

Penalties - Checklist of current penalties applying to tax avoidance, tax evasion 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 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 and the help sheets on Tax Advice and Irregularities.

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 [Anti Money Laundering Guidance for the Accountancy Sector \(AMLGAS\)](#).

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 18 April 2023. The list is ordered by year with the most recent Finance Act containing penalty changes at the top.

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 late payment and late submission penalty regimes being introduced as part of the Government's Making Tax Digital programme. It covers penalties in UK legislation only.

This checklist has been produced for the guidance of members and to assist them in meeting the professional standards required of them. It is not a substitute for detailed professional advice. No responsibility can be accepted for the consequences of any action taken or refrained from as a result of the information in this checklist.

Issue	Penalties levied on agents and advisers			Penalties levied on client (taxpayer)	HMRC Guidance where issued (Note 1)	ATT/CIOT Guidance (or Introductory comments) where issued	Penalty	Effective Date
	Ltd Co	Sole Trader	Partnership/LLP					
<p>1. Penalties for facilitating avoidance schemes involving non-resident promoters</p> <p>Section 91 & Schedule 13 Finance Act 2022</p>	Yes	Yes	Yes	No	HMRC Guidance dated 11 April 2022 – see here .		The legislation introduces a new penalty applicable to UK-based entities who facilitate tax avoidance schemes involving non-resident promoters. The penalty can be for an amount up to 100% of the total fees, or the amounts which are the economic equivalent of fees, received by all entities involved in the promotion of that avoidance scheme.	24 February 2022
<p>2. Electronic Sales Suppression</p> <p>Section 92 & Schedule 14 Finance Act 2022</p>	Yes	Yes	Yes	Yes	HMRC guidance published 16 November 2022 – Factsheet CC/FS68 .		<p>A penalty may be charged if a person is ‘in possession’ of an ESS tool or made, supplied or promoted an ESS tool. The penalties for being in possession of an ESS tool are worked out differently to the penalties for making, supplying or promoting an ESS tool.</p> <p>Penalty for being in possession of an ESS tool - up to £1,000 for the initial fixed penalty plus daily penalties of up to £75 per day.</p>	24 February 2022

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							Penalty for making, supplying, or promoting an ESS tool - up to a maximum of £50,000.	
<p>3. Coronavirus Support Payments, including the Job Retention Scheme and the Self-Employment Income Support Scheme</p> <p>Section 106 and Schedule 16 Finance Act 2020</p>	No	No	No	Yes	<p>HMRC's compliance factsheet CC/FS47 contains information about assessments and penalties in relation to grant overpayments.</p> <p>HMRC's factsheet CC/FS11a provides information about when HMRC might charge penalties for a</p>	<p>The legislation gives HMRC powers to recover payments to which recipients were not entitled to, and to charge a penalty in cases of deliberate non-compliance.</p> <p>Guidance on members' obligations in relation to the reporting of grant claims under the self-employment income support scheme is here.</p> <p>Guidance on the treatment, and corrective action necessary, in relation to errors and tax return reporting obligations regarding the coronavirus job retention scheme is here.</p>	<p>A failure to notify a liability to income tax where the person knew at the time the income tax first became chargeable that they were not entitled to the coronavirus support payment is treated as deliberate and concealed.</p> <p>The failure to notify penalty regime is in Sch 41 FA 2008. A deliberate and concealed failure could be up to 100% of the potential lost revenue.</p>	22 July 2020

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					failure to notify an Income Tax charge relating to an overpayment of a coronavirus support payment.			
4. International Tax Enforcement (Disclosable arrangements) Section 84 Finance Act 2019	Yes	Yes	Yes	Yes	HMRC guidance is in their International Exchange of Information Manual from IEIM 600000 onwards – see here . This guidance is due to be replaced with guidance for Mandatory Disclosure	The International Tax Enforcement (Disclosable Arrangements) Regulations 2023 came into force on 28 March 2023. They introduce UK Mandatory Reporting Rules (MDR) based on the OECD model rules . MDR will require promoters and advisors to disclose details of certain types of arrangements to HMRC. An arrangement will be reportable if it involves the use of opaque offshore structures or if it circumvents reporting under the	There are penalties for failure to make reports and other failures to comply with the Regulations (para 13 onwards). A person who fails to comply with certain of the provisions of the Regulations is liable a) To a penalty not exceeding i) £5,000, or ii) in certain cases, if that amount appears inappropriately low after	28 March 2023

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					<p>Rules which come into effect on 28 March 2023 and which will be similar to existing DAC6 guidance for hallmarks D1 and D2.</p> <p>Further guidance is available on gov.uk as follows:</p> <p>check if you need to tell us about an arrangement</p> <p>register for the MDR service</p>	<p>Common Reporting Standard (CRS). HMRC will share and exchange information on these arrangements with other tax authorities implementing the rules where the taxpayers involved in the arrangement are resident.</p> <p>MDR replaces the EU-based DAC6 rules which the UK implemented prior to its exit from the EU and revokes The International Tax Enforcement (Disclosable Arrangements) Regulations 2020 which had implemented EU Directive 2018/822 amending Directive 2011/16/EU (otherwise known as DAC6) into UK law.</p> <p>The ATT produced some guidance for its members who might have been classified as an 'intermediary' under the regulations due to them being registered as a member or student with the ATT and when,</p>	<p>taking account of all relevant considerations, £600 for each day during the initial period, and</p> <p>b) If failure continues after a penalty is imposed under para (a), to a further penalty(ies) not exceeding £600 for each day failure continues.</p> <p>HMRC may reduce the penalty because of "special circumstances".</p> <p>No penalties will be due where a person has a reasonable excuse for the failure.</p>	

