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## SCHEDULES

### SCHEDULE 18

Section 159

#### SERIAL TAX AVOIDANCE

**Modifications etc. (not altering text)**

- C1** Sch. 18 modified (17.12.2020 for specified purposes, 31.12.2020 in so far as not already in force) by 1994 c. 23, Sch. 9ZA para. 79 (as inserted by [Taxation \(Post-transition Period\) Act 2020 \(c. 26\)](#), s. 11(1)(e), [Sch. 2 para. 2](#) (with s. 3(4), Sch. 2 para. 7(7)-(10)); S.I. 2020/1642, reg. 9)

### PART 1

#### CONTENTS OF SCHEDULE

- 1 In this Schedule—
- (a) Part 2 provides for HMRC to give warning notices to persons who incur relevant defeats and includes—
    - (i) provision about the duration of warning periods under warning notices (see paragraph 3), and
    - (ii) definitions of “relevant defeat” and other key terms;
  - (b) Part 3 contains provisions about persons to whom a warning notice has been given, and in particular—
    - (i) imposes a duty to give information notices, and
    - (ii) allows the Commissioners to publish information about such persons in certain cases involving repeated relevant defeats;
  - (c) Part 4 contains provision about the restriction of reliefs;
  - (d) Part 5 imposes liability to penalties on persons who incur relevant defeats in relation to arrangements used in warning periods;
  - (e) Part 6 contains provisions about corporate groups, associated persons and partnerships;
  - (f) Part 7 contains definitions and other supplementary provisions.

### PART 2

#### ENTRY INTO THE REGIME AND BASIC CONCEPTS

##### *Duty to give warning notice*

- 2 (1) This paragraph applies where a person incurs a relevant defeat in relation to any arrangements.
- (2) HMRC must give the person a written notice (a “warning notice”).

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- (3) The notice must be given within the period of 90 days beginning with the day on which the relevant defeat is incurred.
- (4) The notice must—
  - (a) set out when the warning period begins and ends (see paragraph 3),
  - (b) specify the relevant defeat to which the notice relates, and
  - (c) explain the effect of paragraphs 3 and 17 to 46.
- (5) A warning notice given by virtue of paragraph 49 must also explain the effect of paragraph 51 (information in certain cases involving partnerships).
- (6) In this Schedule “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (7) For the meaning of “relevant defeat” and provision about when a relevant defeat is incurred see paragraph 11.

#### *Warning period*

- 3 (1) If a person is given a warning notice with respect to a relevant defeat (and sub-paragraph (2) does not apply) the period of 5 years beginning with the day after the day on which the notice is given is a “warning period” in relation to that person.
- (2) If a person incurs a relevant defeat in relation to arrangements during a period which is a warning period in relation to that person, the warning period is extended to the end of the 5 years beginning with the day after the day on which the relevant defeat occurs.
- (3) In relation to a warning period which has been extended under this Schedule, references in this Schedule (including this paragraph) to the warning period are to be read as references to the warning period as extended.

#### *Meaning of “tax”*

- 4 [F1(1)] In this Schedule “tax” includes any of the following taxes—
  - (a) income tax,
  - (b) corporation tax, including any amount chargeable as if it were corporation tax or treated as if it were corporation tax,
  - (c) capital gains tax,
  - (d) petroleum revenue tax,
  - (e) diverted profits tax,
  - (f) apprenticeship levy,
  - (g) inheritance tax,
  - (h) stamp duty land tax,
  - (i) annual tax on enveloped dwellings,
  - (j) VAT[F2and indirect taxes], and
  - (k) national insurance contributions.
- [F3(2)] For the purposes of this Schedule “indirect tax” means any of the following—
  - insurance premium tax
  - general betting duty
  - pool betting duty

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remote gaming duty  
machine games duty  
gaming duty  
lottery duty  
bingo duty  
air passenger duty  
hydrocarbon oils duty  
tobacco products duty  
duties on spirits, beer, wine, made-wine and cider  
soft drinks industry levy  
aggregates levy  
landfill tax  
[<sup>F4</sup>plastic packaging tax]  
climate change levy  
customs duties.]

#### Textual Amendments

- F1** Sch. 18 para. 4 renumbered as Sch. 18 para. 4(1) (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(2\)\(a\)](#)
- F2** Words in Sch. 18 para. 4(1)(j) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(2\)\(b\)](#)
- F3** Sch. 18 para. 4(2) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(2\)\(c\)](#)
- F4** Words in Sch. 18 para. 4(2) inserted (10.12.2021 for specified purposes, 1.4.2022 in so far as not already in force and with effect in accordance with s. 85(1)(b) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 85\(1\)\(a\)](#), [Sch. 15 para. 13](#); S.I. 2021/1409, regs. 3, 4

#### *Meaning of “tax advantage” in relation to VAT*

- 5 (1) In this Schedule “tax advantage”, in relation to VAT, is to be read in accordance with sub-paragraphs (2) to (4).
- (2) A taxable person obtains a tax advantage if—
- in any prescribed accounting period, the amount by which the output tax accounted for by the person exceeds the input tax deducted by the person is less than it would otherwise be,
  - the person obtains a VAT credit when the person would not otherwise do so, or obtains a larger VAT credit or obtains a VAT credit earlier than would otherwise be the case,
  - in a case where the person recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case, or
  - in any prescribed accounting period, the amount of the person's non-deductible tax is less than it would otherwise be.
- (3) A person who is not a taxable person obtains a tax advantage if the person's non-refundable tax is less than it otherwise would be.

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- (4) In sub-paragraph (3) “non-refundable tax”, in relation to a person who is not a taxable person, means—
- (a) VAT on the supply to the person of any goods or services,
  - <sup>F5</sup>(b) ..... and
  - (c) VAT paid or payable by the person on the importation of any goods <sup>F6</sup>..., but excluding (in each case) any VAT in respect of which the person is entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.

#### Textual Amendments

- F5** Sch. 18 para. 5(4)(b) omitted (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(2018 c. 22\)](#), s. 57(3), [Sch. 8 para. 121\(a\)\(i\)](#) (with savings and transitional provisions in S.I. 2019/105 (as amended by S.I. 2020/1495, regs. 1(2), [21](#)), S.I. 2020/1545, [Pt. 4](#) and 2020 c. 26, [Sch. 2 para. 7\(7\)-\(9\)](#)); S.I. 2020/1642, [reg. 4\(b\)](#) (with reg. 7)
- F6** Words in Sch. 18 para. 5(4)(c) omitted (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(2018 c. 22\)](#), s. 57(3), [Sch. 8 para. 121\(a\)\(ii\)](#) (with savings and transitional provisions in S.I. 2019/105 (as amended by S.I. 2020/1495, regs. 1(2), [21](#)), S.I. 2020/1545, [Pt. 4](#) and 2020 c. 26, [Sch. 2 para. 7\(7\)-\(9\)](#)); S.I. 2020/1642, [reg. 4\(b\)](#) (with reg. 7)

#### *Meaning of “non-deductible tax”*

- 6 (1) In this Schedule “non-deductible tax”, in relation to a taxable person, means—
- (a) input tax for which the person is not entitled to credit under section 25 of VATA 1994, and
  - (b) any VAT incurred by the person which is not input tax and in respect of which the person is not entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.
- (2) For the purposes of sub-paragraph (1)(b), the VAT “incurred” by a taxable person is—
- (a) VAT on the supply to the person of any goods or services,
  - <sup>F7</sup>(b) ..... and
  - (c) VAT paid or payable by the person on the importation of any goods <sup>F8</sup>....

#### Textual Amendments

- F7** Sch. 18 para. 6(2)(b) omitted (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(2018 c. 22\)](#), s. 57(3), [Sch. 8 para. 121\(b\)\(i\)](#) (with savings and transitional provisions in S.I. 2019/105 (as amended by S.I. 2020/1495, regs. 1(2), [21](#)), S.I. 2020/1545, [Pt. 4](#) and 2020 c. 26, [Sch. 2 para. 7\(7\)-\(9\)](#)); S.I. 2020/1642, [reg. 4\(b\)](#) (with reg. 7)
- F8** Words in Sch. 18 para. 6(2)(c) omitted (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(2018 c. 22\)](#), s. 57(3), [Sch. 8 para. 121\(b\)\(ii\)](#) (with savings and transitional provisions in S.I. 2019/105 (as amended by S.I. 2020/1495, regs. 1(2), [21](#)), S.I. 2020/1545, [Pt. 4](#) and 2020 c. 26, [Sch. 2 para. 7\(7\)-\(9\)](#)); S.I. 2020/1642, [reg. 4\(b\)](#) (with reg. 7)

#### *“Tax advantage”: other taxes*

- 7 In relation to taxes other than VAT, “tax advantage” includes—

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- (a) relief or increased relief from tax,
- (b) repayment or increased repayment of tax,
- (c) receipt, or advancement of a receipt, of a tax credit,
- (d) avoidance or reduction of a charge to tax, an assessment of tax or a liability to pay tax,
- (e) avoidance of a possible assessment to tax or liability to pay tax,
- (f) deferral of a payment of tax or advancement of a repayment of tax, and
- (g) avoidance of an obligation to deduct or account for tax.

*“DOTAS arrangements”*

- 8 (1) For the purposes of this Schedule arrangements are “DOTAS arrangements” at any time if they are notifiable arrangements at the time in question and a person—
- (a) has provided information in relation to the arrangements under section 308(3), 309 or 310 of FA 2004, or
  - (b) has failed to comply with any of those provisions in relation to the arrangements.
- (2) But for the purposes of this Schedule “DOTAS arrangements” does not include arrangements in respect of which HMRC has given notice under section 312(6) of FA 2004 (notice that promoters not under duty to notify client of reference number).
- (3) For the purposes of sub-paragraph (1) a person who would be required to provide information under subsection (3) of section 308 of FA 2004—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under subsection (1) of that section, or
  - (b) but for subsection (4A), (4C) or (5) of that section,
- is treated as providing the information at the end of the period referred to in subsection (3) of that section.
- (4) In this paragraph “notifiable arrangements” has the same meaning as in Part 7 of FA 2004.

