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## SCHEDULES

### SCHEDULE 24

#### PENALTIES FOR ERRORS

##### Modifications etc. (not altering text)

- C1 Sch. 24 applied (N.I.) (1.4.2008) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2000 \(S.R. 2000/121\)](#), **regs. 7(2A)(b)**, 26(4) (as amended by S.R. 2008/129, **regs. 1**, 3(a), 4)
- C1 Sch. 24 applied (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/128\)](#), **regs. 1(1)**, 9(3)(b), 35(4), 54(8)(b)
- C1 Sch. 24 applied (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009 \(S.I. 2009/470\)](#), **regs. 1(1)**, 13(3)(b), 40(4), 59(8)(b) (with **reg. 1(4)(6)**)
- C1 Sch. 24 modified (8.4.2010) by [Finance Act 2010 \(c. 13\)](#), **Sch. 1 para. 37**
- C1 Sch. 24 applied (6.4.2008) by [The Social Security \(Contributions\) Regulations 2001 \(S.I. 2001/1004\)](#), **reg. 81(1)(1A)**, **Sch. 4 paras. 21A(8)**, 21D(9), 21F(12), 22(7), **31(8)** (as amended by S.I. 2008/636, **reg. 7**; S.I. 2010/721, **reg. 4**; S.I. 2012/821, **reg. 11**)
- C1 Sch. 24 applied (with modifications) (19.4.2013) by [The Small Charitable Donations Regulations 2013 \(S.I. 2013/938\)](#), **regs. 1**, **15**
- C1 Sch. 24 excluded (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 35 para. 13(a)**
- C1 Sch. 24 applied by 1993 c. 34, Sch. 20A para. 9A(6) (as inserted (19.12.2014) by [The Lloyd's Underwriters \(Conversion of Partnerships to Underwriting through Successor Companies\) \(Tax\) Regulations 2014 \(S.I. 2014/3133\)](#), **regs. 1**, **5(4)**)
- C1 Sch. 24 applied (with modifications) by 1992 c. 4, s. 11A(1)(3) (as inserted (with effect in accordance with Sch. 1 para. 35 of the amending Act) by [National Insurance Contributions Act 2015 \(c. 5\)](#), **Sch. 1 para. 3**)
- C1 Sch. 24 applied (with modifications) by 1992 c.7 (N.I.) s. 11A(1)(3) (as inserted (with effect in accordance with Sch. 1 para. 35 of the amending Act) by [National Insurance Contributions Act 2015 \(c. 5\)](#), **Sch. 1 para. 12**)
- C1 Sch. 24 applied (with application in accordance with reg. 1 of the amending S.I.) by [The Education \(Postgraduate Masters Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#), **regs. 1(1)**, **24(3)**
- C1 Sch. 24 applied (with application in accordance with reg. 1 of the amending S.I.) by [The Education \(Postgraduate Masters Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#), **regs. 1(1)**, **50(3)**
- C1 Sch. 24 applied (with application in accordance with reg. 1 of the amending S.I.) by [The Education \(Postgraduate Masters Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#), **regs. 1(1)**, **85(4)**
- C1 Sch. 24 applied (with modifications) (1.5.2023) by [The Value Added Tax \(Margin Schemes and Removal or Export of Goods: VAT-related Payments\) Order 2023 \(S.I. 2023/68\)](#), **arts. 1(1)**, **14** (with **art. 1(2)**)

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## PART 1

### LIABILITY FOR PENALTY

#### Modifications etc. (not altering text)

- C1** Sch. 24 Pt. 1 modified (10.6.2021 for specified purposes, 1.7.2021 for specified purposes) by 1994 c. 23, **Sch. 9ZF para. 9** (as inserted by Finance Act 2021 (c. 26), s. 95(6)(a), **Sch. 18 para. 6**); S.I. 2021/770, regs. 3, 4 (with regs. 5-7) (as amended (1.4.2022) by The Value Added Tax (Enforcement Related to Distance Selling and Miscellaneous Amendments) Regulations 2022 (S.I. 2022/226), regs. 1, **26(b)**)

