

**1 Follower notice penalties**

Schedule 1 makes provision in relation to penalties to which a person may be liable after a follower notice has been given under Chapter 2 of Part 4 of FA 2014.

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## SCHEDULE 1

Section 1

## FOLLOWER NOTICE PENALTIES

## PART 1

## AMENDMENT OF CHAPTER 2 OF PART 4 OF FA 2014

1 Chapter 2 of Part 4 of FA 2014 (follower notices) is amended as follows.

*Additional penalty for unreasonable tax appeal*

2 After section 208 (penalty if corrective action not taken in response to follower notice) insert—

**“208A Additional penalty for unreasonable tax appeal**

- (1) In the case of a follower notice given by virtue of section 204(2)(a) in relation to a tax enquiry into a return or claim made by P, this section applies where—
  - (a) P makes a tax appeal addressed to the tribunal in relation to the return or claim, and
  - (b) P is assessed to a penalty under section 208.
- (2) In the case of a follower notice given by virtue of section 204(2)(b) in relation to a tax appeal made by P, this section applies where—
  - (a) the tax appeal is addressed to the tribunal, and
  - (b) P is assessed to a penalty under section 208.
- (3) P is liable to pay a penalty (in addition to the penalty under section 208) if P or P’s representative is found to have acted unreasonably in bringing or conducting relevant proceedings.
- (4) For the purposes of subsection (3), P or P’s representative is found to have acted unreasonably in bringing or conducting relevant proceedings if (and only if) subsection (5) or (6) applies.
- (5) This subsection applies if—
  - (a) the proceedings are struck out—
    - (i) because there is no reasonable prospect of P’s case, or part of it, succeeding, or
    - (ii) because of something that P or P’s representative has done (or not done),
  - (b) the appeal period has ended, and
  - (c) the proceedings have not been reinstated or (where the strike out was not automatic) the decision to strike out the proceedings has not been set aside or overturned on appeal.
- (6) This subsection applies if—

- (a) on an application by HMRC, the tribunal to which the proceedings are addressed makes a declaration that P or P's representative acted unreasonably in bringing or conducting the proceedings,
  - (b) the appeal period has ended, and
  - (c) the decision to make the declaration has not been set aside or overturned on appeal.
- (7) The powers of the tribunal in relation to relevant proceedings are to be taken to include the power to make a declaration for the purposes of subsection (6)(a).
- (8) For the purposes of this section, the following are “relevant proceedings” in relation to P –
  - (a) where the whole of the proceedings on P's tax appeal relate to the chosen arrangements, the whole of those proceedings;
  - (b) where part only of the proceedings on P's tax appeal relates to the chosen arrangements, that part of those proceedings;
  - (c) proceedings before the Upper Tribunal on any further appeal by P in relation to relevant proceedings within paragraph (a) or (b) (where those proceedings were determined by the First-tier Tribunal).
- (9) For the purposes of subsection (8), P's tax appeal is the tax appeal mentioned in subsection (1)(a) or (2)(a) (as the case may be).
- (10) For the purposes of this section, “the appeal period” is –
  - (a) the period during which an appeal could be brought against the striking out of the proceedings or, as the case may be, the decision to make the declaration under subsection (6)(a) (ignoring any possibility of an appeal out of time), 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.
- (11) For the purposes of subsection (10), an appeal includes an application to reinstate proceedings that have been struck out or for the tribunal to set aside its decision.
- (12) In this section, “tribunal” means the First-tier Tribunal or Upper Tribunal.”

*Amount of a section 208 or 208A penalty*

- 3 (1) Section 209 (amount of a section 208 penalty) is amended as follows.
  - (2) In the heading, after “208” insert “or 208A”.
  - (3) In subsection (1), for “50%” substitute “30%”.
  - (4) After subsection (1) insert –
    - “(1A) The penalty under section 208A is 20% of the denied advantage.”
  - (5) In subsection (3) –
    - (a) in the words before paragraph (a), for “specified time” substitute “relevant time”;

- (b) in the words after paragraph (b), after “(1)” insert “, (1A)”.
- (6) After subsection (3) insert –
- “(4) The “relevant time” means –
- (a) in the case of a penalty under section 208, the specified time;
  - (b) in the case of a penalty under section 208A, the day after the end of the appeal period.
- (5) “The appeal period” has the same meaning for the purposes of this section as it has for the purposes of section 208A (see section 208A(10) and (11)).”

*Assessment of a section 208A penalty*

- 4 After section 211 (assessment of a section 208 penalty) insert –
- “211A Assessment of a section 208A penalty**
- (1) Where a person is liable for a penalty under section 208A, HMRC must –
    - (a) assess the penalty,
    - (b) notify the person who is liable for the penalty, and
    - (c) state in the notice a tax period in respect of which the penalty is assessed.
  - (2) A penalty under section 208A 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 subsection (1).
  - (3) Subsection (4) of section 211 applies to an assessment under this section as it applies to an assessment under that section.
  - (4) An assessment of a penalty under section 208A must be made before the end of the period of 90 days beginning with the day after the end of the appeal period.
  - (5) “The appeal period” has the same meaning for the purposes of this section as it has for the purposes of section 208A (see section 208A(10) and (11)).”

