Finance Act 2016

2016 CHAPTER 24

PART 10

TAX AVOIDANCE AND EVASION

General anti-abuse rule

156 General anti-abuse rule: provisional counteractions

(1) In Part 5 of FA 2013 (general anti-abuse rule), after section 209 insert—

"**209A Effect of adjustments specified in a provisional counteraction notice**

(1) Adjustments made by an officer of Revenue and Customs which—

(a) are specified in a provisional counteraction notice given to a person by the officer (and have not been cancelled: see sections 209B to 209E),

(b) are made in respect of a tax advantage that would (ignoring this Part) arise from tax arrangements that are abusive, and

(c) but for section 209(6)(a), would have effected a valid counteraction of that tax advantage under section 209,

are treated for all purposes as effecting a valid counteraction of the tax advantage under that section.

(2) A "provisional counteraction notice" is a notice which—

(a) specifies adjustments (the "notified adjustments") which the officer reasonably believes may be required under section 209(1) to counteract a tax advantage that would (ignoring this Part) arise to the person from tax arrangements;

(b) specifies the arrangements and the tax advantage concerned, and

(c) notifies the person of the person's rights of appeal with respect to the notified adjustments (when made) and contains a statement that if an appeal is made against the making of the adjustments—

(i) no steps may be taken in relation to the appeal unless and until the person is given a notice referred to in section 209F(2), and

(ii) the notified adjustments will be cancelled if HMRC fails to take at least one of the actions mentioned in section 209B(4) within the period specified in section 209B(2).

(3) It does not matter whether the notice is given before or at the same time as the making of the adjustments.

(4) In this section "adjustments" includes adjustments made in any way permitted by section 209(5).

209B Notified adjustments: 12 month period for taking action if appeal made

(1) This section applies where a person (the "taxpayer") to whom a provisional counteraction notice has been given appeals against the making of the notified adjustments.

(2) The notified adjustments are to be treated as cancelled with effect from the end of the period of 12 months beginning with the day on which the provisional counteraction notice is given unless an action mentioned in subsection (4) is taken before that time.

(3) For the purposes of subsection (2) it does not matter whether the action mentioned in subsection (4)(c), (d) or (e) is taken before or after the provisional counteraction notice is given (but if that action is taken before the provisional counteraction notice is given subsection (5) does not have effect).

(4) The actions are—

(a) an officer of Revenue and Customs notifying the taxpayer that the notified adjustments are cancelled;

(b) an officer of Revenue and Customs giving the taxpayer written notice of the withdrawal of the provisional counteraction notice (without cancelling the notified adjustments);

(c) a designated HMRC officer giving the taxpayer a notice under paragraph 3 of Schedule 43 which—

(i) specifies the arrangements and the tax advantage which are specified in the provisional counteraction notice, and

(ii) specifies the notified adjustments (or lesser adjustments) as the counteraction that the officer considers ought to be taken (see paragraph 3(2)(c) of that Schedule);

(d) a designated HMRC officer giving the taxpayer a pooling notice or a notice of binding under Schedule 43A which—

(i) specifies the arrangements and the tax advantage which are specified in the provisional counteraction notice, and

(ii) specifies the notified adjustments (or lesser adjustments) as the counteraction that the officer considers ought to be taken;

(e) a designated HMRC officer giving the taxpayer a notice under paragraph 1(2) of Schedule 43B which—

(i) specifies the arrangements and the tax advantage which are specified in the provisional counteraction notice, and

(ii) specifies the notified adjustments (or lesser adjustments) as the counteraction that the officer considers ought to be taken.

(5) In a case within subsection (4)(c), (d) or (e), if—

(a) the notice under paragraph 3 of Schedule 43, or

(b) the pooling notice or notice of binding, or

(c) the notice under paragraph 1(2) of Schedule 43B,

(as the case may be) specifies lesser adjustments the officer must modify the notified adjustments accordingly.

(6) The officer may not take the action in subsection (4)(b) unless the officer was authorised to make the notified adjustments otherwise than under this Part.

(7) In this section "lesser adjustments" means adjustments which assume a smaller tax advantage than was assumed in the provisional counteraction notice.

209C Notified adjustments: case within section 209B(4)(c)

(1) This section applies if the action in section 209B(4)(c) (notice to taxpayer of proposed counteraction of tax advantage) is taken.

(2) If the matter is not referred to the GAAR Advisory Panel, the notified adjustments are to be treated as cancelled with effect from the date of the designated HMRC officer's decision under paragraph 6(2) of Schedule 43 unless the notice under paragraph 6(3) of Schedule 43 states that the adjustments are not to be treated as cancelled under this section.

(3) A notice under paragraph 6(3) of Schedule 43 may not contain the statement referred to in subsection (2) unless HMRC would have been authorised to make the adjustments if the general anti-abuse rule did not have effect.

(4) If the taxpayer is given a notice under paragraph 12 of Schedule 43 which states that the specified tax advantage is not to be counteracted under the general anti-abuse rule, the notified adjustments are to be treated as cancelled unless that notice states that those adjustments are not to be treated as cancelled under this section.

(5) A notice under paragraph 12 of Schedule 43 may not contain the statement referred to in subsection (4) unless HMRC would have been authorised to make the adjustments if the general anti-abuse rule did not have effect.

(6) If the taxpayer is given a notice under paragraph 12 of Schedule 43 stating that the specified tax advantage is to be counteracted—

(a) the notified adjustments are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and

(b) so far as they are not confirmed, the notified adjustments are to be treated as cancelled.

