

SCHEDULES

SCHEDULE 19

Section 161

LARGE BUSINESSES: TAX STRATEGIES AND SANCTIONS

PART 1

INTERPRETATION

Purpose of Part 1

- 1 This Part defines terms for the purposes of this Schedule.

“Relevant body”

- 2 (1) “Relevant body” means a UK company or any other body corporate (wherever incorporated), but does not include a limited liability partnership.
- (2) A relevant body is a “foreign” relevant body (or member of a group or sub-group) if it is incorporated outside the United Kingdom.

“UK company”

- 3 (1) “UK company” means a company which is (or is treated as if it is) formed and registered under the Companies Act 2006, unless it falls within sub-paragraph (2).
- (2) The term “UK company” does not include a company which is—
- (a) an open-ended investment company within the meaning of section 613 of CTA 2010, or
 - (b) an investment trust within the meaning of section 1158 of CTA 2010.

“UK permanent establishment”

- 4 (1) “UK permanent establishment” means a permanent establishment in the United Kingdom of a foreign relevant body.
- (2) In sub-paragraph (1) “permanent establishment” has the same meaning as it has for the purposes of the Corporation Tax Acts (see section 1141 to 1144 of CTA 2010).

“Qualifying company”

- 5 (1) A UK company is a “qualifying company” in any financial year (subject to any regulations under sub-paragraph (5)) if sub-paragraph (2) or (3) applies to it.
- (2) This sub-paragraph applies to the company if, at the end of the previous financial year—
- (a) it satisfied the qualification test for a UK company, and

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- (b) was not a member of a UK group or a UK sub-group.
- (3) This sub-paragraph applies to the company if, at the end of the previous financial year—
- (a) it was a member of a foreign group,
 - (b) the group met the qualification test for a group, and
 - (c) it was not a member of a UK sub-group of that foreign group.
- (4) The qualification test for a UK company is that the company satisfied either or both of the following conditions (by reference to the previous financial year)—
- | | |
|--------------------------------------|------------------------|
| 1. The company's turnover | More than £200 million |
| 2. The company's balance sheet total | More than £2 billion. |
- (5) The Treasury may by regulations provide that a company of a description specified in the regulations is not a qualifying company for the purposes of this Schedule (or any such purpose specified in the regulations).
- (6) For the purposes of this paragraph a UK permanent establishment of a foreign relevant body is to be treated as if it were—
- (a) a UK company, and
 - (b) if the foreign relevant body is a member of a UK group or a UK sub-group, a member of that group or sub-group.
- “Group” and related expressions*
- 6 (1) “Group” means two or more relevant bodies which together constitute—
- (a) an MNE Group (see paragraph 7), or
 - (b) a group other than an MNE group (see paragraph 8).
- (2) “UK group” means a group whose head is a relevant body incorporated in the United Kingdom.
- (3) “Foreign group” means a group whose head is a foreign relevant body.
- (4) For the purposes of sub-paragraphs (2) and (3) it is immaterial where other members of the group are incorporated.
- 7 (1) “MNE Group” has the same meaning (subject to sub-paragraph (2) below) as in the OECD Model Legislation in the OECD Country-by-Country Reporting Implementation Package as contained in the OECD's Guidance on Transfer Pricing Documentation and Country-by-Country Reporting published in 2014.
- (2) Paragraph (ii) (excluded MNE Group) of the Implementation Package is not part of the definition applied by sub-paragraph (1) above for the purposes of this Schedule.
- (3) In sub-paragraph (1) “OECD” means the Organisation for Economic Co-operation and Development.
- 8 (1) A “group other than an MNE group” means a group consisting of two or more relevant bodies—
- (a) each of which is a member of the group by virtue of sub-paragraph (3) or (4),
 - (b) at least two of which are UK companies,
- which is not an MNE Group.

- (2) For the purposes of the condition in sub-paragraph (1)(b) a UK permanent establishment of a foreign member of a group is to be treated as if it were a UK company and a member of the group.
 - (3) A relevant body is a member of a group if—
 - (a) another relevant body is its 51% subsidiary, or
 - (b) it is a 51% subsidiary of another relevant body.
 - (4) Two relevant bodies are members of the same group if—
 - (a) one is a 51% subsidiary of the other, or
 - (b) both are 51% subsidiaries of another relevant body.
 - (5) Chapter 3 of Part 24 of CTA 2010 (meaning of 51% subsidiary) applies for the purposes of this Schedule as it applies for the purposes of the Corporation Tax Acts (but with the modification in sub-paragraph (6)).
 - (6) It applies as if references to a body corporate were references to a relevant body.
- 9 A group is headed by whichever relevant body within the group is not a 51% subsidiary of another relevant body within the group (and “head”, in relation to the group, means that body).

“Qualifying group”

- 10 (1) A group is a “qualifying group” in any financial year if, at the end of the previous financial year—
- (a) in the case of a group other than an MNE Group, the group satisfied the qualification test for such a group (subject to any regulations under sub-paragraph (6)), or
 - (b) in the case of an MNE Group—
 - (i) there was a mandatory reporting requirement in respect of the group under regulations made under section 122 of FA 2015 (country-by-country reporting), or
 - (ii) there would have been such a requirement if the head of the group were resident in the United Kingdom for tax purposes.
- (2) The qualification test for a group other than an MNE Group is that the group satisfied either or both of the following conditions (by reference to the previous financial year)
-

1. Group turnover	More than £200 million
2. Group balance sheet total	More than £2 billion.

- (3) In sub-paragraph (2)—
- (a) “group turnover” means the aggregate turnover of the UK companies that are members of the group at the end of the previous financial year, and
 - (b) “group balance sheet total”, means the aggregate balance sheet totals for all those UK companies.
- (4) Where the financial year of a UK company within in the group does not end on the same day as the previous financial year of the head of the group, the figures from the company that are to be included in the aggregate figures are those for the company’s

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financial year ending last before the end of the previous financial year of the head of the group.