*“Disclosable [<sup>F9</sup>Schedule 11A] VAT arrangements”*

**Textual Amendments**

- F9** Words in heading before Sch. 18 para. 9 inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(4\)](#)

- <sup>F10</sup>8A (1) For the purposes of this Schedule arrangements are “disclosable VAT arrangements” at any time if at that time sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies if the arrangements are disclosable Schedule 11A VAT arrangements (see paragraph 9).
- (3) This paragraph applies if—
- (a) the arrangements are notifiable arrangements for the purposes of Schedule 17 to FA 2017,

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- (b) the main benefit, or one of the main benefits that might be expected to arise from the arrangements is the obtaining of a tax advantage in relation to VAT (within the meaning of paragraph 6 of that Schedule), and
  - (c) a person—
    - (i) has provided information about the arrangements under paragraph 12(1), 17(2) or 18(2) of that Schedule, or
    - (ii) has failed to comply with any of those provisions in relation to the arrangements.
- (4) But for the purposes of this Schedule arrangements in respect of which HMRC have given notice under paragraph 23(6) of Schedule 17 (notice that promoters not under duty to notify client of reference number) are not to be regarded as “disclosable VAT arrangements”.
- (5) For the purposes of sub-paragraph (3)(c) a person who would be required to provide information under paragraph 12(1) of Schedule 17 to FA 2017—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under paragraph 11(1) of that Schedule, or
  - (b) but for paragraph 13, 14 or 15 of that Schedule,
- is treated as providing the information at the end of the period referred to in paragraph 12(1).]

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#### Textual Amendments

**F10** Sch. 18 para. 8A inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(3\)](#)

- 9 For the purposes of [<sup>F11</sup>paragraph 8A] arrangements are “disclosable [<sup>F12</sup>Schedule 11A] VAT arrangements” at any time if at that time—
- (a) a person has complied with paragraph 6 of Schedule 11A to VATA 1994 in relation to the arrangements (duty to notify Commissioners),
  - (b) a person under a duty to comply with that paragraph in relation to the arrangements has failed to do so, or
  - (c) a reference number has been allocated to the scheme under paragraph 9 of that Schedule (voluntary notification of avoidance scheme which is not a designated scheme).

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#### Textual Amendments

**F11** Words in Sch. 18 para. 9 substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(5\)\(a\)](#)

**F12** Words in Sch. 18 para. 9 inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(5\)\(b\)](#)

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### <sup>F13</sup> “Disclosable indirect tax arrangements”

#### Textual Amendments

**F13** Sch. 18 para. 9A and cross-heading inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(6\)](#)

- 9A (1) For the purposes of this Schedule arrangements are “disclosable indirect tax arrangements” at any time if at that time—
- (a) the arrangements are notifiable arrangements for the purposes of Schedule 17 to FA 2017,
  - (b) the main benefit, or one of the main benefits that might be expected to arise from the arrangements is the obtaining of a tax advantage in relation to an indirect tax other than VAT (within the meaning of paragraph 7 of that Schedule), and
  - (c) a person—
    - (i) has provided information about the arrangements under paragraph 12(1), 17(2) or 18(2) of that Schedule, or
    - (ii) has failed to comply with any of those provisions in relation to the arrangements.
- (2) But for the purposes of this Schedule arrangements in respect of which HMRC have given notice under paragraph 23(6) of Schedule 17 to FA 2016 (notice that promoters not under duty to notify client of reference number) are not to be regarded as “disclosable indirect tax arrangements”.
- (3) For the purposes of sub-paragraph (1)(c) a person who would be required to provide information under paragraph 12(1) of Schedule 17—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under paragraph 11(1) of that Schedule, or
  - (b) but for paragraph 13, 14 or 15 of that Schedule,
- is treated as providing the information at the end of the period referred to in paragraph 12(1).]

### *Paragraphs 8 [<sup>F14</sup> to 9A]: “failure to comply”*

#### Textual Amendments

**F14** Words in Sch. 18 para. 10 heading substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(7\)](#)

- 10 (1) A person “fails to comply” with any provision mentioned in paragraph 8(1) [<sup>F15</sup>, 8A(2)(c), 9(a) or 9A(1)(c)] if and only if any of the conditions in sub-paragraphs (2) to (4) is met.
- (2) The condition in this sub-paragraph is that—
- (a) the tribunal has determined that the person has failed to comply with the provision concerned,
  - (b) the appeal period has ended, and
  - (c) the determination has not been overturned on appeal.

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- (3) The condition in this sub-paragraph is that—
- (a) the tribunal has determined for the purposes of section 118(2) of TMA 1970 that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done,
  - (b) the appeal period has ended, and
  - (c) the determination has not been overturned on appeal.
- (4) The condition in this sub-paragraph is that the person admitted in writing to HMRC that the person has failed to comply with the provision concerned.
- (5) In this paragraph “the appeal period” means—
- (a) the period during which an appeal could be brought against the determination of the tribunal, 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.
- (6) In this paragraph “the tribunal” means the First-tier tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

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**Textual Amendments**

**F15** Words in Sch. 18 para. 10(1) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(8\)](#)

*“Relevant defeat”*

- 11 (1) A person (“P”) incurs a “relevant defeat” in relation to arrangements if any of Conditions A to [F<sup>16</sup>F] is met in relation to P and the arrangements.
- (2) The relevant defeat is incurred when the condition in question is first met.

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**Textual Amendments**

**F16** Sch. 18 para. 11(1): “F” substituted for “E” (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(9\)](#)

*Condition A*

- 12 (1) Condition A is that—
- (a) P has been given a notice under paragraph 12 of Schedule 43 to FA 2013 (general anti-abuse rule: notice of final decision), paragraph 8 or 9 of Schedule 43A to that Act (pooling and binding of arrangements: notice of final decision) or paragraph 8 of Schedule 43B to that Act (generic referrals: notice of final decision) stating that a tax advantage arising from the arrangements is to be counteracted,
  - (b) that tax advantage has been counteracted under section 209 of FA 2013, and
  - (c) the counteraction is final.

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- (2) For the purposes of this paragraph the counteraction of a tax advantage is “final” when the adjustments made to effect the counteraction, and any amounts arising as a result of those adjustments, can no longer be varied, on appeal or otherwise.

#### *Condition B*

- 13 (1) Condition B is that (in a case not falling within Condition A above) a follower notice has been given to P by reference to the arrangements (and not withdrawn) and—
- (a) the necessary corrective action for the purposes of section 208 of FA 2014 has been taken in respect of the denied advantage, or
  - (b) the denied advantage has been counteracted otherwise than as mentioned in paragraph (a) and the counteraction of the denied advantage is final.
- (2) In sub-paragraph (1) the reference to giving a follower notice to P includes a reference to giving a partnership follower notice in respect of a partnership return in relation to which P is a relevant partner (as defined in paragraph 2(5) of Schedule 31 to FA 2014).
- (3) For the purposes of this paragraph it does not matter whether the denied advantage has been dealt with—
- (a) wholly as mentioned in one or other of paragraphs (a) and (b) of sub-paragraph (1), or
  - (b) partly as mentioned in one and partly as mentioned in the other of those paragraphs.
- (4) In this paragraph “the denied advantage” has the same meaning as in Chapter 2 of Part 4 of FA 2014 (see section 208(3) of and paragraph 4(3) of Schedule 31 to that Act).
- (5) For the purposes of this paragraph the counteraction of a tax advantage is “final” when the adjustments made to effect the counteraction, and any amounts arising as a result of those adjustments, can no longer be varied, on appeal or otherwise.
- (6) In this Schedule “follower notice” means a follower notice under Chapter 2 of Part 4 of FA 2014.
- (7) For the purposes of this paragraph a partnership follower notice is given “in respect of” the partnership return mentioned in paragraph (a) or (b) of paragraph 2(2) of Schedule 31 to FA 2014.

#### *Condition C*

- 14 (1) Condition C is that (in a case not falling within Condition A or B)—
- (a) the arrangements are DOTAS arrangements,
  - (b) P has relied on the arrangements (see sub-paragraph (2))—
  - (c) the arrangements have been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of sub-paragraph (1), P “relies on the arrangements” if—
- (a) P makes a return, claim or election, or a partnership return is made, on the basis that a relevant tax advantage arises, or

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- (b) P fails to discharge a relevant obligation (“the disputed obligation”) and there is reason to believe that P's failure to discharge that obligation is connected with the arrangements.
- (3) For the purposes of sub-paragraph (2) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable P to obtain.
- (4) For the purposes of sub-paragraph (2) an obligation is a “relevant obligation” if the arrangements might be expected to have the result that the obligation does not arise.
- (5) For the purposes of this paragraph the arrangements are “counteracted” if—
  - (a) adjustments, other than taxpayer emendations, are made in respect of P's tax position—
    - (i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or
    - (ii) on the basis that the disputed obligation does (or did) arise, or
  - (b) an assessment to tax other than a self-assessment is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).
- (6) For the purposes of this paragraph a counteraction is “final” when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.
- (7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are DOTAS arrangements is when the counteraction becomes final.
- (8) The following are “taxpayer emendations” for the purposes of sub-paragraph (5)—
  - (a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P's affairs relating to the tax in question;
  - (b) an adjustment (by way of an assessment or otherwise) made by HMRC with respect to P's tax position as a result of a disclosure made by P which meets the conditions in sub-paragraph (9).

For the purposes of paragraph (a) a payment in respect of a liability to pay national insurance contributions is not an adjustment unless it is a payment in full.
- (9) The conditions are that the disclosure—
  - (a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and
  - (b) was made at a time when P had no reason to believe that HMRC were about to begin enquiries into P's affairs relating to the tax in question.
- (10) For the purposes of this paragraph a contract settlement which HMRC enters into with P is treated as an assessment to tax (other than a self-assessment); and in relation to contract settlements references in sub-paragraph (5) to the basis on which any assessment or adjustments are made, or any other action is taken, are to be read with any necessary modifications.

*Condition D*

- 15 (1) Condition D is that—

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- (a) P is a taxable person;
  - (b) the arrangements are disclosable VAT arrangements to which P is a party,
  - (c) P has relied on the arrangements (see sub-paragraph (2));
  - (d) the arrangements have been counteracted, and
  - (e) the counteraction is final.
- (2) For the purposes of sub-paragraph (1) P “relies on the arrangements” if—
- (a) P makes a return or claim on the basis that a relevant tax advantage arises, or
  - (b) P fails to discharge a relevant obligation (“the disputed obligation”) and there is reason to believe that P’s failure to discharge that obligation is connected with those arrangements.
- (3) For the purposes of sub-paragraph (2) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable P to obtain.
- (4) For the purposes of sub-paragraph (2) an obligation is a “relevant obligation” if the arrangements might be expected to have the result that the obligation does not arise.
- (5) For the purposes of this paragraph the arrangements are “counteracted” if—
- (a) adjustments, other than taxpayer emendations, are made in respect of P’s tax position—
    - (i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or
    - (ii) on the basis that the disputed obligation does (or did) arise, or
  - (b) an assessment to tax is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).
- (6) For the purposes of this paragraph a counteraction is “final” when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.
- (7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are disclosable VAT arrangements is when the counteraction becomes final.
- (8) The following are “taxpayer emendations” for the purposes of sub-paragraph (5)—
- (a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P’s affairs relating to VAT;
  - (b) an adjustment made by HMRC with respect to P’s tax position (by way of an assessment or otherwise) as a result of a disclosure made by P which meets the conditions in sub-paragraph (9).
- (9) The conditions are that the disclosure—
- (a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and
  - (b) was made at a time when P had no reason to believe that HMRC were about to begin enquiries into P’s affairs relating to VAT.

