

*Disclosure of tax avoidance schemes: consequences for failure to comply***1 Penalties for non-disclosure of tax avoidance schemes**

- (1) In TMA 1970—
- (a) omit section 98C (notifications under Part 7 of Finance Act 2004);
 - (b) in section 100(2) (determination of penalties by an officer of the Board), omit paragraph (f);
 - (c) in section 103A (interest on penalties), omit “(other than section 98C)”.
- (2) In Part 7 of FA 2004 (disclosure of tax avoidance schemes)—
- (a) in section 313(4), for “98C of the Taxes Management Act 1970” substitute “315”;
 - (b) for section 315 substitute—

“315 Penalties

- (1) A person who fails to comply with a duty imposed by a provision mentioned in the first column of the table is liable to a penalty not exceeding the amount specified in relation to that provision in the second column.

<i>Provision</i>	<i>Maximum penalty amount</i>
Section 308(1) or (3) (promoter’s duty to notify)	The applicable rate for each day on which the person fails to comply, or if subsection (3) applies, £1 million
Section 309(1) (client’s duty to notify: no UK promoter)	The applicable rate for each day on which the person fails to comply, or if subsection (3) applies, £1 million
Section 310 (client’s duty to notify: no promoter)	The applicable rate for each day on which the person fails to comply, or if subsection (3) applies, £1 million
Section 310A (duty to provide further information)	The applicable rate for each day on which the person fails to comply, or if subsection (3) applies, £1 million
Section 310C (promoter’s duty to update information)	£5,000
Section 311C (duty to provide further information: section 311(3) case)	The applicable rate for each day on which the person fails to comply, or if subsection (3) applies, £1 million
Section 312(2) (promoter’s duty to notify client of SRN)	£5,000

<i>Provision</i>	<i>Maximum penalty amount</i>
Section 312ZA(2) (duty to notify client of SRN: section 311(3) case)	£5,000
Section 312A(2) or (2A) (client's duty to notify other persons of SRN)	£5,000
Section 312B (client's duty to provide client information to promoter or service provider)	£5,000
Section 313(1) or regulations under section 313(3) (other party's duty to provide information)	The amount specified in subsection (4)
Section 313ZA (promoter's or service provider's duty to provide client information)	£5,000
Section 313ZB (service provider's duty to provide other party's information)	£5,000
Section 313ZC (employer's duty to provide employee information)	£5,000
Section 313A (duty to provide statement on notifiability)	£5,000
Section 313B (duty to provide supporting evidence on notifiability)	£5,000
Section 313C (introducer's duty to provide other person's information)	£5,000

<i>Provision</i>	<i>Maximum penalty amount</i>
Section 316A (duty to provide information in addition to SRN to client or other persons)	£5,000

- (2) The “applicable rate” means –
- (a) £600, or
 - (b) where an order has been made under section 306A or 314A (orders about notifiability) in respect of the arrangements or proposal in relation to which the person fails to comply –
 - (i) £600 for each day falling before the end of the period of ten days beginning with the day on which the order was made, and
 - (ii) £5,000 for each day falling after the end of that period.
- (3) This subsection applies where an authorised officer of HMRC considers that the amount otherwise specified in relation to the provision is inappropriately low.
- (4) The amount specified for section 313(1) or regulations under section 313(3) is –
- (a) £10,000, if the person has failed to comply with the section or regulations on two or more other occasions during the period of 36 months ending with the date of the current failure,
 - (b) £7,500, if the person has failed to comply with the section or regulations on one other occasion during the period of 36 months ending with the date of the current failure, or
 - (c) £5,000, in any other case.
- (5) In this section, a reference to a day on which a person fails to comply with a duty is a reference to a day that –
- (a) begins after the day by which the person was required to comply with the duty, and
 - (b) ends before the earlier of –
 - (i) the day on which the person complies with the duty, and
 - (ii) the day on which any reference number is allocated to the arrangements or proposed arrangements concerned in the circumstances described in subsection (6).
- (6) The circumstances are –

- (a) the duty referred to in subsection (5) is a duty imposed by section 308(1) or (3), 309(1) or 310, and
- (b) it is a case within section 311(3).

315A Further penalties

- (1) If—
 - (a) a penalty is imposed under section 315 in relation to a person's failure to comply with a duty, and
 - (b) after the penalty has been imposed, the person continues to fail to comply with the duty,the person is liable to a further penalty not exceeding the applicable rate (as defined in section 315(2)) for each day on which the failure continues.
- (2) Subsection (1) does not apply to a failure to comply with a duty imposed by section 313(1) or regulations under section 313(3).