#### *Error in taxpayer's document*

- 1 (1) A penalty is payable by a person (P) where—
- P gives HMRC a document of a kind listed in the Table below, and
  - Conditions 1 and 2 are satisfied.
- (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
- an understatement of [<sup>F1</sup>a] liability to tax,
  - a false or inflated statement of a loss <sup>F2</sup>..., or
  - a false or inflated claim to repayment of tax.
- (3) Condition 2 is that the inaccuracy was [<sup>F3</sup>careless (within the meaning of paragraph 3) or deliberate on P's part].
- (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

| <i>Tax</i>                           | <i>Document</i>                                                                                    |
|--------------------------------------|----------------------------------------------------------------------------------------------------|
| Income tax or capital gains tax      | Return under section 8 of TMA 1970 (personal return).                                              |
| Income tax or capital gains tax      | Return under section 8A of TMA 1970 (trustee's return).                                            |
| Income tax or capital gains tax      | Return, statement or declaration in connection with a claim for an allowance, deduction or relief. |
| Income tax or capital gains tax      | Accounts in connection with ascertaining liability to tax.                                         |
| Income tax or capital gains tax      | Partnership return.                                                                                |
| Income tax or capital gains tax      | Statement or declaration in connection with a partnership return.                                  |
| Income tax or capital gains tax      | Accounts in connection with a partnership return.                                                  |
| [ <sup>F4</sup> Apprenticeship levy] | Return under regulations under section 105 of FA 2016.]                                            |

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|                                                    |                                                                                                                                                                  |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| [ <sup>F5</sup> Capital gains tax                  | Return under [ <sup>F6</sup> Schedule 2 to FA 2019].]                                                                                                            |
| [ <sup>F7</sup> Income tax                         | Return under section 254 of FA 2004.]                                                                                                                            |
| Income tax                                         | Return for the purposes of PAYE regulations.                                                                                                                     |
| Construction industry deductions                   | Return for the purposes of regulations under section 70(1)(a) of FA 2004 in connection with deductions on account of tax under the Construction Industry Scheme. |
| Corporation tax                                    | Company tax return under paragraph 3 of Schedule 18 to FA 1998.                                                                                                  |
| Corporation tax                                    | Return, statement or declaration in connection with a claim for an allowance, deduction or relief.                                                               |
| Corporation tax                                    | Accounts in connection with ascertaining liability to tax.                                                                                                       |
| [ <sup>F8</sup> Digital services tax               | DST return under paragraph 2 of Schedule 8 to FA 2020.]                                                                                                          |
| VAT                                                | VAT return under regulations made under paragraph 2 of Schedule 11 to VATA 1994.                                                                                 |
| VAT                                                | Return, statement or declaration in connection with a claim.                                                                                                     |
| <sup>F9</sup>                                      | <sup>F9</sup>                                                                                                                                                    |
| . . .                                              | . . .                                                                                                                                                            |
| [ <sup>F10</sup> Insurance premium tax             | Return under regulations under section 54 of FA 1994.                                                                                                            |
| Insurance premium tax                              | Return, statement or declaration in connection with a claim.                                                                                                     |
| Inheritance tax                                    | Account under section 216 or 217 of IHTA 1984.                                                                                                                   |
| Inheritance tax                                    | Information or document under regulations under section 256 of IHTA 1984.                                                                                        |
| Inheritance tax                                    | Statement or declaration in connection with a deduction, exemption or relief.                                                                                    |
| Stamp duty land tax                                | Return under section 76 of FA 2003.                                                                                                                              |
| Stamp duty reserve tax                             | Return under regulations under section 98 of FA 1986.                                                                                                            |
| [ <sup>F11</sup> Annual tax on enveloped dwellings | Annual tax on enveloped dwellings return.]                                                                                                                       |

