and concealed action, 200% of the potential lost revenue.
 - (5) Paragraph 4A explains the 3 categories of inaccuracy.
- 4A (1) An inaccuracy is in category 1 if—
 - (a) it involves a domestic matter, or
 - (b) it involves an offshore matter and—
 - (i) the territory in question is a category 1 territory, or
 - (ii) the tax at stake is a tax other than income tax or capital gains tax.
- (2) An inaccuracy is in category 2 if—
 - (a) it involves an offshore matter,
 - (b) the territory in question is a category 2 territory, and
 - (c) the tax at stake is income tax or capital gains tax.
 - (3) An inaccuracy is in category 3 if—
 - (a) it involves an offshore matter,
 - (b) the territory in question is a category 3 territory, and
 - (c) the tax at stake is income tax or capital gains tax.
 - (4) An inaccuracy “involves an offshore matter” if it results in a potential loss of revenue that is charged on or by reference to—
 - (a) income arising from a source in a territory outside the UK,
 - (b) assets situated or held in a territory outside the UK,
 - (c) activities carried on wholly or mainly in a territory outside the UK,
or
 - (d) anything having effect as if it were income, assets or activities of a kind described above.
 - (5) An inaccuracy “involves a domestic matter” if it results in a potential loss of revenue that is charged on or by reference to anything not mentioned in sub-paragraph (4)(a) to (d).

- (6) If a single inaccuracy is in more than one category (each referred to as a “relevant category”)—
 - (a) it is to be treated for the purposes of this Schedule as if it were separate inaccuracies, one in each relevant category according to the matters that it involves, and
 - (b) the potential lost revenue is to be calculated separately in respect of each separate inaccuracy.
- (7) “Category 1 territory”, “category 2 territory” and “category 3 territory” are defined in paragraph 21A.
- (8) “Assets” has the meaning given in section 21(1) of TCGA 1992, but also includes sterling.
- 4B The penalty payable under paragraph 1A is 100% of the potential lost revenue.
- 4C The penalty payable under paragraph 2 is 30% of the potential lost revenue.
- 4D Paragraphs 5 to 8 define “potential lost revenue”.

Potential lost revenue: normal rule

- 5 (1) “The potential lost revenue” in respect of an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information) or a failure to notify an under-assessment is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.
- (2) The reference in sub-paragraph (1) to the additional amount due or payable includes a reference to—
 - (a) an amount payable to HMRC having been erroneously paid by way of repayment of tax, and
 - (b) an amount which would have been repayable by HMRC had the inaccuracy or assessment not been corrected.
- (3) In sub-paragraph (1) “tax” includes national insurance contributions.
- (4) The following shall be ignored in calculating potential lost revenue under this paragraph—
 - (a) group relief, and
 - (b) any relief under subsection (4) of section 419 of ICTA (relief in respect of repayment etc of loan) which is deferred under subsection (4A) of that section;

Potential lost revenue: multiple errors

- 6 (1) Where P is liable to a penalty under paragraph 1 in respect of more than one inaccuracy, and the calculation of potential lost revenue under paragraph 5 in respect of each inaccuracy depends on the order in which they are corrected—
 - (a) careless inaccuracies shall be taken to be corrected before deliberate inaccuracies, and
 - (b) deliberate but not concealed inaccuracies shall be taken to be corrected before deliberate and concealed inaccuracies.

- (2) In calculating potential lost revenue where P is liable to a penalty under paragraph 1 in respect of one or more understatements in one or more documents relating to a tax period, account shall be taken of any overstatement in any document given by P which relates to the same tax period.
- (3) In sub-paragraph (2)—
 - (a) “understatement” means an inaccuracy that satisfies Condition 1 of paragraph 1, and
 - (b) “overstatement” means an inaccuracy that does not satisfy that condition.
- (4) For the purposes of sub-paragraph (2) overstatements shall be set against understatements in the following order—
 - (a) understatements in respect of which P is not liable to a penalty,
 - (b) careless understatements,
 - (c) deliberate but not concealed understatements, and
 - (d) deliberate and concealed understatements.
- (5) In calculating for the purposes of a penalty under paragraph 1 potential lost revenue in respect of a document given by or on behalf of P no account shall be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person (except to the extent that an enactment requires or permits a person’s tax liability to be adjusted by reference to P’s).