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					report an arrangement through MDR use the schema and supporting documents to report	<p>as a possible consequence of that, they might have been required to make a disclosure report to HMRC. This guidance has been withdrawn following the introduction of MDR based on the OECD model rules, since they do not replicate the 'intermediary' provisions in DAC6.</p> <p>Please contact atttechnical@att.org.uk if you would like a copy of this withdrawn guidance.</p>		
<p>5. Penalty for transactions connected with VAT fraud etc</p> <p>Section 68 Finance (No 2) Act 2017</p>	No	No	No	Yes		<p>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</p>	Penalty is 30% of the potential lost VAT.	16 November 2017

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<p>6. Requirement to correct certain offshore tax non-compliance</p> <p>Section 67 and Schedule 18 Finance (No 2) Act 2017</p>	No	No	No	Yes	<p>See HMRC's guidance on how to make a disclosure using the Worldwide Disclosure Facility (WDF) here.</p> <p>HMRC's guidance was published on 16 November 2017 and updated on 11 July 2018, 21 August 2018 and 7 September 2022. It can be found here. Additional guidance was published on 7 September</p>	<p>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.</p> <p>Note however that WDF offers no tax amnesty, penalty reduction or guarantee of non-prosecution.</p>	<p>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.</p> <p>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 those where a person deliberately omitted income or gains.</p> <p>There is a reasonable excuse defence.</p>	16 November 2017

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					2022. It can be found here .	<p>See also the following information about the Requirement to Correct on our websites:</p> <ul style="list-style-type: none"> - Practical Notes for ATT Members (14 September 2018) - Inheritance Tax Disclosures and sending additional information to HMRC (CIOT website 22 November 2018) - Requirement to correct offshore tax non-compliance (ATT website) 		
<p>7. Penalties for enablers of defeated tax avoidance</p> <p>Section 65 and Schedule 16</p>	Yes	Yes	Yes	No	HMRC's guidance was published on 22 December 2017 and updated on 30 April 2018. It	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.	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.	16 November 2017

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Finance (No 2) Act 2017					can be found here .	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 For general guidance for ATT/CIOT members, see here .	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.	
8. Errors in taxpayer's documents (penalty for users of tax avoidance scheme) Section 64 Finance (No 2) Act 2017 (inserting paras 3A and 3B in Schedule	No	No	No	Yes	Guidance is in the Compliance Handbook at CH81122 , CH81123 and CH81124	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 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: Firstly, the inaccuracy will be presumed to be careless unless	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 error is deliberate/deliberate and concealed in which case it can be up to 100% of tax due). General penalty guidance is available on HMRCs website	Applies to returns relating to a tax period commencing on or after 6 April 2017

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24 Finance Act 2007)						<p>the taxpayer can prove that it was not careless (ie this provision is reversing the burden of proof).</p> <p>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'.</p>		
<p>9. Corporate criminal offence of failure to prevent the criminal facilitation of tax evasion</p> <p>Criminal Finances Act 2017 Part 3</p>	Yes	No	Yes	No	<p>Government Guidance –1 September 2017 (updated 18 May 2018)</p>	<p>CIOT/ATT overview for members can be found here.</p> <p>An article on the corporate criminal offence provided to us by HMRC during September 2020 can be found here.</p>	<p>Penalties for this offence include:</p> <ul style="list-style-type: none"> • Unlimited financial penalties • Ancillary orders such as confiscation orders or serious crime prevention orders. <p>Criminal convictions should be reported to the CIOT and ATT and</p>	30 September 2017

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							potential disciplinary action may result.	
10. Offences relating to offshore income, assets and activities (Strict liability criminal offence for offshore tax evasion) 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 (a) in England and Wales, to a fine or to imprisonment for a term not exceeding 51 weeks or to both, and (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)
11. Asset based penalties for offshore inaccuracies and failures	No	No	No	Yes		Taxpayers who have been charged a penalty for deliberate offshore inaccuracies and failures where the potential lost revenue (PLR) in relation to a tax year exceeds £25,000, may also be	The penalty is the lower of; a) 10% of the value of the asset, and b) offshore PLR x 10. It is subject to mitigation.	1 April 2017 (by regulations – see here for further details)

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Section 165 and Schedule 22 Finance Act 2016						charged a penalty based on the value of the asset.		
12. Civil penalties in connection with offshore matters and offshore transfers 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)
13. Penalties for Enablers of offshore tax evasion or non-compliance	Yes	Yes	Yes	No	HMRC's Guidance can be found in their compliance Handbook starting at CH124100		The Greater of: <ul style="list-style-type: none"> • 100% of the potential lost revenue; and • £3,000, or Where the evasion has given rise to a penalty under Schedule 21	1 January 2017

