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## SCHEDULES

### SCHEDULE 18

#### SERIAL TAX AVOIDANCE

#### PART 2

##### ENTRY INTO THE REGIME AND BASIC CONCEPTS

##### *Condition C*

- 14 (1) Condition C is that (in a case not falling within Condition A or B)—
- (a) the arrangements are DOTAS arrangements,
  - (b) P has relied on the arrangements (see sub-paragraph (2))—
  - (c) the arrangements have been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of sub-paragraph (1), P “relies on the arrangements” if—
- (a) P makes a return, claim or election, or a partnership return is made, on the basis that a relevant tax advantage arises, or
  - (b) P fails to discharge a relevant obligation (“the disputed obligation”) and there is reason to believe that P’s failure to discharge that obligation is connected with the arrangements.
- (3) For the purposes of sub-paragraph (2) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable P to obtain.
- (4) For the purposes of sub-paragraph (2) an obligation is a “relevant obligation” if the arrangements might be expected to have the result that the obligation does not arise.
- (5) For the purposes of this paragraph the arrangements are “counteracted” if—
- (a) adjustments, other than taxpayer emendations, are made in respect of P’s tax position—
    - (i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or
    - (ii) on the basis that the disputed obligation does (or did) arise, or
  - (b) an assessment to tax other than a self-assessment is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).
- (6) For the purposes of this paragraph a counteraction is “final” when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.

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- (7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are DOTAS arrangements is when the counteraction becomes final.
- (8) The following are “taxpayer emendations” for the purposes of sub-paragraph (5)—
- (a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P's affairs relating to the tax in question;
  - (b) an adjustment (by way of an assessment or otherwise) made by HMRC with respect to P's tax position as a result of a disclosure made by P which meets the conditions in sub-paragraph (9).

For the purposes of paragraph (a) a payment in respect of a liability to pay national insurance contributions is not an adjustment unless it is a payment in full.

- (9) The conditions are that the disclosure—
- (a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and
  - (b) was made at a time when P had no reason to believe that HMRC were about to begin enquiries into P's affairs relating to the tax in question.
- (10) For the purposes of this paragraph a contract settlement which HMRC enters into with P is treated as an assessment to tax (other than a self-assessment); and in relation to contract settlements references in sub-paragraph (5) to the basis on which any assessment or adjustments are made, or any other action is taken, are to be read with any necessary modifications.

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