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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2022, SCHEDULE 17. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 17

Section 96

#### LARGE BUSINESSES: NOTIFICATION OF UNCERTAIN TAX TREATMENT

#### PART 1

##### KEY DEFINITIONS

1 This Part applies for the purposes of this Schedule.

##### *“Company” and “qualifying company”*

- 2 (1) “Company” means a body corporate (wherever incorporated) but does not include—
- (a) a limited liability partnership that is a partnership for the purposes of this Schedule (see paragraph 4);
  - (b) a public authority as defined by the Freedom of Information Act 2000 or a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002 (asp 13);
  - (c) an open-ended investment company within the meaning of section 613 of CTA 2010;
  - (d) a registered society within the meaning of—
    - (i) the Co-operative and Community Benefit Societies Act 2014, or
    - (ii) the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)).
- (2) A company is a “qualifying company” in any financial year if, in the previous financial year, the company had either or both of the following—
- (a) relevant UK turnover of more than £200 million;
  - (b) a relevant UK balance sheet total of more than £2 billion.
- (3) If the company was not a member of a group at the end of the previous financial year—
- (a) “relevant UK turnover” means the company’s UK turnover;
  - (b) “relevant UK balance sheet total” means the company’s UK balance sheet total.
- (4) If the company was a member of a group at the end of the previous financial year—
- (a) “relevant UK turnover” means the aggregate UK turnover of the company (“C”) and each other company that was—
    - (i) a member of the same group as C at the end of C’s previous financial year, and
    - (ii) within the charge to corporation tax on income at any time during C’s previous financial year;

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- (b) “relevant UK balance sheet total” means the aggregate UK balance sheet totals of C and each other such company.
- (5) If the financial year of a company that was a member of the same group as C does not end on the same day as C’s previous financial year, the figures for that company that are to be included in the aggregate figures are the figures for that company’s financial year ending last before the end of C’s previous financial year.
- (6) The Treasury may by regulations provide that a company of a description specified in the regulations is not a qualifying company for the purposes of this Schedule (or any such purpose specified in the regulations).

*“Group”*

- 3 (1) A company is a member of a group if—
  - (a) another company is its 51% subsidiary, or
  - (b) it is a 51% subsidiary of another company.
- (2) Two companies are members of the same group if—
  - (a) one is a 51% subsidiary of the other, or
  - (b) both are 51% subsidiaries of another company.
- (3) Sub-paragraph (4) applies where a company (“Q”)—
  - (a) is a qualifying asset holding company for the purposes of Schedule 2 to this Act, and
  - (b) is a member of a worldwide group, within the meaning given by section 473 of TIOPA 2010.
- (4) Another company is not a member of the same group as Q for the purposes of this Schedule if, by virtue of paragraph 42(2)(a) of Schedule 2 to this Act, that other company is not a member of the same worldwide group as Q for the purposes of Part 10 of TIOPA 2010 (corporate interest restriction).
- (5) Chapter 3 of Part 24 of CTA 2010 (meaning of 51% subsidiary) applies for the purposes of this Schedule as it applies for the purposes of the Corporation Tax Acts.

*“Partnership” and “qualifying partnership”*

- 4 (1) “Partnership” means a partnership (wherever formed) or a limited liability partnership incorporated in the United Kingdom that is carrying on a trade, business or profession with a view to profit.
- (2) A partnership is not a partnership for the purposes of this Schedule if it is—
  - (a) a collective investment scheme, within the meaning of Part 17 of FISMA 2000, or
  - (b) an AIF, as defined by regulation 3 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773).
- (3) A partnership is a “qualifying partnership” in any financial year if, in the previous financial year, the partnership had either or both of the following—
  - (a) UK turnover of more than £200 million;
  - (b) a UK balance sheet total of more than £2 billion.

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- (4) The Treasury may by regulations provide that a partnership of a description specified in the regulations is not a qualifying partnership for the purposes of this Schedule (or any such purpose specified in the regulations).

