SCHEDULES

SCHEDULE 38

TAX AGENTS: DISHONEST CONDUCT

PART 5

PENALTIES: ASSESSMENT ETC

Assessment of penalties

29 (1) If a person becomes liable to a penalty under Part 3 or 4 of this Schedule, HMRC may assess the penalty.

(2) But, in the case of a penalty under Part 4, they may only do so if a conduct notice has been given to the person and either—

(a) the time allowed for giving notice of appeal against the determination has expired without notice of appeal being given, or

(b) notice of appeal against the determination was given within the time allowed, but the appeal has been withdrawn or the determination confirmed.

(3) Paragraph 7(4) applies for the purposes of sub-paragraph (2)(b).

(4) If HMRC assess a penalty, they must notify the person.

30 (1) HMRC may not assess a penalty under this Schedule after the applicable deadline.

(2) For a penalty under Part 3, the applicable deadline is the end of the period of 12 months beginning with the day on which the person became liable to the penalty.

(3) For a penalty under Part 4, the applicable deadline is the end of the period of 12 months beginning with the later of—

(a) the first day on which HMRC may assess the penalty (see paragraph 29(2)), and

(b) day X.

(4) If a loss of tax revenue is brought about by the dishonest conduct, day X is—

(a) the day immediately following the end of the appeal period for the assessment or determination of the tax revenue lost (or, if more than one client is involved, the end of the last such period), or

(b) if there is no such assessment or determination, the day on which the amount of tax revenue lost is ascertained.

(5) Otherwise, day X is the day on which HMRC ascertain that no loss of tax revenue has been brought about by the dishonest conduct.

(6) In sub-paragraph (4), "appeal period" means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been withdrawn or determined.

Appeal against penalty

31 (1) A person may appeal against a decision of HMRC—

(a) that a penalty is payable under Part 3 of this Schedule, or

(b) as to the amount of a penalty payable under Part 3 or 4 of this Schedule.

(2) Notice of appeal must be given—

(a) in writing to HMRC, and

(b) before the end of the period of 30 days beginning with the day on which notification of the penalty was issued.

(3) It must state the grounds of appeal.

(4) On an appeal under sub-paragraph (1)(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.

(5) On an appeal under sub-paragraph (1)(b) that is notified to the tribunal, the tribunal may—

(a) confirm the decision, or

(b) substitute for the decision another decision that HMRC had power to make.

(6) If, in the case of an appeal against a penalty under Part 4, the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 27 (special reduction)—

(a) to the same extent as HMRC (which may mean applying the same reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of that paragraph was flawed (when considered in the light of the principles applicable in proceedings for judicial review).

(7) Subject to this paragraph and paragraph 32, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to income tax.

Enforcement of penalty

32 (1) A penalty under this Schedule must be paid—

(a) before the end of the period of 30 days beginning with the day on which notification of the penalty was issued, or

(b) if a notice of appeal under paragraph 31 is given, before the end of the period of 30 days beginning with the day on which the appeal is withdrawn or determined.

(2) A penalty under this Schedule may be enforced as if it were income tax charged in an assessment and due and payable.

Double jeopardy

33 A person is not liable to a penalty under this Schedule in respect of anything in respect of which the person has been convicted of an offence.

34 (1) A person is not liable to a penalty under this Schedule in respect of anything in respect of which the person is personally liable to a penalty under—

(a) Schedule 24 to FA 2007 (penalties for errors),
(b) Schedule 41 to FA 2008 (penalties for failure to notify etc), or
(c) Schedule 55 to FA 2009 (penalties for failure to make a return etc).

(2) Sub-paragraph (1) applies where, for example, the person is personally liable by virtue of section 48(3) of VATA 1994 (VAT representatives).

Power to change amount of penalties

35 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant day, they may by regulations substitute for the sums for the time being specified in paragraphs 22(1), 23, 26(2), 27(1) and (2)(a) and 28(3) such other sums as appear to them to be justified by the change.

(2) "Relevant day", in relation to a specified sum, means—
(a) the day on which this Act is passed, and
(b) each day on which the power conferred by sub-paragraph (1) has been exercised in relation to that sum.

(3) Regulations under this paragraph do not apply to a failure or conduct that began before the day on which they come into force.

(4) The power to make regulations under this paragraph is exercisable by statutory instrument.

(5) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.