Potential lost revenue: losses

- 7
- (1) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the potential lost revenue is calculated in accordance with paragraph 5.
 - (2) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the potential lost revenue is—
 - (a) the potential lost revenue calculated in accordance with paragraph 5 in respect of any part of the loss that has been used to reduce the amount due or payable in respect of tax, plus
 - (b) 10% of any part that has not.
 - (3) Sub-paragraphs (1) and (2) apply both—
 - (a) to a case where no loss would have been recorded but for the inaccuracy, and
 - (b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (1) and (2) apply only to the difference between the amount recorded and the true amount).
 - (4) Where an inaccuracy has the effect of creating or increasing an aggregate loss recorded for a group of companies—
 - (a) the potential lost revenue shall be calculated in accordance with this paragraph, and

- (b) in applying paragraph 5 in accordance with sub-paragraphs (1) and (2) above, group relief may be taken into account (despite paragraph 5(4)(a)).
- (5) The potential lost revenue in respect of a loss is nil where, because of the nature of the loss or P's circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

Potential lost revenue: delayed tax

- 8 (1) Where an inaccuracy resulted in an amount of tax being declared later than it should have been ("the delayed tax"), the potential lost revenue is—
 - (a) 5% of the delayed tax for each year of the delay, or
 - (b) a percentage of the delayed tax, for each separate period of delay of less than a year, equating to 5% per year.
- (2) This paragraph does not apply to a case to which paragraph 7 applies.

Reductions for disclosure

- 9 (A1) Paragraph 10 provides for reductions in penalties under paragraphs 1, 1A and 2 where a person discloses an inaccuracy, a supply of false information or withholding of information, or a failure to disclose an under-assessment.
 - (1) A person discloses an inaccuracy, a supply of false information or withholding of information, or a failure to disclose an underassessment by—
 - (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and
 - (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.
 - (2) Disclosure—
 - (a) is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and
 - (b) otherwise, is "prompted".
 - (3) In relation to disclosure "quality" includes timing, nature and extent.
- 10 (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a "standard percentage") has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.
 - (2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

- (a) in the case of a prompted disclosure, in column 2 of the Table, and
- (b) in the case of an unprompted disclosure, in column 3 of the Table.

<i>Standard %</i>	<i>Minimum % for prompted disclosure</i>	<i>Minimum % for unprompted disclosure</i>
30%	15%	0%
45%	22.5%	0%
60%	30%	0%
70%	35%	20%
105%	52.5%	30%
140%	70%	40%
100%	50%	30%
150%	75%	45%
200%	100%	60%

Special reduction

- 11 (1) If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1, 1A or 2.
- (2) In sub-paragraph (1) “special circumstances” does not include—
 - (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
 - (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

Interaction with other penalties and late payment surcharges

- 12 (1) The final entry in the Table in paragraph 1 excludes a document in respect of which a penalty is payable under section 98 of TMA 1970 (special returns).
- (2) The amount of a penalty for which P is liable under paragraph 1 or 2 in respect of a document relating to a tax period shall be reduced by the amount of any other penalty incurred by P, or any surcharge for late payment of tax imposed on P, if the amount of the penalty or surcharge is determined by reference to the same tax liability.
- (3) In the application of section 97A of TMA 1970 (multiple penalties) no account shall be taken of a penalty under paragraph 1 or 2.
- (4) Where penalties are imposed under paragraphs 1 and 1A in respect of the same inaccuracy, the aggregate of the amounts of the penalties must not exceed the relevant percentage of the potential lost revenue.
- (5) The relevant percentage is—
 - (a) if the penalty imposed under paragraph 1 is for an inaccuracy in category 1, 100%,
 - (b) if the penalty imposed under paragraph 1 is for an inaccuracy in category 2, 150%, and

- (c) if the penalty imposed under paragraph 1 is for an inaccuracy in category 3, 200%.

