SCHEDULES

SCHEDULE 38

TAX AGENTS: DISHONEST CONDUCT

Modifications etc. (not altering text)

C1 Sch. 38 applied by S.I. 2009/470, reg. 33(1) (as substituted (6.4.2013) by The Education (Student Loans) (Repayment) (Amendment) Regulations 2013 (S.I. 2013/607), regs. 1(1), **9**)

C1 Sch. 38 applied (with application in accordance with reg. 1(2) of the amending S.I.) by The Social Security (Contributions) (Amendment and Application of Schedule 38 to the Finance Act 2012) Regulations 2013 (S.I. 2013/622), regs. 1, **41**

C1 Sch. 38 applied (with application in accordance with reg. 1 of the amending S.I.) by The Education (Postgraduate Masters Degree Loans) Regulations 2016 (S.I. 2016/606), regs. 1(1), **24(2)**

C1 Sch. 38 applied (with application in accordance with reg. 1 of the amending S.I.) by The Education (Postgraduate Masters Degree Loans) Regulations 2016 (S.I. 2016/606), regs. 1(1), **43(1)**

PART 1

INTRODUCTION

Overview

1 This Schedule is arranged as follows—

(a) this Part explains who is a tax agent and what it means to engage in dishonest conduct,

(b) Part 2 sets out the process for establishing whether someone is engaging in or has engaged in dishonest conduct,

(c) Part 3 confers power on HMRC to obtain relevant documents,

(d) Part 4 sets out sanctions for engaging in dishonest conduct,

(e) Part 5 provides for assessment of and appeals against penalties, and

(f) Parts 6 and 7 contain miscellaneous provisions and consequential amendments.

Commencement Information

I1 Sch. 38 para. 1 in force at 1.4.2013 by S.I. 2013/279, **art. 2**

Tax agent

2 (1) A "tax agent" is an individual who, in the course of business, assists other persons ("clients") with their tax affairs.

(2) Individuals can be tax agents even if they (or the organisations for which they work) are appointed—
  (a) indirectly, or
  (b) at the request of someone other than the client.

(3) Assistance with a client's tax affairs includes—
  (a) advising a client in relation to tax, and
  (b) acting or purporting to act as agent on behalf of a client in relation to tax.

(4) Assistance with a client's tax affairs also includes assistance with any document that is likely to be relied on by HMRC to determine a client's tax position.

(5) Assistance given for non-tax purposes counts as assistance with a client's tax affairs if it is given in the knowledge that it will be, or is likely to be, used by a client in connection with the client's tax affairs.

Commencement Information
I2 Sch. 38 para. 2 in force at 1.4.2013 by S.I. 2013/279, **art. 2**

Dishonest conduct

3 (1) An individual "engages in dishonest conduct" if, in the course of acting as a tax agent, the individual does something dishonest with a view to bringing about a loss of tax revenue.

(2) It does not matter whether a loss is actually brought about.

(3) Nor does it matter whether the individual is acting on the instruction of clients.

(4) A loss of tax revenue would be brought about for these purposes if clients were to—
  (a) account for less tax than they are required to account for by law,
  (b) obtain more tax relief than they are entitled to obtain by law,
  (c) account for tax later than they are required to account for it by law, or
  (d) obtain tax relief earlier than they are entitled to obtain it by law.

(5) "Tax" is defined in Part 6 of this Schedule.

(6) "Tax relief" includes—
  (a) any exemption from or deduction or credit against or in respect of tax, and
  (b) any repayment of tax.

(7) A reference in this paragraph to doing something dishonest includes—
  (a) dishonestly omitting to do something, and
  (b) advising or assisting a client to do something that the individual knows to be dishonest.

Commencement Information
I3 Sch. 38 para. 3 in force at 1.4.2013 by S.I. 2013/279, **art. 2**

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2012, PART 1.