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**Penalties Above 20%:  
What Are They, When Are They Applied, and How Do You Defend?**

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**Table of Contents**

- I. Introduction
  - A. Penalties Generally
    - 1. The Growth of Penalties
    - 2. The Purpose Penalties
  - B. Varying Degrees of Penalties
    - 1. The 20% Accuracy-Related Penalties
    - 2. The 30% Accuracy-Related Penalty
    - 3. The 40% Accuracy-Related Penalties
    - 4. The 75% Fraud Penalty
    - 5. International Form and BSA Penalties Above 20%
    - 6. Penalties Not Exclusive
  - C. Burden of Proof
    - 1. Introduction
    - 2. Defining the Burden of Proof
    - 3. The Burden of Production and Recent Developments Concerning I.R.C. §§ 6751 and 7491(c)
    - 4. The Burden of Persuasion
- II. The 20% Accuracy-Related Penalties
  - A. In General
    - 1. Relevance to the 30% and 40% Penalties
    - 2. General Principles and Anti-Stacking Provisions
  - B. Negligence or Disregard of Rules of Regulations
    - 1. Penalty Authorized

2. Amount of Penalty
3. “Negligence” and “Disregard” Defined
4. Examples of Negligent Conduct
5. Other Factors Considered
- C. Substantial Understatement of Tax Liability
  1. Penalty Authorized
  2. Amount of Penalty
  3. “Substantial Understatement” Defined
- D. Substantial Valuation Misstatement
  1. Penalty Authorized
  2. Amount of Penalty
  3. “Substantial Valuation Misstatement” Defined
  4. Threshold Misstatements
  5. Negligence Need Not Be Shown
- E. Substantial Overstatement of Pension Liabilities
  1. Penalty Authorized
  2. Amount of Penalty
  3. “Substantial Overstatement of Pension Liabilities” Defined
- F. Substantial Estate or Gift Tax Valuation Understatement
  1. Penalty Authorized
  2. Amount of Penalty
  3. “Substantial Estate or Gift Tax Valuation Understatement” Defined
- G. Disallowance of Claimed Tax Benefits Due to Lack of Economic Substance for a Properly Disclosed Transaction
  1. Penalty Authorized
  2. Amount of Penalty
  3. “Economic Substance” Defined
- H. Undisclosed Foreign Financial Assets
  1. Penalty Authorized
  2. Amount of Penalty
  3. “Undisclosed Foreign Financial Asset Understatement” and “Undisclosed Foreign Financial Asset” Defined
- I. Inconsistent Estate Basis
  1. Penalty Authorized
  2. Amount of Penalty
  3. “Inconsistent Estate Basis” Defined
- J. Understatement of Tax Attributable to a Properly Disclosed Reportable Transaction
  1. Penalty Authorized
  2. Amount of Penalty
  3. “Reportable Transaction” Defined
  4. Disclosure
  5. Example of Computation of 20% Penalty
- K. Defenses to Accuracy-Related Penalties
  1. Reasonable Cause
  2. Substantial Authority