PART 3

PROCEDURE

Assessment

- 13 (1) Where a person becomes liable for a penalty under paragraph 1, 1A or 2 HMRC shall—
 - (a) assess the penalty,
 - (b) notify the person, and
 - (c) state in the notice a tax period in respect of which the penalty is assessed.
- (1A) A penalty under paragraph 1, 1A or 2 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (2) An assessment—
 - (a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.
- (3) An assessment of a penalty under paragraph 1 or 1A must be made before the end of the period of 12 months beginning with—
 - (a) the end of the appeal period for the decision correcting the inaccuracy, or
 - (b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.
- (4) An assessment of a penalty under paragraph 2 must be made before the end of the period of 12 months beginning with—
 - (a) the end of the appeal period for the assessment of tax which corrected the understatement, or
 - (b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.
- (5) For the purpose of sub-paragraphs (3) and (4) a reference to an appeal period is a reference to the period during which—
 - (a) an appeal could be brought, or
 - (b) an appeal that has been brought has not been determined or withdrawn.
- (6) Subject to sub-paragraphs (3) and (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.
- (7) In this Part of this Schedule references to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.

Suspension

- 14 (1) HMRC may suspend all or part of a penalty for a careless inaccuracy under paragraph 1 by notice in writing to P.
- (2) A notice must specify—
 - (a) what part of the penalty is to be suspended,
 - (b) a period of suspension not exceeding two years, and
 - (c) conditions of suspension to be complied with by P.
- (3) HMRC may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under paragraph 1 for careless inaccuracy.
- (4) A condition of suspension may specify—
 - (a) action to be taken, and
 - (b) a period within which it must be taken.
- (5) On the expiry of the period of suspension—
 - (a) if P satisfies HMRC that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and
 - (b) otherwise, the suspended penalty or part becomes payable.
- (6) If, during the period of suspension of all or part of a penalty under paragraph 1, P becomes liable for another penalty under that paragraph, the suspended penalty or part becomes payable.

Appeal

- 15 (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.
- (3) A person may appeal against a decision of HMRC not to suspend a penalty payable by the person.
- (4) A person may appeal against a decision of HMRC setting conditions of suspension of a penalty payable by the person.
- 16 (1) An appeal under this Part of this Schedule shall 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 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 P 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 Act.
- 17 (1) On an appeal under paragraph 15(1) the tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 15(2) 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, the appellate tribunal may rely on paragraph 11—
 - (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 appellate tribunal thinks that HMRC's decision in respect of the application of paragraph 11 was flawed.
- (4) On an appeal under paragraph 15(3)—
 - (a) the tribunal may order HMRC to suspend the penalty only if it thinks that HMRC's decision not to suspend was flawed, and
 - (b) if the tribunal orders HMRC to suspend the penalty—
 - (i) P may appeal against a provision of the notice of suspension, and
 - (ii) the tribunal may order HMRC to amend the notice.
- (5) On an appeal under paragraph 15(4) the tribunal—
 - (a) may affirm the conditions of suspension, or
 - (b) may vary the conditions of suspension, but only if the tribunal thinks that HMRC's decision in respect of the conditions was flawed.
- (5A) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 16(1)).
- (6) In sub-paragraphs (3)(b), (4)(a) and (5)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (7) Paragraph 14 (see in particular paragraph 14(3)) is subject to the possibility of an order under this paragraph.