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### *Condition E*

- 16 (1) Condition E is that the arrangements are disclosable VAT arrangements to which P is a party and—
- (a) the arrangements relate to the position with respect to VAT of a person other than P (“S”) who has made supplies of goods or services to P,
  - (b) the arrangements might be expected to enable P to obtain a tax advantage in connection with those supplies of goods or services,
  - (c) the arrangements have been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of this paragraph the arrangements are “counteracted” if—
- (a) HMRC assess S to tax or take any other action on a basis which prevents P from obtaining (or obtaining the whole of) the tax advantage in question, or
  - (b) adjustments, other than taxpayer emendations, are made in relation to S's VAT affairs on a basis such as is mentioned in paragraph (a).
- (3) For the purposes of this paragraph a counteraction is “final” when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.
- (4) For the purposes of sub-paragraph (1) the time when it falls to be determined whether or not the arrangements are disclosable VAT arrangements is when the counteraction becomes final.
- (5) The following are “taxpayer emendations” for the purposes of sub-paragraph (2)—
- (a) an adjustment made by S at a time when neither P nor S had reason to believe that HMRC had begun or were about to begin enquiries into the affairs of S or P relating to VAT;
  - (b) an adjustment (by way of an assessment or otherwise) made by HMRC with respect to S's tax position as a result of a disclosure made by S which meets the conditions in sub-paragraph (6).
- (6) The conditions are that the disclosure—
- (a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and
  - (b) was made at a time when neither S nor P had reason to believe that HMRC were about to begin enquiries into the affairs of S or P relating to VAT.

### *<sup>F17</sup>Condition F*

#### **Textual Amendments**

**F17** Sch. 18 para. 16A and cross-heading inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(10\)](#)

- 16A (1) Condition F is that—
- (a) the arrangements are indirect tax arrangements,
  - (b) P has relied on the arrangements (see sub-paragraph (2)),
  - (c) the arrangements have been counteracted, and
  - (d) the counteraction is final.

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- (2) For the purpose of sub-paragraph (1) P relies on the arrangements if—
  - (a) P makes a return, claim, declaration or application for approval on the basis that a relevant tax advantage arises, or
  - (b) P fails to discharge a relevant obligation (“the disputed obligation”) and there is reason to believe that P’s failure to discharge that obligation is connected with the arrangements.
- (3) For the purposes of sub-paragraph (2) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable P to obtain.
- (4) For the purposes of sub-paragraph (2) an obligation is a relevant obligation if the arrangements might be expected to have the result that the obligation does not arise.
- (5) For the purposes of this paragraph the arrangements are “counteracted” if—
  - (a) adjustments, other than taxpayer emendations, are made in respect of P’s tax position —
    - (i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or
    - (ii) on the basis that the disputed obligation does (or did) arise, or
  - (b) an assessment to tax is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).
- (6) For the purposes of this paragraph a “counteraction” is final when the adjustments, assessment or action in question, and any amounts arising from the adjustments, assessment or action, can no longer be varied, on appeal or otherwise.
- (7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are disclosable indirect tax arrangements is when the counteraction becomes final.
- (8) The following are “taxpayer emendations” for the purposes of sub-paragraph (5)—
  - (a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P’s affairs in relation to the tax in question;
  - (b) an adjustment made by HMRC with respect to P’s tax position (whether by way of an assessment or otherwise) as a result of a disclosure by P which meets the conditions in sub-paragraph (9).
- (9) The conditions are that the disclosure—
  - (a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and
  - (b) was made at a time when P had no reason to believe that HMRC were about to begin enquiries into P’s affairs in relation to the tax in question.]

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### PART 3

#### ANNUAL INFORMATION NOTICES AND NAMING

##### *Annual information notices*

- 17 (1) A person (“P”) who has been given a warning notice under this Schedule must give HMRC a written notice (an “information notice”) in respect of each reporting period in the warning period (see sub-paragraph (11)).
- (2) An information notice must be given not later than the 30th day after the end of the reporting period to which it relates.
- (3) An information notice must state whether or not P—
- (a) has in the reporting period delivered a return, or made a claim [<sup>F18</sup>election, declaration or application for approval,] on the basis that a relevant tax advantage arises, or has since the end of the reporting period delivered on that basis a return which P was required to deliver before the end of that period,
  - (b) has in the reporting period failed to take action which P would be required to take under or by virtue of an enactment relating to tax but for particular [<sup>F19</sup>disclosable] arrangements to which P is a party,
  - (c) has in the reporting period become a party to arrangements which—
    - (i) relate to the position with respect to VAT of another person (“S”) who has made supplies of goods or services to P, and
    - (ii) might be expected to enable P to obtain a relevant tax advantage (“the expected tax advantage”) in connection with those supplies of goods or services,
  - (d) has failed to deliver a return which P was required to deliver by a date falling in the reporting period.
- (4) In this paragraph “relevant tax advantage” means a tax advantage which particular [<sup>F20</sup>disclosable] arrangements enable, or might be expected to enable, P to obtain.
- (5) If P has, in the reporting period concerned, made a return, claim [<sup>F21</sup>election, declaration or application for approval] on the basis mentioned in sub-paragraph (3) (a) or failed to take action as mentioned in sub-paragraph (3)(b) the information notice must—
- (a) explain (on the assumptions made by P in so acting or failing to act) how the [<sup>F22</sup>disclosable] arrangements enable P to obtain the tax advantage, or (as the case may be) have the result that P is not required to take the action in question, and
  - (b) state (on the same assumptions) the amount of the relevant tax advantage mentioned in sub-paragraph (3)(a) or (as the case may be) the amount of any tax advantage which arises in connection with the absence of a requirement to take the action mentioned in sub-paragraph (3)(b).
- (6) If P has, in the reporting period, become a party to arrangements such as are mentioned in sub-paragraph (3)(c), the information notice—
- (a) must state whether or not it is P's view that the expected tax advantage arises to P, and

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- (b) if that is P's view, must explain how the arrangements enable P to obtain the tax advantage and state the amount of the tax advantage.
- (7) If the time by which P must deliver a return falls within a reporting period and P fails to deliver the return by that time, HMRC may require P to give HMRC a written notice (a “supplementary information notice”) setting out any matters which P would have been required to set out in an information notice had P delivered the return in that reporting period.
- (8) A requirement under sub-paragraph (7) must be made by a written notice which states the period within which P must comply with the notice.
- (9) If P fails to comply with a requirement of (or imposed under) this paragraph HMRC may by written notice extend the warning period to the end of the period of 5 years beginning with—
- (a) the day by which the information notice or supplementary information notice should have been given (see sub-paragraphs (2) and (8)) or, as the case requires,
  - (b) the day on which P gave the defective information notice or supplementary information notice to HMRC,
- or, if earlier, the time when the warning period would have expired but for the extension.
- (10) HMRC may permit information notices given by members of the same group of companies (as defined in paragraph 46(9)) to be combined.
- (11) For the purposes of this paragraph—
- (a) the first reporting period in any warning period begins with the first day of the warning period and ends with a day specified by HMRC (“the specified day”),
  - (b) the remainder of the warning period is divided into further reporting periods each of which begins immediately after the end of the preceding reporting period and is twelve months long or (if that would be shorter) ends at the end of the warning period.
- [<sup>F23</sup>(12) In this paragraph “disclosable arrangements” means any of the following—
- (a) DOTAS arrangements,
  - (b) disclosable VAT arrangements, and
  - (c) disclosable indirect tax arrangements.]

#### Textual Amendments

- F18** Words in Sch. 18 para. 17(3)(a) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(11\)\(a\)](#)
- F19** Word in Sch. 18 para. 17(3)(b) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(11\)\(b\)](#)
- F20** Word in Sch. 18 para. 17(4) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(11\)\(b\)](#)
- F21** Words in Sch. 18 para. 17(5) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(11\)\(c\)](#)
- F22** Word in Sch. 18 para. 17(5)(a) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(11\)\(b\)](#)

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**F23** Sch. 18 para. 17(12) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(11\)\(d\)](#)

### *Naming*

- 18 (1) The Commissioners may publish information about a person if the person—
- (a) incurs a relevant defeat in relation to arrangements which the person has used in a warning period, and
  - (b) has been given at least two warning notices in respect of other defeats of arrangements which were used in the same warning period.
- (2) Information published for the first time under sub-paragraph (1) must be published within the 12 months beginning with the day on which the most recent of the warning notices falling within that sub-paragraph has been given to the person.
- (3) No information may be published (or continue to be published) after the end of the period of 12 months beginning with the day on which it is first published.
- (4) The information that may be published is—
- (a) the person's name (including any trading name, previous name or pseudonym),
  - (b) the person's address (or registered office),
  - (c) the nature of any business carried on by the person,
  - (d) information about the fiscal effect of the defeated arrangements (had they not been defeated), for instance information about total amounts of tax understated or total amounts by which claims, or statements of losses, have been adjusted,
  - (e) the amount of any penalty to which the person is liable under paragraph 30 in respect of the relevant defeat of any defeated arrangements,
  - (f) the periods in which or times when the defeated arrangements were used, and
  - (g) any other information the Commissioners may consider it appropriate to publish in order to make clear the person's identity.
- (5) If the person mentioned in sub-paragraph (1) is a member of a group of companies (as defined in paragraph 46(9)), the information which may be published also includes—
- (a) any trading name of the group, and
  - (b) information about other members of the group of the kind described in sub-paragraph (4)(a), (b) or (c).
- (6) If the person mentioned in sub-paragraph (1) is a person carrying on a trade or business in partnership, the information which may be published also includes—
- (a) any trading name of the partnership, and
  - (b) information about other members of the partnership of the kind described in sub-paragraph (4)(a) or (b).
- (7) The information may be published in any manner the Commissioners may consider appropriate.
- (8) Before publishing any information the Commissioners—
- (a) must inform the person that they are considering doing so, and
  - (b) afford the person reasonable opportunity to make representations about whether or not it should be published.