- 3. I.R.C. § 6751(b)(1)
  - L. Frequently Litigated Issues
    - 1. Overview
    - 2. Issues Litigated in Penalty Context
- III. The 30% and 40% Accuracy-Related Penalties
  - A. Overview
  - B. Gross Valuation Misstatements
    - 1. In General
    - 2. When a Gross Valuation Misstatement Occurs
    - 3. Overstatements of Basis
    - 4. Reasonable Cause Not Available Post-PPA
  - C. Disallowance of Claimed Tax Benefits Due to Lack of Economic Substance for an Improperly or Undisclosed Transaction
    - 1. Penalty Authorized
    - 2. Amount of Penalty
    - 3. “Economic Substance” Defined
  - D. Undisclosed Foreign Financial Asset Understatement
    - 1. Penalty Authorized
    - 2. Amount of Penalty
    - 3. “Undisclosed Foreign Financial Asset Understatement” and “Undisclosed Foreign Financial Asset” Defined
  - E. Understatement of Tax Attributable to an Improperly or Undisclosed Reportable Transaction
    - 1. Penalty Authorized
    - 2. Amount of Penalty
    - 3. “Reportable Transaction” Defined
    - 4. Disclosure
  - F. Defenses to Accuracy-Related Penalties
- IV. International Form and BSA Penalties Above 20%
  - A. In General
  - B. BSA Penalties – The 50% Penalty and Beyond
    - 1. Simple Negligence Penalty Under 31 U.S.C. § 5321(a)(6)(A)
    - 2. Pattern of Negligent Activity Penalty Under 31 U.S.C. § 5321(a)(6)(B)
    - 3. Nonwillful Violation Penalty Under 31 U.S.C. § 5321(a)(5)(A) and (B)
    - 4. Willful Violation Penalty Under 31 U.S.C. § 5321(a)(5)(A) and (C)
  - C. The 35% Penalty for Failure to File Form 3520
    - 1. Introduction
    - 2. Who Must File
    - 3. When to File
    - 4. Penalties
    - 5. Effect on Statute of Limitations
    - 6. Defenses
    - 7. Purported Gifts Under Treas. Reg. § 1.672(f)-4

- D. Continuation Penalties May Be Greater Than 20%
  - 1. In General
  - 2. Common Continuation Penalties and Related Penalties
  - 3. IRS Procedures for Investigating a Potential Penalty Assessment
  - 4. Reasonable Cause Exception
  - 5. Procedures for Assessing a Continuation Penalty
  - 6. Challenging Continuation Penalties at the Conclusion of the Examination
  - 7. Challenging an Assessment of a Continuation Penalty
  - 8. Challenging an Assessment in an Administrative Collection Case
  - 9. Appeals' Review of Continuation Penalty Assessments
  - 10. Litigation of Continuation Penalty Cases (With Recent Developments)
  
- V. The 75% Fraud Penalty
  - A. Penalty Authorized and Amount of Penalty
    - 1. Fraud Penalty
    - 2. Addition to Tax for Fraudulent Failure to File
  - B. Defining Fraud
    - 1. Fraud Before the Courts
    - 2. Fraud Before the Service
  - C. When Fraud Exists
    - 1. In General
    - 2. Tax Due and Owing
    - 3. Fraudulent Intent
  - D. The Fine Line Between Tax Avoidance and Tax Evasion
    - 1. Tax Avoidance Not Criminal
    - 2. Tax Evasion Criminal
  
- VI. Other Common Additions to Tax and Penalties
  - A. Failure to File Addition to Tax
    - 1. Imposition of Addition to Tax
    - 2. Amount of Addition to Tax
    - 3. "Willful Neglect" and "Reasonable Cause" Defined
    - 4. Fraudulent Failure to File
  - B. Failure to Pay Addition to Tax
    - 1. Imposition of Addition to Tax
    - 2. Amount of Base Addition to Tax
  - C. Failure to Pay Estimated Tax Addition to Tax
    - 1. Imposition of Addition to Tax
    - 2. Amount of Addition to Tax
    - 3. Amount of Required Estimated Tax
    - 4. Avoiding the Addition to Tax for Failure to Pay Estimated Taxes

**Appendix A: International Penalty Chart for Individuals**

**Appendix B: International Penalty Chart for Entities**

**Appendix C: International Penalty Chart for Estates and Gifts**

**Appendix D: International Penalty Related to Withholding Forms**

## I. Introduction

### A. Penalties Generally:

1. The Growth of Penalties: “The number of penalties has grown more than ten-fold from the 13 penalties included in the Internal Revenue Code of 1954.” Alan J. Tarr & Pamela Jensen Drucker, Civil Tax Penalties, 634-3d Tax Mgmt. (BNA), at A. Anecdotally, the Internal Revenue Service (“IRS” or “Service”) now asserts penalties with greater frequency and in cases where a penalty historically would not have been asserted. Suffice to say, the number and degree of penalties has steadily risen over time.
  - a. In General: As of the time of this writing, the Internal Revenue Code (“Code”) authorizes the Service to impose more than 150 civil penalties, additions to tax, and additional taxes for a variety of misdeeds.
  - b. Focus of Outline: This Outline focuses primarily on penalties related to taxpayers’ reporting positions.
2. The Purpose of Penalties: “Penalties exist to encourage voluntary compliance by supporting the standards of behavior required by the [Code].” Internal Revenue Manual (“I.R.M.”) 20.1.1.2 (Feb. 22, 2008).

