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SCHEDULES

SCHEDULE 16

PENALTIES FOR ENABLERS OF DEFEATED TAX AVOIDANCE

PART 6

ASSESSMENT OF PENALTY

Assessment of penalty

- 19 (1) Where a person is liable for a penalty under paragraph 1 HMRC must—
- (a) assess the penalty, and
 - (b) notify the person.
- (2) If—
- (a) HMRC do not have all the information required to determine the amount or value of the relevant consideration within the meaning of paragraph 15, and
 - (b) HMRC have taken all reasonable steps to obtain that information,
- HMRC may assess the penalty on the basis of a reasonable estimate by HMRC of that consideration.
- (3) This paragraph is subject to—
- (a) paragraphs 21 and 22 (limits on when penalty may be assessed); and
 - (b) Part 7 of this Schedule (requirement for opinion of GAAR Advisory Panel before penalty may be assessed).
- 20 (1) A penalty under paragraph 1 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (2) An assessment of a penalty under paragraph 1—
- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule), and
 - (b) may be enforced as if it were an assessment to tax.

Special provision about assessment for multi-user schemes

- 21 (1) This paragraph applies where—
- (a) a proposal for arrangements is implemented more than once, by a number of tax arrangements which are substantially the same as each other (“related arrangements”),
 - (b) paragraph 1 applies in relation to particular arrangements (“the arrangements concerned”) which are one of the number of related arrangements implementing the proposal, and

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- (c) at the time when the person who entered into the arrangements concerned incurs a defeat in respect of them [^{F1}(other than a tribunal or court defeat), neither condition 1 nor condition 2 has been met].
- (2) HMRC may not assess any penalty payable under paragraph 1 in respect of the arrangements concerned until [^{F2}condition 1 or condition 2 is met].
- [^{F3}(2A) Condition 1 is that a defeat that is a tribunal or court defeat is incurred in the case of at least one of the number of related arrangements implementing the proposal.
- (2B) Condition 2 is that the required number or percentage of relevant defeats is reached.
- (2C) For the purposes of this paragraph, a defeat incurred in respect of arrangements is a “tribunal or court defeat” if—
- (a) condition A (in paragraph 5) is met and the adjustments mentioned in paragraph 5(2) have been confirmed by a tribunal or court, or
 - (b) condition B (in paragraph 6) is met and the assessment mentioned in paragraph 6(2) has been confirmed by a tribunal or court.
- (2D) An adjustment or assessment (as the case may be) has been confirmed by a tribunal or court if the First-tier Tribunal, the Upper Tribunal or a court has determined in proceedings before it that the adjustment or assessment in question should not be varied.
- (2E) For the purposes of sub-paragraph (2D), disregard variations that do not substantively alter the basis of the adjustment or assessment in question.]
- (3) For the purposes of this paragraph the “required [^{F4}number or] percentage of relevant defeats” is reached when HMRC reasonably believe that [^{F5}—
- (a) the number of related arrangements implementing the proposal is fewer than 21 and defeats have been incurred in the case of 50% or more of those arrangements;
 - (b) the number of related arrangements implementing the proposal is more than 20 but fewer than 44 and defeats have been incurred in the case of 11 or more of those arrangements;
 - (c) the number of related arrangements implementing the proposal is more than 43 but fewer than 200 and defeats have been incurred in the case of 25% or more of those arrangements;
 - (d) the number of related arrangements implementing the proposal is 200 or more and defeats have been incurred in the case of 50 or more of those arrangements.]
- (4) Sub-paragraph (2) does not apply in relation to a penalty if the person liable to the penalty requests assessment of the penalty sooner than the time allowed by sub-paragraph (2).

Textual Amendments

- F1** Words in [Sch. 16 para. 21\(1\)\(c\)](#) substituted (with effect in accordance with s. 123(9)-(11) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 123\(2\)\(a\)](#) (with s. 123(9))
- F2** Words in [Sch. 16 para. 21\(2\)](#) substituted (with effect in accordance with s. 123(9)-(11) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 123\(2\)\(b\)](#) (with s. 123(9))