*“Relevant tax” and “relevant return”*

- 5 (1) A tax that is listed in the first column of the following table is a “relevant tax” and a return which appears in the corresponding entry in the second column of the table is, in relation to the relevant tax concerned, a “relevant return”.

<i>Tax to which return relates</i>	<i>Return</i>
Corporation tax	Company tax return
Income tax or corporation tax	Partnership return
Income tax	PAYE return
VAT	VAT return

- (2) In this Schedule—
- “company tax return” means a return under paragraph 3 of Schedule 18 to FA 1998;
  - “corporation tax” includes any amount chargeable under section 330(1), 455 or 464A of CTA 2010 as if it were corporation tax but does not include—
    - (a) an amount chargeable under section 269DA of CTA 2010 (surcharge on banking companies);
    - (b) an amount chargeable under Part 9A of TIOPA 2010 (controlled foreign companies);
    - (c) an amount of the bank levy (see Schedule 19 to FA 2011);
  - “partnership return” has the same meaning as in TMA 1970;
  - “PAYE return” means a return under PAYE regulations;
  - “VAT” means value added tax charged in accordance with VATA 1994;
  - “VAT return” means a return under regulations under paragraph 2 of Schedule 11 to VATA 1994.
- (3) A relevant return is delivered to HMRC “for” a financial year if it relates to—
- (a) the whole of that financial year, or
  - (b) a part of that financial year.
- (4) References to a return being required to be made include a requirement to file, deliver or submit a return (however expressed).

*“Financial year”*

- 6 (1) “Financial year”—
- (a) in relation to a company which is (or is treated as if it is) formed and registered under the Companies Act 2006, has the meaning given by that Act (see section 390 of the Companies Act 2006);
  - (b) in relation to a company to which Chapter 3 of Part 5 of the Overseas Companies Regulations 2009 (S.I. 2009/1801) (companies not required to prepare and disclose accounts under parent law) applies, has the meaning

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given by regulation 37 of those regulations (which modifies the application of sections 390 to 392 of the Companies Act 2006);

- (c) in relation to a company to which Chapter 3 of Part 6 of the Overseas Companies Regulations 2009 (institutions not required to prepare and disclose accounts under parent law) applies, has the meaning given by regulation 52 of those regulations (which modifies the application of sections 390 to 392 of the Companies Act 2006);
- (d) in relation to any other company or a non-UK resident partnership, means any period in respect of which a profit and loss account for the company's or (as the case may be) the partnership's undertaking is required to be made up (whether by its constitution or by the law under which it is formed), whether that period is 12 months or not;
- (e) in relation to a UK resident partnership, means any period of account for which its representative partner has provided, or is required to provide, a partnership statement [<sup>F1</sup>within the meaning] of TMA 1970.

(2) In this paragraph—

“UK resident partnership” means a partnership which is resident in the United Kingdom;

“non-UK resident partnership” means a partnership which is not resident in the United Kingdom;

“representative partner”, in relation to a UK resident partnership, means

- (a) [<sup>F2</sup>the partner who is required by a notice served under or by virtue of section 12AA(2) or (3) of TMA 1970 to make and deliver returns to an officer of Revenue and Customs][<sup>F3</sup>, or]
- (b) [<sup>F4</sup>the nominated partner within the meaning of paragraph 5 of Schedule A1 to TMA 1970.]

(3) For the purposes of this paragraph a partnership is resident in the territory in which the control and management of the activities of the partnership take place.

#### Textual Amendments

- F1** Words in [Sch. 17 para. 6\(1\)\(e\)](#) substituted (1.4.2022 in relation to relevant returns that are required to be made on or after that date) by 2017 c. 32, [Sch. 14 para. 50\(2\)](#) (as inserted by [Finance Act 2022 \(c. 3\)](#), [Sch. 17 para. 31](#))
- F2** Words in [Sch. 17 para. 6\(2\)](#) renumbered (1.4.2022 in relation to relevant returns that are required to be made on or after that date) by 2017 c. 32, [Sch. 14 para. 50\(3\)\(a\)](#) (as inserted by [Finance Act 2022 \(c. 3\)](#), [Sch. 17 para. 31](#))
- F3** Word in [Sch. 17 para. 6\(2\)](#) inserted (1.4.2022 in relation to relevant returns that are required to be made on or after that date) by 2017 c. 32, [Sch. 14 para. 50\(3\)\(b\)](#) (as inserted by [Finance Act 2022 \(c. 3\)](#), [Sch. 17 para. 31](#))
- F4** Words in [Sch. 17 para. 6\(2\)](#) inserted (1.4.2022 in relation to relevant returns that are required to be made on or after that date) by 2017 c. 32, [Sch. 14 para. 50\(3\)\(c\)](#) (as inserted by [Finance Act 2022 \(c. 3\)](#), [Sch. 17 para. 31](#))

