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**63 Serial tax avoidance**

The Schedule contains provision about the issue of warning notices to, and further sanctions for, persons who incur a relevant defeat in relation to arrangements.

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## SCHEDULE TO CLAUSE 63

### SERIAL TAX AVOIDANCE

#### PART 1

##### ENTRY INTO THE REGIME AND BASIC CONCEPTS

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

- 1 (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”).
- (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 15),
  - (b) specify the relevant defeat to which the notice relates, and
  - (c) explain the effect of paragraphs 15(3) and 16 to 27.
- (5) In this Schedule “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (6) For the meaning of “relevant defeat” and provision about when a relevant defeat is incurred see paragraph 9.

###### *Meaning of “tax”*

- 2 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) inheritance tax,
  - (g) stamp duty land tax,
  - (h) annual tax on enveloped dwellings,
  - (i) VAT, and
  - (j) national insurance contributions.

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

- 3 (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 –
- (a) 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,
  - (b) 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,
  - (c) 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
  - (d) 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.
- (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,
  - (b) VAT on the acquisition by the person from another member State of any goods, and
  - (c) VAT paid or payable by the person on the importation of any goods from a place outside the member States,
- 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.

*Meaning of “non-deductible tax”*

- 4 (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,
  - (b) VAT on the acquisition by the person from another member State of any goods, and
  - (c) VAT paid or payable by the person on the importation of any goods from a place outside the member States.

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*“Tax advantage”: other taxes*

- 5 In relation to taxes other than VAT, “tax advantage” includes –
- (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 or an assessment of tax,
  - (e) avoidance of a possible assessment to 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”*

- 6 (1) For the purposes of this Schedule arrangements are “DOTAS arrangements” at any time if they are notifiable arrangements and 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) 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.
- (3) In this paragraph “notifiable arrangements” has the same meaning as in Part 7 of FA 2004.

*“Disclosable VAT arrangements”*

- 7 For the purposes of this Schedule arrangements are “disclosable 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).

*Paragraphs 6 and 7: “failure to comply”*

- 8 (1) A person “fails to comply” with any provision mentioned in paragraph 6(1) or 7(a) 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 –

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- (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.
  - (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.

*“Relevant defeat”*

- 9 (1) A person (“P”) incurs a “relevant defeat” in relation to arrangements if any of Conditions A to E is met in relation to P and the arrangements.
- (2) The relevant defeat is incurred when the condition in question is first met.

*Condition A*

- 10 (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) 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.
- (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*

- 11 (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—

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- (a) P has complied with subsection (2) of section 208 of FA 2014 by taking the action specified in subsections (4) to (6) of that section in respect of the denied tax advantage, or
    - (b) the denied tax advantage has been counteracted otherwise than as mentioned in paragraph (a) and the counteraction of the denied tax advantage is final.
  - (2) In this paragraph “the denied tax advantage” is to be interpreted in accordance with section 208(3) of FA 2014.
  - (3) 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.
  - (4) In this Schedule “follower notice” means a follower notice under Chapter 2 of Part 4 of FA 2014.

*Condition C*

- 12 (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 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 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.

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- (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 full disclosure made by P 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.
  - (9) The reference in sub-paragraph (8)(b) to a “disclosure” is to a disclosure of an inaccuracy in a return or other document.
  - (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*

- 13 (1) Condition D is that –
  - (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

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- (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 full disclosure made by P at a time when P had no reason to believe that HMRC were about to begin enquiries into P’s affairs relating to VAT.
  - (9) The reference in sub-paragraph (8)(b) to a “disclosure” is to a disclosure of an inaccuracy in a return or other document.

*Condition E*

- 14 (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 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.



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- (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 full disclosure made by S 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.
- (6) The reference in sub-paragraph (5)(b) to a “disclosure” is to a disclosure of an inaccuracy in a return or other document.

#### *Warning period*

- 15 (1) A person to whom a warning notice under paragraph 1 has been given (and who was not on warning under this Schedule when the relevant defeat to which the notice relates was incurred) is to be on warning under this Schedule throughout the period of 5 years beginning with the day after the day on which the notice is given.
- (2) That period is a “warning period” in relation to the person.
- (3) If a person incurs a relevant defeat in relation to arrangements at a time when the person is on warning under this Schedule –
- (a) the person is to remain on warning for a further 5 years beginning with the day after the day on which the relevant defeat occurs, and
  - (b) the warning period is accordingly treated as extended to the end of that 5 year period.
- (4) In relation to a warning period which has been extended under sub-paragraph (3) or paragraph 16(8), references in this Schedule (including this paragraph) to the warning period are to be read as references to the warning period as extended.

