

SCHEDULES

SCHEDULE 38

TAX AGENTS: DISHONEST CONDUCT

PART 6

MISCELLANEOUS PROVISION AND INTERPRETATION

Application of provisions of TMA 1970

- 36 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule 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).

Tax

- 37 (1) “Tax” means—
- (a) income tax,
 - (b) capital gains tax,
 - (c) corporation tax,
 - (d) construction industry deductions,
 - (e) VAT,
 - (f) insurance premium tax,
 - (g) inheritance tax,
 - (h) stamp duty land tax,
 - (i) stamp duty reserve tax,
 - (j) petroleum revenue tax,
 - (k) aggregates levy,
 - (l) climate change levy,
 - (m) landfill tax, and
 - (n) any duty of excise other than vehicle excise duty.
- (2) “Construction industry deductions” means construction industry deductions under Chapter 3 of Part 3 of FA 2004.
- (3) “Corporation tax” includes an amount assessable or chargeable as if it were corporation tax.
- (4) “VAT” means—
- (a) value added tax charged in accordance with VATA 1994,

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- (b) amounts recoverable under paragraph 5(2) of Schedule 11 to that Act (amounts shown on invoices as VAT), and
- (c) amounts treated as VAT by virtue of regulations under section 54 of that Act (farmers etc).

General interpretation

- 38 In this Schedule—
- “appointed” includes engaged;
 - “client” (except in paragraph 17)—
 - (a) has the meaning given in paragraph 2(1), and
 - (b) in relation to a particular tax agent, means a client of that tax agent;
 - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
 - “conduct notice” has the meaning given in paragraph 4;
 - “the document-holder” has the meaning given in paragraph 8;
 - “document” includes a copy of a document (see also section 114 of FA 2008);
 - “file access notice” has the meaning given in paragraph 8;
 - “HMRC” means Her Majesty’s Revenue and Customs;
 - “organisation” includes any person or firm carrying on a business;
 - “specify” includes describe;
 - “tax period” means a tax year, accounting period or other period in respect of which tax is charged;
 - “the tribunal” means the First-tier Tribunal or, where determined by or under the Tribunal Procedure Rules, the Upper Tribunal.
- 39 (1) A reference in this Schedule to clients of a tax agent (or to a tax agent’s clients) is a reference to the persons whom the agent assists with their tax affairs.
- (2) Sub-paragraph (1) applies even if—
- (a) the agent works for an organisation, and
 - (b) it is the organisation that is appointed to give the assistance.
- 40 A loss of tax revenue is taken for the purposes of this Schedule to be (or to be capable of being) brought about by dishonest conduct despite the fact that the loss can be recovered or properly accounted for (following discovery of the conduct or otherwise).
- 41 A reference in this Schedule to working for an organisation includes being a partner or member of an organisation.
- 42 A reference in a provision of this Schedule to an authorised officer is to an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purposes of that provision.

Relationship with other enactments

- 43 Nothing in this Schedule limits—
- (a) any liability a person may have under any other enactment in respect of conduct in respect of which a person is liable to a penalty under this Schedule, or

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- (b) any power a person may have under any other enactment to obtain relevant documents.