

## SCHEDULES

### SCHEDULE 18

#### SERIAL TAX AVOIDANCE

#### PART 5

#### PENALTY

##### *Penalties: reasonable excuse*

- 42 (1) A person is not liable to a penalty under paragraph 30 in respect of a relevant defeat if the person satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that the person had a reasonable excuse for the relevant failure to which that relevant defeat relates (see paragraph 43).
- (2) Sub-paragraph (3) applies if—
- (a) a person has incurred a relevant defeat in respect of which the person is liable to a penalty under paragraph 30, and
  - (b) before incurring that defeat the person had been given, or become liable to be given, an excepted warning notice.
- (3) The person is treated for the purposes of sub-paragraphs (2) to (4) of paragraph 30 (rate of penalty) as not having been given, and not having become liable to be given, the excepted notice (so far as it relates to the relevant defeat in respect of which the person had a reasonable excuse).
- (4) A warning notice is “excepted” for the purposes of this paragraph if the person was not liable to a penalty in respect of the defeat specified in it because the person had a reasonable excuse for the relevant failure in question.
- (5) For the purposes of this paragraph, in the case of a person (“P”)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
  - (b) where P relies on another person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant failure, and
  - (c) where P had a reasonable excuse for the relevant failure but the excuse had ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.
- (6) In determining for the purposes of this paragraph whether or not a person (“P”) had a reasonable excuse for any action, failure or inaccuracy, reliance on advice is to be taken automatically not to constitute a reasonable excuse if the advice is addressed to, or was given to, a person other than P or takes no account of P’s individual circumstances.