- (5) For the purposes of assessing the turnover or balance sheet total of the group, sub-paragraphs (3) and (4) apply as if a UK permanent establishment of a foreign member of the group were a UK company and a member of the group.
- (6) The Treasury may by regulations provide—
- (a) that a group other than an MNE Group which is of a specified description is not a qualifying group for the purposes, or any specified purpose, of this Schedule, or
 - (b) that a relevant body, or a UK permanent establishment, of a specified description is to be disregarded in determining whether the qualification test is satisfied by a group other than an MNE Group;
- and in this sub-paragraph “specified” means specified in the regulations.
- (7) In this paragraph “financial year”, in relation to a group, means a financial year of the head of the group.

“UK sub-group” and “head” (in relation to a UK sub-group)

- 11 (1) A “UK sub-group” consists of two or more relevant bodies that would be a UK group, but for the fact that they are members of a larger group headed by a relevant body incorporated outside the United Kingdom.
- (2) A UK sub-group is headed by the company or other relevant body incorporated in the United Kingdom that is not a 51% subsidiary of another member of the UK sub-group (and “head”, in relation to the sub-group, means that company or body).

“UK partnership”, “qualifying partnership” and “representative partner”

- 12 (1) “UK partnership” means a body of any of the following descriptions which is carrying on a trade, business or profession with a view to profit—
- (a) a partnership within the meaning of the Partnership Act 1890,
 - (b) a limited partnership registered under the Limited Partnerships Act 1907, or
 - (c) a limited liability partnership incorporated in the United Kingdom.
- (2) A UK partnership is a “qualifying partnership” in a financial year, if it satisfied the qualification test for a UK partnership at the end of the previous financial year (subject to any regulations under sub-paragraph (4)).
- (3) The qualification test for a UK partnership is that the partnership satisfied either or both of the following conditions (by reference to the previous financial year)—

1. The partnership’s turnover	More than £200 million
2. The partnership’s balance sheet total	More than £2 billion.

- (4) The Treasury may by regulations provide that a UK partnership of a description specified in the regulations is not a qualifying partnership for the purposes of this Schedule (or any such purpose specified in the regulations).

- (5) “Representative partner”, in relation to a UK partnership, means the partner who is required by a notice served under or by virtue of section 12AA(2) or (3) of TMA 1970 to make and deliver returns to an officer of HMRC.

“Financial year”

13 “Financial year”—

- (a) in relation to a UK company, has the meaning given by the Companies Act 2006 (see section 390 of that Act),
- (b) in relation to any other relevant body, means any period in respect of which a profit and loss account for the body’s undertaking is required to be made up (whether by its constitution or by the law under which it is established), whether that period is a year or not,
- (c) in relation to a UK partnership, means any period of account for which its representative partner has provided or is required to provide a partnership statement under a return issued under section 12AB TMA 1970.

“Turnover” and “balance sheet total”

14 (1) “Turnover”—

- (a) in relation to a UK company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act), and
- (b) in relation to a UK partnership or a UK permanent establishment, has a corresponding meaning.

- (2) “Balance sheet total”, in relation to a UK company, UK partnership or UK permanent establishment and a financial year, means the aggregate of the amounts shown as assets in its balance sheet at the end of the financial year.

“UK taxation”

15 (1) “UK taxation” means —

- (a) income tax,
- (b) corporation tax, including any amount assessable or chargeable as if it were corporation tax or treated as if it were corporation tax,
- (c) value added tax,
- (d) amounts for which the company is accountable under PAYE regulations,
- (e) diverted profits tax,
- (f) insurance premium tax,
- (g) annual tax on enveloped dwellings,
- (h) stamp duty land tax,
- (i) stamp duty reserve tax,
- (j) petroleum revenue tax;
- (k) customs duties,
- (l) excise duties,
- (m) national insurance contributions.

- (2) In relation to a tax strategy required to be published by Part 2, “UK taxation” refers to the taxes or duties mentioned above so far as relating to or affecting the bodies or body to which the required tax strategy relates.

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PART 2

PUBLICATION OF TAX STRATEGIES

Qualifying UK groups: duty to publish a group tax strategy

- 16 (1) This paragraph applies in relation to a UK group which is a qualifying group in any financial year (“the current financial year”).
- (2) The head of the group must ensure that a group tax strategy for the group, containing the information required by paragraph 17, is prepared and published on behalf of the group in accordance with this paragraph.
- (3) The group tax strategy—
- (a) must be published before the end of the current financial year, and
 - (b) if the group was a qualifying group in the previous financial year, must not be published more than 15 months after the day on which its previous group tax strategy was published.
- (4) The group tax strategy—
- (a) must be published on the internet by any of the UK companies that are members of the group so as to be accessible to the public free of charge (whether or not it is also published in any other way), and
 - (b) may be published as a separate document or as a self-contained part of a wider document.
- (5) The head of the group must ensure that the group tax strategy published on the internet remains accessible to the public free of charge—
- (a) if a group tax strategy for the group’s next financial year is required by this paragraph to be published, until that tax strategy is published, or
 - (b) if paragraph (a) does not apply, for at least one year.
- (6) For the purposes of this paragraph—
- (a) a group tax strategy is published when it is first published on the internet as mentioned in paragraph (4)(a),
 - (b) the identity of the group is not to be regarded as altered by any change in its membership during the current financial year resulting from a relevant body—
 - (i) becoming a 51% subsidiary of a member of the group, or
 - (ii) ceasing to be a 51% subsidiary of another member of the group; and
 - (c) if the group becomes a UK sub-group of a foreign group during the current financial year, it is to be treated for the rest of that year as if it were still a UK group.
- (7) In this paragraph and paragraph 17 “financial year”, in relation to a UK group, means a financial year of the head of the group.