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|                                                    |                                                                                                                      |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| [ <sup>F11</sup> Annual tax on enveloped dwellings | Return of adjusted chargeable amount.]                                                                               |
| Petroleum revenue tax                              | Return under paragraph 2 of Schedule 2 to the Oil Taxation Act 1975.                                                 |
| [ <sup>F12</sup> Petroleum revenue tax             | Statement or declaration in connection with a claim under paragraph 13A of Schedule 2 to the Oil Taxation Act 1975.] |
| Petroleum revenue tax                              | Statement or declaration in connection with a claim under Schedule 5, 6, 7 or 8 to the Oil Taxation Act 1975.        |
| Petroleum revenue tax                              | Statement under section 1(1)(a) of the Petroleum Revenue Tax Act 1980.                                               |
| [ <sup>F13</sup> Soft drinks industry levy         | Return under regulations under section 52 of FA 2017]                                                                |
| Aggregates levy                                    | Return under regulations under section 25 of FA 2001.                                                                |
| Climate change levy                                | Return under regulations under paragraph 41 of Schedule 6 to FA 2000.                                                |
| Landfill tax                                       | Return under regulations under section 49 of FA 1996.                                                                |
| Air passenger duty                                 | Return under section 38 of FA 1994.                                                                                  |
| Alcoholic liquor duties                            | Return under regulations under section 13, 49, 56 or 62 of the Alcoholic Liquor Duties Act 1979.                     |
| Alcoholic liquor duties                            | Statement or declaration in connection with a claim for repayment of duty under section 4(4) of FA 1995.             |
| Tobacco products duty                              | Return under regulations under section 7 of the Tobacco Products Duties Act 1979.                                    |
| Hydrocarbon oil duties                             | Return under regulations under section 21 of the Hydrocarbon Oil Duties Act 1979.                                    |
| Excise duties                                      | Return under regulations under section 93 of CEMA 1979.                                                              |
| Excise duties                                      | Return under regulations under section 100G or 100H of CEMA 1979.                                                    |
| Excise duties                                      | Statement or declaration in connection with a claim.                                                                 |
| General betting duty                               | Return under regulations under paragraph 2 of Schedule 1 to BGDA 1981.                                               |

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|                                                     |                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Pool betting duty                                   | Return under regulations under paragraph 2A of Schedule 1 to BGDA 1981.                                                                                                                                                                                                                                                         |
| Bingo duty                                          | Return under regulations under paragraph 9 of Schedule 3 to BGDA 1981.                                                                                                                                                                                                                                                          |
| Lottery duty                                        | Return under regulations under section 28(2) of FA 1993.                                                                                                                                                                                                                                                                        |
| Gaming duty                                         | Return under directions under paragraph 10 of Schedule 1 to FA 1997.                                                                                                                                                                                                                                                            |
| Remote gaming duty                                  | Return under regulations under section 26K of BGDA 1981.]                                                                                                                                                                                                                                                                       |
| [ <sup>F14</sup> Machine games duty                 | Return under regulations under paragraph 18 of Schedule 24 to FA 2012]                                                                                                                                                                                                                                                          |
| [ <sup>F15</sup> Any of the taxes mentioned above ] | Any document which is likely to be relied upon by HMRC to determine, without further inquiry, a question about—<br>(a) P's liability to tax,<br>(b) payments by P by way of or in connection with tax,<br>(c) any other payment by P (including penalties), or<br>(d) repayments, or any other kind of payment or credit, to P. |

<sup>F16</sup>(4A) .....

<sup>F16</sup>(4B) .....

<sup>F16</sup>(4C) .....

[<sup>F17</sup>(5) In relation to a return under paragraph 2 of Schedule 2 to the Oil Taxation Act 1975 [<sup>F18</sup>or a statement or declaration under paragraph 13A of that Schedule], references in this Schedule to P include any person who, after the giving of the return for a taxable field (within the meaning of that Act), becomes the responsible person for the field (within the meaning of that Act).]

