

Status: Point in time view as at 15/03/2018.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2017, PART 6. (See end of Document for details)

SCHEDULES

SCHEDULE 16

PENALTIES FOR ENABLERS OF DEFEATED TAX AVOIDANCE

PART 6

ASSESSMENT OF PENALTY

Assessment of penalty

- 19 (1) Where a person is liable for a penalty under paragraph 1 HMRC must—
- (a) assess the penalty, and
 - (b) notify the person.
- (2) If—
- (a) HMRC do not have all the information required to determine the amount or value of the relevant consideration within the meaning of paragraph 15, and
 - (b) HMRC have taken all reasonable steps to obtain that information,
- HMRC may assess the penalty on the basis of a reasonable estimate by HMRC of that consideration.
- (3) This paragraph is subject to—
- (a) paragraphs 21 and 22 (limits on when penalty may be assessed); and
 - (b) Part 7 of this Schedule (requirement for opinion of GAAR Advisory Panel before penalty may be assessed).
- 20 (1) A penalty under paragraph 1 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (2) An assessment of a penalty under paragraph 1—
- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule), and
 - (b) may be enforced as if it were an assessment to tax.

Special provision about assessment for multi-user schemes

- 21 (1) This paragraph applies where—
- (a) a proposal for arrangements is implemented more than once, by a number of tax arrangements which are substantially the same as each other (“related arrangements”),
 - (b) paragraph 1 applies in relation to particular arrangements (“the arrangements concerned”) which are one of the number of related arrangements implementing the proposal, and

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- (c) at the time when the person who entered into the arrangements concerned incurs a defeat in respect of them, the required percentage of relevant defeats has not been reached.
- (2) HMRC may not assess any penalty payable under paragraph 1 in respect of the arrangements concerned until the required percentage of relevant defeats is reached.
- (3) For the purposes of this paragraph the “required percentage of relevant defeats” is reached when HMRC reasonably believe that defeats have been incurred in the case of more than 50% of the related arrangements implementing the proposal.
- (4) Sub-paragraph (2) does not apply in relation to a penalty if the person liable to the penalty requests assessment of the penalty sooner than the time allowed by sub-paragraph (2).

Time limit for assessment

- 22 (1) An assessment of a person as liable to a penalty under paragraph 1 may not take place after the relevant time.
- (2) In this paragraph “the relevant time” means, subject to sub-paragraphs (3) to (6)—
- (a) where a GAAR final decision notice within the meaning of paragraph 24(1) has been given in relation to the arrangements to which the penalty relates, the end of 12 months beginning with the date on which T incurs the defeat mentioned in paragraph 1;
 - (b) where a notice under paragraph 25 has been given to the person mentioned in sub-paragraph (1) above in respect of the arrangements to which the penalty relates, the end of 12 months beginning with the end of the time allowed for making representations in respect of that notice;
 - (c) where—
 - (i) a referral has been made under paragraph 26 in respect of the arrangements to which the penalty relates, and
 - (ii) paragraph (d) does not apply,
 the end of 12 months beginning with the date on which the opinion of the GAAR Advisory Panel is given on the referral (within the meaning given by paragraph 34(6));
 - (d) where a notice under paragraph 35 has been given to the person mentioned in sub-paragraph (1) above in respect of the arrangements to which the penalty relates, the end of 12 months beginning with the end of the time allowed for making representations in respect of that notice.
- (3) Where—
- (a) paragraph 21 prevented a penalty from being assessed before the required percentage of relevant defeats was reached, and
 - (b) the required percentage of relevant defeats (within the meaning of paragraph 21) has been reached,
- the relevant time in relation to that penalty is whichever is the later of—
- (i) the relevant time given by sub-paragraph (2), and
 - (ii) the end of 12 months beginning with the date on which that required percentage was reached.

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- (4) Where under paragraph 21(4) a person requests assessment of a penalty, the relevant time in relation to that penalty is whichever is the later of—
- (a) the relevant time given by sub-paragraph (2), and
 - (b) the end of 12 months beginning with the date on which the request is made, and sub-paragraph (3) does not apply to the penalty even if the required percentage of relevant defeats is reached.
- (5) Sub-paragraph (6) applies where—
- (a) at any time a declaration has been made under paragraph 44 for the purposes of any determination of whether a person is liable to a penalty under paragraph 1 in relation to particular arrangements (“the arrangements concerned”), and
 - (b) subsequently, facts that in the Commissioners' opinion are sufficient to indicate that the declaration contains a material inaccuracy have come to the Commissioners' knowledge.
- (6) The relevant time in respect of any penalty under paragraph 1 payable by that person in relation to the arrangements concerned is whichever is the later of—
- (a) the relevant time given by the preceding provisions of this paragraph, and
 - (b) the end of 12 months beginning with the date on which such facts came to the Commissioners' knowledge.

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