Content of group tax strategy

- 17 (1) A group tax strategy required to be published on behalf of a UK group by paragraph 16 must set out—
- (a) the approach of the group to risk management and governance arrangements in relation to UK taxation,

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- (b) the attitude of the group towards tax planning (so far as affecting UK taxation),
 - (c) the level of risk in relation to UK taxation that the group is prepared to accept, and
 - (d) the approach of the group towards its dealings with HMRC.
- (2) The group tax strategy may—
 - (a) include other information relating to taxation (whether UK taxation or otherwise), and
 - (b) deal with a matter mentioned in sub-paragraph (1) by reference to the group as a whole or to individual members of the group (or to both).
- (3) The information required by sub-paragraph (1) to be included in the group tax strategy does not include any information about activities of any member of the group that consists of the provision of tax advice or related professional services to persons who are not members of the group.
- (4) The publication of information as the group tax strategy does not constitute publication of the strategy for the purposes of paragraph 16 unless the UK company publishing it makes clear (in a way that will be readily apparent to anyone accessing the information online) that the company regards its publication as complying with the duty under paragraph 16(2) in the current financial year.
- (5) For the purposes of this paragraph a UK permanent establishment of a foreign member of the group is to be treated as if it were a member of the group.
- (6) The Treasury may by regulations require the group tax strategy to include a country-by-country report.
- (7) In this paragraph “country-by-country report” has the meaning given by the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016.

Penalty for non-compliance with paragraph 16

- 18
- (1) This paragraph applies where paragraph 16 requires a group tax strategy to be published for a UK group in any financial year of the head of the UK group.
 - (2) The head of the group is liable to a penalty of £7,500 if—
 - (a) there is a failure to publish a group tax strategy for the group that complies with paragraph 16(2), or
 - (b) where a group tax strategy has been published, there is a failure to comply with paragraph 16(5).
 - (3) Subject to sub-paragraph (5) the head of the group is only liable to one penalty by virtue of sub-paragraph (2) in respect of a group tax strategy required for the financial year in question.
 - (4) Sub-paragraph (5) applies where—
 - (a) the head of the group is liable to a penalty under this paragraph in respect of a failure mentioned in sub-paragraph (2)(a), and
 - (b) no group tax strategy for the group that complies with paragraph 16(2) (disregarding paragraph 16(3)) is published within the period of 6 months

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after the last day on which the duty under paragraph 16(2) could have been complied with.

- (5) At the end of that period, the head of the group—
 - (a) is liable to a further penalty of £7,500, and
 - (b) where the failure mentioned in sub-paragraph (4)(b) continues, is liable to a further penalty of £7,500 at the end of each subsequent month in which no such group tax strategy is published.

UK sub-groups: duty to publish a sub-group tax strategy

- 19 (1) This paragraph applies to a UK sub-group of a foreign group if in any financial year (“the current financial year”) the foreign group is a qualifying group.
- (2) The head of the sub-group must ensure that a sub-group tax strategy for the sub-group, giving the information required by paragraph 20, is prepared and published in accordance with this paragraph.
- (3) The sub-group tax strategy—
- (a) must be published before the end of the current financial year, and
 - (b) if the group of which the sub-group is part was a qualifying group in the previous financial year, must not be published more than 15 months after the day on which its sub-group tax strategy for that year was published;
- (4) The sub-group tax strategy—
- (a) must be published on the internet by any of the UK companies that are members of the foreign group so as to be accessible to the public free of charge (whether or not it is also published in any other way), and
 - (b) may be published as a separate document or as a self-contained part of a wider document.
- (5) The head of the sub-group must ensure that the sub-group tax strategy published on the internet remains accessible to the public free of charge—
- (a) if a sub-group tax strategy for the sub-group’s next financial year is required by this paragraph to be published, until that tax strategy is published, or
 - (b) if paragraph (a) does not apply, for at least one year.
- (6) For the purposes of this paragraph—
- (a) a sub-group tax strategy is published when it is first published on the internet as mentioned in sub-paragraph (4)(a),
 - (b) the identity of the sub-group is not affected by any change in its membership in the current financial year resulting from a relevant body becoming or ceasing to be a 51% subsidiary of a member of the sub-group, and
 - (c) if the sub-group becomes a UK sub-group of another foreign group during the current financial year, for the rest of that year it is to be treated as if it were still a UK sub-group of the original foreign group (but only a UK company within the sub-group may publish a sub-group tax strategy for the sub-group after that change).
- (7) In this paragraph “financial year”, in relation to a UK sub-group, means a financial year of the head of the group of which it is a sub-group.

Content of a sub-group tax strategy

- 20 (1) Paragraph 17 applies in relation to a sub-group tax strategy required to be published on behalf of a UK sub-group by paragraph 19 as it applies to a group tax strategy required to be published by a qualifying UK group.
- (2) In the application of paragraph 17 to a sub-group tax strategy, references to the group or members of the group are to be read as references to the UK sub-group or members of the UK sub-group.
- (3) In the application of paragraph 17 as modified by this paragraph to a sub-group tax strategy, a UK permanent establishment of a foreign member of the UK sub-group is to be treated as if it were a member of the sub-group.

Penalty for non-compliance with requirements of paragraph 19

- 21 (1) This paragraph applies where paragraph 19 requires a sub-group tax strategy to be published for a UK sub-group in any financial year of the head of the sub-group.
- (2) The head of the sub-group is liable to a penalty of £7,500 if—
- (a) there is a failure to publish a sub-group tax strategy for the sub-group that complies with paragraph 19(2), or
 - (b) where a sub-group tax strategy has been published, there is a failure to comply with paragraph 19(5).
- (3) Subject to sub-paragraph (5), the head of the sub-group is only liable to one penalty by virtue of sub-paragraph (2) in respect of a sub-group tax strategy required for the financial year in question.
- (4) Sub-paragraph (5) applies where—
- (a) the head of the sub-group is liable to a penalty under this paragraph in respect of a failure mentioned in sub-paragraph (2)(a), and
 - (b) no sub-group tax strategy for the sub-group that complies with paragraph 19(2) (disregarding paragraph 19(3)) is published within the period of 6 months after the last day on which the duty under paragraph 19(2) could have been complied with.
- (5) At the end of that period, the head of the sub-group is liable—
- (a) to a further penalty of £7,500, and
 - (b) where the failure mentioned in sub-paragraph (4)(b) continues, to a further penalty of £7,500 at the end of each subsequent month in which no such sub-group tax strategy is published.

