

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2012, PART 1. (See end of Document for details)*

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

- II** 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.

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- (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**

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