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- (9) Arrangements are “defeated arrangements” for the purposes of sub-paragraph (4) if the person used them in the warning period mentioned in sub-paragraph (1) and a warning notice specifying the defeat of those arrangements has been given to the person before the information is published.
- (10) If a person has been given a single warning notice in relation to two or more relevant defeats, the person is treated for the purposes of this paragraph as having been given a separate warning notice in relation to each of those relevant defeats.
- (11) Nothing in this paragraph prevents the power under sub-paragraph (1) from being exercised on a subsequent occasion in relation to arrangements used by the person in a different warning period.

## PART 4

### RESTRICTION OF RELIEFS

#### *Duty to give a restriction relief notice*

- 19 (1) HMRC must give a person a written notice (a “restriction of relief notice”) if—
- (a) the person incurs a relevant defeat in relation to arrangements which the person has used in a warning period,
  - (b) the person has been given at least two warning notices in respect of other relevant defeats of arrangements which were used in that same warning period, and
  - (c) the defeats mentioned in paragraphs (a) and (b) meet the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) that each of the relevant defeats is by virtue of Condition A, B or C,
  - (b) that each of the relevant defeats relates to the misuse of a relief (see sub-paragraph (5)), and
  - (c) in the case of each of the relevant defeats, either—
    - (i) that the relevant counteraction (see sub-paragraph (7)) was made on the basis that a particular avoidance-related rule applies in relation to a person's affairs, or
    - (ii) that the misused relief is a loss relief.
- (3) In sub-paragraph (2)(c)—
- (a) the “misused relief” means the relief mentioned in sub-paragraph (5), and
  - (b) “loss relief” means any relief under Part 4 of ITA 2007 or Part 4 or 5 of CTA 2010.
- (4) A restriction of relief notice must—
- (a) explain the effect of paragraphs 20, 21 and 22, and
  - (b) set out when the restricted period is to begin and end.
- (5) For the purposes of this Part of this Schedule, a relevant defeat by virtue of Condition A, B or C “relates to the misuse of a relief” if—

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- (a) the tax advantage in question, or part of the tax advantage in question, is or results from (or would but for the counteraction be or result from) a relief or increased relief from tax, or
  - (b) it is reasonable to conclude that the making of a particular claim for relief, or the use of a particular relief, is a significant component of the arrangements in question.
- (6) In sub-paragraph (5) “the tax advantage in question” means—
- (a) in relation to a defeat by virtue of Condition A, the tax advantage mentioned in paragraph 12(1)(a),
  - (b) in relation to a defeat by virtue of Condition B, the denied advantage (as defined in paragraph 13(4)), or
  - (c) in relation to a defeat by virtue of Condition C—
    - (i) the tax advantage mentioned in paragraph 14(2)(a), or, as the case requires,
    - (ii) the absence of the relevant obligation (as defined in paragraph 14(4)).
- (7) In this paragraph “the relevant counteraction”, in relation to a relevant defeat means—
- (a) in the case of a defeat by virtue of Condition A, the counteraction referred to in paragraph 12(1)(c);
  - (b) in the case of a defeat by virtue of Condition B, the action referred to in paragraph 13(1);
  - (c) in the case of a defeat by virtue of Condition C, the counteraction referred to in paragraph 14(1)(d).
- (8) If a person has been given a single warning notice in relation to two or more relevant defeats, the person is treated for the purposes of this paragraph as having been given a separate warning notice in relation to each of those relevant defeats.

#### *Restriction of relief*

- 20 (1) Sub-paragraphs (2) to (15) have effect in relation to a person to whom a relief restriction notice has been given.
- (2) The person may not, in the restricted period, make any claim for relief.
- (3) Sub-paragraph (2) does not have effect in relation to—
- (a) a claim for relief under Schedule 8 to FA 2003 (stamp duty land tax: charities relief);
  - (b) a claim for relief under Chapter 3 of Part 8 of ITA 2007 (gifts of shares, securities and real property to charities etc);
  - (c) a claim for relief under Part 10 of ITA 2007 (special rules about charitable trusts etc);
  - (d) a claim for relief under double taxation arrangements;
  - (e) an election under section 426 of ITA 2007 (gift aid: election to treat gift as made in previous year).
- (4) Claims under the following provisions in Part 4 of FA 2004 (registered pension schemes: tax reliefs etc) do not count as claims for relief for the purposes of this paragraph—

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- section 192(4) (increase of basic rate limit and higher rate limit);  
section 193(4) (net pay arrangements: excess relief);  
section 194(1) (relief on making of a claim).
- (5) The person may not, in the restricted period, surrender group relief under Part 5 of CTA 2010.
- (6) No deduction is to be made under section 83 of ITA 2007 (carry forward against subsequent trade profits) in calculating the person's net income for a relevant tax year.
- (7) No deduction is to be made under section 118 of ITA 2007 (carry-forward property loss relief) in calculating the person's net income for a relevant tax year.
- (8) The person is not entitled to relief under section 448 (annual payments: relief for individuals) or 449 (annual payments: relief for other persons) of ITA 2007 for any payment made in the restricted period.
- (9) No deduction of expenses referable to a relevant accounting period is to be made under section 1219(1) of CTA 2009 (expenses of management of a company's investment business).
- (10) No reduction is to be made under section 45(4) of CTA 2010 (carry-forward of trade loss relief) in calculating the profits for a relevant accounting period of a trade carried on by the person.
- (11) In calculating the total amount of chargeable gains accruing to a person in a relevant tax year (or part of a relevant tax year), no losses are to be deducted under subsections (2) to (2B) of section 2 of TCGA 1992 (persons and gains chargeable to capital gains tax, and allowable losses).
- (12) In calculating the total amount of ATED-related chargeable gains accruing to a person in a relevant tax year, no losses are to be deducted under subsection (3) of section 2B of TCGA 1992 (persons chargeable to capital gains tax on ATED-related gains).
- (13) In calculating the total amount of chargeable NRCGT gains accruing to a person in a relevant tax year on relevant high value disposals, no losses are to be deducted under subsection (2) of section 14D of TCGA 1992 (persons chargeable to capital gains tax on NRCGT gains).
- (14) If the person is a company, no deduction is to be made under section 62 of CTA 2010 (relief for losses made in UK property business) from the company's total profits of a relevant accounting period.
- (15) No deduction is to be made under regulation 18 of the Unauthorised Unit Trusts (Tax) Regulations 2013 (S.I. 2013/2819) (relief for deemed payments by trustees of an exempt unauthorised unit trust) in calculating the person's net income for a relevant tax year.
- (16) In this paragraph “relevant tax year” means any tax year the first day of which is in the restricted period.
- (17) In this paragraph “relevant accounting period” means an accounting period the first day of which is in the restricted period.
- (18) In this paragraph “double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the UK).

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### *The restricted period*

- 21 (1) In paragraphs 19 and 20 (and this paragraph) “the restricted period” means the period of 3 years beginning with the day on which the relief restriction notice is given.
- (2) If during the restricted period (or the restricted period as extended under this sub-paragraph) the person to whom a relief restriction notice has been given incurs a further relevant defeat meeting the conditions in sub-paragraph (4), HMRC must give the person a written notice (a “restricted period extension notice”).
- (3) A restricted period extension notice extends the restricted period to the end of the period of 3 years beginning with the day on which the further relevant defeat occurs.
- (4) The conditions mentioned in sub-paragraph (2) are that—
- (a) the relevant defeat is incurred by virtue of Condition A, B or C in relation to arrangements which the person used in the warning period mentioned in paragraph 19(1)(a), and
  - (b) the warning notice given to the person in respect of the relevant defeat relates to the misuse of a relief.
- (5) If the person to whom a relief restriction notice has been given incurs a relevant defeat which meets the conditions in sub-paragraph (4) after the restricted period has expired but before the end of a concurrent warning period, HMRC must give the person a restriction of relief notice.
- (6) In sub-paragraph (5) “concurrent warning period” means a warning period which at some time ran concurrently with the restricted period.

### *Reasonable excuse*

- 22 (1) If a person who has incurred a relevant defeat satisfies HMRC or, on an appeal under paragraph 24, the First-tier Tribunal or Upper Tribunal that the person had a reasonable excuse for the matters to which that relevant defeat relates, then—
- (a) for the purposes of paragraph 19(1)(a) and 21(2) and (5), the person is treated as not having incurred that relevant defeat, and
  - (b) for the purposes of paragraph 19(1)(b) and (c) any warning notice given to the person which relates to that relevant defeat is treated as not having been given to the person.
- (2) For the purposes of this paragraph, in the case of a person (“P”)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
  - (b) where P relies on another person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant failure, and
  - (c) where P had reasonable excuse for the relevant failure but the excuse had ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.
- (3) In determining for the purposes of this paragraph whether or not a person (“P”) had a reasonable excuse for any action, failure or inaccuracy, reliance on advice is to be taken automatically not to constitute a reasonable excuse if the advice is addressed to, or was given to, a person other than P or takes no account of P’s individual circumstances.

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- (4) In this paragraph “relevant failure”, in relation to a relevant defeat, is to be interpreted in accordance with sub-paragraphs (2) to (7) of paragraph 43.

*Mitigation of restriction of relief*

- 23 (1) The Commissioners may mitigate the effects of paragraph 20 in relation to a person (“P”) so far as it appears to them that there are exceptional circumstances such that the operation of that paragraph would otherwise have an unduly serious impact with respect to the tax affairs of P or another person.
- (2) For the purposes of sub-paragraph (1) the Commissioners may modify the effects of paragraph 20 in any way they think appropriate, including by allowing P access to the whole or part of a relief to which P would otherwise not be entitled as a result of paragraph 20.

*Appeal*

- 24 (1) A person may appeal against—
- (a) a relief restriction notice, or
  - (b) a restricted period extension notice.
- (2) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which the notice is given.
- (3) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (4) On an appeal the tribunal may—
- (a) cancel HMRC's decision, or
  - (b) affirm that decision with or without any modifications in accordance with sub-paragraph (5).
- (5) On an appeal the tribunal may rely on paragraph 23 (mitigation of restriction of relief) —
- (a) to the same extent as HMRC (which may mean applying the same mitigation as HMRC to a different starting point), or
  - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 23 was flawed.
- (6) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (3)).