Qualifying companies: duty to publish a company tax strategy

- 22 (1) This paragraph applies in relation to a UK company which in any financial year (“the current financial year”) is a qualifying company.
- (2) The company must prepare and publish a company tax strategy, containing the information required by paragraph 23, in accordance with this paragraph.
- (3) The duty under sub-paragraph (2) applies even if the company becomes a member of a UK group or a UK sub-group during the current financial year.
- (4) The company tax strategy—

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- (a) must be published by the company before the end of the current financial year, and
 - (b) if the company was a qualifying company in the previous financial year, must not be published more than 15 months after the day on which its company tax strategy was published in the previous financial year.
- (5) The company tax strategy—
 - (a) must be published on the internet so as to be accessible to the public free of charge (whether or not published in any other way), and
 - (b) may be published as a separate document or a self-contained part of a wider document.
- (6) The company must ensure that the company tax strategy published on the internet remains accessible to the public free of charge—
 - (a) if a company tax strategy for the next financial year is required by this paragraph to be published, until that tax strategy is published, or
 - (b) if paragraph (a) does not apply, for at least one year.
- (7) For the purposes of this paragraph a company tax strategy is published when it is first published as mentioned in sub-paragraph (5)(a).
- (8) A UK permanent establishment which in any financial year is by virtue of paragraph 5(6) to be treated as a qualifying company is to be treated for the purposes of this paragraph and paragraphs 23 and 24 as if it were a UK company which in that financial year is a qualifying company.

Content of a company tax strategy

- 23 (1) The company tax strategy must set out—
- (a) the company's approach to risk management and governance arrangements in relation to UK taxation,
 - (b) the company's attitude towards tax planning (so far as affecting UK taxation),
 - (c) the level of risk in relation to UK taxation that the company is prepared to accept,
 - (d) the company's approach towards its dealings with HMRC.
- (2) The company tax strategy may include other information relating to taxation (whether UK taxation or otherwise).
- (3) The information required by sub-paragraph (1) to be included in a company tax strategy does not include any information about activities of the company that consist of the provision of tax advice or related professional services to other persons.
- (4) The publication of information as a company tax strategy does not constitute publication of the strategy for the purposes of paragraph 22 unless the company makes clear (in a way that will be readily apparent to anyone accessing the information online) that the company regards its publication as complying with the duty under paragraph 22(2) in the current financial year.

Penalty for non-compliance with paragraph 22

- 24 (1) This paragraph applies where paragraph 22 requires a company tax strategy to be published for a UK company in any financial year.
- (2) The company is liable to a penalty of £7,500 if—
- (a) there is a failure to publish a company tax strategy for the company that complies with paragraph 22(2), or
 - (b) where a company tax strategy has been published, there is a failure to comply with paragraph 22(6).
- (3) Subject to sub-paragraph (5), the company is only liable to one penalty by virtue of sub-paragraph (2) in respect of a company tax strategy required for the financial year in question.
- (4) Sub-paragraph (5) applies where—
- (a) a penalty is imposed under this paragraph in respect of a failure mentioned in sub-paragraph (2)(a), and
 - (b) no company tax strategy that complies with paragraph 22(2) (disregarding paragraph 22(4)) is published within the period of 6 months after the last day on which the duty under paragraph 22(2) could have been complied with.
- (5) At the end of that period, the company is liable—
- (a) to a further penalty of £7,500, and
 - (b) where the failure mentioned in sub-paragraph (4)(b) continues, to a further penalty of £7,500 at the end of each subsequent month in which no such company tax strategy is published.

Qualifying partnerships: duty to publish a partnership tax strategy

- 25 (1) Paragraphs 22 to 24 apply in relation to a UK partnership which is (in any financial year of the partnership) a qualifying partnership as they apply to a UK company which is (in any financial year of the company) a qualifying company.
- (2) Those paragraphs have effect in their application to a qualifying partnership—
- (a) with the omission of paragraph 22(3) and (8),
 - (b) as if for “company tax strategy” (in each place) there were substituted “partnership tax strategy”, and
 - (c) as if for “company” and “company’s” (in each place) there were substituted respectively “partnership” and “partnership’s”.

Penalties under this Part: general provisions

- 26 (1) Paragraphs 27 to 33 apply in relation to the liability of any person to a penalty under this Part and, accordingly, in those paragraphs—
- “failure”, in relation to a liability for a penalty, means a failure which could give rise to that liability,
 - “liability to a penalty” means a liability under paragraph 18, 21 or 24 (including paragraph 24 as applied to a qualifying UK partnership), and
 - “penalty” means a penalty under any of those paragraphs.
- (2) In those paragraphs “tribunal” means the First-tier Tribunal or, where determined by or under the Tribunal Procedure Rules, the Upper Tribunal.

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Failure to comply with a time limit

- 27 A failure to do anything required by this Part to be done within a limited period of time goes not give rise to liability to a penalty if it is done within such further time (if any) as an officer of Revenue and Customs may have allowed.

