

SCHEDULES

SCHEDULE 16

PENALTIES FOR ENABLERS OF DEFEATED TAX AVOIDANCE

PART 3

“DEFEAT” IN RESPECT OF ABUSIVE TAX ARRANGEMENTS

Condition A

- 5 (1) Condition A is that—
- (a) T, or a person on behalf of T, has given HMRC a document of a kind listed in the Table in paragraph 1 of Schedule 24 to FA 2007 (returns etc),
 - (b) the document was submitted on the basis that a tax advantage (“the relevant tax advantage”) arose from the arrangements concerned,
 - (c) the relevant tax advantage has been counteracted, and
 - (d) the counteraction is final.
- (2) For the purposes of this paragraph the relevant tax advantage has been “counteracted” if adjustments have been made in respect of T’s tax position on the basis that the whole or part of the relevant tax advantage does not arise.
- (3) For the purposes of this paragraph a counteraction is “final” when the adjustments in question, and any amounts arising from the adjustments, can no longer be varied, on appeal or otherwise.
- (4) In this paragraph “adjustments” means any adjustments, whether by way of an assessment, the modification of an assessment or return, the amendment or disallowance of a claim, a payment, the entering into of a contract settlement or otherwise.
- Accordingly, references to “making” adjustments include securing that adjustments are made by entering into a contract settlement.
- (5) Any reference in this paragraph to giving HMRC a document includes—
- (a) communicating information to HMRC in any form and by any method;
 - (b) making a statement or declaration in a document.
- (6) Any reference in this paragraph to a document of a kind listed in the Table in paragraph 1 of Schedule 24 to FA 2007 includes—
- (a) a document amending a document of a kind so listed, and
 - (b) a document which—
 - (i) relates to national insurance contributions, and
 - (ii) is a document in relation to which that Schedule applies.