#### Textual Amendments

- F1** Word in Sch. 24 para. 1(2) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 2\(2\)\(a\)](#); [S.I. 2009/571, art. 2](#)
- F2** Words in Sch. 24 para. 1(2) omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 2\(2\)\(b\)](#); [S.I. 2009/571, art. 2](#)
- F3** Words in Sch. 24 para. 1(3) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 2\(3\)](#); [S.I. 2009/571, art. 2](#)
- F4** Words in Sch. 24 para. 1 inserted (6.4.2017) by [Finance Act 2016 \(c. 24\), s. 113\(2\)\(16\)](#) (with s. 117); [S.I. 2017/355, reg. 2](#)

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- F5** Words in Sch. 24 para. 1(4) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 56\(2\)](#)
- F6** Words in Sch. 24 para. 1(4) substituted (with effect in accordance with Sch. 2 para. 32(1) of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 2 para. 27\(2\)](#)
- F7** Words in Sch. 24 para. 1 inserted (with effect in accordance with art. 3-5 of the commencing S.I.) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 2\(4\)](#); S.I. 2009/571, art. 2
- F8** Words in Sch. 24 para. 1 table inserted (22.7.2020) by [Finance Act 2020 \(c. 14\)](#), [Sch. 10 para. 3\(2\)](#)
- F9** Words in [Sch. 24 para. 1](#) omitted (31.12.2020) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(3), [Sch. 8 para. 111\(2\)](#) (with savings and transitional provisions in S.I. 2019/105 (as amended by S.I. 2020/1495, regs. 1(2), 21), S.I. 2020/1545, Pt. 4 and 2020 c. 26, Sch. 2 para. 7(7)-(9)); S.I. 2020/1642, reg. 4(b) (with reg. 7)
- F10** Words in Sch. 24 para. 1 inserted (with effect in accordance with art. 3-5 of the commencing S.I.) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 2\(5\)](#); S.I. 2009/571, art. 2
- F11** Words in Sch. 24 para. 1 inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 34 para. 6](#)
- F12** Words in Sch. 24 para. 1 inserted (with effect in accordance with s. 28(2) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 12 para. 12\(2\)](#)
- F13** Words in Sch. 24 para. 1 inserted (6.4.2018) by [Finance Act 2017 \(c. 10\)](#), s. 61(2), [Sch. 11 para. 3](#); S.I. 2018/467, reg. 2
- F14** Words in Sch. 24 para. 1 inserted (with effect in accordance with Sch. 24 para. 66(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 24 para. 29](#)
- F15** Words in Sch. 24 para. 1 substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 2\(6\)](#); S.I. 2009/571, art. 2
- F16** [Sch. 24 para. 1\(4A\)-\(4C\)](#) omitted (31.12.2020) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\)](#), s. 57(3), [Sch. 8 para. 111\(3\)](#) (with savings and transitional provisions in S.I. 2019/105 (as amended by S.I. 2020/1495, regs. 1(2), 21), S.I. 2020/1545, Pt. 4 and 2020 c. 26, Sch. 2 para. 7(7)-(9)); S.I. 2020/1642, reg. 4(b) (with reg. 7)
- F17** [Sch. 24 para. 1\(5\)](#) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 2\(7\)](#); S.I. 2009/571, art. 2
- F18** Words in Sch. 24 para. 1(5) inserted (with effect in accordance with s. 28(2) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 12 para. 12\(3\)](#)

#### Modifications etc. (not altering text)

- C2** [Sch. 24 para. 1](#) modified (temp.) (with effect in accordance with [Sch. 10 para. 43](#) of the amending Act) by [Finance Act 2022 \(c. 3\)](#), [Sch. 10 para. 27](#) (as amended (5.1.2023) by S.I. 2022/1321, regs. 1, [2\(2\)](#))

#### Commencement Information

- I1** [Sch. 24 para. 1](#) in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