## PART 2

### ANNUAL INFORMATION NOTICES AND NAMING

#### *Annual information notices*

- 16 (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 (7)).
- (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 or election, 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

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- but for particular DOTAS arrangements or disclosable VAT arrangements to which P is a party, or
- (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.
- (4) In this paragraph “relevant tax advantage” means a tax advantage which particular DOTAS arrangements or disclosable VAT arrangements enable, or might be expected to enable, P to obtain.
- (5) If P has, in the reporting period, made a return, claim or election on the basis mentioned in sub-paragraph (2)(a) or failed to take action as mentioned in sub-paragraph (2)(b) the notice must—
- (a) explain (on the assumptions made by P in so acting or failing to act) how the DOTAS arrangements or disclosable VAT 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 (2)(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 (2)(b).
- (6) If P has, in the reporting period, become a party to arrangements such as are mentioned in sub-paragraph (3)(c), the notice—
- (a) must state whether or not it is P’s view that the expected tax advantage arises to P, and
  - (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) 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.
- (8) If P fails to comply with 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 should have been given (see sub-paragraph (1)) or, as the case requires,
  - (b) the day on which P gave the defective information notice to HMRC, or, if earlier, the time when the warning period would have expired but for the extension.

### *Naming*

- 17 (1) The Commissioners may publish information about a person if the person has been given at least three warning notices which have the same basis period (see paragraph 41).

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- (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 notice 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 27 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) The information may be published in any manner the Commissioners may consider appropriate.
  - (6) 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.
  - (7) Arrangements are “defeated arrangements” for the purposes of sub-paragraph (4) if the person used the 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.
  - (8) 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 3

#### RESTRICTION OF RELIEFS

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

- 18 (1) HMRC must give a person a written notice (a “restriction of relief notice”) if the person has been given three warning notices in relation to which the following conditions are met—
  - (a) the notices share the same basis period (see paragraph 41),

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- (b) each of the notices relates to a relevant defeat by virtue of Condition A, B or C,
  - (c) each of the notices relates to the misuse of a relief (see sub-paragraph (5)), and
  - (d) in the case of each notice the condition in paragraph (a) or (b) of sub-paragraph (2) is met.
- (2) The alternative conditions are –
- (a) that the relevant counteraction (see sub-paragraph (7)) was made on the basis that a particular avoidance-related rule applies in relation to the person’s affairs, or
  - (b) that the misused relief is a loss relief.
- (3) In sub-paragraph (2)(b) –
- (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 of CTA 2010.
- (4) A restriction of relief notice must –
- (a) explain the effect of paragraphs 19, 20 and 25, and
  - (b) set out when the restricted period is to begin and end.
- (5) For the purposes of this Part of this Schedule, a warning notice relating to a relevant defeat by virtue of Condition A, B or C “relates to the misuse of a relief” if –
- (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 essential to the design 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 10(1)(a),
  - (b) in relation to a defeat by virtue of Condition B, the denied tax advantage (as defined in paragraph 11(2)), or
  - (c) in relation to a defeat by virtue of Condition C –
    - (i) the tax advantage mentioned in paragraph 12(2)(a), or, as the case requires,
    - (ii) the absence of the relevant obligation (as defined in paragraph 12(4)).
- (7) In this paragraph “the relevant counteraction”, in relation to a warning notice given to a person in respect of a relevant defeat means –
- (a) in the case of a defeat by virtue of Condition A, the counteraction referred to in paragraph 10(1)(c);
  - (b) in the case of a defeat by virtue of Condition B, the counteraction referred to in paragraph 11(1)(b);
  - (c) in the case of a defeat by virtue of Condition C, the counteraction referred to in paragraph 12(1)(c).

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*Restriction of relief*

- 19 (1) Sub-paragraphs (2) to (7) 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 (see paragraph 20), 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—
- 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) 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.
- (6) 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.
- (7) 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.
- (8) If the person is a company, no deduction is to be made under section 62 (relief for losses made in UK property business) from the company's total profits of a relevant accounting period.
- (9) 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.
- (10) In this paragraph "relevant tax year" means any tax year the first day of which is in the restricted period.
- (11) In this paragraph "relevant accounting period" means an accounting period the first day of which is in the restricted period.
- (12) 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*

- 20 (1) In paragraph 19 (and this paragraph) “the restricted period” means in 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 a 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 18(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 (4) “concurrent warning period” means a warning period which at some time ran concurrently with the restricted period.

*Meaning of “avoidance-related rule”*

- 21 (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—
- (a) it refers to the “purpose” or “object” of a transaction, arrangements or any other action or matter, and
  - (b) the purpose is expressed (wholly or partly) by reference to the avoidance of tax or the obtaining of any advantage in relation to tax (however described, and including cases where the reference is to not avoiding tax or not obtaining an advantage, or a particular advantage, in relation to tax).
- (3) Sub-paragraph (2)(a) has effect as if a reference to the “main purpose” or “main object”, or to the “main purposes” or “main objects”, of an action or matter were a reference to the “purpose” or “object” of the action or matter; and sub-paragraph (2)(b) is to be read accordingly.
- (4) A rule falls within Category 2 if as a result of the rule the treatment of a person for tax purposes may differ depending on whether or not certain 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.