“Turnover” and “balance sheet total”

7 (1) “Turnover”—

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- (a) in relation to a company which is (or is treated as if it is) formed and registered under the Companies Act 2006, has the same meaning as in Part 15 of that Act (see section 474 of the Companies Act 2006);
  - (b) in relation to any other company or a partnership, has a corresponding meaning.
- (2) “UK turnover”—
- (a) in relation to a UK resident company, means all of its turnover;
  - (b) in relation to a non-UK resident company, means so much of its turnover as, on a just and reasonable apportionment, is attributable to the activities in respect of which the company is within the charge to corporation tax on income;
  - (c) in relation to a UK resident partnership, means all of its turnover;
  - (d) in relation to a non-UK resident partnership, means so much of its turnover as, on a just and reasonable apportionment, is attributable to any permanent establishment that it has in the United Kingdom.
- (3) “Balance sheet total”, in relation to a company or partnership and a financial year, means the aggregate of the amounts shown as assets in its balance sheet at the end of the financial year.
- (4) “UK balance sheet total”—
- (a) in relation to a UK resident company, means its balance sheet total;
  - (b) in relation to a non-UK resident company, means so much of its balance sheet total as, on a just and reasonable apportionment, is attributable to the activities in respect of which the company is within the charge to corporation tax on income;
  - (c) in relation to a UK resident partnership, means its balance sheet total;
  - (d) in relation to a non-UK resident partnership, means so much of its balance sheet total as, on a just and reasonable apportionment, is attributable to any permanent establishment that it has in the United Kingdom.
- (5) In this paragraph—
- “UK resident company” and “non-UK resident company” have the same meaning as in the Corporation Tax Acts;
  - “UK resident partnership” means a partnership which is resident in the United Kingdom;
  - “non-UK resident partnership” means a partnership which is not resident in the United Kingdom.
- (6) For the purposes of this paragraph—
- (a) a partnership is resident in the territory in which the control and management of the activities of the partnership take place;
  - (b) a non-UK resident partnership is to be regarded as having a permanent establishment in the United Kingdom if, were it a company within the meaning of the Corporation Tax Acts, it would have a permanent establishment in the United Kingdom by virtue of Chapter 2 of Part 24 of CTA 2010.

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## PART 2

### REQUIREMENT TO NOTIFY HMRC OF UNCERTAIN TAX TREATMENT

#### *Requirement to notify*

- 8 (1) Sub-paragraph (2) applies if—
- (a) a relevant return is delivered to HMRC for a financial year by, or in respect of, a company or partnership, and
  - (b) the company or partnership is a qualifying company, or qualifying partnership, in that financial year.
- (2) The company or partnership must notify HMRC if the relevant return includes an amount (including nil) brought into account for the purposes of a relevant tax and—
- (a) at the time the return is delivered to HMRC, the amount is an uncertain amount (see paragraph 10), or
  - (b) after the return is delivered to HMRC, the amount becomes an uncertain amount by virtue of paragraph 10(2) (accounting provision made to reflect the probability that a different tax treatment will be applied to a transaction to which the amount relates).
- (3) In sub-paragraph (2)—
- (a) the reference to an amount included in a relevant return includes the inclusion of that amount as a result of an amendment of the return (other than amendment made by HMRC), and
  - (b) in such a case, references to the return being delivered to HMRC are to be read as references to HMRC being notified of the amendment.
- (4) The notification requirement in sub-paragraph (2)—
- (a) applies separately in relation to each relevant tax;
  - (b) applies only if the threshold test in paragraph 11(2) is met;
  - (c) is subject to the general exemption in paragraph 18;
  - (d) is subject to the exemption in paragraph 19 for certain group transactions;
  - (e) must be complied with on or before the date determined in accordance with paragraph 9.
- (5) Where, in relation to a relevant tax, a company or partnership is required by sub-paragraph (2)(a) to notify HMRC about more than one amount that is included in a relevant return delivered for the financial year in question (other than as a result of an amendment of the return after the notification is given), a single notification must be given that covers each such amount.
- (6) A notification under sub-paragraph (2) must be given by such means, and in such form, and include such information, as is specified in a notice published by HMRC.