209D Notified adjustments: case within section 209B(4)(d)

(1) This section applies if the action in section 209B(4)(d) (pooling notice or notice of binding) is taken.

(2) If the taxpayer is given a notice under paragraph 8(2) or 9(2) of Schedule 43A which states that the specified tax advantage is not to be counteracted under the general anti-abuse rule, the notified adjustments are to be treated as cancelled, unless that notice states that those adjustments are not to be treated as cancelled under this section.

(3) A notice under paragraph 8(2) or 9(2) of Schedule 43A may not contain the statement referred to in subsection (2) unless HMRC would have been authorised to make the adjustments if the general anti-abuse rule did not have effect.

(4) If the taxpayer is given a notice under paragraph 8(2) or 9(2) of Schedule 43A stating that the specified tax advantage is to be counteracted—

(a) the notified adjustments are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and

(b) so far as they are not confirmed, the notified adjustments are to be treated as cancelled.

209E Notified adjustments: case within section 209B(4)(e)

(1) This section applies if the action in section 209B(4)(e) (notice of proposal to make generic referral) is taken.

(2) If the notice under paragraph 1(2) of Schedule 43B is withdrawn, the notified adjustments are to be treated as cancelled unless the notice of withdrawal states that the adjustments are not to be treated as cancelled under this section.

(3) The notice of withdrawal may not contain the statement referred to in subsection (2) unless HMRC was authorised to make the notified adjustments otherwise than under this Part.

(4) If the taxpayer is given a notice under paragraph 8(2) of Schedule 43B, which states that the specified tax advantage is not to be counteracted under the general anti-abuse rule, the notified adjustments are to be treated as cancelled, unless that notice states that those adjustments are not to be treated as cancelled under this section.

(5) A notice under paragraph 8(2) of Schedule 43B may not contain the statement referred to in subsection (4) unless HMRC was authorised to make the adjustments otherwise than under this Part.

(6) If the taxpayer is given a notice under paragraph 8(2) of Schedule 43B stating that the specified tax advantage is to be counteracted—

(a) the notified adjustments are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and

(b) so far as they are not confirmed, the notified adjustments are to be treated as cancelled.

209F Appeals against provisional counteractions: further provision

(1) Subsections (2) to (5) have effect in relation to an appeal by a person ("the taxpayer") against the making of adjustments which are specified in a provisional counteraction notice.

(2) No steps after the initial notice of appeal are to be taken in relation to the appeal unless and until the taxpayer is given—

(a) a notice under section 209B(4)(b),

(b) a notice under paragraph 6(3) of Schedule 43 (notice of decision not to refer matter to GAAR advisory panel) containing the statement described in section 209C(2) (statement that adjustments are not to be treated as cancelled),

(c) a notice under paragraph 12 of Schedule 43,

(d) a notice under paragraph 8(2) or 9(2) of Schedule 43A, or

(e) a notice under paragraph 8 of Schedule 43B,

in respect of the tax arrangements concerned.

(3) The taxpayer has until the end of the period mentioned in subsection (4) to comply with any requirement to specify the grounds of appeal.

(4) The period mentioned in subsection (3) is the 30 days beginning with the day on which the taxpayer receives the notice mentioned in subsection (2).

(5) In subsection (2) the reference to "steps" does not include the withdrawal of the appeal."

(2) In section 214(1) of FA 2013 (interpretation of Part 5), at the appropriate place insert—

""notified adjustments", in relation to a provisional counteraction notice, has the meaning given by section 209A(2);"

""provisional counteraction notice" has the meaning given by section 209A(2);".

(3) The amendments made by this section have effect in relation to tax arrangements (within the meaning of Part 5 of FA 2013) entered into at any time (whether before or on or after the day on which this Act is passed).

157 General anti-abuse rule: binding of tax arrangements to lead arrangements

(1) Part 5 of FA 2013 (general anti-abuse rule) is amended in accordance with subsections (2) to (11).

(2) After Schedule 43 insert—

"SCHEDULE
43A

PROCEDURAL REQUIREMENTS: POOLING NOTICES AND NOTICES OF BINDING

Pooling notices

1 (1) This paragraph applies where a person has been given a notice under paragraph 3 of Schedule 43 in relation to any tax arrangements (the "lead arrangements") and the condition in sub-paragraph (2) is met.

(2) The condition is that the period of 45 days mentioned in paragraph 4(1) of Schedule 43 has expired but no notice under paragraph 12 of Schedule 43 or paragraph 8 of Schedule 43B has yet been given in respect of the matter.

(3) If a designated HMRC officer considers—

(a) that a tax advantage has arisen to another person ("R") from tax arrangements that are abusive,

(b) that those tax arrangements ("R's arrangements") are equivalent to the lead arrangements, and

(c) that the advantage ought to be counteracted under section 209,

the officer may give R a notice (a "pooling notice") which places R's arrangements in a pool with the lead arrangements.

(4) There is one pool for any lead arrangements, so all tax arrangements placed in a pool with the lead arrangements (as well as the lead arrangements themselves) are in one and the same pool.

(5) Tax arrangements which have been placed in a pool do not cease to be in the pool except where that is expressly provided for by this Schedule (regardless of whether or not the lead arrangements or any other tax arrangements remain in the pool).

(6) The officer may not give R a pooling notice if R has been given in respect of R's arrangements a notice under paragraph 3 of Schedule 43.

Notice of proposal to bind arrangements to counteracted arrangements

2 (1) This paragraph applies where a counteraction notice has been given to a person in relation to any tax arrangements (the "counteracted arrangements") which are in a pool created under paragraph 1.

