**Penalties - Checklist of current penalties applying to tax avoidance and offshore tax evasion and non-compliance.**

A number of new penalties have been introduced through legislative changes over recent years. Members have provided feedback that they would find it useful to have a summary of these changes which they can use as a checklist to ensure they have considered the implications in relation to their practice and their clients. The attached checklist has been prepared on this basis and to assist members in meeting the professional standards required from them.

Members are required to comply with the Standards set out in Professional Conduct in Relation to Taxation (PCRT) and Professional Rules and Practice Guidelines (PRPG):

- PRPG sets out the fundamental principles and the rules which a member must comply with which includes the requirement to maintain professional competence and exercise due care and the Continuing Professional Development (CPD) requirements. This document is a summary only and members should consider the further CPD required where they deal with specialist areas where these penalties may apply.
- PCRT focuses on the tripartite relationship between the tax adviser, the client and HMRC and much of the material contained in it will be of assistance here, in particular the sections on the Fundamental Principles, the Standards for Tax Planning, Tax Advice, Irregularities and POTAS.

Members in the regulated sector should also be aware of their obligation under anti money laundering legislation to make a suspicious activity report (unless the privilege reporting exemption applies) where the member knows or suspects (or has reasonable grounds for doing so) that another person is engaged in defined criminal activity, which would include, for example, deliberately underpaying tax. Members should refer to the CCAB anti money laundering Guidance.

As tax penalty legislation is updated it is important that tax advisers are aware of those changes and seek to minimise exposure to those penalties for their own practice and for clients. The summary below sets out some of the recent legislative changes in Finance Acts and the Criminal Finances Act 2017 which relate to taxpayers and tax advisers and the associated penalties as at 17 January 2018.

Please note that this list is not exhaustive and does not cover routine compliance penalties eg in relation to failure to make returns (Sch 55 FA 2009), inaccurate returns (Sch 24 FA 2007), failure to notify chargeability (Sch 41 FA 2008), late payments of tax, or any changes to the penalty regime that might be introduced as part of the Government's Making Tax Digital programme. It covers penalties in UK legislation only.

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| 1. Penalty for transactions connected with VAT fraud etc<br><br>Clause 68 Finance (No 2) Act 2017 | No | No | No | Yes | | The penalty will be imposed when a business has entered into a transaction connected with evasion of VAT by another person, and knew, or should have known, that the transaction was connected with fraud | Penalty is 30% of the potential lost VAT. | Yet to be announced |
| 2. Requirement to correct certain offshore tax non-compliance<br><br>Clause 67 and Schedule 18 Finance (No 2) Act 2017 | No | No | No | Yes | See HMRC's guidance on how to make a disclosure using the Worldwide Disclosure Facility (WDF) here.<br><br>HMRC's guidance is here. Updates to the guidance are expected in | New measures applying to a person with any undeclared tax liabilities relating to offshore matters as at 5 April 2017. There will be a statutory requirement to correct the issue between 6 April 2017 and 30 September 2018. The issue is treated as corrected if the taxpayer takes steps including a disclosure under the WDF before the deadline.<br><br>Note however that WDF offers no tax amnesty, penalty reduction or guarantee of non-prosecution. | Failure to carry out the necessary corrections by 30 September 2018 will render the taxpayer liable to a new failure to correct (FTC) penalty which starts at 200% of the offshore potential lost revenue (PLR), and which may not be reduced (for disclosure etc) below 100% of the offshore PLR.<br><br>The FTC penalty does not take into account the seriousness of the cause of the original error/ omission, thus treating technical errors/ cases where reasonable care was taken when a return was submitted in the same way as | 16 November 2017 |