*Meaning of “avoidance-related rule”*

- 25 (1) In this Part of this Schedule “avoidance-related rule” means a rule in Category 1 or 2.
- (2) A rule is in Category 1 if it refers (in whatever terms)—
- (a) to the purpose or main purpose or purposes of a transaction, arrangements or any other action or matter, and
  - (b) to whether or not the purpose in question is or involves the avoidance of tax or the obtaining of any advantage in relation to tax (however described).

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- (3) A rule is also in Category 1 if it refers (in whatever terms) to—
- (a) expectations as to what are, or may be, the expected benefits of a transaction, arrangements or any other action or matter, and
  - (b) whether or not the avoidance of tax or the obtaining of any advantage in relation to tax (however described) is such a benefit.

For the purposes of paragraph (b) it does not matter whether the reference is (for instance) to the “sole or main benefit” or “one of the main benefits” or any other reference to a benefit.

- (4) A rule falls within Category 2 if as a result of the rule a person may be treated differently for tax purposes depending on whether or not purposes referred to in the rule (for instance the purposes of an actual or contemplated action or enterprise) are (or are shown to be) commercial purposes.

- (5) For example, a rule in the following form would fall within Category 1 and within Category 2—

**Example rule**

Section X does not apply to a company in respect of a transaction if the company shows that the transaction meets Condition A or B. Condition A is that the transaction is effected—

- (a) for genuine commercial reasons, or
- (b) in the ordinary course of managing investments.”

*Meaning of “relief”*

- 26 The following are “reliefs” for the purposes of this Part of this Schedule—
- (a) any relief from tax (however described) which must be claimed, or which is not available without making an election,
  - (b) relief under section 1219 of CTA 2009 (expenses of management of a company's investment business),
  - (c) any relief (not falling within paragraph (a)) under Part 4 of ITA 2007 (loss relief) or Part 4 or 5 of CTA 2010 (loss relief and group relief), and
  - (d) any relief (not falling within paragraph (a) or (b)) under a provision listed in section 24 of ITA 2007 (reliefs deductible at Step 2 of the calculation of income tax liability).

*“Claim” for relief*

- 27 In this Part of this Schedule “claim for relief” includes any election or other similar action which is in substance a claim for relief.

*VAT [<sup>F24</sup> and indirect taxes]*

**Textual Amendments**

- F24** Words in Sch. 18 para. 28 heading inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(12\)](#)

- 28 In this Part of this Schedule “tax” does not include VAT [<sup>F25</sup> or any other indirect tax].

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### Textual Amendments

**F25** Words in Sch. 18 para. 28 inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(13\)](#)

#### *Power to amend*

- 29 (1) The Treasury may by regulations—
- (a) amend paragraph 20;
  - (b) amend paragraph 26.
- (2) Regulations under sub-paragraph (1)(a) may, in particular, alter the application of paragraph 20 in relation to any relief, exclude any relief from its application or extend its application to further reliefs.
- (3) Regulations under sub-paragraph (1)(b) may amend the meaning of “relief” in any way (including by extending or limiting the meaning).
- (4) Regulations under this paragraph may—
- (a) make supplementary, incidental and consequential provision;
  - (b) make transitional provision.
- (5) Regulations under this paragraph are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

## PART 5

### PENALTY

#### *Penalty*

- 30 (1) 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.
- (2) The penalty is 20% of the value of the counteracted advantage if neither sub-paragraph (3) nor sub-paragraph (4) applies.
- (3) The penalty is 40% of the value of the counteracted advantage if before the relevant defeat is incurred the person has been given, or become liable to be given, one (but not more than one) relevant prior warning notice.
- (4) The penalty is 60% of the value of the counteracted advantage if before the current defeat is incurred the person has been given, or become liable to be given, two or more relevant prior warning notices.
- (5) In this paragraph “relevant prior warning notice” means a warning notice in relation to the defeat of arrangements which the person has used in the warning period mentioned in sub-paragraph (1).

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- (6) For the meaning of “the value of the counteracted advantage” see paragraphs 32 to 37.

*Simultaneous defeats etc*

- 31 (1) If a person incurs simultaneously two or more relevant defeats in relation to different arrangements, sub-paragraphs (2) to (4) of paragraph 30 have effect as if the relevant defeat with the lowest value was incurred last, the relevant defeat with the next lowest value immediately before it, and so on.
- (2) For this purpose the “value” of a relevant defeat is taken to be equal to the value of the counteracted advantage.
- (3) If a person has been given a single warning notice in relation to two or more relevant defeats, the person is treated for the purposes of paragraph 30 as having been given a separate warning notice in relation to each of those relevant defeats.

*Value of the counteracted advantage: basic rule for taxes other than VAT*

- 32 (1) In relation to a relevant defeat incurred by virtue of Condition A, B [<sup>F26</sup>C or F], the “value of the counteracted advantage” is—
- (a) in the case of a relevant defeat incurred by virtue of Condition A, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in paragraph 12(1)(c);
  - (b) in the case of a relevant defeat incurred by virtue of Condition B, the additional amount due or payable in respect of tax as a result of the action mentioned in paragraph 13(1);
  - (c) in the case of a relevant defeat incurred by virtue of Condition C, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in paragraph 14(1)(d) [<sup>F27</sup>;
  - (d) in the case of a relevant defeat incurred by virtue of Condition F, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in paragraph 16A(1)(d).]
- (2) The reference in sub-paragraph (1) to the additional amount due and payable includes a reference to—
- (a) an amount payable to HMRC having erroneously been paid by way of repayment of tax, and
  - (b) an amount which would be repayable by HMRC if the counteraction mentioned in paragraph (a) [<sup>F28</sup>(c) or (d)] of sub-paragraph (1) were not made or the action mentioned in paragraph (b) of that sub-paragraph were not taken (as the case may be).
- (3) The following are ignored in calculating the value of the counteracted advantage—
- (a) group relief, and
  - (b) any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.
- (4) This paragraph is subject to paragraphs 33 and 34.

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#### Textual Amendments

- F26** Words in Sch. 18 para. 32(1) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(14\)\(a\)](#)
- F27** Sch. 18 para. 32(1)(d) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(14\)\(a\)](#)
- F28** Words in Sch. 18 para. 32(2)(b) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(14\)\(b\)](#)

#### *Value of counteracted advantage: losses for purposes of direct tax*

- 33 (1) This paragraph has effect in relation to relevant defeats incurred by virtue of Condition A, B or C.
- (2) To the extent that the counteracted advantage (see paragraph 35) has the result that a loss is wrongly recorded for the purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is determined in accordance with paragraph 32.
- (3) To the extent that the counteracted advantage has the result that a loss is wrongly recorded for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is—
- (a) the value under paragraph 32 of so much of the counteracted advantage as results from the part (if any) of the loss which is used to reduce the amount due or payable in respect of tax, plus
- (b) 10% of the part of the loss not so used.
- (4) Sub-paragraphs (2) and (3) apply both—
- (a) to a case where no loss would have been recorded but for the counteracted advantage, and
- (b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (2) and (3) apply only to the difference between the amount recorded and the true amount).
- (5) To the extent that a counteracted advantage creates or increases an aggregate loss recorded for a group of companies—
- (a) the value of the counteracted advantage is calculated in accordance with this paragraph, and
- (b) in applying paragraph 32 in accordance with sub-paragraphs (2) and (3), group relief may be taken into account (despite paragraph 32(3)).
- (6) To the extent that the counteracted advantage results in a loss, the value of it is nil where, because of the nature of the loss or the person's circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

#### *Value of counteracted advantage: deferred tax*

- 34 (1) To the extent that the counteracted advantage (see paragraph 35) is a deferral of tax (other than VAT), the value of that advantage is—
- (a) 25% of the amount of the deferred tax for each year of the deferral, or

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(b) a percentage of the amount of the deferred tax, for each separate period of deferral of less than a year, equating to 25% per year, or, if less, 100% of the amount of the deferred tax.

(2) This paragraph does not apply to a case to the extent that paragraph 33 applies.

*Meaning of “the counteracted advantage” in paragraphs 33 and 34*

- 35 (1) In paragraphs 33 and 34 “the counteracted advantage” means—
- (a) in relation to a relevant defeat incurred by virtue of Condition A, the tax advantage mentioned in paragraph 12(1)(b);
  - (b) in relation to a relevant defeat incurred by virtue of Condition B, the denied advantage in relation to which the action mentioned in paragraph 13(1) is taken;
  - (c) in relation to a relevant defeat incurred by virtue of Condition C, means any tax advantage in respect of which the counteraction mentioned in paragraph 14(1)(c) is made <sup>[F29]</sup>;
  - (d) in relation to a relevant defeat incurred by virtue of Condition F, means any tax advantage in respect of which the counteraction mentioned in paragraph 16A(1)(c) is made.]
- (2) In sub-paragraph (1)(c) “counteraction” is to be interpreted in accordance with paragraph 14(5).

**Textual Amendments**

**F29** Sch. 18 para. 35(1)(d) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(15\)](#)

*Value of the counteracted advantage: Conditions D and E*

- 36 (1) In relation to a relevant defeat incurred by a person by virtue of Condition D or E, the “value of the counteracted advantage” is equal to the sum of any counteracted tax advantages determined under sub-paragraphs (3) to (6).
- (2) In this paragraph “the counteraction” means the counteraction mentioned in paragraph 15(1) or 16(1) (as the case may be).
- (3) If the amount of VAT due or payable by the person in respect of any prescribed accounting period (X) exceeds the amount (Y) that would have been so payable but for the counteraction, the amount by which X exceeds Y is a counteracted tax advantage.
- (4) If the person obtains no VAT credit for a particular prescribed accounting period, the amount of any VAT credit which the person would have obtained for that period but for the counteraction is a counteracted tax advantage.
- (5) If for a prescribed accounting period the person obtains a VAT credit of an amount (Y) which is less than the amount (X) of the VAT credit which the person would have obtained but for the counteraction, the amount by which X exceeds Y is a counteracted tax advantage.

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- (6) If the amount (X) of the person's non-deductible tax for any prescribed accounting period is greater than Y, where Y is what would be the amount of the person's non-deductible tax for that period but for the counteraction, then the amount by which X exceeds Y is a counteracted tax advantage, but only to the extent that amount is not represented by a corresponding amount which is the whole or part of a counteracted tax advantage by virtue of sub-paragraphs (3) to(5).
- (7) In this paragraph “non-deductible tax”, in relation to the person who incurred the relevant defeat, means—
- (a) input tax for which the person is not entitled to credit under section 25 of VATA 1994, and
  - (b) any VAT incurred by the person which is not input tax and in respect of which the person is not entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.
- (8) For the purposes of sub-paragraph (7)(b) the VAT “incurred” by a taxable person is—
- (a) VAT on the supply to the person of any goods or services,
  - <sup>F30</sup>(b) .....
  - (c) VAT on the importation of any goods <sup>F31</sup>....
- (9) References in sub-paragraph (3) to amounts due and payable by the person in respect of a prescribed accounting period include references to—
- (a) amounts payable to HMRC having erroneously been paid by way of repayment of tax, and
  - (b) amounts which would be repayable by HMRC if the counteraction mentioned in sub-paragraph (3) were not made.

