

## SCHEDULES

### SCHEDULE 13

#### JOINT AND SEVERAL LIABILITY OF COMPANY DIRECTORS ETC

##### *Cases involving penalty for facilitating avoidance or evasion*

- 5 (1) An authorised HMRC officer may give a notice under this sub-paragraph to an individual if it appears to the officer that conditions A to D are met.
- (2) Condition A is that—
- (a) a penalty under any of the specified provisions (see sub-paragraph (6)) has been imposed on a company by HMRC, or
  - (b) proceedings have been commenced before the First-tier Tribunal for a penalty under any of those provisions to be imposed on a company.
- (3) Condition B is that—
- (a) the company is subject to an insolvency procedure, or
  - (b) there is a serious possibility of the company becoming subject to an insolvency procedure.
- (4) Condition C is that the individual was a director or shadow director of the company, or a participator in it, at the time of any act or omission in respect of which—
- (a) the penalty was imposed, or
  - (b) the proceedings for the penalty were commenced.
- (5) Condition D is that there is a serious possibility that some or all of the penalty will not be paid.
- (6) The specified provisions are—
- (a) section 98C(1) of the TMA 1970 (penalties for breach of certain obligations relating to disclosure of tax avoidance schemes by promoters etc of schemes);
  - (b) paragraphs 2 and 3 of Schedule 35 to FA 2014 (promoters of tax avoidance schemes: penalties);
  - (c) paragraph 1 of Schedule 20 to FA 2016 (penalties for enablers of offshore tax evasion or non-compliance);
  - (d) Part 1 of Schedule 16 to F(No.2)A 2017 (penalties for enablers of defeated tax avoidance);
  - (e) Part 2 of Schedule 17 to that Act (penalties for breach of certain obligations relating to disclosure of tax avoidance schemes by promoters etc of schemes).
- (7) A notice under sub-paragraph (1) must—
- (a) specify the company to which the notice relates;
  - (b) set out the reasons for which it appears to the officer that conditions A to D are met;

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*Status: This is the original version (as it was originally enacted).*

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- (c) state the effect of the notice;
  - (d) offer the individual a review of the decision to give the notice, and explain the effect of paragraph 11 (right of review);
  - (e) explain the effect of paragraph 13 (right of appeal).
- (8) It must also—
- (a) specify the amount of the penalty, if sub-paragraph (2)(a) applies;
  - (b) if sub-paragraph (2)(b) applies, indicate that the amount will be specified in a further notice.
- (9) Once the existence and amount of the penalty have been established in a case where sub-paragraph (2)(b) applies, an authorised HMRC officer must give a further notice specifying that amount.
- (10) A notice under sub-paragraph (9) must—
- (a) be given to the individual to whom the notice under sub-paragraph (1) was given;
  - (b) offer the individual a review of the decision to give the notice, and explain the effect of paragraph 11 (right of review);
  - (c) explain the effect of paragraph 13 (right of appeal).
- (11) An individual who is given a notice under sub-paragraph (1) is jointly and severally liable with the company (and with any other individual who is given such a notice) for the amount of the penalty.
- (12) The amount of the individual’s liability under sub-paragraph (11) is taken to be the amount specified under sub-paragraph (8)(a) or (9).
- For provision under which the amount so specified may be varied, see—
- (a) paragraph 10 (modification etc),
  - (b) paragraphs 11 and 12 (review), and
  - (c) paragraphs 13 and 14 (appeal).