(2) If a designated HMRC officer considers—

(a) that a tax advantage has arisen to another person ("R") from tax arrangements that are abusive,

(b) that those tax arrangements ("R's arrangements") are equivalent to the counteracted arrangements, and

(c) that the advantage ought to be counteracted under section 209,

the officer may give R a notice (a "notice of binding") in relation to R's arrangements.

(3) The officer may not give R a notice of binding if R has been given in respect of R's arrangements a notice under—

(a) paragraph 1, or
(b) paragraph 3 of Schedule 43.

(4) In this paragraph "counteraction notice" means a notice such as is mentioned in sub-paragraph (2) of paragraph 12 of Schedule 43 or sub-paragraph (3) of paragraph 8 of Schedule 43B (notice of final decision to counteract).

3 (1) The decision whether or not to give R a pooling notice or notice of binding must be taken, and any notice must be given, as soon as is reasonably practicable after HMRC becomes aware of the relevant facts.

(2) A pooling notice or notice of binding must—
(a) specify the tax arrangements in relation to which the notice is given and the tax advantage,
(b) explain why the officer considers R's arrangements to be equivalent to the lead arrangements or the counteracted arrangements (as the case may be),
(c) explain why the officer considers that a tax advantage has arisen to R from tax arrangements that are abusive,
(d) set out the counteraction that the officer considers ought to be taken, and
(e) explain the effect of—
(i) paragraphs 4 to 10,
(ii) subsection (9) of section 209, and
(iii) section 212A.

(3) A pooling notice or notice of binding may set out steps that R may (subject to subsection (9) of section 209) take to avoid the proposed counteraction.

Corrective action by a notified taxpayer

4 (1) If a person to whom a pooling notice or notice of binding has been given takes the relevant corrective action in relation to the tax arrangements and tax advantage specified in the notice before the beginning of the closed period mentioned in section 209(9), the person is to be treated for the purposes of paragraphs 8 and 9 and Schedule 43B (generic referral of tax arrangements) as not having been given the notice in question (and accordingly the tax arrangements in question are no longer in the pool).

(2) For the purposes of this Schedule the "relevant corrective action" is taken if (and only if) the person takes the steps set out in sub-paragraphs (3) and (4).

(3) The first step is that—
(a) the person amends a return or claim to counteract the tax advantage specified in the pooling notice or notice of binding, or
(b) if the person has made a tax appeal (by notifying HMRC or otherwise) on the basis that the tax advantage specified in the pooling notice or notice of binding arises from the tax arrangements specified in that notice, the person takes all necessary action to enter into an agreement with HMRC (in writing) for the purpose of relinquishing that advantage.

(4) The second step is that the person notifies HMRC—

(a) that the first step has been taken, and

(b) of any additional amount which has or will become due and payable in respect of tax by reason of the first step being taken.

(5) Where a person takes the first step described in sub-paragraph (3)(b), HMRC may proceed as if the person had not taken the relevant corrective action if the person fails to enter into the written agreement.

(6) In determining the additional amount which has or will become due and payable in respect of tax for the purposes of sub-paragraph (4)(b), it is to be assumed that, where the person takes the necessary action as mentioned in sub-paragraph (3)(b), the agreement is then entered into.

(7) No enactment limiting the time during which amendments may be made to returns or claims operates to prevent the person taking the first step mentioned in sub-paragraph (3)(a) before the tax enquiry is closed.

(8) No appeal may be brought, by virtue of a provision mentioned in sub-paragraph (9), against an amendment made by a closure notice in respect of a tax enquiry to the extent that the amendment takes into account an amendment made by the taxpayer to a return or claim in taking the first step mentioned in sub-paragraph (3)(a).

(9) The provisions are—

(a) paragraph 35(1)(b) of Schedule 33,

(b) section 31(1)(b) or (c) of TMA 1970,

(c) paragraph 9 of Schedule 1A to TMA 1970,

(d) paragraph 34(3) of Schedule 18 to FA 1998, and

(e) paragraph 35(1)(b) of Schedule 10 to FA 2003.

Corrective action by lead taxpayer

5 If the person mentioned in paragraph 1(1) takes the relevant corrective action (as defined in paragraph 4A of Schedule 43) before the end of the period of 75 days beginning with the day on which the notice mentioned in paragraph 1(1) was given to that person, the lead arrangements are treated as ceasing to be in the pool.

Opinion notices and right to make representations

6 (1) Sub-paragraph (2) applies where—

(a) a pooling notice is given to a person in relation to any tax arrangements, and

(b) an opinion notice (or opinion notices) under paragraph 11(2) of Schedule 43 about another set of tax arrangements in the pool ("the referred arrangements") is subsequently given to a designated HMRC officer.

(2) The officer must give the person a pooled arrangements opinion notice.

(3) No more than one pooled arrangements opinion notice may be given to a person in respect of the same tax arrangements.

(4) Where a designated HMRC officer gives a person a notice of binding, the officer must, at the same time, give the person a bound arrangements opinion notice.

7 (1) In relation to a person who is, or has been, given a pooling notice, "pooled arrangements opinion notice" means a written notice which—

(a) sets out a report prepared by HMRC of any opinion of the GAAR Advisory Panel about the referred arrangements,

(b) explains the person's right to make representations falling within sub-paragraph (3), and

(c) sets out the period in which those representations may be made.

