



Finance Act 2021

2021 CHAPTER 26

PART 4

MISCELLANEOUS AND FINAL

Avoidance

123 Penalties for enablers of defeated tax avoidance

- (1) Schedule 16 to F(No.2)A 2017 (penalties for enablers of defeated tax avoidance) is amended as follows.
- (2) In paragraph 21 (special provision about assessment for multi-user schemes)—
 - (a) in sub-paragraph (1)(c), for “, the required percentage of relevant defeats has not been reached” substitute “ (other than a tribunal or court defeat), neither condition 1 nor condition 2 has been met ”;
 - (b) in sub-paragraph (2), for “the required percentage of relevant defeats is reached” substitute “ condition 1 or condition 2 is met ”;
 - (c) after sub-paragraph (2) insert—
 - “(2A) Condition 1 is that a defeat that is a tribunal or court defeat is incurred in the case of at least one of the number of related arrangements implementing the proposal.
 - (2B) Condition 2 is that the required number or percentage of relevant defeats is reached.
 - (2C) For the purposes of this paragraph, a defeat incurred in respect of arrangements is a “tribunal or court defeat” if—
 - (a) condition A (in paragraph 5) is met and the adjustments mentioned in paragraph 5(2) have been confirmed by a tribunal or court, or

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- (b) condition B (in paragraph 6) is met and the assessment mentioned in paragraph 6(2) has been confirmed by a tribunal or court.
- (2D) An adjustment or assessment (as the case may be) has been confirmed by a tribunal or court if the First-tier Tribunal, the Upper Tribunal or a court has determined in proceedings before it that the adjustment or assessment in question should not be varied.
- (2E) For the purposes of sub-paragraph (2D), disregard variations that do not substantively alter the basis of the adjustment or assessment in question.”;
- (d) in sub-paragraph (3)—
- (i) after “required” insert “ number or ”;
 - (ii) for the words from “defeats have” to the end of the sub-paragraph substitute “—
 - (a) the number of related arrangements implementing the proposal is fewer than 21 and defeats have been incurred in the case of 50% or more of those arrangements;
 - (b) the number of related arrangements implementing the proposal is more than 20 but fewer than 44 and defeats have been incurred in the case of 11 or more of those arrangements;
 - (c) the number of related arrangements implementing the proposal is more than 43 but fewer than 200 and defeats have been incurred in the case of 25% or more of those arrangements;
 - (d) the number of related arrangements implementing the proposal is 200 or more and defeats have been incurred in the case of 50 or more of those arrangements.”
- (3) In paragraph 22 (time limit for assessment)—
- (a) in sub-paragraph (3)—
 - (i) in paragraph (a), for “the required percentage of defeats was reached” substitute “ condition 1 or condition 2 was met ”;
 - (ii) for paragraph (b) substitute—

“(b) condition 1 or condition 2 has been met,”;
 - (iii) in paragraph (ii) for “that required percentage was reached” substitute “ the first of condition 1 or condition 2 was met ”;
 - (b) in sub-paragraph (4), in the words after paragraph (b), for “the required percentage of relevant defeats is reached” substitute “ condition 1 or condition 2 is met ”.
- (4) In paragraph 40 (information and inspection powers: application of Schedule 36 to FA 2008)—
- (a) for sub-paragraph (1) substitute—

“(1) Schedule 36 to FA 2008 (information and inspection powers) applies for the purpose of—

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- (a) checking a relevant person's position as regards liability for a penalty under paragraph 1 in relation to particular tax arrangements;
 - (b) ascertaining the identity of any other person who has or may have enabled those arrangements,as it applies for the purpose of checking a person's tax position, subject to the modifications in paragraphs 41 to 43.”;
 - (b) in sub-paragraph (2), in the definition of “relevant person”, at the end of the definition insert “ (or will become or may become so liable if T incurs a defeat) ”;
 - (c) after sub-paragraph (2) insert—
 - “(3) References in this paragraph and paragraphs 41 and 42 to a person who has or may have enabled particular tax arrangements are to be read in accordance with Part 4 of this Schedule (persons who “enabled” the arrangements), save that—
 - (a) references in that Part to the arrangements mentioned in paragraph 1 (however expressed) are to be read as references to the particular tax arrangements, and
 - (b) references in that Part to “T” are to be read as references to the person who entered into the particular tax arrangements.”
- (5) In paragraph 41 (general modifications of Schedule 36 to FA 2008 as applied)—
- (a) in the words before sub-paragraph (a), for “the purpose” substitute “ a purpose ”;
 - (b) in sub-paragraph (d), for the words from “the investigation” to the end of the sub-paragraph substitute “—
 - (i) the investigation of the relevant person's position as regards liability for a penalty under paragraph 1 in relation to particular tax arrangements, or (as the case may be)
 - (ii) the identification of any other person who has or may have enabled those arrangements, and”.
- (6) In paragraph 42 (specific modifications of Schedule 36 to FA 2008 as applied)—
- (a) in sub-paragraph (1)—
 - (i) for “the purpose” substitute “ a purpose ”;
 - (ii) for “(2)” substitute “ (1A) ”;
 - (b) after sub-paragraph (1) insert—
 - “(1A) Paragraph 1 (taxpayer notices) has effect as if the reference to checking the taxpayer's tax position (as modified by paragraph 41 of this Schedule) included a reference to ascertaining the identity of any other person who has or may have enabled the particular tax arrangements in relation to which the relevant person's position as regards liability to a penalty under paragraph 1 is to be checked.
 - (1B) Paragraph 10 (power to inspect business premises etc) has effect as if the reference to checking that person's tax position (as modified by paragraph 41 of this Schedule) included a reference to ascertaining the identity of any other person who has or may have enabled the particular tax arrangements in relation to which the relevant person's

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position as regards liability to a penalty under paragraph 1 is to be checked.”;

(c) after sub-paragraph (2) insert—

“(2A) Paragraph 25 (tax advisers) is treated as omitted.”

- (7) In paragraph 43 (exclusion of paragraphs 50 and 51 of Schedule 36 to FA 2008), for “the purpose” substitute “ a purpose ”.
- (8) In paragraph 48 (restrictions on power to publish information about persons who have incurred a penalty)—
- (a) in sub-paragraph (1), omit paragraph (c);
 - (b) in sub-paragraph (2), for “(1)(c) and (d)” substitute “ (1)(d) ”;
 - (c) omit sub-paragraph (3).
- (9) The amendments made by subsections (2) and (3) do not have effect in relation to a person who is liable to a penalty under paragraph 1 of Schedule 16 to F(No.2)A 2017 solely by reason of actions of the person carried out before the day on which this Act is passed.
- (10) Where the amendments made by subsections (2) and (3) have effect, in determining whether condition 1 or 2 is met in relation to particular tax arrangements, account may be taken of defeats incurred in the case of other related arrangements before the day on which this Act is passed.
- (11) For the purposes of subsection (10), “condition 1”, “condition 2”, “defeat” and “related arrangements” have the same meanings as in paragraph 21 of Schedule 16 to F(No.2)A 2017 (as amended by subsection (2)).
- (12) The amendments made by subsections (4) to (7) have effect for a purpose mentioned in paragraph (a) or (b) of paragraph 40(1) of Schedule 16 to F(No.2)A 2017 (as substituted by subsection (4)(a)) in relation to tax arrangements whenever entered into (whether before or after the passing of this Act).
- (13) The amendments made by subsection (8) do not have effect in relation to a person who incurs a penalty under paragraph 1 of Schedule 16 to F(No.2)A 2017 whose liability to the penalty arose solely by reason of actions of the person carried out before the day on which this Act is passed.

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