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| | | | | | February 2018. | | those where a person deliberately omitted income or gains.<br><br>There is a reasonable excuse defence. | |
| 3. Penalties for enablers of defeated tax avoidance<br><br>Clause 65 and schedule 16 Finance (No 2) Act 2017 | Yes | Yes | Yes | No | HMRC's guidance was published on 22 December 2017 and can be found here. | The legislation applies to a person if they enable abusive tax arrangements that are entered into on or after 16 November 2017. The enabling activity must also have been undertaken after this date.<br><br>Enablers are those who design, market or otherwise facilitate abusive tax arrangements. When such arrangements are defeated in court or at the tribunal, or are otherwise counteracted, each person who enabled those arrangements may be liable to a penalty | The penalty for each enabler is equal to the amount of consideration either received or receivable by them for enabling those arrangements. The penalty is imposed on every 'enabler' in the avoidance supply chain.<br><br>No penalty can be charged unless HMRC has obtained an opinion of the GAAR Advisory Panel in relation to the tax arrangements or equivalent arrangements. | 16 November 2017 |
| 4. Errors in taxpayer's documents (penalty for users of tax | No | No | No | Yes | Guidance is in the Compliance Handbook at CH81122, | In cases where HMRC seek a careless inaccuracy penalty from a taxpayer who has submitted a document to HMRC and it contains an inaccuracy because it | A tax geared penalty based on the same principles as are already in place (Sch 24 FA 2007) and will therefore be between 0% and 30% of the extra tax due (unless the | Applies to returns relating to a tax period commencing on |

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| avoidance scheme)<br><br>Clause 64 Finance (No 2) Act 2017 | | | | | CH81123 and CH81124 | is submitted on the basis that a particular avoidance arrangements had an effect which in fact they did not have, this provision has the following effect:<br><br>Firstly, the inaccuracy will be presumed to be careless unless the taxpayer can prove that it was not careless (ie this provision is reversing the burden of proof).<br><br>Secondly, when considering whether reasonable care has been taken no account can be taken of any evidence of reliance on advice referred to as 'disqualified advice'. | error is deliberate/deliberate and concealed in which case it can be up to 100% of tax due).<br><br>General penalty guidance is available on HMRCs website | or after 6 April 2017 |
| 5. Corporate criminal offence of failure to prevent the criminal | Yes | No | Yes | No | Government Guidance –1 September 2017 | CIOT/ATT overview for members can be found here. | Penalties for this offence include:<br><br>• Unlimited financial penalties<br>• Ancillary orders such as confiscation orders or | 30 September 2017 |

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| facilitation of tax evasion<br><br>Criminal Finances Act 2017 Part 3 | | | | | | | serious crime prevention orders.<br><br>Criminal convictions should be reported to the CIOT and ATT and potential disciplinary action may result. | |
| 6. Offences relating to offshore income, assets and activities (Strict liability criminal offence for offshore tax evasion)<br><br>Section 166 Finance Act 2016 (inserting ss106B – 106H into TMA 1970) | No | No | No | Yes | | The offence applies if a taxpayer fails to notify HMRC of his or her chargeability to tax, fails to file a return or files an incorrect return in relation to offshore income, assets or activities (regulations specify it applies only where a non-Common Reporting Standard jurisdiction is involved and the unpaid tax is more than £25,000 per tax year). It is not necessary for the prosecution to prove 'mens rea' (it is a strict liability offence) but the taxpayer can put forward a 'reasonable excuse' defence. | A person guilty of this offence is liable on summary conviction<br>(*a*) in England and Wales, to a fine or to imprisonment for a term not exceeding 51 weeks or to both, and<br>(*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. | 7 October 2017 (by regulation – see here for further details) |
| 7. Asset based penalties for | No | No | No | Yes | | Taxpayers who have been charged a penalty for deliberate | The penalty is the lower of; | 1 April 2017 |