*Aggregate penalties*

- 5 (1) Section 212 (aggregate penalties) is amended as follows.
- (2) In subsection (2), after “(1)(b) and (c)” insert “and any penalty under section 208A that is additional to the penalty mentioned in subsection (1)(b)”.
  - (3) In subsection (3), after “208” insert “or 208A”.

*Alteration of assessment of a section 208 or 208A penalty*

- 6 (1) Section 213 (alteration of assessment of a section 208 penalty) is amended as follows.
- (2) In the heading, after “208” insert “or 208A”.
  - (3) In subsection (1), after “211(2)” insert “or 211A(1)”.

*Cancellation of a section 208A penalty*

- 7 In section 214 (appeal against a section 208 penalty), after subsection (8) insert –
- “(8A) If the tribunal cancels a decision of HMRC that a penalty is payable by P under section 208, any penalty additional to that penalty to which P is liable under section 208A is also cancelled.”

*Appeal against a section 208A penalty*

- 8 After section 214 insert –

**“214A Appeal against a section 208A penalty**

- (1) P may appeal against a decision of HMRC that a penalty is payable by P under section 208A.
- (2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P under section 208A.
- (3) An appeal under subsection (1) may be made only on one or more of the following grounds –
  - (a) that section 208A did not apply when the decision was made or no longer applies;
  - (b) that the condition in section 208A(3) was not met when the decision was made or is no longer met;
  - (c) that the penalty was not assessed before the end of the period mentioned in section 211A(4).
- (4) An appeal under this section must be made within the period of 30 days beginning with the day on which notification of the penalty is given under section 211A.
- (5) On an appeal under subsection (1), the tribunal may affirm or cancel HMRC’s decision.
- (6) On an appeal under subsection (2), the tribunal may –
  - (a) affirm HMRC’s decision, or
  - (b) substitute for HMRC’s decision another decision that HMRC had power to make.
- (7) Subsections (5) to (7) of section 214 apply to an appeal under this section as they apply to an appeal under that section.
- (8) In this section “tribunal” has the meaning it has for the purposes of section 214 (see section 214(5) and (11)).”

PART 2

CONSEQUENTIAL AMENDMENTS

*FA 2014*

- 9 FA 2014 is amended as follows.
- 10 In the heading of Schedule 30 (section 208 penalty: value of the denied advantage), after “208” insert “or 208A”.

- 11 In Schedule 31 (follower notices and partnerships), after paragraph 4 insert –

*“Additional penalty for unreasonable tax appeal*

4A Section 208A(3) applies, in relation to a partnership follower notice, as if the first reference to P were to each relevant partner.”

- 12 (1) In Schedule 31, paragraph 5 is amended as follows.
- (2) In sub-paragraph (2) –
- (a) in paragraph (a), for “20%” substitute “12%”;
- (b) after paragraph (a), insert –
- “(aa) the total amount of the penalties under section 208A(3) for which the relevant partners are liable is 8% of the value of the denied advantage,”;
- (c) in paragraph (b), after “the penalty” insert “under section 208(2) or 208A(3) (as modified by this paragraph)”.
- (3) In sub-paragraph (5), after “penalties” insert “under section 208(2) (as modified by this paragraph)”.
- (4) In sub-paragraph (6), after “paragraph 4(2)” insert “or 4A”.
- (5) In sub-paragraph (7)(a), after “penalties” insert “under section 208(2)”.
- (6) After sub-paragraph (9), insert –
- “(9A) The right of appeal under section 214A extends to –
- (a) a decision that penalties under section 208A(3) are payable by the relevant partners by virtue of this paragraph, and
- (b) a decision as to the total amount of those penalties payable by those partners,
- but not to a decision as to the appropriate share of, or the amount of a penalty payable by, a relevant partner.
- (9B) Section 214A(3) applies to an appeal by virtue of sub-paragraph (9A)(a) as it applies to an appeal under section 214A(1).
- (9C) Section 214A(5) applies to an appeal by virtue of sub-paragraph (9A)(a), and section 214A(6) to an appeal by virtue of sub-paragraph (9A)(b).”
- (7) In sub-paragraph (11), after “(2)(a)” insert “and (aa)”.

*National Insurance Contributions Act 2015*

- 13 (1) In Schedule 2 to the National Insurance Contributions Act 2015, paragraph 20 (recovery of penalties under Part 4 of FA 2014) is amended as follows.
- (2) In sub-paragraph (1), after “208” insert “, 208A”.
- (3) In sub-paragraph (3), after “208” insert “or 208A”.

PART 3

COMMENCEMENT

- 14 The amendments made by this Schedule have effect where a penalty under section 208 of FA 2014 is assessed, under section 211 of that Act, on or after the day on which this Schedule comes into force.

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