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(5) For the purposes of sub-paragraph (4) it does not matter whether the rule refers to “commercial purposes”, “genuine commercial purposes” or “bona fide commercial purposes”.

(6) 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.

Condition B is that the avoidance of tax is not the main object or one of the main objects of the transaction.”

*Meaning of “relief”*

- 22 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) any relief (not falling within paragraph (a)) under Part 4 of ITA 2007 (loss relief) or Part 4 of CTA 2010 (loss relief), and
  - (c) 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*

- 23 In this Part of this Schedule “claim for relief” includes any election which is in substance a claim for relief.

*VAT*

- 24 In this Part of this Schedule “tax” does not include VAT.

*Appeal*

- 25 (1) A person may appeal against a relief restriction notice or a restricted period extension notice.
- (2) An appeal against a relief restriction notice may only be made on the ground that the condition that the person has been given three warning notices meeting the condition in paragraph 18(1) is not met.
- (3) An appeal against a restricted period extension notice may only be made on the ground that the condition in paragraph 20(2) for giving such a notice is not met.
- (4) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which the notice is given.

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- (5) 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).
  - (6) On an appeal under sub-paragraph (1) the tribunal may affirm or cancel HMRC's decision.
  - (7) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (3)).

*Power to amend*

- 26 (1) The Treasury may by regulations –
  - (a) amend paragraph 19 for the purpose of further limiting, or removing or restricting limitations on, the matters which fall within paragraphs (a) and (b) of sub-paragraph (2) of that paragraph;
  - (b) amend paragraph 22.
- (2) Regulations under sub-paragraph (1)(b) may amend the meaning of "relief" in any way (including by extending or limiting the meaning).
- (3) Regulations under this paragraph may –
  - (a) make supplementary, incidental and consequential provision;
  - (b) make transitional provision.
- (4) Regulations under this paragraph are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this Part 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 4

PENALTY

*Penalty*

- 27 (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 (the "relevant warning period").
- (2) The penalty is 20% of the value of the counteracted advantage if the person has not, before the relevant defeat is incurred, been given (or become liable to be given) a warning notice which has the relevant warning period as its basis period (see paragraph 41).
- (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) warning notice which has the relevant warning period as its basis period.
- (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 warning notices which have the relevant warning period as their basis period.



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- (5) For the meaning of “the value of the counteracted advantage” see paragraphs 29 to 34.

*Simultaneous defeats*

- 28 (1) If a person incurs simultaneously two or more relevant defeats in relation to different arrangements, sub-paragraphs (2) to (4) of paragraph 27 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 value of the counteracted tax advantage.

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

- 29 (1) In relation to a relevant defeat incurred by virtue of Condition A, B or C, 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 10(1)(b);
  - (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 counteraction or relinquishment of the denied advantage;
  - (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 12(1).
- (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) or (c) of sub-paragraph (1) were not made or (as the case may be) the denied advantage mentioned in paragraph (b) of that sub-paragraph were not counteracted or relinquished.
- (3) In sub-paragraph (1) –
- (a) in paragraph (b) “the denied advantage” has the same meaning as in paragraph 11;
  - (b) in paragraph (c) “counteraction” is to be interpreted in accordance with paragraph 12(5).
- (4) 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.
- (5) This paragraph is subject to paragraphs 30 and 31.

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

- 30 (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 32) 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 29.
- (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 29 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 29 in accordance with sub-paragraphs (2) and (3), group relief may be taken into account (despite paragraph 29(4)).
- (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*

- 31 (1) To the extent that the counteracted advantage (see paragraph 32) 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
  - (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 30 applies.

*Meaning of “the counteracted advantage” in paragraphs 30 and 23*

- 32 (1) In paragraphs 30 and 31 “the counteracted tax advantage” means –

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- (a) in relation to a relevant defeat incurred by virtue of Condition A, the tax advantage mentioned in paragraph 10(1)(b);
  - (b) in relation to a relevant defeat incurred by virtue of Condition B, the denied tax advantage referred to in paragraph (a) or (b) of paragraph 11(1);
  - (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 12(1)(c) is made.
- (2) In sub-paragraph (1)(c) “counteraction” is to be interpreted in accordance with paragraph 12(5).

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

- 33 (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 14(1).
- (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.
- (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,
  - (b) VAT on the acquisition by the person from another member State of any goods;

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- (c) VAT on the importation of any goods from a place outside the member States.
- (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 sub-paragraph (3) were not made.