(2) In relation to a person who is given a notice of binding "bound arrangements opinion notice" means a written notice which—

(a) sets out a report prepared by HMRC of any opinion of the GAAR Advisory Panel about the counteracted arrangements (see paragraph 2(1)),

(b) explains the person's right to make representations falling within sub-paragraph (3), and

(c) sets out the period in which those representations may be made.

(3) A person who is given a pooled arrangements opinion notice or a bound arrangements opinion notice has 30 days beginning with the day on which the notice is given to make representations in any of the following categories—

(a) representations that no tax advantage has arisen to the person from the arrangements to which the notice relates;

(b) representations as to why the arrangements to which the notice relates are or may be materially different from—

(i) the referred arrangements (in the case of a pooled arrangements opinion notice), or

(ii) the counteracted arrangements (in the case of a bound arrangements opinion notice).

(4) In sub-paragraph (3)(b) references to "arrangements" include any circumstances which would be relevant in accordance with section 207 to a determination of whether the tax arrangements in question are abusive.

Notice of final decision

8 (1) This paragraph applies where—

(a) any tax arrangements have been placed in a pool by a notice given to a person under paragraph 1, and

(b) a designated HMRC officer has given a notice under paragraph 12 of Schedule 43 in relation to any other arrangements in the pool (the "referred arrangements").

(2) The officer must, having considered any opinion of the GAAR Advisory Panel about the referred arrangements and any representations made under paragraph 7(3) in relation to the arrangements mentioned in sub-paragraph (1)(a), give the person a written notice setting out whether the

tax advantage arising from those arrangements is to be counteracted under the general anti-abuse rule.

9 (1) This paragraph applies where—

(a) a person has been given a notice of binding under paragraph 2, and

(b) the period of 30 days for making representations under paragraph 7(3) has expired.

(2) A designated HMRC officer must, having considered any opinion of the GAAR Advisory Panel about the counteracted arrangements and any representations made under paragraph 7(3) in relation to the arrangements specified in the notice of binding, give the person a written notice setting out whether the tax advantage arising from the arrangements specified in the notice of binding is to be counteracted under the general anti-abuse rule.

10 If a notice under paragraph 8(2) or 9(2) states that a tax advantage is to be counteracted, it must also set out—

(a) the adjustments required to give effect to the counteraction, and

(b) if relevant, any steps the person concerned is required to take to give effect to it.

"Equivalent arrangements"

11 (1) For the purposes of paragraph 1, tax arrangements are "equivalent" to one another if they are substantially the same as one another having regard to—

(a) their substantive results,

(b) the means of achieving those results, and

(c) the characteristics on the basis of which it could reasonably be argued, in each case, that the arrangements are abusive tax arrangements under which a tax advantage has arisen to a person.

Notices may be given on assumption that tax advantage does arise

12 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule where the officer considers that a tax advantage might have arisen to the person concerned.

(2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that a tax advantage does arise (without conceding that it does).

Power to amend

13 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).

(2) Regulations under sub-paragraph (1) may include—

(a) any amendment of this Part that is appropriate in consequence of an amendment by virtue of sub-paragraph (1);

(b) transitional provision.

(3) Regulations under sub-paragraph (1) are to be made by statutory instrument.

(4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons."

(3) After Schedule 43A insert—

"SCHEDULE
43B

PROCEDURAL REQUIREMENTS: GENERIC REFERRAL OF TAX ARRANGEMENTS

Notice of proposal to make generic referral of tax arrangements

1 (1) Sub-paragraph (2) applies if—

(a) pooling notices given under paragraph 1 of Schedule 43A have placed one or more sets of tax arrangements in a pool with the lead arrangements,

(b) the lead arrangements (see paragraph 1(1) of Schedule 43A) have ceased to be in the pool, and

(c) no referral under paragraph 5 or 6 of Schedule 43 has been made in respect of any arrangements in the pool.

(2) A designated HMRC officer may determine that, in respect of each of the tax arrangements that are in the pool, there is to be given (to the person to whom the pooling notice in question was given) a written notice of a proposal to make a generic referral to the GAAR Advisory Panel in respect of the arrangements in the pool.

(3) Only one determination under sub-paragraph (2) may be made in relation to any one pool.

(4) The persons to whom those notices are given are "the notified taxpayers".

(5) A notice given to a person ("T") under sub-paragraph (2) must—

(a) specify the arrangements (the "specified arrangements") and the tax advantage (the "specified advantage") to which the notice relates,

(b) inform T of the period under paragraph 2 for making a proposal.

2 (1) T has 30 days beginning with the day on which the notice under paragraph 1 is given to propose to HMRC that it—

(a) should give T a notice under paragraph 3 of Schedule 43 in respect of the arrangements to which the notice under paragraph 1 relates, and

(b) should not proceed with the proposal to make a generic referral to the GAAR Advisory Panel in respect of those arrangements.

(2) If a proposal is made in accordance with sub-paragraph (1) a designated HMRC officer must consider it.

Generic referral

3 (1) This paragraph applies where a designated HMRC officer has given notices to the notified taxpayers in accordance with paragraph 1(2).

(2) If none of the notified taxpayers has made a proposal under paragraph 2 by the end of the 30 day period mentioned in that paragraph, the officer must make a referral to the GAAR Advisory Panel in respect of the notified taxpayers and the arrangements which are specified arrangements in relation to them.

(3) If at least one of the notified taxpayers makes a proposal in accordance with paragraph 2, the designated HMRC officer must, after the end of that 30 day period, decide whether to—

(a) give a notice under paragraph 3 of Schedule 43 in respect of one set of tax arrangements in the relevant pool, or

(b) make a referral to the GAAR Advisory Panel in respect of the tax arrangements in the relevant pool.