#### Textual Amendments

**F30** Sch. 18 para. 38(8)(b) omitted (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(2018 c. 22\)](#), s. 57(3), [Sch. 8 para. 121\(c\)\(i\)](#) (with savings and transitional provisions in [S.I. 2019/105](#) (as amended by [S.I. 2020/1495](#), [regs. 1\(2\)](#), [21](#)), [S.I. 2020/1545](#), [Pt. 4](#) and [2020 c. 26](#), [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(b\)](#) (with [reg. 7](#))

**F31** Words in Sch. 18 para. 38(8)(c) omitted (31.12.2020) by [Taxation \(Cross-border Trade\) Act 2018 \(2018 c. 22\)](#), s. 57(3), [Sch. 8 para. 121\(c\)\(ii\)](#) (with savings and transitional provisions in [S.I. 2019/105](#) (as amended by [S.I. 2020/1495](#), [regs. 1\(2\)](#), [21](#)), [S.I. 2020/1545](#), [Pt. 4](#) and [2020 c. 26](#), [Sch. 2 para. 7\(7\)-\(9\)](#)); [S.I. 2020/1642](#), [reg. 4\(b\)](#) (with [reg. 7](#))

#### *Value of counteracted advantage: delayed VAT*

- 37 (1) Sub-paragraph (3) of paragraph 36 has effect as follows so far as the tax advantage which is counteracted as mentioned in that sub-paragraph is in the nature of a delay in relation to the person's obligations with respect to VAT.
- (2) That sub-paragraph has effect as if for “the amount by which X exceeds Y is a counteracted tax advantage” there were substituted, “there is a counteracted tax advantage of—
- “(d) 25% of the amount of the delayed VAT for each year of the delay, or
  - (e) a percentage of the amount of the delayed VAT, for each separate period of delay of less than a year, equating to 25% per year,

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or, if less, 100% of the amount of the delayed VAT ”.

*Assessment of penalty*

- 38 (1) Where a person is liable for a penalty under paragraph 30, HMRC must assess the penalty.
- (2) Where HMRC assess the penalty, HMRC must—
- (a) notify the person who is liable for the penalty, and
  - (b) state in the notice a tax period in respect of which the penalty is assessed.
- (3) A penalty under this paragraph must be paid before the end of the period of 30 days beginning with the day on which the person is notified of the penalty under sub-paragraph (2).
- (4) An assessment—
- (a) is to be treated for procedural purposes as if it were an assessment to tax,
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with an assessment to tax.
- (5) An assessment of a penalty under this paragraph must be made before the end of the period of 12 months beginning with the date of the defeat mentioned in paragraph 30(1).

*Alteration of assessment of penalty*

- 39 (1) After notification of an assessment has been given to a person under paragraph 38(2), the assessment may not be altered except in accordance with this paragraph or on appeal.
- (2) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the value of the counteracted advantage.
- (3) An assessment may be revised as necessary if operated by reference to an overestimate of the value of the counteracted advantage.

*Aggregate penalties*

- 40 (1) The amount of a penalty for which a person is liable under paragraph 30 is to be reduced by the amount of any other penalty incurred by the person, or any surcharge for late payment of tax imposed on the person, if the amount of the penalty or surcharge is determined by reference to the same tax liability.
- (2) In sub-paragraph (1) “any other penalty” does not include a penalty under section 212A of FA 2013 (GAAR penalty) or Part 4 of FA 2014 (penalty where corrective action not taken after follower notice etc).
- (3) In the application of section 97A of TMA 1970 (multiple penalties) no account shall be taken of a penalty under paragraph 30.

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### *Appeal against penalty*

- 41 (1) A person may appeal against a decision of HMRC that a penalty is payable under paragraph 30.
- (2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by P under paragraph 30.
- (3) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which notification of the penalty is given under paragraph 38.
- (4) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (5) Sub-paragraph (4) does not apply—
- (a) so as to require a person to pay a penalty before an appeal against the assessment of the penalty is determined, or
  - (b) in respect of any other matter expressly provided for by this Part of this Schedule.
- (6) On an appeal under sub-paragraph (1) or (2) the tribunal may—
- (a) affirm HMRC's decision, or
  - (b) substitute for HMRC's decision another decision that HMRC has power to make.
- (7) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (4)).

### *Penalties: reasonable excuse*

- 42 (1) A person is not liable to a penalty under paragraph 30 in respect of a relevant defeat if the person satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that the person had a reasonable excuse for the relevant failure to which that relevant defeat relates (see paragraph 43).
- (2) Sub-paragraph (3) applies if—
- (a) a person has incurred a relevant defeat in respect of which the person is liable to a penalty under paragraph 30, and
  - (b) before incurring that defeat the person had been given, or become liable to be given, an excepted warning notice.
- (3) The person is treated for the purposes of sub-paragraphs (2) to (4) of paragraph 30 (rate of penalty) as not having been given, and not having become liable to be given, the excepted notice (so far as it relates to the relevant defeat in respect of which the person had a reasonable excuse).
- (4) A warning notice is “excepted” for the purposes of this paragraph if the person was not liable to a penalty in respect of the defeat specified in it because the person had a reasonable excuse for the relevant failure in question.
- (5) For the purposes of this paragraph, in the case of a person (“P”)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

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- (b) where P relies on another person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant failure, and
  - (c) where P had a reasonable excuse for the relevant failure but the excuse had ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.
- (6) In determining for the purposes of this paragraph whether or not a person (“P”) had a reasonable excuse for any action, failure or inaccuracy, reliance on advice is to be taken automatically not to constitute a reasonable excuse if the advice is addressed to, or was given to, a person other than P or takes no account of P’s individual circumstances.

*Paragraph 42: meaning of “the relevant failure”*

- 43 (1) In paragraph 42 “the relevant failure”, in relation to a relevant defeat, is to be interpreted in accordance with sub-paragraphs (2) to (7).
- (2) In relation to a relevant defeat incurred by virtue of Condition A, “the relevant failure” means the failures or inaccuracies as a result of which the counteraction under section 209 of FA 2013 was necessary
- (3) In relation to a relevant defeat incurred by virtue of Condition B, “the relevant failure” means the failures or inaccuracies in respect of which the action mentioned in paragraph 13(1) was taken.
- (4) In relation to a relevant defeat incurred by virtue of Condition C, “the relevant failure” means the failures or inaccuracies as a result of which the adjustments, assessments, or other action mentioned in paragraph 14(5) are required.
- (5) In relation to a relevant defeat incurred by virtue of Condition D, “the relevant failure” means the failures or inaccuracies as a result of which the adjustments, assessments or other action mentioned in paragraph 15(5) are required.
- (6) In relation to a relevant defeat incurred by virtue of Condition E, “the relevant failure” means P’s actions (and failures to act), so far as they are connected with matters in respect of which the counteraction mentioned in paragraph 16(1) is required.
- (7) In sub-paragraph (6) “counteraction” is to be interpreted in accordance with paragraph 16(2).
- [<sup>F32</sup>(8) In relation to a relevant defeat incurred by virtue of Condition F, “the relevant failure” means the failures or inaccuracies as a result of which the adjustments, assessments, or other actions mentioned in paragraph 16A(5) are required.]

**Textual Amendments**

**F32** Sch. 18 para. 43(8) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(16\)](#)

*Mitigation of penalties*

- 44 (1) The Commissioners may in their discretion mitigate a penalty under paragraph 30, or stay or compound any proceedings for such a penalty.
- (2) They may also, after judgment, further mitigate or entirely remit the penalty.

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## PART 6

### CORPORATE GROUPS, ASSOCIATED PERSONS AND PARTNERSHIPS

#### *Representative member of a VAT group*

- 45 (1) Where a body corporate (“R”) is the representative member of a group (and accordingly is treated for the purposes of this Schedule as mentioned in section 43(1) of VATA 1994), anything which has been done by or in relation to another body corporate (“B”) in B’s capacity as representative member of that group is treated for the purposes of this Schedule as having been done by or in relation to R in R’s capacity as representative member of the group.

Accordingly paragraph 3 (warning period) operates as if the successive representative members of a group were a single person.

- (2) This Schedule has effect as if the representative member of a group, so far as acting in its capacity as such, were a different person from that body corporate so far as acting in any other capacity.
- (3) In this paragraph the reference to a “group” is to be interpreted in accordance with sections 43A to 43D of VATA 1994.

#### *Corporate groups*

- 46 (1) Sub-paragraphs (2) and (3) apply if HMRC has a duty under paragraph 2 to give a warning notice to a company (“C”) which is a member of a group.
- (2) That duty has effect as a duty to give a warning notice to each current group member (see sub-paragraph (8)).
- (3) Any warning notice which has been given (or is treated as having been given) previously to any current group member is treated as having been given to each current group member (and any provision in this Schedule which refers to a “warning period” in relation to a person is to be interpreted accordingly).
- (4) In relation to a company which incurs a relevant defeat, paragraph 19(1) (duty to give relief restriction notice) does not have effect unless the warning period mentioned in that sub-paragraph would be a warning period in relation to the company regardless of sub-paragraph (3).
- (5) A company which incurs a relevant defeat is not liable to pay a penalty under paragraph 30 unless the warning period mentioned in sub-paragraph (1) of that paragraph would be a warning period in relation to the company regardless of sub-paragraph (3).
- (6) HMRC may discharge any duty to give a warning notice to a current group member in accordance with sub-paragraph (2) by delivering the notice to C (and if it does so may combine one or more warning notices in a single notice).
- (7) If a company ceases to be a member of a group, and—
- (a) immediately before it ceases to be a member of the group, a warning period has effect in relation to the company, but
  - (b) no warning period would have effect in relation to the company at that time but for sub-paragraph (2) or (3),

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that warning period ceases to have effect in relation to the company when it ceases to be a member of that group.