315B Determination of penalties

- (1) In imposing a penalty or considering whether a penalty is inappropriately low under section 315(3) the authorised officer must have regard to all relevant considerations, including—
 - (a) the desirability of the penalty being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions;
 - (b) the amount of any fees received, or likely to have been received, by the person in connection with the proposal or arrangements concerned;
 - (c) in the case of a person entering into the arrangements, the amount of any advantage gained, or sought to be gained, by that person.
- (2) A penalty imposed under this Part is to be treated as a penalty imposed under the Taxes Acts and, accordingly, is a penalty to be determined under section 100(1) of TMA 1970.

315C Failure to comply with time limit

A failure to do anything required to be done within a limited period of time does not give rise to liability to a penalty under section 315 or 315A if the person did it within such further time, if any, as an officer of Revenue and Customs or the tribunal may have allowed.

315D Other exemptions from liability to a penalty

- (1) Where a person had a reasonable excuse for a failure to comply with a duty imposed by a provision mentioned in the first column of the table in section 315(1), they shall be deemed not to have failed to comply unless the excuse ceased and, after the excuse ceased, they shall be deemed not to have failed to comply if they complied without unreasonable delay after the excuse had ceased.
- (2) Where an order is made under section 306A or 314A –
 - (a) the order is not evidence that a person either does or does not have a reasonable excuse for non-compliance before the order was made, and
 - (b) the person identified in the order as the promoter cannot rely on doubt as to notifiability as a reasonable excuse for a failure to comply with section 308.
- (3) Where a person fails to comply with –
 - (a) section 309 and the promoter for the purposes of that section is a monitored promoter, or
 - (b) section 310 and the arrangements for the purposes of that section are arrangements of a monitored promoter, then any legal advice which was given or procured by that monitored promoter and which the person took into account is to be disregarded in determining whether the person has a reasonable excuse for the failure.
- (4) In determining whether or not a person who is a monitored promoter has a reasonable excuse for a failure to do anything required to be done, reliance on legal advice does not constitute a reasonable excuse if either –
 - (a) the advice was not based on a full and accurate description of the facts, or
 - (b) the conclusions in the advice that the person relied on were unreasonable.
- (5) For the purposes of this section, “monitored promoter” has the meaning given by section 244(5) of FA 2014.

315E Regulations to vary amounts

- (1) The Treasury may by regulations make provision for the purpose of varying any of the amounts specified in section 315 or 315A.
- (2) Regulations under this section –
 - (a) must be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.”;

(c) in section 318, in the appropriate places insert –

““authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of this Part or, as the case may be, section 100 of TMA 1970;

“Taxes Acts” has the same meaning as in TMA 1970 (see section 118(1) of that Act);”.

(3) In Part 2 of Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes) –

(a) in the cross heading before paragraph 39 omit “(apart from paragraph 26)”;

(b) for paragraphs 39 to 44 substitute –

“39 (1) A person who fails to comply with a duty imposed by a provision of Part 1 of this Schedule mentioned in the first column of the table is liable to a penalty not exceeding the amount specified in relation to that provision in the second column.

<i>Provision</i>	<i>Maximum penalty amount</i>
Paragraph 11(1) or 12(1) (promoter’s duty to notify)	The applicable rate for each day on which the person fails to comply, or if sub-paragraph (3) applies, £1 million
Paragraph 17(2) (client’s duty to notify: no UK promoter)	The applicable rate for each day on which the person fails to comply, or if sub-paragraph (3) applies, £1 million
Paragraph 18(2) (client’s duty to notify: no promoter)	The applicable rate for each day on which the person fails to comply, or if sub-paragraph (3) applies, £1 million
Paragraph 19 (duty to provide further information)	The applicable rate for each day on which the person fails to comply, or if sub-paragraph (3) applies, £1 million
Paragraph 21 (promoter’s duty to update information)	£5,000
Paragraph 22C (duty to provide further information: paragraph 22(3) case)	The applicable rate for each day on which the person fails to comply, or if sub-paragraph (3) applies, £1 million

<i>Provision</i>	<i>Maximum penalty amount</i>
Paragraph 23(2) (promoter's duty to notify client of SRN)	£5,000
Paragraph 23A(2) (duty to notify client of SRN: paragraph 22(3) case)	£5,000
Paragraph 24(3) (client's duty to notify other persons of SRN)	£5,000
Paragraph 25(2) (client's duty to provide client information to promoter or service provider)	£5,000
Paragraph 26(1) or regulations under paragraph 26(3) (other party's duty to provide information)	The amount specified in sub-paragraph (4)
Paragraph 27(3) (promoter's or service provider's duty to provide client information)	£5,000
Paragraph 28 (service provider's duty to provide other party's information)	£5,000
Paragraph 29 (duty to provide statement on notifiability)	£5,000
Paragraph 30 (duty to provide supporting	£5,000