*[<sup>F19</sup>Error in taxpayer's document attributable to another person*

#### Textual Amendments

- F19** [Sch. 24 para. 1A](#) and cross-heading inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 3](#); S.I. 2009/571, art. 2

- 1A (1) A penalty is payable by a person (T) where—
- (a) another person (P) gives HMRC a document of a kind listed in the Table in paragraph 1,
  - (b) the document contains a relevant inaccuracy, and

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- (c) the inaccuracy was attributable to T deliberately supplying false information to P (whether directly or indirectly), or to T deliberately withholding information from P, with the intention of the document containing the inaccuracy.
- (2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—
- (a) an understatement of a liability to tax,
  - (b) a false or inflated statement of a loss, or
  - (c) a false or inflated claim to repayment of tax.
- (3) A penalty is payable under this paragraph in respect of an inaccuracy whether or not P is liable to a penalty under paragraph 1 in respect of the same inaccuracy.]

#### *Under-assessment by HMRC*

- 2 (1) A penalty is payable by a person (P) where—
- (a) an assessment issued to P by HMRC understates P's liability to [<sup>F20</sup>a relevant tax], and
  - (b) P has failed to take reasonable steps to notify HMRC, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.
- (2) In deciding what steps (if any) were reasonable HMRC must consider—
- (a) whether P knew, or should have known, about the under-assessment, and
  - (b) what steps would have been reasonable to take to notify HMRC.
- [<sup>F21</sup>(3) In sub-paragraph (1) “relevant tax” means any tax mentioned in the Table in paragraph 1.]
- [<sup>F22</sup>(4) In this paragraph (and in Part 2 of this Schedule so far as relating to this paragraph)—
- (a) “assessment” includes determination, and
  - (b) accordingly, references to an under-assessment include an under-determination.]

#### **Textual Amendments**

- F20** Words in Sch. 24 para. 2(1) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 4\(2\)](#); [S.I. 2009/571](#), art. 2
- F21** Sch. 24 para. 2(3) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 4\(3\)](#); [S.I. 2009/571](#), art. 2
- F22** Sch. 24 para. 2(4) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 2](#)

#### **Commencement Information**

- I2** Sch. 24 para. 2 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

#### *Degrees of culpability*

- 3 (1) [<sup>F23</sup>For the purposes of a penalty under paragraph 1, inaccuracy in] a document given by P to HMRC is—
- (a) “careless” if the inaccuracy is due to failure by P to take reasonable care,

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- (b) “deliberate but not concealed” if the inaccuracy is deliberate [<sup>F24</sup>on P's part] but P does not make arrangements to conceal it, and
  - (c) “deliberate and concealed” if the inaccuracy is deliberate [<sup>F24</sup>on P's part] and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).
- (2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate [<sup>F25</sup>on P's part] when the document was given, is to be treated as careless if P—
- (a) discovered the inaccuracy at some later time, and
  - (b) did not take reasonable steps to inform HMRC.
- [<sup>F26</sup>(3) Paragraph 47 of Schedule 19 to FA 2016 (special measures for persistently uncooperative large businesses) provides for certain inaccuracies to be treated, for the purposes of this Schedule, as being due to a failure by P to take reasonable care.]

#### Textual Amendments

- F23** Words in Sch. 24 para. 3(1) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 5\(2\)\(a\)](#); [S.I. 2009/571, art. 2](#)
- F24** Words in Sch. 24 para. 3(1) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 5\(2\)\(b\)](#); [S.I. 2009/571, art. 2](#)
- F25** Words in Sch. 24 para. 3(2) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 5\(3\)](#); [S.I. 2009/571, art. 2](#)
- F26** Sch. 24 para. 3(3) inserted (with effect in accordance with s. 161(2) of the amending Act) by [Finance Act 2016 \(c. 24\), Sch. 19 para. 48](#)

#### Commencement Information

- I3** Sch. 24 para. 3 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568, art. 2](#) (with [art. 3](#))