PART 4

MISCELLANEOUS

Agency

- 18 (1) P is liable under paragraph 1(1)(a) where a document which contains a careless inaccuracy (within the meaning of paragraph 3) is given to HMRC on P's behalf.
- (2) In paragraph 2(1)(b) and (2)(a) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.
- (3) Despite sub-paragraphs (1) and (2), P is not liable to a penalty under paragraph 1 or 2 in respect of anything done or omitted by P's agent where P satisfies HMRC that P took reasonable care to avoid inaccuracy (in relation to paragraph 1) or unreasonable failure (in relation to paragraph 2).
- (4) In paragraph 3(1)(a) (whether in its application to a document given by P or, by virtue of sub-paragraph (1) above, in its application to a document

given on P's behalf) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

- (5) In paragraph 3(2) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

Companies: officers' liability

19 (1) Where a penalty under paragraph 1 is payable by a company for a deliberate inaccuracy which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer.

(2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership "officer" means—

- (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006 (c. 46)),
- (aa) a manager, and
- (b) a secretary.

(3A) In the application of sub-paragraph (1) to a limited liability partnership, "officer" means a member.

(4) In the application of sub-paragraph (1) in any other case "officer" means—

- (a) a director,
- (b) a manager,
- (c) a secretary, and
- (d) any other person managing or purporting to manage any of the company's affairs.

(5) Where HMRC have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—

- (a) paragraph 11 applies to the specified portion as to a penalty,
- (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
- (c) paragraph 13(2), (3) and (5) apply as if the notice were an assessment of a penalty,
- (d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 13(6),
- (e) paragraphs 15(1) and (2), 16 and 17(1) to (3) and (6) apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer, and
- (f) paragraph 21 applies as if the officer were liable to a penalty.

(6) In this paragraph "company" means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.

Partnerships

- 20 (1) This paragraph applies where P is liable to a penalty under paragraph 1 for an inaccuracy in or in connection with a partnership return.
- (2) Where the inaccuracy affects the amount of tax due or payable by a partner of P, the partner is also liable to a penalty (“a partner’s penalty”).
- (3) Paragraphs 4 to 13 and 19 shall apply in relation to a partner’s penalty (for which purpose a reference to P shall be taken as a reference to the partner).
- (4) Potential lost revenue shall be calculated separately for the purpose of P’s penalty and any partner’s penalty, by reference to the proportions of any tax liability that would be borne by each partner.
- (5) Paragraph 14 shall apply jointly to P’s penalty and any partner’s penalties.
- (6) P may bring an appeal under paragraph 15 in respect of a partner’s penalty (in addition to any appeal that P may bring in connection with the penalty for which P is liable).

Double jeopardy

- 21 A person is not liable to a penalty under paragraph 1, 1A or 2 in respect of an inaccuracy or failure in respect of which the person has been convicted of an offence.

PART 5

GENERAL

Classification of territories

- 21A(1) A category 1 territory is a territory designated as a category 1 territory by order made by the Treasury.
- (2) A category 2 territory is a territory that is neither—
- (a) a category 1 territory, nor
 - (b) a category 3 territory.
- (3) A category 3 territory is a territory designated as a category 3 territory by order made by the Treasury.
- (4) In considering how to classify a territory for the purposes of this paragraph, the Treasury must have regard to—
- (a) the existence of any arrangements between the UK and that territory for the exchange of information for tax enforcement purposes,
 - (b) the quality of any such arrangements (in particular, whether they provide for information to be exchanged automatically or on request), and
 - (c) the benefit that the UK would be likely to obtain from receiving information from that territory, were such arrangements to exist with it.
- (5) An order under this paragraph is to be made by statutory instrument.

- (6) Subject to sub-paragraph (7), an instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) If the order is—
 - (a) the first order to be made under sub-paragraph (1), or
 - (b) the first order to be made under sub-paragraph (3), it may not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (8) An order under this paragraph does not apply to inaccuracies in a document given to HMRC (or, in a case within paragraph 3(2), inaccuracies discovered by P) before the date on which the order comes into force.