<i>Provision</i>	<i>Maximum penalty amount</i>
evidence on notifiability)	
Paragraph 31 (introducer's duty to provide other person's information)	£5,000
Paragraph 33 (duty to provide information in addition to SRN to client or other persons)	£5,000

- (2) The “applicable rate” means –
- (a) £600, or
 - (b) where an order has been made under paragraph 4 or 5 (orders about notifiability) in respect of the arrangements or proposal in relation to which the person fails to comply –
 - (i) £600 for each day falling before the end of the period of eleven days beginning with the day on which the order was made, and
 - (ii) £5,000 for each day falling after the end of that period.
- (3) This sub-paragraph applies where an authorised officer considers that the amount otherwise specified in relation to the provision is inappropriately low.
- (4) The amount specified for paragraph 26(1) or regulations under paragraph 26(3) is –
- (a) £10,000, if the person has failed to comply with the paragraph or regulations on two or more other occasions during the period of 36 months ending with the date of the current failure,
 - (b) £7,500, if the person has failed to comply with the paragraph or regulations on one other occasion during the period of 36 months ending with the date of the current failure, or
 - (c) £5,000, in any other case.
- (5) In this paragraph, a reference to a day on which a person fails to comply with a duty is a reference to a day that –
- (a) begins after the day by which the person was required to comply with the duty, and
 - (b) ends before the earlier of –

- (i) the day on which the person complies with the duty, and
 - (ii) the day on which any reference number is allocated to the arrangements or proposed arrangements concerned in the circumstances described in sub-paragraph (6).
 - (6) The circumstances are—
 - (a) the duty referred to in sub-paragraph (5) is a duty imposed by paragraph 11(1), 12(1), 17(2) or 18(2), and
 - (b) it is a case within paragraph 22(3).
 - (7) In this paragraph “authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of this paragraph.
- 40 (1) If—
- (a) a penalty is imposed under paragraph 39 in relation to a person’s failure to comply with a duty, and
 - (b) after the penalty has been imposed, the person continues to fail to comply with the duty,
- the person is liable to a further penalty not exceeding the applicable rate (as defined in paragraph 39(2)) for each day on which the failure continues.
- (2) Sub-paragraph (1) does not apply to a failure to comply with a duty imposed by paragraph 26(1) or regulations under paragraph 26(3).
- 41 (1) In imposing a penalty or considering whether a penalty is inappropriately low under paragraph 39(3) the authorised officer must have regard to all relevant considerations, including—
- (a) the desirability of the penalty being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions;
 - (b) the amount of any fees received, or likely to have been received, by the person in connection with the proposal or arrangements concerned;
 - (c) in the case of a person entering into the arrangements, the amount of any advantage gained, or sought to be gained, by that person.
- (2) In this paragraph “authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of this paragraph.
- 42 (1) The Treasury may by regulations make provision for the purpose of varying any of the amounts specified in paragraph 39 or 40.

- (2) Regulations under this paragraph may include incidental or transitional provision.”;
- (c) omit paragraph 45 and the cross heading before paragraph 45;
- (d) in the cross heading before paragraph 46 omit “under paragraph 39(1)(b) or 44”;
- (e) in paragraph 46(1), for “39(1)(b) or 44” substitute “39 or 40”;
- (f) in paragraph 49(2)(a), for “prescribed period mentioned in paragraph 41” substitute “period mentioned in paragraph 39(2)(b)”.

2 Offences relating to non-disclosure of tax avoidance schemes

- (1) In Part 7 of FA 2004 (disclosure of tax avoidance schemes)–
 - (a) in section 305A (introduction), in subsection (2)(d), after “about” insert “offences and”;
 - (b) after section 314A (order to disclose), insert–

“314B Offence relating to duties of a promoter

- (1) A person who fails to comply with a duty imposed by section 308(1) or 308(3) (promoter’s duty to notify HMRC) commits an offence.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse.
- (3) A person who commits an offence under this section is liable–
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (4) A person is not liable to a penalty under section 315 (penalties) in respect of anything in respect of which the person has been convicted of an offence.