Reasonable excuse

- 28 (1) Liability to a penalty for a failure does not arise if the person who would otherwise be liable to that penalty satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that the person had a reasonable excuse for that failure.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
 - (b) where the person relies on another person to do anything, that cannot be a reasonable excuse—
 - (i) unless the first person took reasonable care to avoid the failure, or
 - (ii) if the first person is a UK group or UK sub-group, where the person relied on is another member of the group or sub-group,
 - (c) where the person had a reasonable excuse but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties

- 29 (1) Where a person becomes liable to a penalty—
- (a) HMRC may assess the penalty, and
 - (b) if they do so, HMRC must notify the person of the assessment.
- (2) An assessment of a penalty may not be made—
- (a) more than 6 months after the failure first comes to the attention of an officer of Revenue and Customs, or
 - (b) more than 6 years after the end of the financial year in which the tax strategy to which the failure relates was (or was originally) required to be published.

Appeal

- 30 (1) A person may appeal against a decision of HMRC that a penalty is payable by that person.
- (2) Notice of an appeal must be given—
- (a) in writing,
 - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 29(1)(b) was issued,
- (3) Notice of an appeal must state the grounds of appeal.
- (4) On an appeal that is notified to the tribunal, the tribunal may confirm or cancel the decision.

- (5) Subject to this paragraph and paragraph 31, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Schedule as they have effect in relation to an appeal against an assessment to income tax.

Enforcement

- 31 (1) A penalty must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 29(1)(b) was issued, or
 - (b) if a notice of appeal is given, before the end of 30 days beginning with the day on which the appeal is determined or withdrawn.
- (2) A penalty may be enforced as if it were corporation tax charged in an assessment and due and payable.

Power to change amount of penalties

- 32 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for any sums for the time being specified in paragraph 18, 21 or 24 such other sum as appear to them to be justified by the change.
- (2) In sub-paragraph (1) “relevant date” means—
- (a) the date on which this Act is passed, and
 - (b) each date on which the power conferred by that sub-paragraph has been exercised.
- (3) Regulations under this paragraph do not apply to a failure that occurs in respect of a financial year (of the body or partnership responsible for the failure) that begins before the date on which they come into force.

Application of provisions of TMA 1970

- 33 Subject to the provisions of this Part, the following provisions of TMA 1970 apply for the purposes of this Part as they apply for the purposes of the Taxes Acts—
- (a) section 108 (responsibility of company officers),
 - (b) section 114 (want of form), and
 - (c) section 115 (delivery and service of documents).

Meaning of “tax strategy”

- 34 In this Part “tax strategy” means—
- (a) a group tax strategy (see paragraphs 16 to 18),
 - (b) a sub-group tax strategy (see paragraphs 19 to 21),
 - (c) a company tax strategy (see paragraphs 22 to 24), or
 - (d) a partnership tax strategy (see paragraph 25).

PART 3

SANCTIONS FOR PERSISTENTLY UNCO-OPERATIVE LARGE BUSINESSES

Large groups falling within Part 3

- 35 A UK group falls within this Part of this Schedule (“this Part”) if—
- (a) the group has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),
 - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the group or members of the group which are unresolved (see paragraph 39), and
 - (c) there is a reasonable likelihood of further instances of the group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the group or members of the group.
- 36 (1) A UK group has “engaged in unco-operative behaviour” if—
- (a) a member of the group has satisfied either or both of the conditions listed in sub-paragraph (2), or
 - (b) two or more of the members of the group, taken together, have satisfied either or both of those conditions.
- (2) Those conditions are—
- (a) the behaviour condition (see paragraph 37);
 - (b) the arrangements condition (see paragraph 38).
- (3) A UK group has engaged in unco-operative behaviour “persistently” if—
- (a) a member of the group has done so persistently, or
 - (b) two or more members of the group, taken together, have done so persistently.
- (4) References in this Part to doing something “persistently” include doing it on a sufficient number of occasions for it to be clear that it represents a pattern of behaviour.
- 37 (1) A member of a UK group has, or two or more members of a UK group (taken together) have, “satisfied the behaviour condition” if it has, or they have, behaved in a manner which has delayed or otherwise hindered HMRC in the exercise of their functions in connection with determining the liability to UK taxation of the group or a member of the group.
- (2) Factors which may indicate that a member of a UK group has behaved as described in sub-paragraph (1) include—
- (a) the extent to which HMRC have used statutory powers to obtain information relating to the UK group or members of the group;
 - (b) the reasons why those powers have been used;
 - (c) the number and seriousness of inaccuracies in, and omissions from, documents given to HMRC by or on behalf of the UK group or members of the group;
 - (d) the extent to which, in dealings with HMRC, members of the group (or people acting on their behalf) have relied on interpretations of legislation relating to UK taxation which, at the time, are speculative.

- (3) An interpretation of legislation relating to UK taxation is “speculative” if it is likely that a court or tribunal would disagree with it.
- 38 (1) A member of a UK group has “satisfied the arrangements condition” if it is a party to a tax avoidance scheme.
- (2) “Tax avoidance scheme” means—
- (a) arrangements in respect of which a notice of final decision has been given under—
 - (i) paragraph 12 of Schedule 43 to FA 2013,
 - (ii) paragraph 5 or 6 of Schedule 43A to FA 2013, or
 - (iii) paragraph 9 of Schedule 43B to FA 2013,stating that a tax advantage arising from the arrangements is to be counteracted;
 - (b) arrangements which are notifiable arrangements for the purposes of Part 7 of FA 2004 (disclosure of tax avoidance schemes), other than arrangements in relation to which HMRC have given notice under section 312(6) of FA 2004 (notice that promoters not under duty to provide clients with prescribed information);
 - (c) a scheme which is a notifiable scheme for the purposes of Schedule 11A to VATA 1994 (disclosure of avoidance schemes).
- 39 (1) There is a significant tax issue in respect of a UK group or a member of a UK group where—
- (a) there is a disagreement between HMRC and a member of the group about an issue affecting the amount of the liability of the group or a member of the group to UK taxation,
 - (b) the issue has been, or could be, referred to a court or tribunal to determine, and
 - (c) as regards the amount of the liability, the difference between HMRC’s view and the view of the member is, or is likely to be, not less than £2 million.
- (2) The reference in sub-paragraph (1)(a) to circumstances in which there is a disagreement include circumstances in which there is a reasonable likelihood of a disagreement.
- (3) The Treasury may by regulations substitute a higher amount for the amount for the time being specified in sub-paragraph (1)(c).
- 40 The references in paragraphs 36 to 39 to things done by a member of a UK group (“the group in question”)—
- (a) include acts and omissions of a relevant body that is not a member of the group in question if they took place at a time when the relevant body was a member of a group headed by the body that is the head of the group in question;
 - (b) do not include acts or omissions of a relevant body that is a member of the group in question if they took place at a time when the relevant body was not a member of a group headed by the body that is the head of the group in question.