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| offshore inaccuracies and failures<br><br>Section 165 and Schedule 22 Finance Act 2016 | | | | | | offshore inaccuracies and failures where the potential lost revenue (PLR) in relation to a tax year exceeds £25,000, may also be charged a penalty based on the value of the asset. | a) 10% of the value of the asset, and<br>b) offshore PLR x 10.<br>It is subject to mitigation. | (by regulations – see here for further details) |
| 8. Civil penalties in connection with offshore matters and offshore transfers<br><br>Section 163 & Schedule 21 Finance Act 2016 | No | No | No | Yes | HMRC's Factsheet on Higher Penalties for Offshore Matters CC/FS17 can be found here. | This applies to the most serious cases of evasion with offshore connections. | It is levied in addition to the higher offshore penalties contained in Sch 24 FA 2007 (penalties for errors), Sch 41 FA 2008 (penalties for failure to notify) and Sch 55 FA 2009 (penalties for failure to make returns) where the behaviour that lead to the penalty was deliberate or deliberate and concealed. In order to receive the maximum penalty reductions additional details must be disclosed (see para 10(5) Sch 21). | 1 April 2017 (by regulations – see here for further details) |
| 9. Penalties for Enablers of offshore tax evasion or | Yes | Yes | Yes | No | HMRC's announcement can be found here. | CIOT/ATT guidance for members can found here. | The Greater of:<br>• 100% of the potential lost revenue; and<br>• £3,000, or | 1 January 2017 |

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| non-compliance<br><br>Section 162 & Schedule 20 Finance Act 2016 | | | | | HMRC's Factsheet CC/FS17a can be found here. | | Where the evasion has given rise to a penalty under Schedule 21 Finance Act 2015 (offshore asset moves), the greater of:<br>• 50% of the potential lost revenue; and<br>• £3,000 | |
| 10. Serial Tax Avoidance<br><br>Section 159 and Schedule 18 Finance Act 2016 | No | No | No | Yes | HMRC's guidance can be found here. | Applies where a tax avoidance scheme is defeated (either by decision of court or tribunal or by settlement with HMRC). A warning notice can be issued to those who entered into schemes before 15th September 2016 which are defeated after 6th April 2017. In March 2017 we provided guidance to members in connection with letters clients may have received from HMRC and who may have needed to take action before 6 April 2017. | A person is liable to pay a penalty if the person incurs a relevant defeat in relation to any arrangements which the person has used in a warning period. The penalty range is 20% to 60% of the 'counteracted advantage' depending on how many relevant prior warning notices the taxpayer has received. (Paragraph 30 of Schedule 18). | In force since 15 September 2016 |
| 11. General Anti-Abuse Rule (GAAR) Penalty | No | No | No | Yes | See the GAAR Guidance Part B paragraph 16.6 and Part | GAAR aims to tackle abusive tax arrangements. | The GAAR Guidance explains that: "For arrangements entered into on or after 15 September 2016.....the GAAR legislation includes specific | GAAR penalty applies to arrangements entered into on |

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| Section 158 Finance Act 2016<br><br>The GAAR legislation is in Part 5 and schedules 43 to 43C Finance Act 2013 and Section 10 of the National Insurance Contributions Act 2014 | | | | | E paragraphs 3.24 – 3.25. | See further guidance in PCRT chapter 4 | provisions, enacted in Finance Act 2016, which impose penalties in certain circumstances (see paragraphs E3.24 - E3.25).<br>Under these provisions a penalty will apply where a taxpayer submits a ‘tax document’ to HMRC relating to a tax arrangement for which HMRC issues a notice of final decision stating that the tax advantage is to be counteracted and then subsequently counteracts the tax advantage by making just and reasonable adjustments”.<br>The amount of the penalty chargeable is a fixed rate of 60% of the ‘counteracted advantage’. | or after 15 September 2016<br><br>The GAAR itself applies to arrangements entered into after 17 July 2013. |
| 12. Penalties in relation to offshore asset moves.<br><br>Section 121 and Schedule 21 Finance Act 2015 | No | No | No | Yes | HMRC’s Factsheet on Higher Penalties for Offshore Matters CC/FS17 can be found here. | An additional offshore penalty can be imposed in cases involving either a failure to notify a tax liability, an inaccuracy in a tax return or where there has been a late filing of a tax return for at least 12 months and three conditions are satisfied:<br>A – there has been a deliberate failure to comply; | The additional penalty is 50% of the original penalty. | Applies to relevant offshore asset moves occurring after 26 March 2015. |