314C Liability for senior managers

- (1) If an offence under section 314B(1) is committed by a body corporate or a partnership and–
 - (a) is committed with the consent or connivance of a senior manager, or
 - (b) is attributable to the neglect of a senior manager,
 the senior manager commits the offence (as well as the body or partnership) and is liable to be proceeded against and punished accordingly.
- (2) A “senior manager” means–
 - (a) in relation to a body corporate other than one whose affairs are managed by its members–

- (i) a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity, or
 - (ii) a shadow director within the meaning of section 251 of the Companies Act 2006;
 - (b) in relation to a limited liability partnership or other body corporate whose affairs are managed by its members –
 - (i) a member exercising management functions, or purporting to do so, or
 - (ii) in the case of a limited liability partnership, a shadow member;
 - (c) in relation to a partnership, a partner or a person purporting to act in that capacity.
- (3) In this section, a “shadow member” means a person in accordance with whose directions or instructions the members of the limited liability partnership are accustomed to act, save that a person is not a shadow member by reason only of the fact that the members act on advice given by that person in a professional capacity.”.
- (2) In Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes) –
- (a) in Part A1 (introduction), in paragraph A1, in sub-paragraph (2)(d), after “about” insert “offences and”;
 - (b) for the heading of Part 2 substitute “Offences and penalties”;
 - (c) in Part 2 (penalties), before the cross heading before paragraph 39 insert –

“Offence relating to duties of a promoter

- 38A(1) A person who fails to comply with a duty imposed by paragraph 11(1) or 12(1) (promoter’s duty to notify HMRC) commits an offence.
- (2) It is a defence for a person charged with an offence under sub-paragraph (1) to prove that they had a reasonable excuse.
 - (3) A person who commits an offence under this paragraph is liable –
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
 - (4) A person is not liable to a penalty under this Part in respect of anything in respect of which the person has been convicted of an offence.

- 38B(1) If an offence under paragraph 38A(1) is committed by a body corporate or a partnership and –
- (a) is committed with the consent or connivance of a senior manager, or
 - (b) is attributable to the neglect of a senior manager, the senior manager commits the offence (as well as the body or partnership).
- (2) A “senior manager” means –
- (a) in relation to a body corporate other than one whose affairs are managed by its members –
 - (i) a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity, or
 - (ii) a shadow director within the meaning of section 251 of the Companies Act 2006;
 - (b) in relation to a limited liability partnership or other body corporate whose affairs are managed by its members –
 - (i) a member exercising management functions, or purporting to do so, or
 - (ii) in the case of a limited liability partnership, a shadow member;
 - (c) in relation to a partnership, a partner or a person purporting to act in that capacity.
- (3) In this section, a “shadow member” means a person in accordance with whose directions or instructions the members of the limited liability partnership are accustomed to act, save that a person is not a shadow member by reason only of the fact that the members act on advice given by that person in a professional capacity.”

3 Removal of time limits on publication by HMRC

- (1) In Part 7 of FA 2004 (disclosure of tax avoidance schemes), in section 316C (publication by HMRC), omit subsections (6A) and (6B).
- (2) In Part 1 of Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes), in paragraph 36 (publication by HMRC), omit sub-paragraphs (7) and (8).

4 Consequential amendments

- (1) In paragraph 5 of Schedule 34 to FA 2014 (promoters of tax avoidance schemes: threshold conditions) –
 - (a) in sub-paragraph (3)(a), for “the tribunal” substitute “an authorised officer”;
 - (b) in sub-paragraph (4)(a) –

- (i) at the beginning insert “on appeal, ”;
 - (ii) for “section 118(2) of TMA 1970” substitute “section 315D(1) of FA 2004”;
- (c) for sub-paragraph (6) substitute—
 - “(6) For the purposes of this paragraph—
 - “appeal period” means—
 - (a) the period during which an appeal could be brought against the determination of an authorised officer or the tribunal, as applicable, or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of;
 - “authorised officer” means an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by HMRC for the purposes of the provision concerned.”.
- (2) In paragraph 5 of Schedule 13 to FA 2020 (joint and several liability of company directors), for sub-paragraph (6)(a) substitute—
 - “(a) sections 315 and 315A of FA 2004 (penalties for non-disclosure of tax avoidance schemes);”.
- (3) In section 132A(2) of the Social Security Administration Act 1992 (disclosure of contributions avoidance arrangements)—
 - (a) in paragraph (a), at the end insert “or to a penalty under that Part”;
 - (b) in paragraph (b)—
 - (i) for “section 98C of the Taxes Management Act 1970 (penalties for failure to comply with Part 7 of the Finance Act 2004) and any other” substitute “any”;
 - (ii) for “that section” substitute “Part 7 of the Finance Act 2004”.
- (4) In FA 2022—
 - (a) in section 90(3) (freezing orders: interpretation etc)—
 - (i) omit paragraph (a);
 - (ii) omit paragraph (d);
 - (b) in Schedule 13 (penalties for facilitating avoidance schemes involving non-resident promoters), in paragraph 1(4), for paragraph (a) substitute—
 - “(a) section 315 or 315A of FA 2004 (disclosure of tax avoidance schemes);”.