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- F3** Sch. 16 para. 21(2A)-(2E) inserted (with effect in accordance with s. 123(9)-(11) of the amending Act) by Finance Act 2021 (c. 26), s. 123(2)(c) (with s. 123(9))
- F4** Words in Sch. 16 para. 21(3) inserted (with effect in accordance with s. 123(9)-(11) of the amending Act) by Finance Act 2021 (c. 26), s. 123(2)(d)(i) (with s. 123(9))
- F5** Sch. 16 para. 21(3)(a)-(d) substituted for words (with effect in accordance with s. 123(9)-(11) of the amending Act) by Finance Act 2021 (c. 26), s. 123(2)(d)(ii) (with s. 123(9))

Time limit for assessment

- 22 (1) An assessment of a person as liable to a penalty under paragraph 1 may not take place after the relevant time.
- (2) In this paragraph “the relevant time” means, subject to sub-paragraphs (3) to (6)—
- (a) where a GAAR final decision notice within the meaning of paragraph 24(1) has been given in relation to the arrangements to which the penalty relates, the end of 12 months beginning with the date on which T incurs the defeat mentioned in paragraph 1;
 - (b) where a notice under paragraph 25 has been given to the person mentioned in sub-paragraph (1) above in respect of the arrangements to which the penalty relates, the end of 12 months beginning with the end of the time allowed for making representations in respect of that notice;
 - (c) where—
 - (i) a referral has been made under paragraph 26 in respect of the arrangements to which the penalty relates, and
 - (ii) paragraph (d) does not apply,the end of 12 months beginning with the date on which the opinion of the GAAR Advisory Panel is given on the referral (within the meaning given by paragraph 34(6));
 - (d) where a notice under paragraph 35 has been given to the person mentioned in sub-paragraph (1) above in respect of the arrangements to which the penalty relates, the end of 12 months beginning with the end of the time allowed for making representations in respect of that notice.
- (3) Where—
- (a) paragraph 21 prevented a penalty from being assessed before [^{F6}condition 1 or condition 2 was met], and
 - [^{F7}(b) condition 1 or condition 2 has been met,]
- the relevant time in relation to that penalty is whichever is the later of—
- (i) the relevant time given by sub-paragraph (2), and
 - (ii) the end of 12 months beginning with the date on which [^{F8}the first of condition 1 or condition 2 was met].
- (4) Where under paragraph 21(4) a person requests assessment of a penalty, the relevant time in relation to that penalty is whichever is the later of—
- (a) the relevant time given by sub-paragraph (2), and
 - (b) the end of 12 months beginning with the date on which the request is made, and sub-paragraph (3) does not apply to the penalty even if [^{F9}condition 1 or condition 2 is met].
- (5) Sub-paragraph (6) applies where—

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- (a) at any time a declaration has been made under paragraph 44 for the purposes of any determination of whether a person is liable to a penalty under paragraph 1 in relation to particular arrangements (“the arrangements concerned”), and
 - (b) subsequently, facts that in the Commissioners' opinion are sufficient to indicate that the declaration contains a material inaccuracy have come to the Commissioners' knowledge.
- (6) The relevant time in respect of any penalty under paragraph 1 payable by that person in relation to the arrangements concerned is whichever is the later of—
- (a) the relevant time given by the preceding provisions of this paragraph, and
 - (b) the end of 12 months beginning with the date on which such facts came to the Commissioners' knowledge.

Textual Amendments

- F6** Words in [Sch. 16 para. 22\(3\)\(a\)](#) substituted (with effect in accordance with s. 123(9)-(11) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 123\(3\)\(a\)\(i\)](#) (with [s. 123\(9\)](#))
- F7** Words in [Sch. 16 para. 22\(3\)\(b\)](#) substituted (with effect in accordance with s. 123(9)-(11) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 123\(3\)\(a\)\(ii\)](#) (with [s. 123\(9\)](#))
- F8** Words in [Sch. 16 para. 22\(3\)\(b\)\(ii\)](#) substituted (with effect in accordance with s. 123(9)-(11) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 123\(3\)\(a\)\(iii\)](#) (with [s. 123\(9\)](#))
- F9** Words in [Sch. 16 para. 22\(4\)](#) substituted (with effect in accordance with s. 123(9)-(11) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 123\(3\)\(b\)](#) (with [s. 123\(9\)](#))

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

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

- Sch. A1 para. 8(6)(b) omitted by [2022 c. 3 Sch. 1 para. 32\(b\)](#)
- Sch. A1 para. 8(2) substituted by [2022 c. 3 Sch. 1 para. 32\(a\)](#)