### *[<sup>F27</sup>Errors related to avoidance arrangements*

#### Textual Amendments

- F27** Sch. 24 paras. 3A, 3B and cross-heading inserted (with effect in accordance with s. 64(5)(6) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 64\(2\)](#)

- 3A (1) This paragraph applies where a document of a kind listed in the Table in paragraph 1 is given to HMRC by a person (“P”) and the document contains an inaccuracy which—
- (a) falls within paragraph 1(2), and
  - (b) arises because the document is submitted on the basis that particular avoidance arrangements (within the meaning of paragraph 3B) had an effect which in fact they did not have.
- (2) It is to be presumed that the inaccuracy was careless, within the meaning of paragraph 3, unless—
- (a) the inaccuracy was deliberate on P's part, or



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- (b) P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid inaccuracy.
- (3) In considering whether P took reasonable care to avoid inaccuracy, HMRC and (on an appeal notified to the tribunal) the tribunal must take no account of any evidence of any reliance by P on advice where the advice is disqualified.
- (4) Advice is “disqualified” if any of the following applies—
  - (a) the advice was given to P by an interested person;
  - (b) the advice was given to P as a result of arrangements made between an interested person and the person who gave the advice;
  - (c) the person who gave the advice did not have appropriate expertise for giving the advice;
  - (d) the advice took no account of P's individual circumstances;
  - (e) the advice was addressed to, or given to, a person other than P;but this is subject to sub-paragraphs (5) and (7).
- (5) Where (but for this sub-paragraph) advice would be disqualified under any of paragraphs (a) to (c) of sub-paragraph (4), the advice is not disqualified under that paragraph if at the relevant time P—
  - (a) has taken reasonable steps to find out whether the advice falls within that paragraph, and
  - (b) reasonably believes that it does not.
- (6) In sub-paragraph (4) “an interested person” means—
  - (a) a person, other than P, who participated in the avoidance arrangements or any transaction forming part of them, or
  - (b) a person who for any consideration (whether or not in money) facilitated P's entering into the avoidance arrangements.
- (7) Where (but for this sub-paragraph) advice would be disqualified under paragraph (a) of sub-paragraph (4) because it was given by a person within sub-paragraph (6)(b), the advice is not disqualified under that paragraph if—
  - (a) the person giving the advice had appropriate expertise for giving it,
  - (b) the advice took account of P's individual circumstances, and
  - (c) at the time when the question whether the advice is disqualified arises—
    - (i) Condition E in paragraph 3B(5) is met in relation to the avoidance arrangements, but
    - (ii) none of Conditions A to D in paragraph 3B(5) is or has at any time been met in relation to them.
- (8) If the document mentioned in sub-paragraph (1) is given to HMRC by P as a personal representative of a deceased person (“D”)—
  - (a) sub-paragraph (4) is to be read as if—
    - (i) the references in paragraphs (a) and (b) to P were to P or D;
    - (ii) the reference in paragraph (d) to P were to D, and
    - (iii) the reference in paragraph (e) to a person other than P were to a person who is neither P nor D,
  - (b) sub-paragraph (6) is to be read as if—
    - (i) the reference in paragraph (a) to P were a reference to the person to whom the advice was given, and

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- (ii) the reference in paragraph (b) to P were to D (or, where P also participated in the avoidance arrangements, P or D), and
- (c) sub-paragraph (7) is to be read as if the reference in paragraph (b) to P were to D.

(9) In this paragraph—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“the relevant time” means the time when the document mentioned in sub-paragraph (1) is given to HMRC;

“the tribunal” has the same meaning as in paragraph 17 (see paragraph 17(5A)).

3B (1) In paragraph 3A “avoidance arrangements” means, subject to sub-paragraph (3), arrangements which fall within sub-paragraph (2).

(2) Arrangements fall within this sub-paragraph if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.

(3) Arrangements are not avoidance arrangements for the purposes of paragraph 3A if (although they fall within sub-paragraph (2))—

- (a) they are arrangements which accord with established practice, and
- (b) HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice.