Location of assets etc

- 21B(1) The Treasury may by regulations make provision for determining for the purposes of paragraph 4A where—
 - (a) a source of income is located,
 - (b) an asset is situated or held, or
 - (c) activities are wholly or mainly carried on.
- (2) Different provision may be made for different cases and for income tax and capital gains tax.
- (3) Regulations under this paragraph are to be made by statutory instrument.
- (4) An instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

Interpretation

- 22 Paragraphs 23 to 27 apply for the construction of this Schedule.
- 23 HMRC means Her Majesty's Revenue and Customs.
- 23A "Tax", without more, includes duty.
- 23B "UK" means the United Kingdom, including the territorial sea of the United Kingdom.
- 24 An expression used in relation to income tax has the same meaning as in the Income Tax Acts.
- 25 An expression used in relation to corporation tax has the same meaning as in the Corporation Tax Acts.
- 26 An expression used in relation to capital gains tax has the same meaning as in the enactments relating to that tax.
- 27 An expression used in relation to VAT has the same meaning as in VATA 1994.
- 28 In this Schedule—
 - (a) a reference to corporation tax includes a reference to tax or duty which by virtue of an enactment is assessable or chargeable as if it were corporation tax,

- (b) a reference to tax includes a reference to construction industry deductions under Chapter 3 of Part 3 of FA 2004,
- (c) “direct tax” means—
 - (i) income tax,
 - (ii) capital gains tax,
 - (iii) corporation tax, and
 - (iv) petroleum revenue tax.
- (d) a reference to understating liability to VAT includes a reference to overstating entitlement to a VAT credit,
- (e) a reference to a loss includes a reference to a charge, expense, deficit and any other amount which may be available for, or relied on to claim, a deduction or relief,
- (f) a reference to repayment of tax includes a reference to allowing a credit against tax or to a payment of a corporation tax credit,
- (fa) corporation tax credit” means—
 - (i) a R&D tax credit under Schedule 20 to FA 2000,
 - (ii) a land remediation tax credit or life assurance company tax credit under Schedule 22 to FA 2001,
 - (iii) a tax credit under Schedule 13 to FA 2002 (vaccine research etc),
 - (iv) a film tax credit under Schedule 5 to FA 2006, or
 - (v) a first-year tax credit under Schedule A1 to CAA 2001,
- (g) “tax period” means a tax year, accounting period or other period in respect of which tax is charged,
- (h) a reference to giving a document to HMRC includes a reference to communicating information to HMRC in any form and by any method (whether by post, fax, email, telephone or otherwise),
- (i) a reference to giving a document to HMRC includes a reference to making a statement or declaration in a document,
- (j) a reference to making a return or doing anything in relation to a return includes a reference to amending a return or doing anything in relation to an amended return, and
- (k) a reference to action includes a reference to omission.

Consequential amendments

- 29 The following provisions are omitted—
 - (a) sections 95, 95A, 97 and 98A(4) of TMA 1970 (incorrect returns and accounts),
 - (b) sections 100A(1) and 103(2) of TMA 1970 (deceased persons),
 - (c) in Schedule 18 to FA 1998 (company tax returns), paragraphs 20 and 89 (company tax returns), and
 - (d) sections 60, 61, 63 and 64 of VATA 1994 (evasion).
- 30 In paragraphs 7 and 7B of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) (penalties) a reference to a provision of TMA 1970 shall be construed as a reference to this Schedule so far as is necessary to preserve its effect.
- 31 In paragraphs 7 and 7B of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (penalties) a reference to a

provision of TMA 1970 shall be construed as a reference to this Schedule so far as is necessary to preserve its effect.

OTHER PROVISIONS REPEALED BY SCHEDULE 57 FA 2009

- 13 (1) TMA 1970 is amended as follows.
- (2) In section 100(2) (determination of penalties by officer), omit paragraph (g) and the “or” before it.
- (3) After section 103 insert—

“Disapplication of sections 100 to 103 in the case of certain penalties

103ZA Sections 100 to 103 do not apply to a penalty under—

- (a) Schedule 24 to FA 2007 (penalties for errors),
- (b) Schedule 36 to FA 2008 (information and inspection powers),
- (c) Schedule 41 to that Act (penalties for failure to notify and certain other wrongdoing),
- (d) Schedule 55 to FA 2009 (penalties for failure to make returns etc), or
- (e) Schedule 56 to that Act (penalties for failure to make payments on time).”