### B. Varying Degrees of Penalties:

1. The 20% Accuracy-Related Penalties: The Service is authorized to impose 20% accuracy-related penalties for the following misdeeds:
  - a. Negligence or disregard of rules or regulations, see I.R.C. § 6662(a), (b)(1);
  - b. Any substantial understatement of income tax, see I.R.C. § 6662(a), (b)(2);
  - c. Any substantial valuation misstatement, see I.R.C. § 6662(a), (b)(3);
  - d. Any substantial overstatement of pension liabilities, see I.R.C. § 6662(a), (b)(4);
  - e. Any substantial estate or gift tax valuation understatement, see I.R.C. § 6662(a), (b)(5);
  - f. Any disallowance of claimed tax benefits by reason of a properly disclosed transaction lacking economic substance (within the meaning of I.R.C. § 7701(o) or failing to meet the requirements of any similar rule of law), see I.R.C. § 6662(a), (b)(6);
  - g. Any undisclosed foreign financial asset, see I.R.C. § 6662(a), (b)(7);
  - h. Any inconsistent estate basis, see I.R.C. § 6662(a), (b)(8); and
  - i. Any understatement of tax attributable to a properly disclosed reportable transaction, see I.R.C. § 6662A(a).

2. The 30% Accuracy-Related Penalty: The Service is also authorized to impose accuracy-related penalties greater than 20% in a variety of circumstances set forth below. For example, the Service is authorized to impose 30% accuracy-related penalties for:
  - a. Any understatement of tax attributable to an improperly disclosed (or not disclosed) reportable transaction, see I.R.C. § 6662A(a), (c)
3. The 40% Accuracy-Related Penalties: The Service is authorized to impose 40% accuracy-related penalties for:
  - a. Any gross valuation misstatement, see I.R.C. § 6662(a), (b)(3), (h);
  - b. Any disallowance of claimed tax benefits by reason of an improperly disclosed (or not disclosed) transaction lacking economic substance, see I.R.C. § 6662(a), (b)(6); or
  - c. Any undisclosed foreign financial asset understatement, see I.R.C. § 6662(a), (b)(7) (j).
4. The 75% Fraud Penalty: The Service is authorized to impose 75% fraud penalties for:
  - a. Fraud, see I.R.C. § 6663.
5. International Form and BSA Penalties Above 20%: In addition, the Service is also authorized to assert civil penalties that may be above 20% of the tax due. For example:
  - a. International Form Penalties Above 20%: Under I.R.C. § 6677, the failure to file information returns with respect to certain foreign trusts can result in a penalty equal to 35% of the amount required to be reported, but not reported.
  - b. BSA Penalties Above 20%: Under 31 U.S.C. § 5321(a)(5)(A) and (C), the IRS is authorized to impose a civil penalty on any person who willfully violates or causes a violation of any provision of 31 U.S.C. § 5314 (requiring the filing of FBARs). The maximum civil penalty that can apply to a person who willfully violated the FBAR reporting requirements is the greater of \$100,000 or 50% of the value of the account at the time of the violation. See 31 U.S.C. § 5321(a)(5)(C), (D). An examiner has broad discretion as to the amount of the penalty to impose in connection with a willful violation, see I.R.M. 4.26.16.6 (Nov. 6, 2015), and these penalties often rise above 20%.
6. Penalties Not Exclusive: In addition to the above-mentioned penalties, the Service is also authorized to assert civil penalties, additions to tax, and additional taxes for a number of other misdeeds, including but not limited to:
  - a. The failure to timely file income and employment tax returns, see I.R.C. § 6651(a)(1);

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