

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.

Status: This is the original version (as it was originally enacted).

- (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.