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| | | | | | | B – there has been a 'relevant offshore asset move' which has taken place after the 'relevant time'; and<br>C – one of the main purposes of the move is to prevent or delay the discovery of a potential loss of revenue by HMRC – and the original penalty relates to the same potential lost revenue. | | |
| 13.Penalties in connection with offshore matters and offshore transfers<br><br>Section 120 and Schedule 20 Finance Act 2015 | No | No | No | Yes | HMRC's Factsheet on Higher Penalties for Offshore Matters CC/FS17 can be found here. | This provision amends and extends the existing penalty regime that applies to non-compliance where offshore matters are involved.<br>- to include inheritance tax;<br>- to apply to domestic offences where the proceeds are transferred offshore; and<br>- to introduce a new Category O to the penalty categorisation system for jurisdictions that agree to adopt automatic exchange of information under the Common Reporting Standard. | The penalty regime is amended to provide for the penalties that will apply to an error in the new category 0. Offshore penalties are increased where the offence occurs in a Category 1 territory. The legislation now refers to four categories of errors,<br>(See para 2 Sch 20) | 1/6 April 2016 (by regulation – see here for further details) |

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| 14. Promoters of Tax Avoidance Schemes (POTAS)<br><br>Part 5 and Schedules 34 to 36 Finance Act 2014, Schedule 19 Finance Act 2015 and s24 Finance Act 2017 | Yes | Yes | Yes | No | HMRC's latest guidance can be found here. | The regime targets those who are promoting tax avoidance and uses a series of sanctions which starts with a conduct notice. Where conditions in a conduct notice are breached a monitoring notice is issued. | There are a number of potential penalties for failure to comply – see chapter 5 of HMRC's guidance and Schedule 35 FA 2014. | 17 July 2014 |
| 15.VAT Disclosure Regime (VADR)<br><br>Schedule 11A to VAT Act 1994 | No | No | No | Yes | VAT Notice 700/8: disclosure of VAT avoidance schemes | The regime targets arrangements or transactions that are intended to give the trader or any other person a VAT advantage when compared to adopting a different course of action. | The penalties for failing to make a full notification to HMRC at the correct time are:<br>• 15% of the VAT saved for listed schemes, and<br>• £5,000 for hallmarked schemes | Originally from 1 August 2004. |
| 16. Disclosure of Tax Avoidance | Yes | Yes | Yes | Yes | HMRC's latest guidance can be found here. | DOTAS is a reporting system which enables HMRC to scrutinise tax avoidance schemes and determine how they work and | The main penalties arise in relation to:<br><br>Scheme providers: | Originally from 1 August 2004. |

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| Schemes (DOTAS)<br><br>Finance Act 2004 and subsequent Acts up to and including Finance (No 2) Act 2017 (clause 66 and schedule 17) which brings VAT and other indirect taxes within DOTAS.<br><br>Legislation is extensive – refer to HMRC guidance for references too legislation | | | | | | who is using them. A scheme reported under DOTAS is issued with a Scheme Reference Number (SRN). Lately, DOTAS has become the trigger for issuing accelerated payment notices, and non-compliance with DOTAS is a threshold condition for the issue of a conduct notice under the POTAS regime.<br><br>See chapter 8 of PCRT for further guidance. | • Failure to disclose a scheme<br>• Failure to provide a scheme reference number to users of the scheme.<br>Employers<br>• Penalty per employee involved in a scheme.<br>Users<br>• Failure to report a scheme reference number to HMRC<br><br>Other penalties also arise - for further details refer to paragraphs 22.5, 22.6 and 22.7 of HMRC guidance. | |

Note 1: This guidance only picks up specific guidance notes and not any references in the HMRC manuals.