



Asset-based penalty for an individual's offshore inaccuracies and failures

Summary of legislation

Where there is a deliberate inaccuracy in an individual's tax return, or a deliberate failure to notify, which relates to an offshore asset and a loss of Income Tax, Capital Gains Tax or Inheritance Tax, HMRC will be able to charge a penalty of the lower of 10 percent of the asset value or 10 times the lost tax.

The lost tax relating to offshore income, gains or assets will need to be £25,000 or more in a tax year for the penalty to apply. The lost tax will be calculated as the top slice of all tax liabilities.

There are reductions in the level of the penalty for disclosure and co-operation, including amongst other things, where the taxpayer provides HMRC with a reasonable valuation of the asset. What constitutes reasonable isn't defined.

The maximum level of the reduction hasn't been defined in the legislation, instead being set in regulations which are to follow.

In addition, there is a "special reduction" where HMRC can reduce the penalty if there are found to be "special circumstances". Again, "special circumstances" are not defined, but specifically does not include ability to pay.

Timing

This new rule will come into force at a later date to be announced by HMRC

Our view

This is a further example of HMRC's crackdown on offshore non-compliance.

Penalties are normally based on a percentage of the tax so linking a penalty to the asset value could produce significantly higher penalties which HMRC will hope sends out the message to taxpayers to come forward voluntarily to receive maximum reductions for disclosure and co-operation.

The key point for those with overseas assets is to be fully satisfied that all UK tax affairs, in connection with those assets, are in order and as such these penalties will not come into play.

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