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Warning notices

- 41 (1) A designated HMRC officer may give the head of a UK group a notice under this paragraph (a “warning notice”) if the officer considers that the group is a qualifying group that falls within this Part.
- (2) The notice must set out the reasons why the officer considers that the group falls within this Part.
- (3) The notice—
- (a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the group, and
 - (b) expires (if not previously withdrawn) at the end of the period of 15 months beginning with the day on which it was given.
- (4) Once a warning notice has been given —
- (a) it is immaterial for the purposes of this Part whether the group remains a qualifying group,
 - (b) the identity of the group is not to be regarded as altered by any change in its membership resulting from a relevant body—
 - (i) becoming a 51% subsidiary of a member of the group, or
 - (ii) ceasing to be a 51% subsidiary of another member of the group; and
 - (c) if the group becomes a UK sub-group of a foreign group it is to be treated as if it were still a UK group.
- (5) Sub-paragraph (4) applies while the group is subject to—
- (a) the warning notice, or
 - (b) any other notice under this Part issued as a result of the group having been given the warning notice.

Special measures notices

- 42 (1) This paragraph applies to a UK group if—
- (a) the head of the group has been given a warning notice in relation to the group that has not been withdrawn,
 - (b) the period of 12 months beginning with the day on which the warning notice was given has elapsed, and
 - (c) the period of 15 months beginning with that day has not elapsed.
- (2) If a designated HMRC officer considers that the group falls within this Part, the officer may give the head of the group a notice under this paragraph (a “special measures notice”).
- (3) When considering whether the group falls within this Part, the officer may take into account any relevant behaviour, whether or not it is mentioned in the warning notice.
- (4) When deciding whether to give a special measures notice, the designated HMRC officer must consider any representations made by a member of the group before the end of the period of 12 months beginning with the day on which the warning notice was given.
- (5) The special measures notice must set out the reasons why the officer considers that the group falls within this Part.

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- (6) Paragraph 45 deals with other circumstances in which a UK group may be given a special measures notice.
- 43 (1) A special measures notice—
- (a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the UK group, and
 - (b) expires, if not previously withdrawn, at the end of the period of 27 months beginning with the relevant day.
- (2) “The relevant day” means the later of—
- (a) the day on which the special measures notice was given, and
 - (b) the day on which it was last confirmed under paragraph 44.
- 44 (1) This paragraph applies to a UK group if—
- (a) the head of the group has been given a special measures notice in relation to the group which has not been withdrawn,
 - (b) the period of 24 months beginning with the relevant day has elapsed, and
 - (c) the period of 27 months beginning with that day has not elapsed.
- (2) If a designated HMRC officer considers that the group falls within this Part, the officer may give the head of the group a notice under this paragraph (a “confirmation notice”) confirming the special measures notice given in relation to the group.
- (3) When considering whether the group falls within this Part, the officer may take into account any relevant behaviour, whether or not it is mentioned in the special measures notice which is to be confirmed, in any previous confirmation notice or in the warning notice.
- (4) “The relevant day” has the same meaning as in paragraph 43(2).
- (5) The confirmation notice must set out the reasons why the officer considers that the group falls within this Part.
- (6) When deciding whether to give a confirmation notice, a designated HMRC officer must consider any representations made by a member of the group before the end of the period of 24 months beginning with the relevant day.
- (7) A confirmation notice—
- (a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the group, and
 - (b) expires, if not previously withdrawn, at the end of the period of 27 months beginning with the day on which it is given.
- 45 (1) This paragraph applies in relation to a UK group where—
- (a) the head of the group has been given a warning notice or a special measures notice in relation to the group, and
 - (b) that notice has expired.
- (2) A designated HMRC officer may give the head of a UK group a special measures notice if—
- (a) it appears to the officer that—
 - (i) during the period of 6 months beginning with the day on which the notice mentioned in sub-paragraph (1)(a) expired (“the expiry day”),

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the group has engaged in unco-operative behaviour (see paragraphs 36 to 38), and

- (ii) there is a reasonable likelihood that, if it had engaged in the behaviour before the notice expired, a designated HMRC officer would have considered that the group fell within this Part (so that a special measures notice or confirmation notice could have been given to the head of the group),
 - (b) during the period of 7 months beginning with the expiry day, a designated HMRC officer has notified the head of the group that the power under this paragraph may be exercised in relation to the group, and
 - (c) the period of 9 months beginning with that day has not elapsed.
- (3) When deciding whether to give a special measures notice under this paragraph, the officer must consider any representations made by a member of the group before the end of the period of 8 months beginning with the expiry day.