(4) A referral under this paragraph is a "generic referral".

4 (1) If a generic referral is made to the GAAR Advisory Panel, the designated HMRC officer must at the same time provide it with—

(a) a general statement of the material characteristics of the specified arrangements, and

(b) a declaration that—

(i) the statement under paragraph (a) is applicable to all the specified arrangements, and

(ii) as far as HMRC is aware, nothing which is material to the GAAR Advisory Panel's consideration of the matter has been omitted.

(2) The general statement under sub-paragraph (1)(a) must—

(a) contain a factual description of the tax arrangements;

(b) set out HMRC's view as to whether the tax arrangements accord with established practice (when the arrangements were entered into);

(c) explain why it is the designated HMRC officer's view that a tax advantage of the nature described in the statement and arising from tax arrangements having the characteristics described in the statement would be a tax advantage arising from arrangements that are abusive;

(d) set out any matters the designated officer is aware of which may suggest that any view of HMRC or the designated HMRC officer expressed in the general statement is not correct;

(e) set out any other matters which the designated officer considers are required for the purposes of the exercise of the GAAR Advisory Panel's functions under paragraph 6.

5 If a generic referral is made the designated HMRC officer must at the same time give each of the notified taxpayers a notice which—

(a) specifies that a generic referral is being made, and

(b) is accompanied by a copy of the statement given to the GAAR Advisory Panel in accordance with paragraph 4(1)(a).

Decision of GAAR Advisory Panel and opinion notices

6 (1) If a generic referral is made to the GAAR Advisory Panel under paragraph 3, the Chair must arrange for a sub-panel consisting of 3 members of the GAAR Advisory Panel (one of whom may be the Chair) to consider it.

(2) The sub-panel must produce—

(a) one opinion notice stating the joint opinion of all the members of the sub-panel, or

(b) two or three opinion notices which taken together state the opinions of all the members.

(3) The sub-panel must give a copy of the opinion notice or notices to the designated HMRC officer.

(4) An opinion notice is a notice which states that in the opinion of the members of the sub-panel, or one or more of those members—

(a) the entering into and carrying out of tax arrangements such as are described in the general statement under paragraph 4(1)(a) is a reasonable course of action in relation to the relevant tax provisions,

(b) the entering into or carrying out of such tax arrangements is not a reasonable course of action in relation to the relevant tax provisions, or

(c) it is not possible, on the information available, to reach a view on that matter,

and the reasons for that opinion.

(5) In forming their opinions for the purposes of sub-paragraph (4) members of the sub-panel must—

(a) have regard to all the matters set out in the statement under paragraph 4(1)(a),

(b) assume (unless the contrary is stated in the statement under paragraph 4(1)(a)) that the tax arrangements do not form part of any other arrangements,

(c) have regard to the matters mentioned in paragraphs (a) to (c) of section 207(2), and

(d) take account of subsections (4) to (6) of section 207.

(6) For the purposes of the giving of an opinion under this paragraph, the arrangements are to be assumed to be tax arrangements.

(7) In this Part, a reference to any opinion of the GAAR Advisory Panel in respect of a generic referral of any tax arrangements is a reference to the contents of any opinion notice given in relation to a generic referral in respect of the arrangements.

Notice of right to make representations

7 (1) Where a designated HMRC officer is given an opinion notice (or opinion notices) under paragraph 6, the officer must give each of the notified taxpayers a copy of the opinion notice (or notices) and a written notice which—

(a) explains the notified taxpayer's right to make representations falling within sub-paragraph (2), and

(b) sets out the period in which those representations may be made.

(2) A notified taxpayer ("T") who is given a notice under sub-paragraph (1) has 30 days beginning with the day on which the notice is given to make representations in any of the following categories—

(a) representations that no tax advantage has arisen from the specified arrangements;

(b) representations that T has already been given a notice under paragraph 6 of Schedule 43A in relation to the specified arrangements;

(c) representations that any matter set out in the statement under paragraph 4(1)(a) is materially inaccurate as regards the specified arrangements (having regard to all circumstances which would be relevant in accordance with section 207 to a determination of whether the tax arrangements in question are abusive).

Notice of final decision after considering opinion of GAAR Advisory Panel

8 (1) A designated HMRC officer who has received a copy of a notice or notices under paragraph 6(3) in respect of a generic referral must consider the case of each notified taxpayer in accordance with sub-paragraph (2).

(2) The officer must, having considered—

(a) any opinion of the GAAR Advisory Panel about the matters referred to it, and

(b) any representations made by the notified taxpayer under paragraph 7,

give to the notified taxpayer a written notice setting out whether the specified advantage is to be counteracted under the general anti-abuse rule.

(3) If the notice states that a tax advantage is to be counteracted, it must also set out—

(a) the adjustments required to give effect to the counteraction, and

(b) if relevant, any steps that the taxpayer is required to take to give effect to it.

Notices may be given on assumption that tax advantage does arise

9 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule where the officer considers that a tax advantage might have arisen to the person concerned.

(2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that a tax advantage does arise (without conceding that it does).

Power to amend

10 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).

(2) Regulations under sub-paragraph (1) may include—

(a) any amendment of this Part that is appropriate in consequence of an amendment by virtue of sub-paragraph (1);

(b) transitional provision.

(3) Regulations under sub-paragraph (1) are to be made by statutory instrument.

(4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons."