#### *Deadline for notification*

- 9 (1) The time by which a notification required by paragraph 8(2) must be given to HMRC is determined in accordance with the following table—

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<i>Case</i>	<i>Deadline for notification</i>
Notification under paragraph 8(2)(a) of an amount included in a company tax return delivered to HMRC for a financial year	On or before the later of— (a) the filing date for the return (within the meaning given by paragraph 14 of Schedule 18 to FA 1998), or (b) if the period for which the return is required to be made is a period for which the company is required to deliver accounts under the Companies Act 2006, the last day for the delivery of those accounts to the registrar of companies
Notification under paragraph 8(2)(a) of an amount included in a partnership return delivered to HMRC for a financial year	On or before the date on which the return is required to be made
Notification under paragraph 8(2)(a) of an amount included in a PAYE return delivered to HMRC for a financial year	On or before the date on which the last PAYE return for the financial year is required to be made
Notification under paragraph 8(2)(a) of an amount included in a VAT return delivered to HMRC for a financial year	On or before the date on which the last VAT return for the financial year is required to be made
Notification under paragraph 8(2)(b) of an amount included in a company tax return or partnership return delivered to HMRC for a financial year	On or before the date (determined in accordance with this table) by which the notification would be required if— (a) the notification were required by paragraph 8(2)(a), and (b) the return were delivered to HMRC for the financial year in which the accounting provision is recognised in the accounts of the company or partnership (see paragraph 10(2)).
Notification under paragraph 8(2)(b) of an amount included in a PAYE return or VAT return delivered to HMRC for a financial year	On or before the date (determined in accordance with this table) by which the notification would be required if— (a) the notification were required by paragraph 8(2)(a), and (b) the return were delivered to HMRC for the financial year following the financial year in which the accounting provision is recognised in the accounts of the company or partnership.

- (2) In the table, references to a notification under paragraph 8(2)(a) in relation to a return do not include references to a notification required as a result of an amendment of the return (see instead sub-paragraph (3)).
- (3) Where the notification is required by paragraph 8(2)(a) and concerns an amount included in a relevant return as a result of an amendment of the return, the notification must be given before the end of the period of 30 days beginning with the day on which HMRC is notified of the amendment.

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### *Uncertain tax treatment*

- 10 (1) For the purposes of this Part, an amount brought into account by a company or partnership for the purposes of a relevant tax is an “uncertain amount” if either or both of sub-paragraphs (2) and (3) apply in relation to the amount.
- (2) This sub-paragraph applies if provision has been recognised in the accounts of the company or partnership to reflect the probability that a different tax treatment will be applied to a transaction to which the amount relates.
- (3) This sub-paragraph applies if the tax treatment applied in arriving at the amount relies (wholly or in part) on an interpretation or application of the law that is not in accordance with the way in which it is known that HMRC would interpret or apply the law.
- (4) For the purposes of sub-paragraph (3), HMRC’s position on a matter is taken to be “known” by a company or partnership if it is apparent from—
- (a) guidance, statements or other material of HMRC that is of general application and in the public domain, or
  - (b) dealings with HMRC by or in respect of the company or partnership (whether or not they concern the amount in question or the transaction to which the amount relates).

