

## SCHEDULES

### SCHEDULE 18

#### SERIAL TAX AVOIDANCE

#### PART 5

#### PENALTY

*Value of the counteracted advantage: Conditions D and E*

- 36 (1) In relation to a relevant defeat incurred by a person by virtue of Condition D or E, the “value of the counteracted advantage” is equal to the sum of any counteracted tax advantages determined under sub-paragraphs (3) to (6).
- (2) In this paragraph “the counteraction” means the counteraction mentioned in paragraph 15(1) or 16(1) (as the case may be).
- (3) If the amount of VAT due or payable by the person in respect of any prescribed accounting period (X) exceeds the amount (Y) that would have been so payable but for the counteraction, the amount by which X exceeds Y is a counteracted tax advantage.
- (4) If the person obtains no VAT credit for a particular prescribed accounting period, the amount of any VAT credit which the person would have obtained for that period but for the counteraction is a counteracted tax advantage.
- (5) If for a prescribed accounting period the person obtains a VAT credit of an amount (Y) which is less than the amount (X) of the VAT credit which the person would have obtained but for the counteraction, the amount by which X exceeds Y is a counteracted tax advantage.
- (6) If the amount (X) of the person’s non-deductible tax for any prescribed accounting period is greater than Y, where Y is what would be the amount of the person’s non-deductible tax for that period but for the counteraction, then the amount by which X exceeds Y is a counteracted tax advantage, but only to the extent that amount is not represented by a corresponding amount which is the whole or part of a counteracted tax advantage by virtue of sub-paragraphs (3) to (5).
- (7) In this paragraph “non-deductible tax”, in relation to the person who incurred the relevant defeat, means—
- (a) input tax for which the person is not entitled to credit under section 25 of VATA 1994, and
  - (b) any VAT incurred by the person which is not input tax and in respect of which the person is not entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.
- (8) For the purposes of sub-paragraph (7)(b) the VAT “incurred” by a taxable person is—

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*Status: This is the original version (as it was originally enacted).*

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- (a) VAT on the supply to the person of any goods or services,
  - (b) VAT on the acquisition by the person from another member State of any goods;
  - (c) VAT on the importation of any goods from a place outside the member States.
- (9) References in sub-paragraph (3) to amounts due and payable by the person in respect of a prescribed accounting period include references to—
- (a) amounts payable to HMRC having erroneously been paid by way of repayment of tax, and
  - (b) amounts which would be repayable by HMRC if the counteraction mentioned in sub-paragraph (3) were not made.