Circumstances in which warning and special measures notices are treated as having been given

- 46 (1) Sub-paragraphs (2) and (3) apply where—
- (a) a relevant body (“B1”) is given a warning notice, and
 - (b) before the notice ceases to have effect, B1 becomes a member of a group headed by another relevant body (“H1”).
- (2) H1 is to be treated as having been given a warning notice on the day on which the warning notice was given to B1.
- (3) A warning notice treated as given under sub-paragraph (2) is valid whether or not, on the day mentioned in that sub-paragraph, H1 was the head of a qualifying UK group that fell within this Part.
- (4) Sub-paragraphs (5) to (7) apply where—
- (a) a relevant body (“B2”) is given a special measures notice, and
 - (b) before the notice ceases to have effect, B2 becomes a member of a group headed by another relevant body (“H2”).
- (5) H2 is to be treated as having been given a special measures notice on the day on which the special measures notice was given to B2.
- (6) A special measures notice treated as given under sub-paragraph (5) is valid whether or not, on the day mentioned in that sub-paragraph, H2 was the head of a qualifying UK group that fell within this Part.
- (7) Paragraph 47(1) does not by virtue of sub-paragraphs (5) and (6) of this paragraph apply to an inaccuracy in a document given to HMRC by or on behalf of a person—
- (a) at a time when the person was a member of a group headed by H2, but
 - (b) before the day B2 becomes a member of H2.
- (8) Sub-paragraphs (9) and (10) apply where—
- (a) a relevant body (“B3”) is given a confirmation notice, and
 - (b) before the notice ceases to have effect, B3 becomes a member of a group headed by another relevant body (“H3”).

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- (9) H3 is to be treated as having been given a confirmation notice on the day on which the confirmation notice was given to B3.
- (10) A confirmation notice treated as given under sub-paragraph (9) is valid whether or not, on the day mentioned in that sub-paragraph, H3 was the head of a qualifying UK group that fell within this Part.
- (11) The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to relevant bodies in other circumstances described in the regulations.
- (12) Regulations under this paragraph may, in particular—
 - (a) make provision about the validity of notices treated as given by virtue of the regulations;
 - (b) make provision about the effect of paragraph 47(1) in cases involving such notices.

Sanctions: liability for penalties for errors in documents given to HMRC

- 47 (1) For the purposes of Schedule 24 to FA 2007 (penalties for errors), an inaccuracy in a document given to HMRC by or on behalf of a person is to be treated as being due to failure by the person to take reasonable care if—
- (a) the document was given to HMRC at a time when the person was a member of a group subject to a special measures notice, and
 - (b) the inaccuracy—
 - (i) relates to a tax avoidance scheme (as defined in paragraph 38) entered into by the person at a time when the person was a member of a group subject to a special measures notice, or
 - (ii) is, entirely or partly, attributable to an interpretation of legislation relating to UK taxation which, at the time the document was given to HMRC, was speculative.
- (2) A group is “subject to a special measures notice” if a special measures notice—
- (a) has been given to the head of the group in relation to the group, and
 - (b) is in force.
- (3) An interpretation of legislation relating to UK taxation is “speculative” if it is likely that a court or tribunal would disagree with it.
- (4) Sub-paragraph (1) does not apply to an inaccuracy if—
- (a) it is deliberate on the part of the person or someone acting on the person’s behalf,
 - (b) it is in fact due to a failure by the person or someone acting on the person’s behalf to take reasonable care, or
 - (c) it is treated as due to such a failure by virtue of another enactment.
- 48 In Schedule 24 to FA 2007 (penalties for errors), at the end of paragraph 3 (meaning of “careless” etc) insert—
- “(3) Paragraph 47 of Schedule 19 to FA 2016 (special measures for persistently unco-operative large businesses) provides for certain inaccuracies to be treated, for the purposes of this Schedule, as being due to a failure by P to take reasonable care.”

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Sanctions: Commissioners publishing information

- 49 (1) If a group is subject to a confirmed special measures notice, the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") may publish the following information—
- (a) the name of the group, including any previous name;
 - (b) the address or registered office of the head of the group;
 - (c) any other information that the Commissioners consider it appropriate to publish in order to identify the group;
 - (d) the fact that the group is subject to a confirmed special measures notice.
- (2) A group is "subject to a confirmed special measures notice" if sub-paragraph (3) or (4) is satisfied.
- (3) This sub-paragraph is satisfied if—
- (a) a special measures notice has been given to the head of the group and confirmed under paragraph 44, and
 - (b) the special measures notice is in force.
- (4) This sub-paragraph is satisfied if—
- (a) a special measures notice has been given to the head of the group and confirmed under paragraph 44,
 - (b) that notice has ceased to have effect,
 - (c) a further special measures notice has been given to the head of the group under paragraph 45 in the period of 9 months beginning with the day on which the special measures notice mentioned in paragraph (a) ceased to have effect, and
 - (d) that notice is in force.
- (5) Before publishing the information, the Commissioners must—
- (a) inform the head of the group that they are considering doing so, and
 - (b) allow the head of the group a reasonable opportunity to make representations about whether the information should be published.
- (6) If, after information about a group is published under this paragraph, the group ceases to be subject to a confirmed special measures notice, the Commissioners must publish a notice stating that the group is no longer subject to a confirmed special measures notice.
- (7) A notice under sub-paragraph (6) must be published before the end of the period of 30 days beginning with the day on which the special measures notice is withdrawn or has expired.
- (8) The Commissioners may publish information and notices under this paragraph in any manner they consider appropriate.

Application of Part 3 to large UK sub-groups

- 50 (1) A UK sub-group of a foreign group falls within this Part if—
- (a) the sub-group has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),
 - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the

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sub-group or members of the sub-group which are unresolved (see paragraph 39), and

- (c) there is a reasonable likelihood of further instances of the sub-group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the sub-group or members of the sub-group.

- (2) Paragraphs 36 to 40 apply in relation to a UK sub-group as they apply in relation to a UK group.

- (3) Paragraphs 41 to 45 apply in relation to the head of a UK sub-group of a foreign group that is a qualifying group at the material time as they apply in relation to the head of a UK group.

- (4) In the application of paragraph 41 in the case of a UK sub-group, sub-paragraph (4) has effect in relation to a UK sub-group as if for paragraphs (b) and (c) there were substituted—

- “(b) the identity of the sub-group is not to be regarded as altered by any change in its membership resulting from a relevant body—

- (i) becoming a 51% subsidiary of a member of the sub-group,
 - or

- (ii) ceasing to be a 51% subsidiary of another member of the sub-group; and

- (c) if the sub-group becomes a UK sub-group of another foreign group, it is to be treated as if it were still a UK sub-group of the original foreign group.”