#### *Assessment of penalty*

- 34 (1) Where a person is liable for a penalty under paragraph 27, 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 27(1).

#### *Alteration of assessment of penalty*

- 35 (1) After notification of an assessment has been given to a person under paragraph 34(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*

- 36 (1) The amount of a penalty for which a person is liable under paragraph 27 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.

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- (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 27.

*Appeal against penalty*

- 37 (1) A person may appeal against a decision of HMRC that a penalty is payable under paragraph 27.
- (2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by P under paragraph 27.
- (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 27.
- (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.
- (6) On an appeal under sub-paragraph (1) 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)).

*Reasonable excuse*

- 38 (1) A person is not liable to a penalty under paragraph 27 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 39).
- (2) A person liable to a penalty under paragraph 27 in respect of a relevant defeat (the “principal defeat”), is treated for the purposes of sub-paragraphs (2) to (4) of paragraph 27 (rate of penalty) as not having been given, and not having become liable to be given, any prior warning notice in relation to which the condition in sub-paragraph (3) is met.
- (3) The condition is that the person was not liable to a penalty in respect of the defeat specified in that prior warning notice because the person had a reasonable excuse for the relevant failure to which that defeat relates.
- (4) In sub-paragraphs (2) and (3) “prior warning notice” means a warning notice which the person was given, or became liable to be given, before incurring the principal defeat.

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- (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,
  - (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.
- (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 38: meaning of “the relevant failure”*

- 39 (1) In paragraph 38 “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 11(1)(a) or (b) was taken.
  - (4) In relation to a relevant failure 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 12(4) 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 13(4) 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 14(1) is required.
  - (7) In sub-paragraph (6) “counteraction” is to be interpreted in accordance with paragraph 14(2).

*Mitigation of penalties*

- 40 (1) The Commissioners for Her Majesty’s Revenue and Customs may in their discretion mitigate a penalty under paragraph 27, 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 5

INTERPRETATION OF PARTS 1 AND 2

*“Basis period” of a warning notice*

- 41 In relation to a warning notice given to a person, “basis period” means the warning period (if any) in which the person used the arrangements to which the relevant defeat specified in the notice relates.

*Time of “use” of defeated arrangements*

- 42 (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 –
- (a) the filing date of any return made by the person on the basis that the tax advantage mentioned in paragraph 10(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 10(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 tax 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 tax 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 12(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 12(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 13(2)(a);

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- (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 13(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 the S to which the counteraction mentioned in paragraph 14(1)(c) relates;
  - (b) the date on which S made any claim or election 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.
- (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.

#### *Inheritance tax*

- 43 (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 “assessment”, in relation to inheritance tax, includes a determination.

#### *General interpretation*

- 44 (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, 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);
  - “arrangements” has the meaning given by paragraph 1(5);
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;



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“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;

“disclosable VAT arrangements” is to be interpreted in accordance with paragraph 7;

“DOTAS arrangements” is to be interpreted in accordance with paragraph 6;

“follower notice” has the meaning given by paragraph 11(4);

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

“relevant defeat” is to be interpreted in accordance with paragraph 9;

“tax” has the meaning given by paragraph 2;

“tax advantage” has the meaning given by paragraph 5.

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

## PART 6

### CONSEQUENTIAL AMENDMENTS

- 45 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 (g), and
  - (b) after paragraph (h) insert “or
    - (i) Part 1 of the Schedule to section 63 of FA 2016 (serial avoiders regime).”
- 46 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 1 of the Schedule to section 63 of FA 2016 (serial avoiders regime).”

## PART 7

### COMMENCEMENT

- 47 Subject to paragraphs 48 and 49, Parts 1 to 6 of this Schedule have effect in relation to relevant defeats incurred after the day on which this Act is passed.
- 48 (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

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- (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 10(1)(c);
  - (b) in a case within Condition B, the action mentioned in paragraph 11(1)(a) or the counteraction mentioned in paragraph 11(1)(b);
  - (c) in a case within Condition C, the counteraction mentioned in paragraph 12(1)(c);
  - (d) in a case within Condition D, the counteraction mentioned in paragraph 13(1)(d);
  - (e) in a case within Condition E, the counteraction mentioned in paragraph 14(1)(c).
- (4) In sub-paragraph (3) –
- (a) in paragraph (c) “counteraction” is to be interpreted in accordance with paragraph 12(5);
  - (b) in paragraph (d) “counteraction” is to be interpreted in accordance with paragraph 13(5);
  - (c) in paragraph (e) “counteraction” is to be interpreted in accordance with paragraph 14(2).
- (5) See paragraph 9(2) for provision about when a relevant defeat is incurred.
- 49 (1) A warning notice given to a person is to be disregarded for the purposes of –
- (a) paragraph 17 (naming), and
  - (b) Part 3 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.
- (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 27 (penalty).