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Section 162 & Schedule 20 Finance Act 2016					HMRC's Factsheet CC/FS17a can be found here . HMRC's announcement can be found here .		Finance Act 2015 (offshore asset moves), the greater of: <ul style="list-style-type: none"> • 50% of the potential lost revenue; and • £3,000 	
14. Serial Tax Avoidance 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 15 th September 2016 which are defeated after 6 th 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
15. General Anti-Abuse Rule (GAAR) Penalty Section 158	No	No	No	Yes	See the GAAR Guidance Part B paragraph 16.6 and Part E paragraphs 3.24 – 3.25 .	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 provisions, enacted in Finance Act 2016, which impose penalties in	GAAR penalty applies to arrangements entered into on or after 15 September 2016

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<p>Finance Act 2016</p> <p>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</p>							<p>certain circumstances (see paragraphs E3.24 - E3.25). 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". The amount of the penalty chargeable is a fixed rate of 60% of the 'counteracted advantage'.</p>	<p>The GAAR itself applies to arrangements entered into after 17 July 2013.</p>
<p>16. Penalties in relation to offshore asset moves.</p> <p>Section 121 and Schedule 21 Finance Act 2015</p>	No	No	No	Yes	<p>HMRC's Factsheet on Higher Penalties for Offshore Matters CC/FS17 can be found here.</p>	<p>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: A – there has been a deliberate failure to comply; B – there has been a 'relevant offshore asset move' which has</p>	<p>The additional penalty is 50% of the original penalty.</p>	<p>Applies to relevant offshore asset moves occurring after 26 March 2015.</p>

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						taken place after the 'relevant time'; and 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.		
17. Penalties in connection with offshore matters and offshore transfers 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. - to include inheritance tax; - to apply to domestic offences where the proceeds are transferred offshore; and - 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, (See para 2 Sch 20)	1/6 April 2016 (by regulation – see here for further details)

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<p>18. Promoters of Tax Avoidance Schemes (POTAS)</p> <p>Part 5 and Schedules 34 to 36 Finance Act 2014, Schedule 19 Finance Act 2015 and s24 Finance Act 2017</p>	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
<p>19. Follower Notices</p> <p>Part 4 Ch 1 & Sch 31 Finance Act 2014</p> <p>S119 & Sch 28 Finance Act 2021</p>	No	No	No	Yes	<p>HMRC's guidance is here.</p> <p>It also includes guidance on accelerated payment notices (introduced in Part 4 Ch 3</p>	A Follower Notice (FN) is a legal request by HMRC to a taxpayer who has used a tax avoidance scheme to remove the tax advantage they have claimed, for example by amending their tax return. FNs can only be issued when the scheme has been defeated in another person's litigation (a relevant judicial ruling). A person receiving an FN will incur a penalty if they do not	On receipt of a FN the recipient has 90 days in which to take corrective action. If corrective action is not taken in this time, HMRC may issue a penalty of 50% of the disputed tax advantage, which can be reduced to no less than 10% to reflect any co-operation given by the recipient in respect of the notice.	17 July 2014 & 10 June 2021

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					Finance Act 2014).	take the corrective action by the deadline set out in the notice.	Changes introduced in FA2021 reduce the standard rate of the penalty is from 50% to 30% of the tax under dispute, but the higher rate is maintained for those taxpayers whose continued refusal to settle with HMRC is deemed to be unreasonable by the tax tribunal.	
20. VAT Disclosure Regime (VADR) 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: <ul style="list-style-type: none"> • 15% of the VAT saved for listed schemes, and • £5,000 for hallmarked schemes 	Originally from 1 August 2004.
21. Disclosure of Tax Avoidance Schemes (DOTAS) Finance Act 2004 and subsequent	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 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	The main penalties arise in relation to: Scheme providers: <ul style="list-style-type: none"> • Failure to disclose a scheme • Failure to provide a scheme reference number to users of the scheme. 	Originally from 1 August 2004.

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<p>Acts up to and including Finance (No 2) Act 2017 (clause 66 and schedule 17) which brings VAT and other indirect taxes within DOTAS.</p> <p>Legislation is extensive – refer to HMRC guidance for references too legislation</p>						<p>accelerated payment notices, and non-compliance with DOTAS is a threshold condition for the issue of a conduct notice under the POTAS regime.</p> <p>See PCRT helpsheet B for guidance on the application of the PCRT Fundamental Principles and Standards for Tax Planning.</p>	<p>Employers</p> <ul style="list-style-type: none"> Penalty per employee involved in a scheme. <p>Users</p> <ul style="list-style-type: none"> Failure to report a scheme reference number to HMRC <p>Other penalties also arise - for further details refer to paragraphs 22.5, 22.6 and 22.7 of HMRC guidance.</p>	

Note 1: This guidance only picks up specific guidance notes, and some references to HMRC manuals. It is not a comprehensive list of references to the HMRC manuals.