- (8) In this paragraph “current group member” means a company which is a member of the group concerned at the time when the warning notice mentioned in sub-paragraph (1) is given.
- (9) For the purposes of this paragraph two companies are members of the same group of companies if—
- (a) one is a 75% subsidiary of the other, or
  - (b) both are 75% subsidiaries of a third company.
- (10) In this paragraph “75% subsidiary” has the meaning given by section 1154 of CTA 2010.
- (11) In this paragraph “company” has the same meaning as in the Corporation Tax Acts (see section 1121 of CTA 2010).

*Associated persons treated as incurring relevant defeats*

- 47 (1) Sub-paragraph (2) applies if a person (“P”) incurs a relevant defeat in relation to any arrangements (otherwise than by virtue of this paragraph).
- (2) Any person (“S”) who is associated with P at the relevant time is also treated for the purposes of paragraphs 2 (duty to give warning notice) and 3(2) (warning period) as having incurred that relevant defeat in relation to those arrangements (but see sub-paragraph (3)).
- For the meaning of “associated” see paragraph 48.
- (3) Sub-paragraph (2) does not apply if P and S are members of the same group of companies (as defined in paragraph 46(9)).
- (4) In relation to a warning notice given to S by virtue of sub-paragraph (2), paragraph 2(4)(c) (certain information to be included in warning notice) is to be read as referring only to paragraphs 3, 17 and 18.
- (5) A warning notice which is given to a person by virtue of sub-paragraph (2) is treated for the purposes of paragraphs 19(1) (duty to give relief restriction notice) and 30 (penalty) as not having been given to that person.
- (6) In sub-paragraph (2) “the relevant time” means the time when P is given a warning notice in respect of the relevant defeat.

*Meaning of “associated”*

- 48 (1) For the purposes of paragraph 47 two persons are associated with one another if—
- (a) one of them is a body corporate which is controlled by the other, or
  - (b) they are bodies corporate under common control.
- (2) Two bodies corporate are under common control if both are controlled—
- (a) by one person,
  - (b) by two or more, but fewer than six, individuals, or
  - (c) by any number of individuals carrying on business in partnership.

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- (3) For the purposes of this section a body corporate (“H”) is taken to control another body corporate (“B”) if—
- (a) H is empowered by statute to control B's activities, or
  - (b) H is B's holding company within the meaning of section 1159 of and Schedule 6 to the Companies Act 2006.
- (4) For the purposes of this section an individual or individuals are taken to control a body corporate (“B”) if the individual or individuals, were they a body corporate, would be B's holding company within the meaning of those provisions.

*Partners treated as incurring relevant defeats*

- 49 (1) Where paragraph 50 applies in relation to a partnership return, each relevant partner is treated for the purposes of this Schedule as having incurred the relevant defeat mentioned in paragraph 50(1)(b), (2) or (3)(b) (as the case may be).
- (2) In this paragraph “relevant partner” means any person who was a partner in the partnership at any time during the relevant reporting period (but see sub-paragraph (3)).
- (3) The “relevant partners” do not include—
- (a) the person mentioned in sub-paragraph (1)(b), (2) or (3)(b) (as the case may be) of paragraph 50, or
  - (b) any other person who would, apart from this paragraph, incur a relevant defeat in connection with the subject matter of the partnership return mentioned in sub-paragraph (1).
- (4) In this paragraph the “relevant reporting period” means the period in respect of which the partnership return mentioned in sub-paragraph (1), (2) or (3) of paragraph 50 was required.

*Partnership returns to which this paragraph applies*

- 50 (1) This paragraph applies in relation to a partnership return if—
- (a) that return has been made on the basis that a tax advantage arises to a partner from any arrangements, and
  - (b) that person has incurred, in relation to that tax advantage and those arrangements, a relevant defeat by virtue of Condition A (final counteraction of tax advantage under general anti-abuse rule).
- (2) Where a person has incurred a relevant defeat by virtue of sub-paragraph (2) of paragraph 13 (Condition B: case involving partnership follower notice) this paragraph applies in relation to the partnership return mentioned in that sub-paragraph.
- (3) This paragraph applies in relation to a partnership return if—
- (a) that return has been made on the basis that a tax advantage arises to a partner from any arrangements, and
  - (b) that person has incurred, in relation to that tax advantage and those arrangements, a relevant defeat by virtue of Condition C (return, claim or election made in reliance on DOTAS arrangements).

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- (4) The references in this paragraph to a relevant defeat do not include a relevant defeat incurred by virtue of paragraph 47(2).

*Partnerships: information*

- 51 (1) If paragraph 50 applies in relation to a partnership return, the appropriate partner must give HMRC a written notice (a “partnership information notice”) in respect of each sub-period in the information period.
- (2) The “information period” is the period of 5 years beginning with the day after the day of the relevant defeat mentioned in paragraph 50.
- (3) If, in the case of a partnership, a new information period (relating to another partnership return) begins during an existing information period, those periods are treated for the purposes of this paragraph as a single period (which includes all times that would otherwise fall within either period).
- (4) An information period under this paragraph ends if the partnership ceases.
- (5) A partnership information notice must be given not later than the 30th day after the end of the sub-period to which it relates.
- (6) A partnership information notice must state—
- (a) whether or not any relevant partnership return which was, or was required to be, delivered in the sub-period has been made on the basis that a relevant tax advantage arises, and
  - (b) whether or not there has been a failure to deliver a relevant partnership return in the sub-period.
- (7) In this paragraph—
- (a) “relevant partnership return” means a partnership return in respect of the partnership's trade, profession or business;
  - (b) “relevant tax advantage” means a tax advantage which particular DOTAS arrangements enable, or might be expected to enable, a person who is or has been a partner in the partnership to obtain.
- (8) If a partnership information notice states that a relevant partnership return has been made on the basis mentioned in sub-paragraph (6)(a) the notice must—
- (a) explain (on the assumptions made for the purposes of the return) how the DOTAS arrangements enable the tax advantage concerned to be obtained, and
  - (b) describe any variation in the amounts required to be stated in the return under section 12AB(1) of TMA 1970 which results from those arrangements.
- (9) HMRC may require the appropriate partner to give HMRC a notice (a “supplementary information notice”) setting out further information in relation to a partnership information notice.

In relation to a partnership information notice “further information” means information which would have been required to be set out in the notice by virtue of sub-paragraph (6)(a) or (8) had there not been a failure to deliver a relevant partnership return.

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- (10) A requirement under sub-paragraph (9) must be made by a written notice and the notice must state the period within which the notice must be complied with.
- (11) If a person fails to comply with a requirement of (or imposed under) this paragraph, HMRC may by written notice extend the information period concerned to the end of the period of 5 years beginning with—
- (a) the day by which the partnership information notice or supplementary information notice was required to be given to HMRC or, as the case requires,
  - (b) the day on which the person gave the defective notice to HMRC,
- or, if earlier, the time when the information period would have expired but for the extension.
- (12) For the purposes of this paragraph—
- (a) the first sub-period in an information period begins with the first day of the information period and ends with a day specified by HMRC,
  - (b) the remainder of the information period is divided into further sub-periods each of which begins immediately after the end of the preceding sub-period and is twelve months long or (if that would be shorter) ends at the end of the information period.
- (13) In this paragraph “the appropriate partner” means the partner in the partnership who is for the time being nominated by HMRC for the purposes of this paragraph.

*Partnerships: special provision about taxpayer emendations*

- 52 (1) Sub-paragraph (2) applies if a partnership return is amended at any time under section 12ABA of TMA 1970 (amendment of partnership return by representative partner etc) on a basis that—
- (a) results in an increase or decrease in, or
  - (b) otherwise affects the calculation of,
- any amount stated under subsection (1)(b) of section 12AB of that Act (partnership statement) as a partner's share of any income, loss, consideration, tax or credit for any period.
- (2) For the purposes of paragraph 14 (Condition C: counteraction of DOTAS arrangements), the partner is treated as having at that time amended—
- (a) the partner's return under section 8 or 8A of TMA 1970, or
  - (b) the partner's company tax return,
- so as to give effect to the amendments of the partnership return.
- (3) Sub-paragraph (4) applies if a partnership return is amended at any time by HMRC as a result of a disclosure made by the representative partner or that person's successor on a basis that—
- (a) results in an increase or decrease in, or
  - (b) otherwise affects the calculation of,
- any amount stated under subsection (1)(b) of section 12AB of TMA 1970 (partnership statement) as the share of a particular partner (P) of any income, loss, consideration, tax or credit for any period.

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- (4) If the conditions in sub-paragraph (5) are met, P is treated for the purposes of paragraph 14 as having at that time amended—
- (a) P's return under section 8 or 8A of TMA 1970, or
  - (b) P's company tax return,
- so as to give effect to the amendments of the partnership return.
- (5) The conditions are that the disclosure—
- (a) is a full and explicit disclosure of an inaccuracy in the partnership return, and
  - (b) was made at a time when neither the person making the disclosure nor P had reason to believe that HMRC was about to begin enquiries into the partnership return.

*Supplementary provision relating to partnerships*

- 53 (1) In paragraphs 49 to 52 and this paragraph—
- “partnership” is to be interpreted in accordance with section 12AA of TMA 1970 (and includes a limited liability partnership);
- “the representative partner”, in relation to a partnership return, means the person who was required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver the return;
- “successor”, in relation to a person who is the representative partner in the case of a partnership return, has the same meaning as in TMA 1970 (see section 118(1) of that Act).
- (2) For the purposes of this Part of this Schedule a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change.

## PART 7

### SUPPLEMENTAL

*Meaning of “adjustments”*

- 54 (1) In this Schedule “adjustments” means any adjustments, whether by way of an assessment, the modification of an assessment or return, amendment or disallowance of a claim, a payment, the entering into of a contract settlement, or otherwise (and references to “making” adjustments accordingly include securing that adjustments are made by entering into a contract settlement).
- (2) “Adjustments” also includes a payment in respect of a liability to pay national insurance contributions.

*Time of “use” of defeated arrangements*

- 55 (1) With reference to a particular relevant defeat incurred by a person in relation to arrangements, the person is treated as having “used” the arrangements on the dates set out in this paragraph.
- (2) If the person incurs the relevant defeat by virtue of Condition A, the person is treated as having “used” the arrangements on the following dates—

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- (a) the filing date of any return made by the person on the basis that the tax advantage mentioned in paragraph 12(1)(a) arises from the arrangements;
  - (b) the date on which the person makes any claim or election on that basis;
  - (c) the date of any relevant failure by the person to comply with an obligation.
- (3) For the purposes of sub-paragraph (2) a failure to comply with an obligation is a “relevant failure” if the whole or part of the tax advantage mentioned in paragraph 12(1)(b) arose as a result of, or in connection with, that failure.
- (4) If the person incurs the relevant defeat by virtue of Condition B, the person is treated as having “used” the arrangements on the following dates—
- (a) the filing date of any return made by the person on the basis that the asserted advantage (see section 204(3) of FA 2014) results from the arrangements,
  - (b) the date on which any claim is made by the person on that basis,
  - (c) the date of any failure by the person to comply with a relevant obligation.