### *Threshold test*

- 11 (1) This paragraph and paragraphs 12 to 17 apply for determining, in relation to an uncertain amount included in a relevant return, whether the threshold test is met (see paragraph 8(4)(b)).
- (2) The threshold test is met if it is reasonable to conclude that, by bringing the uncertain amount into account for the purposes of a relevant tax—
- (a) the company or partnership would obtain a tax advantage it would not obtain if the uncertain amount were the expected amount, and
  - (b) in the relevant period, the aggregate value of all such tax advantages that would be obtained by bringing the uncertain amount, and any related uncertain amounts, into account is more than £5 million.
- (3) For these purposes—
- (a) “tax advantage”—
    - (i) in relation to income tax or corporation tax, has the meaning given by paragraph 12;
    - (ii) in relation to VAT, has the meaning given by paragraph 13;
  - (b) the value of the tax advantage is determined in accordance with paragraph 14;
  - (c) the “expected amount”, in relation to an uncertain amount, is determined in accordance with paragraph 15;
  - (d) the “relevant period” is determined in accordance with paragraph 16;
  - (e) whether two or more uncertain amounts are “related” is determined in accordance with paragraph 17.
- (4) Where the relevant period is more than or less than 12 months, the sum specified in sub-paragraph (2)(b) is to be proportionately increased or reduced.



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- (5) The Treasury may by regulations amend sub-paragraph (2)(b) by substituting a different sum for the sum that is for the time being specified.

*“Tax advantage” in relation to income tax or corporation tax*

- 12 For the purposes of this Part, a “tax advantage” in relation to income tax or corporation tax includes—
- (a) a relief or increased relief from tax;
  - (b) repayment or increased repayment of tax;
  - (c) avoidance or reduction of a charge to tax or an assessment to tax;
  - (d) avoidance of a possible assessment to tax;
  - (e) deferral of a payment of tax or advancement of a repayment of tax;
  - (f) avoidance of an obligation to deduct or account for tax.

*“Tax advantage” in relation to VAT*

- 13 (1) For the purposes of this Part, a company or partnership obtains a tax advantage in relation to VAT if—
- (a) in a prescribed accounting period, the amount by which the output tax accounted for by the company or partnership is less, or is accounted for later, than would otherwise be the case;
  - (b) the company or partnership obtains a VAT credit when it would otherwise not do so, or obtains a larger credit or obtains a credit earlier than would otherwise be the case;
  - (c) in a case where the company or partnership recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case;
  - (d) in a prescribed accounting period, the amount of the company’s or partnership’s non-deductible tax is less than it otherwise would be;
  - (e) the company or partnership avoids an obligation to account for VAT.
- (2) In sub-paragraph (1)(d) “non-deductible tax”, in relation to a company or partnership, means—
- (a) input tax for which the company or partnership is not entitled to credit under section 25 of VATA 1994;
  - (b) any VAT incurred by the company or partnership which is not input tax and in respect of which the company or partnership is not entitled to a refund from the Commissioners for Her Majesty’s Revenue and Customs by virtue of any provision of VATA 1994.
- (3) For the purposes of sub-paragraph (2)(b), the VAT “incurred” by a company or partnership is—
- (a) VAT on the supply to the company or partnership of any goods or services;
  - (b) VAT paid or payable by the company or partnership on the importation of any goods.
- (4) Terms used in this paragraph which are defined in section 96 of VATA 1994 have the meanings given by that section.