(4) If, at any time, any of Conditions A to E is met in relation to particular arrangements—

- (a) for the purposes of this Schedule the arrangements are to be taken to fall within (and always to have fallen within) sub-paragraph (2), and
- (b) in relation to the arrangements, sub-paragraph (3) (and the reference to it in sub-paragraph (1)) are to be treated as omitted.

This does not prevent arrangements from falling within sub-paragraph (2) other than by reason of one or more of Conditions A to E being met.

(5) Conditions A to E are as follows—

- (a) Condition A is that the arrangements are DOTAS arrangements within the meaning given by section 219(5) and (6) of FA 2014;
- (b) Condition B is that the arrangements are disclosable VAT arrangements or disclosable indirect tax arrangements for the purposes of Schedule 18 to FA 2016 (see paragraphs 8A to 9A of that Schedule);
- (c) Condition C is that both of the following apply—
  - (i) P has been given a notice under a provision mentioned in sub-paragraph (6) stating that a tax advantage arising from the arrangements is to be counteracted, and
  - (ii) that tax advantage has been counteracted under section 209 of FA 2013;
- (d) Condition D is that a follower notice under section 204 of FA 2014 has been given to P by reference to the arrangements (and not withdrawn) and—
  - (i) the necessary corrective action for the purposes of section 208 of FA 2014 has been taken in respect of the denied advantage, or

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- (ii) the denied advantage has been counteracted otherwise than as mentioned in sub-paragraph (i);
- (e) Condition E is that a tax advantage asserted by reference to the arrangements has been counteracted (by an assessment, an amendment of a return or claim, or otherwise) on the basis that an avoidance-related rule applies in relation to P's affairs.
- (6) The provisions referred to in sub-paragraph (5)(c)(i) are—
- paragraph 12 of Schedule 43 to FA 2013 (general anti-abuse rule: notice of final decision);
  - paragraph 8 or 9 of Schedule 43A to that Act (pooled or bound arrangements: notice of final decision);
  - paragraph 8 of Schedule 43B to that Act (generic referrals: notice of final decision).
- (7) In sub-paragraph (5)(d) the reference to giving a follower notice to P includes giving a partnership follower notice in respect of a partnership return in relation to which P is a relevant partner; and for the purposes of this sub-paragraph—
- “relevant partner” has the meaning given by paragraph 2(5) of Schedule 31 to FA 2014;
  - a partnership follower notice is given “in respect of” the partnership return mentioned in paragraph 2(2)(a) or (b) of that Schedule.
- (8) For the purposes of sub-paragraph (5)(d) it does not matter whether the denied advantage has been dealt with—
- wholly as mentioned in one or other of sub-paragraphs (i) and (ii) of sub-paragraph (5)(d), or
  - partly as mentioned in one of those sub-paragraphs and partly as mentioned in the other;
- and “the denied advantage” has the same meaning as in Chapter 2 of Part 4 of FA 2014 (see section 208(3) of and paragraph 4(3) of Schedule 31 to that Act).
- (9) For the purposes of sub-paragraph (5)(e) a tax advantage has been “asserted by reference to” the arrangements if a return, claim or appeal has been made by P on the basis that the tax advantage results from the arrangements.
- (10) In this paragraph—
- “arrangements” has the same meaning as in paragraph 3A;
- “avoidance-related rule” has the same meaning as in Part 4 of Schedule 18 to FA 2016 (see paragraph 25 of that Schedule);
- a “tax advantage” includes—
- relief or increased relief from tax,
  - repayment or increased repayment of tax,
  - avoidance or reduction of a charge to tax or an assessment to tax,
  - avoidance of a possible assessment to tax,
  - deferral of a payment of tax or advancement of a repayment of tax,
  - avoidance of an obligation to deduct or account for tax, and
  - in relation to VAT, anything which is a tax advantage for the purposes of Schedule 18 to FA 2016 under paragraph 5 of that Schedule.]

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