In this sub-paragraph “relevant obligation” means an obligation which would not have fallen on the person (or might have been expected not to do so), had the denied advantage arisen (see section 208(3) of FA 2014).

- (5) If the person incurs the relevant defeat by virtue of Condition C, the person is treated as having “used” the arrangements on the following dates—
- (a) the filing date of any return made by the person on the basis mentioned in paragraph 14(2)(a);
  - (b) the date on which the person makes any claim or election on that basis;
  - (c) the date of any failure by the person to comply with a relevant obligation (as defined in paragraph 14(4)).
- (6) If the person incurs the relevant defeat by virtue of Condition D, the person is treated as having “used” the arrangements on the following dates—
- (a) the filing date of any return made by the person on the basis mentioned in paragraph 15(2)(a);
  - (b) the date on which the person makes any claim on that basis;
  - (c) the date of any failure by the person to comply with a relevant obligation (as defined in paragraph 15(4)).
- (7) If the person incurs the relevant defeat by virtue of Condition E, the person is treated as having “used” the arrangements on the following dates—
- (a) the filing date of any return made by S to which the counteraction mentioned in paragraph 16(1)(c) relates;
  - (b) the date on which S made any claim to which that counteraction relates;
  - (c) the date of any relevant failure by S to which that counteraction relates.
- (8) In sub-paragraph (7) “relevant failure” means a failure to comply with an obligation relating to VAT.
- <sup>F33</sup>(8A) If the person incurs the relevant defeat by virtue of Condition F, the person is treated as having “used” the arrangements on the following dates—
- (a) the filing date of any return made by the person on the basis mentioned in paragraph 16A(2)(a);
  - (b) the date on which the person makes any claim, declaration or application for approval;

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- (c) the date of any failure by the person to comply with a relevant obligation (as defined in paragraph 16A(4)).]
- (9) In this paragraph “filing date”, in relation to a return, means the earlier of—
- (a) the day on which the return is delivered, or
  - (b) the last day of the period within which the return must be delivered.
- (10) References in this paragraph to the date on which a person fails to comply with an obligation are to the date on which the person is first in breach of the obligation.

#### Textual Amendments

**F33** Sch. 18 para. 55(8A) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(17\)](#)

#### *Inheritance tax*

- 56 (1) In the case of inheritance tax, each of the following is treated as a return for the purposes of this Schedule—
- (a) an account delivered by a person under section 216 or 217 of IHTA 1984 (including an account delivered in accordance with regulations under section 256 of that Act);
  - (b) a statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account;
  - (c) information or a document provided by a person in accordance with regulations under section 256 of that Act;
- and such a return is treated as made by the person in question.
- (2) In this Schedule (except where the context requires otherwise) “assessment”, in relation to inheritance tax, includes a determination.

#### *National insurance contributions*

- 57 (1) In this Schedule references to an assessment to tax include a NICs decision relating to a person's liability for relevant contributions.
- (2) In this Schedule a reference to a provision of Part 7 of FA 2004 (disclosure of tax avoidance schemes) (a “DOTAS provision”) includes a reference to—
- (a) that DOTAS provision as applied by regulations under section 132A of the Social Security Administration Act 1992 (disclosure of contributions avoidance arrangements);
  - (b) any provision of regulations under that section that corresponds to that DOTAS provision,
- whenever the regulations are made.
- (3) Regulations under section 132A of that Act may disapply, or modify the effect of, sub-paragraph (2).
- (4) In this paragraph “NICs decision” means a decision under section 8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 or Article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (S.I. 1999/671).

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### *General interpretation*

58 (1) In this Schedule—

“arrangements” has the meaning given by paragraph 2(6);

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

“contract settlement” means an agreement in connection with a person's liability to make a payment to the Commissioners under or by virtue of an enactment;

[<sup>F34</sup>“disclosable indirect tax arrangements” is to be interpreted in accordance with paragraph 9A;]

[<sup>F34</sup>“disclosable Schedule 11A VAT arrangements is to be interpreted in accordance with paragraph 9;]

“disclosable VAT arrangements” is to be interpreted in accordance with paragraph [<sup>F35</sup>8A];

“DOTAS arrangements” is to be interpreted in accordance with paragraph 8 (and see also paragraph 57(2));

“follower notice” has the meaning given by paragraph 13(6);

“HMRC” means Her Majesty's Revenue and Customs;

[<sup>F36</sup>“indirect tax” has the meaning given by paragraph 4(2);]

“national insurance contributions” means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“net income” has the meaning given by section 23 of ITA 2007 (see Step 2 of that section);

“partnership follower notice” has the meaning given by paragraph 2(2) of Schedule 31 to FA 2014;

“partnership return” means a return under section 12AA of TMA 1970;

“relevant contributions” means the following contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992—

- (a) Class 1 contributions;
- (b) Class 1A contributions;
- (c) Class 1B contributions;
- (d) Class 2 contributions which must be paid but in relation to which section 11A of the Act in question (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2) of that Act) does not apply;

“relevant defeat” is to be interpreted in accordance with paragraph 11;

“tax” has the meaning given by paragraph [<sup>F37</sup>4(1)];

“tax advantage” has the meaning given by paragraph 7;

“warning notice” has the meaning given by paragraph 2.

(2) In this Schedule an expression used in relation to VAT has the same meaning as in VATA 1994.

(3) In this Schedule (except where the context requires otherwise) references, however expressed, to a person's affairs in relation to tax include the person's position as

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regards deductions or repayments of, or of sums representing, tax that the person is required to make by or under an enactment.

- (4) For the purposes of this Schedule a partnership return is regarded as made on the basis that a particular tax advantage arises to a person from particular arrangements if—
- (a) it is made on the basis that an increase or reduction in one or more of the amounts mentioned in section 12AB(1) of TMA 1970 (amounts in the partnership statement in a partnership return) results from those arrangements, and
  - (b) that increase or reduction results in that tax advantage for the person.

#### Textual Amendments

- F34** Words in Sch. 18 para. 58(1) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(18\)\(a\)](#)
- F35** Word in Sch. 18 para. 58(1) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(18\)\(c\)](#)
- F36** Words in Sch. 18 para. 58(1) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(18\)\(b\)](#)
- F37** Word in Sch. 18 para. 58(1) substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 55\(18\)\(d\)](#)

#### Consequential amendments

- 59 In section 103ZA of TMA 1970 (disapplication of sections 100 to 103 in the case of certain penalties)—
- (a) omit “or” at the end of paragraph (ga), and
  - (b) after paragraph (h) insert “or
    - (i) Part 5 of Schedule 18 to the Finance Act 2016 (serial tax avoidance).”
- 60 In section 212 of FA 2014 (follower notices: aggregate penalties), in subsection (4)—
- (a) omit “or” at the end of paragraph (b), and
  - (b) after paragraph (c) insert “, or
    - (d) Part 5 of Schedule 18 to FA 2016 (serial tax avoidance).”
- 61 (1) The Social Security Contributions and Benefits Act 1992 is amended as follows.
- (2) In section 11A (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2)), in subsection (1), at the end of paragraph (e) insert—
- “(ea) the provisions of Schedule 18 to the Finance Act 2016 (serial tax avoidance);”.
- (3) In section 16 (application of Income Tax Acts and destination of Class 4 contributions), in subsection (1), at the end of paragraph (d) insert “and
- (e) the provisions of Schedule 18 to the Finance Act 2016 (serial tax avoidance);”.
- 62 In the Social Security Contributions and Benefits (Northern Ireland) Act 1992, in section 11A (application of certain provisions of the Income Tax Acts in relation

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to Class 2 contributions under section 11(2)), in subsection (1), at the end of paragraph (e) insert—

“(ea) the provisions of Schedule 18 to the Finance Act 2016 (serial tax avoidance);”.

#### *Commencement*

- 63 Subject to paragraphs 64 and 65, paragraphs 1 to 62 of this Schedule have effect in relation to relevant defeats incurred after the day on which this Act is passed.
- 64 (1) A relevant defeat is to be disregarded for the purposes of this Schedule if it is incurred before 6 April 2017 in relation to arrangements which the person has entered into before the day on which this Act is passed.
- (2) A relevant defeat incurred on or after 6 April 2017 is to be disregarded for the purposes of this Schedule if—
- (a) the person entered into the arrangements concerned before the day on which this Act is passed, and
  - (b) before 6 April 2017—
    - (i) the person incurring the defeat fully discloses to HMRC the matters to which the relevant counteraction relates, or
    - (ii) that person gives HMRC notice of a firm intention to make a full disclosure of those matters and makes such a full disclosure within any time limit set by HMRC.
- (3) In sub-paragraph (2) “the relevant counteraction” means—
- (a) in a case within Condition A, the counteraction mentioned in paragraph 12(1)(c);
  - (b) in a case within Condition B, the action mentioned in paragraph 13(1);
  - (c) in a case within Condition C, the counteraction mentioned in paragraph 14(1)(c);
  - (d) in a case within Condition D, the counteraction mentioned in paragraph 15(1)(d);
  - (e) in a case within Condition E, the counteraction mentioned in paragraph 16(1)(c).
- (4) In sub-paragraph (3)—
- (a) in paragraph (c) “counteraction” is to be interpreted in accordance with paragraph 14(5);
  - (b) in paragraph (d) “counteraction” is to be interpreted in accordance with paragraph 15(5);
  - (c) in paragraph (e) “counteraction” is to be interpreted in accordance with paragraph 16(2).
- (5) See paragraph 11(2) for provision about when a relevant defeat is incurred.
- 65 (1) A warning notice given to a person is to be disregarded for the purposes of—
- (a) paragraph 18 (naming), and
  - (b) Part 4 of this Schedule (restriction of reliefs),
- if the relevant defeat specified in the notice relates to arrangements which the person has entered into before the day on which this Act is passed.

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- (2) Where a person has entered into any arrangements before the day on which this Act is passed—
- (a) a relevant defeat incurred by a person in relation to the arrangements, and
  - (b) any warning notice specifying such a relevant defeat,
- is to be disregarded for the purposes of paragraph 30 (penalty).

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)