14 In FA 2008 omit—

- (a) paragraph 74 of Schedule 36 (information and inspection powers), and
- (b) paragraph 20(3) of Schedule 40 (amendment of Schedule 24 to FA 2007).

FINANCE ACT 2009

PART 7
ADMINISTRATION
Standards and values

...

Publishing details of deliberate tax defaulters

- 94 (1) The Commissioners may publish information about any person if—
- (a) in consequence of an investigation conducted by the Commissioners, one or more relevant tax penalties is found to have been incurred by the person, and
 - (b) the potential lost revenue in relation to the penalty (or the aggregate of the potential lost revenue in relation to each of the penalties) exceeds £25,000.
- (2) A “relevant tax penalty” is—
- (a) a penalty under paragraph 1 of Schedule 24 to FA 2007 (inaccuracy in taxpayer’s document) in respect of a deliberate inaccuracy on the part of the person,
 - (b) a penalty under paragraph 1A of that Schedule (inaccuracy in taxpayer’s document attributable to deliberate supply of false information or deliberate withholding of information by person),
 - (c) a penalty under paragraph 1 of Schedule 41 to FA 2008 (failure to notify) in respect of a deliberate failure on the part of the person, or
 - (d) a penalty under paragraph 2 (unauthorised VAT invoice), 3 (putting product to use attracting higher duty etc) or 4 (handling goods subject to unpaid excise duty) of that Schedule in respect of deliberate action by the person.
- (3) “Potential lost revenue”, in relation to a penalty, has the meaning given by—
- (a) paragraphs 5 to 8 of Schedule 24 to FA 2007, or
 - (b) paragraphs 7 to 11 of Schedule 41 to FA 2008, in relation to the inaccuracy, failure or action to which the penalty relates.
- (4) The information that may be published is—
- (a) the person’s name (including any trading name, previous name or pseudonym),
 - (b) the person’s address (or registered office),
 - (c) the nature of any business carried on by the person,
 - (d) the amount of the penalty or penalties and the potential lost revenue in relation to the penalty (or the aggregate of the potential lost revenue in relation to each of the penalties),
 - (e) the periods or times to which the inaccuracy, failure or action giving rise to the penalty (or any of the penalties) relates, and
 - (f) any such other information as the Commissioners consider it appropriate to publish in order to make clear the person’s identity.

- (5) The information may be published in any manner that the Commissioners consider appropriate.
- (6) Before publishing any information the Commissioners must—
 - (a) inform the person that they are considering doing so, and
 - (b) afford the person reasonable opportunity to make representations about whether it should be published.
- (7) No information may be published before the day when the penalty becomes final (or the latest day when any of the penalties becomes final).
- (8) No information may be published for the first time after the end of the period of one year beginning with that day (or that latest day).
- (9) No information may be published (or continue to be published) after the end of the period of one year beginning with the day on which it is first published.
- (10) No information may be published if the amount of the penalty is reduced under—
 - (a) paragraph 10 of Schedule 24 to FA 2007, or
 - (b) paragraph 13 of Schedule 41 to FA 2008, (reductions for disclosure) to the full extent permitted.
- (11) For the purposes of this section a penalty becomes final—
 - (a) if it has been assessed, when the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined, or
 - (b) if a contract is made between the Commissioners and the person under which the Commissioners undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover it, at the time when the contract is made.
- (12) The Treasury may by order vary the amount for the time being specified in subsection (1).
- (13) This section comes into force on a day appointed by order made by the Treasury.
- (14) Orders under this section are to be made by statutory instrument.
- (15) A statutory instrument containing an order under subsection (12) is subject to annulment in pursuance of a resolution of the House of Commons.
- (16) In this section “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.