(4) In section 209 (counteracting tax advantages), in subsection (6)(a), after "Schedule 43" insert ", 43A or 43B".

(5) In section 210 (consequential relieving adjustments), in subsection (1)(b), after "Schedule 43," insert "paragraph 8 or 9 of Schedule 43A or paragraph 8 of Schedule 43B,".

(6) In section 211 (proceedings before a court or tribunal), in subsection (2)(b), for the words from "Panel" to the end substitute "Panel given—

(i) under paragraph 11 of Schedule 43 about the arrangements or any tax arrangements which are, as a result of a notice under paragraph 1 or 2 of Schedule 43A, the referred or (as the case may be) counteracted arrangements in relation to the arrangements, or

(ii) under paragraph 6 of Schedule 43B in respect of a generic referral of the arrangements."

(7) Section 214 (interpretation of Part 5) is amended in accordance with subsections (8) to (10).

(8) Renumber section 214 as subsection (1) of section 214.

(9) In subsection (1) (as renumbered), at the appropriate places insert—

""designated HMRC officer" has the meaning given by paragraph 2 of Schedule 43;".".

""notice of binding" has the meaning given by paragraph 2(2) of Schedule 43A;"

""pooling notice" has the meaning given by paragraph 1(4) of Schedule 43A;"

""tax appeal" has the meaning given by paragraph 1A of Schedule 43;"

""tax enquiry" has the meaning given by section 202(2) of FA 2014."

(10) After subsection (1) insert—

"(2) In this Part references to any "opinion of the GAAR Advisory Panel" about any tax arrangements are to be interpreted in accordance with paragraph 11(5) of Schedule 43.

(3) In this Part references to tax arrangements which are "equivalent" to one another are to be interpreted in accordance with paragraph 11 of Schedule 43A."

(11) In Schedule 43 (general anti-abuse rule: procedural requirements), in paragraph 6, after sub-paragraph (2) insert—

"(3) The officer must, as soon as reasonably practicable after deciding whether or not the matter is to be referred to the GAAR Advisory Panel, give the taxpayer written notice of the decision."

(12) Section 10 of the National Insurance Contributions Act 2014 (GAAR to apply to national insurance contributions) is amended in accordance with subsections (13) to (16).

(13) In subsection (4), at the end insert ", paragraph 8 or 9 of Schedule 43A to that Act (pooling of tax arrangements: notice of final decision) or paragraph 8 of Schedule 43B to that Act (generic referral of arrangements: notice of final decision)".

(14) After subsection (6) insert—

"(6A) Where, by virtue of this section, a case falls within paragraph 4A of Schedule 43 to the Finance Act 2013 (referrals of single schemes: relevant corrective action) or paragraph 4 of Schedule 43A to that Act (pooled schemes: relevant corrective action)—

(a) the person ("P") mentioned in sub-paragraph (1) of that paragraph takes the "relevant corrective action" for the purposes of that paragraph if (and only if)—

(i) in a case in which the tax advantage in question can be counteracted by making a payment to HMRC, P makes that payment and notifies HMRC that P has done so, or

(ii) in any case, P takes all necessary action to enter into an agreement in writing with HMRC for the purpose of relinquishing the tax advantage, and

(b) accordingly, sub-paragraphs (2) to (8) of that paragraph do not apply."

(15) In subsection (11)—

(a) for "and HMRC" substitute ", "HMRC" and "tax advantage"";

(b) after "2013" insert "(as modified by this section)".

(16) After subsection (11) insert—

"(12) See section 10A for further modifications of Part 5 of the Finance Act 2013."

(17) After section 10 of the National Insurance Contributions Act 2014 insert—

"**10A Application of GAAR in relation to penalties**

(1) For the purposes of this section a penalty under section 212A of the Finance Act 2013 is a "relevant NICs-related penalty" so far as the penalty relates to a tax advantage in respect of relevant contributions.

(2) A relevant NICs-related penalty may be recovered as if it were an amount of relevant contributions which is due and payable.

(3) Section 117A of the Social Security Administration Act 1992 or (as the case may be) section 111A of the Social Security Administration (Northern Ireland) Act 1992 (issues arising in proceedings: contributions etc) has effect in relation to proceedings before a court for recovery of a relevant NICs-related penalty as if the assessment of the penalty were a NICs decision as to whether the person is liable for the penalty.

(4) Accordingly, paragraph 5(4)(b) of Schedule 43C to the Finance Act 2013 (assessment of penalty to be enforced as if it were an assessment to tax) does not apply in relation to a relevant NICs-related penalty.

(5) In the application of Schedule 43C to the Finance Act 2013 in relation to a relevant NICs-related penalty, paragraph 9(5) has effect as if the reference to an appeal against an assessment to the tax concerned were to an appeal against a NICs decision.

(6) In paragraph 8 of that Schedule (aggregate penalties), references to a "relevant penalty provision" include—

(a) any provision mentioned in sub-paragraph (5) of that paragraph, as applied in relation to any class of national insurance contributions by regulations (whenever made);

(b) section 98A of the Taxes Management Act 1970, as applied in relation to any class of national insurance contributions by regulations (whenever made);

(c) any provision in regulations made by the Treasury under which a penalty can be imposed in respect of any class of national insurance contributions.

(7) The Treasury may by regulations—

(a) disapply, or modify the effect of, subsection (6)(a) or (b);

(b) modify paragraph 8 of Schedule 43C to the Finance Act 2013 as it has effect in relation to a relevant penalty provision by virtue of subsection (6)(b) or (c).