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*Value of a tax advantage*

- 14 (1) The value of a tax advantage is the additional amount due or payable in respect of tax if the uncertain amount were the expected amount (subject to the following provisions of this paragraph).
- (2) The following are ignored in calculating the value of the tax advantage—
- (a) relief under Part 5 (group relief) or 5A (group relief for carried-forward losses) of CTA 2010, and
  - (b) any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.
- (3) To the extent that the tax advantage has the result that a loss is recorded for the purposes of corporation tax or income tax, and the loss has been wholly used to reduce the amount due or payable in respect of that tax, the value of the tax advantage is determined in accordance with sub-paragraph (1).
- (4) To the extent that the tax advantage has the result that a loss is recorded for the purposes of corporation tax or income tax, and the loss has not been wholly used to reduce the amount due or payable in respect of that tax, the value of the tax advantage is—
- (a) the value under sub-paragraph (1) of so much of the tax advantage as results from the part (if any) of the loss which is used to reduce the amount due or payable in respect of tax, and
  - (b) 10% of the part of the loss not so used.
- (5) Sub-paragraphs (3) and (4) apply both—
- (a) to a case where no loss would have been recorded but for the tax advantage, and
  - (b) to a case where a loss of a different amount would have been recorded (but in that case, sub-paragraphs (3) and (4) apply only to the difference between the amount of the loss recorded and the different amount that would have been recorded).
- (6) To the extent that a tax advantage results in a loss recorded for the purposes of corporation tax or income tax, the value of it is nil where, because of—
- (a) the nature of the loss, or
  - (b) the circumstances of the company or partnership that has brought the uncertain amount into account for tax purposes,
- there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

*The “expected amount”*

- 15 (1) For the purposes of the threshold test in paragraph 11(2), the “expected amount”, in relation to an uncertain amount, is the amount that it is reasonable to conclude the uncertain amount would be were the tax treatment applied in arriving at the amount—
- (a) where the uncertain amount is uncertain by virtue of paragraph 10(2), the different tax treatment for which provision has been recognised in the relevant accounts;
  - (b) where the uncertain amount is uncertain by virtue of paragraph 10(3), a tax treatment that is wholly in accordance with HMRC’s known interpretation and application of the law.

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- (2) Where more than one tax treatment is wholly in accordance with HMRC’s known interpretation and application of the law, sub-paragraph (1)(b) applies by reference to whichever of those treatments would give the least amount of tax advantage for the purposes of the threshold test.
- (3) Where sub-paragraph (1) gives more than one expected amount, because the uncertain amount is uncertain by virtue of both of sub-paragraphs (2) and (3) of paragraph 10, the threshold test applies by reference to whichever of those expected amounts would give the most amount of tax advantage.
- (4) Paragraph 10(4) applies for the purposes of sub-paragraph (1)(b) as it applies for the purposes of paragraph 10(3).

#### *Relevant period*

- 16 (1) For the purposes of the threshold test in paragraph 11(2), the “relevant period” in relation to an uncertain amount included in a relevant return is—
  - (a) where the relevant return is a company tax return, the period for which the return is made (see paragraph 5 of Schedule 18 to FA 1998);
  - (b) where the relevant return is a partnership return, the financial year for which the return is delivered to HMRC;
  - (c) where the relevant return is a PAYE return, the period corresponding to the length of the financial year for which the return is delivered to HMRC, ending with the last day of the last period for which a PAYE return is required to be made that falls wholly within that financial year;
  - (d) where the relevant return is a VAT return, the period corresponding to the length of the financial year for which the return is delivered to HMRC, ending with the last day of the last prescribed accounting period falling wholly within that financial year.
- (2) In sub-paragraph (1)(d), “prescribed accounting period” has the meaning given by section 25(1) of VATA 1994.

#### *Related amounts*

- 17 (1) For the purposes of the threshold test in paragraph 11(2), two uncertain amounts are related if—
  - (a) both amounts are included in the same relevant return, or a relevant return of the same description delivered to HMRC for the same financial year,
  - (b) both amounts relate to the same relevant tax, and
  - (c) the tax treatment applied in arriving at one amount is substantially the same as the tax treatment applied in arriving at the other amount.
- (2) Where the relevant return is a return under PAYE regulations, national insurance contributions are to be treated as income tax for the purposes of this paragraph (and accordingly, for the purposes of determining the aggregate value of the tax advantages mentioned in paragraph 11(2)(b)).

#### *General exemption*

- 18 (1) A company or partnership is not required by paragraph 8(2) to notify HMRC about an amount included in a relevant return if it is reasonable for the company or partnership

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to conclude that HMRC already have available to them all, or substantially all, of the information relating to that amount that would have been included in the notification if it had been required to be given.

