

SCHEDULES

SCHEDULE 16

PENALTIES FOR ENABLERS OF DEFEATED TAX AVOIDANCE

PART 8

APPEALS

- 37 A person may appeal against—
- (a) a decision of HMRC that a penalty under paragraph 1 is payable by that person, or
 - (b) a decision of HMRC as to the amount of a penalty under paragraph 1 payable by the person.
- 38 (1) An appeal under paragraph 37 is to be treated in the same way as an appeal against an assessment to the tax to which the arrangements concerned relate (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (2) Sub-paragraph (1) does not apply—
- (a) so as to require a person to pay a penalty under paragraph 1 before an appeal against the assessment of the penalty is determined;
 - (b) in respect of any other matter expressly provided for by this Schedule.
- (3) In this paragraph “the arrangements concerned” means the arrangements to which the penalty relates.
- 39 (1) On an appeal under paragraph 37(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.
- (2) On an appeal under paragraph 37(b) that is notified to the tribunal, the tribunal may—
- (a) affirm HMRC’s decision, or
 - (b) substitute for that decision another decision that HMRC had power to make.
- (3) If the tribunal substitutes its decision for HMRC’s, the tribunal may rely on paragraph 18—
- (a) to the same extent as HMRC (which may mean applying the same percentage 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 paragraph 18 was flawed.
- (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (5) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 38(1)).