(8) Section 175(3) to (5) of SSCBA 1992 (various supplementary powers) applies to a power to make regulations conferred by subsection (7).

(9) Regulations under subsection (7) must be made by statutory instrument.

(10) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.

(11) In this section "NICs decision" means a decision under section 8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 or Article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (SI 1999/671).

(12) In this section "relevant contributions" means the following contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992—

(a) Class 1 contributions;

(b) Class 1A contributions;

(c) Class 1B contributions;

(d) Class 2 contributions which must be paid but in relation to which section 11A of the Act in question (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2) of that Act) does not apply."

(18) Section 219 of FA 2014 (circumstances in which an accelerated payment notice may be given) is amended in accordance with subsections (19) and (20).

(19) In subsection (4), after paragraph (c) insert—

"(d) a notice has been given under paragraph 8(2) or 9(2) of Schedule 43A to FA 2013 (notice of final decision after considering Panel's opinion about referred or counteracted arrangements) in relation to the asserted advantage or part of it and the chosen arrangements (or is so given at the same time as the accelerated payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel about the other arrangements (see subsection (8)) was as set out in paragraph 11(3)(b) of Schedule 43 to FA 2013;

(e) a notice under paragraph 8(2) of Schedule 43B to FA 2013 (GAAR: generic referral of tax arrangements) has been given in relation to the asserted advantage or part of it and the chosen arrangements (or is so given at the same time as the accelerated payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel which considered the generic referral in respect of those arrangements under paragraph 6 of Schedule 43B to FA 2013 was as set out in paragraph 6(4)(b) of that Schedule."

(20) After subsection (7) insert—

"(8) In subsection (4)(d) "other arrangements" means—

(a) in relation to a notice under paragraph 8(2) of Schedule 43A to FA 2013, the referred arrangements (as defined in that paragraph);

(b) in relation to a notice under paragraph 9(2) of that Schedule, the counteracted arrangements (as defined in paragraph 2 of that Schedule)."

(21) In section 220 of FA 2014 (content of notice given while a tax enquiry is in progress)—

(a) in subsection (4)(c), after "219(4)(c)" insert ", (d) or (e)";

(b) in subsection (5)(c), after "219(4)(c)" insert ", (d) or (e)";

(c) in subsection (7), for the words from "under" to the end substitute "under—

(a) paragraph 12 of Schedule 43 to FA 2013,

(b) paragraph 8 or 9 of Schedule 43A to that Act, or

(c) paragraph 8 of Schedule 43B to that Act,

as the case may be."

(22) Section 287 of FA 2014 (Code of Practice on Taxation for Banks) is amended in accordance with subsections (23) to (25).

(23) In subsection (4), after "(5)" insert "or (5A)".

(24) In subsection (5)(b), after "Schedule" insert "or paragraph 8 or 9 of Schedule 43A to that Act".

(25) After subsection (5) insert—

"(5A) This subsection applies to any conduct—

(a) in relation to which there has been given—

(i) an opinion notice under paragraph 6(4)(b) of Schedule 43B to FA 2013 (GAAR advisory panel: opinion that such conduct unreasonable) stating the joint opinion of all the members of a sub-panel arranged under that paragraph, or

(ii) one or more such notices stating the opinions of at least two members of such a sub-panel, and

(b) in relation to which there has been given a notice under paragraph 8 of that Schedule (HMRC final decision on tax advantage) stating that a tax advantage is to be counteracted.

(5B) For the purposes of subsection (5), any opinions of members of the GAAR advisory panel which must be considered before a notice is given under paragraph 8 or 9 of Schedule 43A to FA 2013 (opinions about the lead arrangements) are taken to relate to the conduct to which the notice relates."

(26) In Schedule 32 to FA 2014 (accelerated payments and partnerships), paragraph 3 is amended in accordance with subsections (27) and (28).

(27) In sub-paragraph (5), after paragraph (c) insert—

"(d) the relevant partner in question has been given a notice under paragraph 8(2) or 9(2) of Schedule 43A to FA 2013 (notice of final decision after considering Panel's opinion about referred or counteracted arrangements) in respect of any tax advantage resulting from the asserted advantage or part of it and the chosen arrangements (or is given such a notice at the same time as the partner payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel about the other arrangements (see sub-paragraph (7)) was as set out in paragraph 11(3)(b) of Schedule 43 to FA 2013;

(e) the relevant partner in question has been given a notice under paragraph 8(2) of Schedule 43B to FA 2013 (GAAR: generic referral of arrangements) in respect of any tax advantage resulting from the asserted advantage or part of it and the chosen arrangements (or is given such a notice at the same time as the partner payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel which considered the generic referral in respect of those arrangements was as set out in paragraph 6(4)(b) of that Schedule."

(28) After sub-paragraph (6) insert—

"(7) Other arrangements" means—

(a) in relation to a notice under paragraph 8(2) of Schedule 43A to FA 2013, the referred arrangements (as defined in that paragraph);

(b) in relation to a notice under paragraph 9(2) of that Schedule, the counteracted arrangements (as defined in paragraph 2 of that Schedule).”

(29) In Schedule 34 to FA 2014 (promoters of tax avoidance schemes: threshold conditions), in paragraph 7—

(a) in paragraph (a), at the end insert “(referrals of single schemes) or are in a pool in respect of which a referral has been made to that Panel under Schedule 43B to that Act (generic referrals),”;

(b) in paragraph (b)—

(i) for “in relation to the arrangements” substitute “in respect of the referral”;

(ii) after “11(3)(b)” insert “or (as the case may be) 6(4)(b)”;

(c) in paragraph (c)(i) omit “paragraph 10 of”.