- (2) For these purposes, information is to be taken to be available to HMRC if it has become available by any means, including by virtue of—
- (a) information provided under any of the following provisions—
    - (i) Schedule 11A to VATA 1994 (disclosure of avoidance schemes);
    - (ii) Part 7 of FA 2004 (disclosure of tax avoidance schemes);
    - (iii) Schedule 17 to FA 2009 (international movement of capital);
    - (iv) Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes);
    - (v) regulations under section 84 of FA 2019 (international tax enforcement: disclosable arrangements), or
  - (b) dealings with HMRC by or in respect of the company or partnership.
- (3) The Treasury may by regulations amend sub-paragraph (2)(a) to add to the provisions mentioned or to remove or modify a provision mentioned.

#### *Exemption for certain group transactions*

- 19 A company is not required by paragraph 8(2) to notify HMRC about an uncertain amount included in a relevant return if—
- (a) the relevant tax for the purposes of which the amount is brought into account is corporation tax,
  - (b) the amount relates to a transaction between the company and one or more other companies at a time when all of the companies are members of the same group (see paragraph 3), and
  - (c) the net effect of the transaction is that the value of the tax advantages (if any) that would be obtained by the group, taken as a whole, does not exceed the sum for the time being specified in paragraph 11(2)(b).

### **PART 3**

#### PENALTIES

#### *Penalty for non-compliance with paragraph 8*

- 20 (1) A company or partnership that is required by paragraph 8(2)(a) to give a notification to HMRC is liable to a penalty if it fails to give the notification in accordance with that paragraph.
- (2) The amount of the penalty under sub-paragraph (1) is—
- (a) for a first failure in respect of a relevant tax, £5,000;
  - (b) for a second failure in respect of a relevant tax, £25,000;
  - (c) for a further failure in respect of a relevant tax, £50,000.
- (3) A company or partnership that is required by paragraph 8(2)(b) to give a notification to HMRC is liable to a penalty if it fails to give the notification in accordance with that paragraph.

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*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 2022, SCHEDULE 17. (See end of Document for details)

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- (4) The amount of the penalty under sub-paragraph (3) is £5,000.

*First, second and further failures*

- 21 (1) This paragraph applies for determining whether a company's or partnership's failure to give a notification in accordance with paragraph 8(2)(a) is, in respect of a relevant tax—
- (a) a first failure,
  - (b) a second failure, or
  - (c) a further failure.
- (2) The failure is a first failure in respect of a relevant tax if, in the applicable three year period, the company or partnership has not been assessed to a penalty under paragraph 20(1) in respect of the same relevant tax.
- (3) The failure is a second failure in respect of a relevant tax if, in the applicable three year period, the company or partnership—
- (a) has been assessed to a penalty under paragraph 20(1) for a first failure in respect of the same relevant tax, but
  - (b) has not been assessed to a penalty under paragraph 20(1) for a second or further failure in respect of the same relevant tax.
- (4) The failure is a further failure in respect of a relevant tax if, in the applicable three year period, the company or partnership has been assessed to a penalty under paragraph 20(1) for a second or further failure in respect of the same relevant tax.
- (5) The “applicable three year period” is the period comprising the three financial years of the company or partnership immediately preceding the financial year for which the relevant return, in relation to which the notification was required, was delivered to HMRC.

*Reasonable excuse*

- 22 (1) Liability to a penalty under paragraph 20 does not arise if the person who would otherwise be liable to the penalty satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that the person had a reasonable excuse for that failure.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control;
  - (b) where the person relies on another person to do anything, that cannot be a reasonable excuse unless the first person took reasonable care to avoid the failure;
  - (c) where the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

*Assessment of penalties*

- 23 (1) Where a person becomes liable to a penalty under paragraph 20—
- (a) HMRC may assess the penalty, and
  - (b) if they do so, HMRC must notify the person of the assessment.

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- (2) An assessment of a penalty under paragraph 20 may not be made—
- (a) more than 6 months after the failure to give the notification in accordance with paragraph 8(2)(a) or (b) (as the case may be) first comes to the attention of an officer of Revenue and Customs, or
  - (b) more than 6 years after the end of the financial year in which the notification should have been given.

