

SCHEDULES

SCHEDULE 18

SERIAL TAX AVOIDANCE

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—
- (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.

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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.
- (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

- 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).

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;
 - "disclosable VAT arrangements" is to be interpreted in accordance with paragraph 9;
 - "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;
 - "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;

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- (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 4;
 - “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 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.

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 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),

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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 30 (penalty).