- (5) As applied by this paragraph, paragraphs 36 to 45 have effect as if references to a UK group (including in references to the head of a UK group or members of a UK group) were references to a UK sub-group.

- (6) In paragraphs 40, 41, 46, 47 and 49, references to a group (including in references to the head of a group or members of a group) include a UK sub-group.

- (7) In paragraph 46, references to the head of a UK group include the head of a UK sub-group.

Application of Part 3 to large companies

- 51 (1) A UK company falls within this Part if—

- (a) the company has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),
- (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the company which are unresolved (see paragraph 39), and
- (c) there is a reasonable likelihood of further instances of the company engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the company.

- (2) Paragraphs 36 to 39 apply in relation to a company as they apply in relation to a UK group.

- (3) Paragraphs 41 to 45 apply in relation to a company as they apply in relation to the head of a UK group.

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- (4) As applied by this paragraph, paragraphs 36 to 39 and 41 to 45 have effect as if references to a UK group, the head of a UK group or a member of a UK group were references to a company.
- (5) Paragraph 47 applies in relation to a company as it applies in relation to a member of a group.
- (6) Paragraph 49 applies in relation to a company as it applies in relation to a group.
- (7) As applied by this paragraph, paragraphs 47 and 49 have effect as if references to a group, the head of a group or a member of a group were references to a company.

Application of Part 3 to large partnerships

- 52 (1) A UK partnership falls within this Part if—
- (a) the partnership has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),
 - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the partnership which are unresolved (see paragraph 39), and
 - (c) there is a reasonable likelihood of further instances of the partnership engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the partnership.
- (2) Paragraphs 36 to 39 of this Schedule apply in relation to a UK partnership as they apply in relation to a UK group.
- (3) Paragraphs 41 to 45 of this Schedule apply in relation to the representative partner of a UK partnership as they apply in relation to the head of a UK group.
- (4) As applied by this paragraph, paragraphs 36 to 39 and 41 to 45 have effect as if—
- (a) references to a UK group were references to a UK partnership;
 - (b) references to the head of a UK group were references to the representative partner of a UK partnership;
 - (c) references to a member of a UK group were references to a partner of a UK partnership, acting in the person's capacity as such.
- (5) The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to the representative partner of a UK partnership in circumstances described in the regulations.
- (6) Paragraph 46(12) applies to regulations under this paragraph.
- (7) Paragraph 47 applies in relation to an inaccuracy in a document given to HMRC by a partner of a UK partnership, acting in the person's capacity as such, as if—
- (a) references to a group were references to a partnership;
 - (b) references to the head of a group were references to the representative partner of a partnership;
 - (c) references to a member of a group were references to a partner of a partnership.

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- (8) Paragraph 47 applies in relation to an inaccuracy in any other document given to HMRC on behalf of a UK partnership as if—
- (a) references to a person included a UK partnership;
 - (b) references to a group, or a member of a group, were references to a UK partnership;
 - (c) references to the head of a group were references to the representative partner of a UK partnership.
- (9) Paragraph 49 applies in relation to a UK partnership as it applies in relation to a group.
- (10) As applied by this paragraph, paragraph 49 has effect as if—
- (a) references to a group were references to a UK partnership;
 - (b) references to the head of a group were references to the representative partner of a UK partnership.

Meaning of “designated HMRC officer”

- 53 In this Part “designated HMRC officer” means an officer of Revenue and Customs who has been designated by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of this Part.

PART 4

SUPPLEMENTARY

Amendment of power under section 122 of FA 2015

- 54 The power to make regulations under section 122(6)(c) of FA 2015 (country- by-country reporting: incidental etc provision that may be included in regulations) includes power to amend paragraph 7 above.

Regulations

- 55 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

TERMS DEFINED FOR PURPOSES OF MORE
THAN ONE PARAGRAPH OF THIS SCHEDULE

<i>Term</i>	<i>Paragraph</i>
balance sheet total	paragraph 14(2)
confirmation notice (in Part 3)	paragraph 44
designated HMRC officer (in Part 3)	paragraph 53
engaged in unco-operative behaviour (in Part 3)	paragraph 36
failure (in paragraphs 27 to 33)	paragraph 26(1)

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<i>Term</i>	<i>Paragraph</i>
financial year (in relation to a UK group) (in paragraphs 16 and 17)	paragraph 16(7)
foreign (in relation to a relevant body)	paragraph 2(2)
foreign (in relation to a group)	paragraph 6(3)
group	paragraph 6(1)
group other than an MNE Group	paragraph 8
head (in relation to a group)	paragraph 9
head (in relation to a UK sub-group)	paragraph 11(2)
“liability to a penalty” (in paragraphs 27 to 33)	paragraph 26(1)
MNE Group	paragraph 7(1)
member (in relation to a group)	paragraph 8(2) and (3)
penalty (in paragraphs 27 to 33)	paragraph 26(1)
qualifying company	paragraph 5
qualifying group	paragraph 10
qualifying UK partnership	paragraph 12(2)
relevant body	paragraph 2(1)
representative partner	paragraph 12(5)
satisfied the arrangements condition (in Part 3)	paragraph 38
satisfied the behaviour condition (in Part 3)	paragraph 37
special measures notice	paragraphs 42 and 45
tax strategy (in Part 2)	paragraph 34
tribunal (in paragraphs 27 to 33)	paragraph 26(2)
turnover	paragraph 14(1)
UK company	paragraph 3
UK group	paragraph 6(2)
UK partnership	paragraph 12(1)
UK permanent establishment	paragraph 4(1)
UK sub-group	paragraph 11(1)
UK taxation	paragraph 15
warning notice	paragraph 41.