### *Appeal*

- 24 (1) A person may appeal against—
- (a) a decision of HMRC that a penalty under paragraph 20 is payable by the person, or
  - (b) a decision of HMRC as to the amount of a penalty under paragraph 20.
- (2) Notice of an appeal must be given—
- (a) in writing, and
  - (b) before the end of the period of 30 days beginning with the date on which the notification by HMRC under paragraph 23(1)(b) was issued.
- (3) Notice of an appeal must state the grounds of appeal.
- (4) On an appeal under sub-paragraph (1)(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (5) On an appeal under sub-paragraph (1)(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.
- (6) Subject to this paragraph, and paragraph 25, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Schedule as they have effect in relation to an appeal against an assessment to income tax.

### *Enforcement*

- 25 (1) A penalty under paragraph 20 must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification by HMRC under paragraph 23(1)(b) was issued, or
  - (b) if a notice of appeal is given, before the end of the period of 30 days beginning with the day on which the appeal is determined or withdrawn.
- (2) A penalty under paragraph 20 may be enforced—
- (a) where the penalty is payable by a company, as if it were corporation tax charged in an assessment and due and payable;
  - (b) where the penalty is payable by a partnership, as if it were income tax charged in an assessment and due and payable.

### *Power to change amount of penalty*

- 26 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sum for the time

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being specified in any of the following provisions such other sum as appears to them to be justified by the change—

- (a) paragraph (a), (b) or (c) of paragraph 20(2) (amount of a first, second or further penalty under paragraph 20(1));
  - (b) paragraph 20(4) (amount of penalty under paragraph 20(3)).
- (2) In sub-paragraph (1) “relevant date” means—
- (a) the date on which this Act is passed, and
  - (b) each date on which the power conferred by sub-paragraph (1) has been exercised in relation to the amount in question.
- (3) Regulations under this paragraph do not apply to a failure that occurs in respect of a relevant return that is required to be made before the date on which the regulations come into force.

*“Tribunal”*

27 In this Part, “tribunal” means the First-tier Tribunal.

## PART 4

### SUPPLEMENTARY

*Regulations*

- 28 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) Subject to sub-paragraph (3), a statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.
- (3) A statutory instrument containing regulations under paragraph 11(5), which change the sum for the time being specified in paragraph 11(2)(b) by more than is necessary to reflect changes in the value of money, may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

*Application of provisions of TMA 1970*

- 29 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);
  - (c) section 115 (delivery and service of documents).

*Interpretation*

- 30 In this Schedule—
- “the charge to corporation tax on income” has the same meaning as in CTA 2009 (see section 2(3) of that Act);
  - “HMRC” means Her Majesty’s Revenue and Customs;

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“transaction” includes arrangements, agreements and understandings (whether or not they are, or are intended to be, legally enforceable).

## PART 5

### CONSEQUENTIAL AMENDMENTS

31 In Schedule 14 to F(No.2)A 2017 (digital reporting and record-keeping for income tax etc: further amendments), at the end insert—

“FA 2022

50 (1) Schedule 17 to FA 2022 (large businesses: notification of uncertain tax treatment) is amended as follows.

(2) In paragraph 6(1)(e) (definition of “financial year” in relation to a UK resident partnership), for “under section 12AB” substitute “within the meaning”.

(3) In paragraph 6(2), in the definition of “representative partner”—

(a) the words from “the partner” to the end of the definition become paragraph (a) of the definition;

(b) at the end of that paragraph (a) insert “, or”;

(c) after that paragraph insert—

“(b) the nominated partner within the meaning of paragraph 5 of Schedule A1 to TMA 1970.””

32 The reference in section 61(6) of F(No.2)A 2017 (commencement) to Schedule 14 to that Act is to be read as a reference to that Schedule as amended by paragraph 31 of this Schedule.

## PART 6

### COMMENCEMENT

33 This Schedule applies in relation to relevant returns that are required to be made on or after 1 April 2022.



**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2022, SCHEDULE 17.