(30) The amendments made by this section have effect in relation to tax arrangements (within the meaning of Part 5 of FA 2013) entered into at any time (whether before or on or after the day on which this Act is passed).

158 General anti-abuse rule: penalty

(1) Part 5 of FA 2013 (general anti-abuse rule) is amended as follows.

(2) After section 212 insert—

“**212A Penalty**

(1) A person (P) is liable to pay a penalty if—

(a) P has been given a notice under—

(i) paragraph 12 of Schedule 43,

(ii) paragraph 8 or 9 of Schedule 43A, or

(iii) paragraph 8 of Schedule 43B,

stating that a tax advantage arising from particular tax arrangements is to be counteracted,

(b) a tax document has been given to HMRC on the basis that the tax advantage arises to P from those arrangements,

(c) that document was given to HMRC—

(i) by P, or

(ii) by another person in circumstances where P knew, or ought to have known, that the other person gave the document on the basis mentioned in paragraph (c), and

(d) the tax advantage has been counteracted by the making of adjustments under section 209.

(2) The penalty is 60% of the value of the counteracted advantage.

(3) Schedule 43C—

(a) gives the meaning of “the value of the counteracted advantage”, and

(b) makes other provision in relation to penalties under this section.

(4) In this section "tax document" means any return, claim or other document submitted in compliance (or purported compliance) with any provision of, or made under, an Act.

(5) In this section the reference to giving a tax document to HMRC is to be interpreted in accordance with paragraph 11(g) and (h) of Schedule 43C."

(3) After Schedule 43B insert—

"SCHEDULE
43C

PENALTY UNDER SECTION 212A: SUPPLEMENTARY PROVISION

Value of the counteracted advantage: introduction

1 Paragraphs 2 to 4 set out how to calculate the "value of the counteracted advantage" for the purposes of section 212A.

Value of the counteracted advantage: basic rule

2 (1) The "value of the counteracted advantage" is the additional amount due or payable in respect of tax as a result of the counteraction mentioned in section 212A(1)(c).

(2) The reference in sub-paragraph (1) to the additional amount due and payable includes a reference to—

(a) an amount payable to HMRC having erroneously been paid by way of repayment of tax, and

(b) an amount which would be repayable by HMRC if the counteraction were not made.

(3) The following are ignored in calculating the value of the counteracted advantage—

(a) group relief, and

(b) any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.

(4) For the purposes of this paragraph consequential adjustments under section 210 are regarded as part of the counteraction in question.

(5) If the counteraction affects the person's liability to two or more taxes, the taxes concerned are to be considered together for the purpose of determining the value of the counteracted advantage.

(6) This paragraph is subject to paragraphs 3 and 4.

Value of counteracted advantage: losses

3 (1) To the extent that the tax advantage mentioned in section 212A(1)(b) ("the tax advantage") resulted in the wrong recording of a loss for the purposes of direct tax and the loss has been wholly used to reduce the amount due

or payable in respect of tax, the value of the counteracted advantage is determined in accordance with paragraph 2.

(2) To the extent that the tax advantage resulted in the wrong recording of a loss for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is—

(a) the value under paragraph 2 of so much of the tax advantage as results (or would in the absence of the counteraction result) from the part (if any) of the loss which was used to reduce the amount due or payable in respect of tax, plus

(b) 10% of the part of the loss not so used.

(3) Sub-paragraphs (1) and (2) apply both—

(a) to a case where no loss would have been recorded but for the tax advantage, and

(b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (1) and (2) apply only to the difference between the amount recorded and the true amount).

(4) To the extent that the tax advantage creates or increases (or would in the absence of the counteraction create or increase) an aggregate loss recorded for a group of companies—

(a) the value of the counteracted advantage is calculated in accordance with this paragraph, and

(b) in applying paragraph 2 in accordance with sub-paragraphs (1) and (2), group relief may be taken into account (despite paragraph 2(3)).

(5) To the extent that the tax advantage results (or would in the absence of the counteraction result) in a loss, the value of it is nil where, because of the nature of the loss or the person's circumstances, there was no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

Value of counteracted advantage: deferred tax

4 (1) To the extent that the tax advantage mentioned in section 212A is a deferral of tax, the value of the counteracted advantage is—

(a) 25% of the amount of the deferred tax for each year of the deferral, or

(b) a percentage of the amount of the deferred tax, for each separate period of deferral of less than a year, equating to 25% per year,

or, if less, 100% of the amount of the deferred tax.

(2) This paragraph does not apply to a case to the extent that paragraph 3 applies.

Assessment of penalty

5 (1) Where a person is liable for a penalty under section 212A, HMRC must assess the penalty.

(2) Where HMRC assess the penalty, HMRC must—

(a) notify the person who is liable for the penalty, and

(b) state in the notice a tax period in respect of which the penalty is assessed.

(3) A penalty under this paragraph must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(4) An assessment—

(a) is to be treated for procedural purposes as if it were an assessment to tax,

(b) may be enforced as if it were an assessment to tax, and

(c) may be combined with an assessment to tax.

(5) An assessment of a penalty under this paragraph must be made before the end of the period of 12 months beginning with—

(a) the end of the appeal period for the assessment which gave effect to the counteraction mentioned in section 212A(1)(b), or

(b) if there is no assessment within paragraph (a), the date (or the latest of the dates) on which that counteraction becomes final.

(6) The reference in sub-paragraph (5)(b) to the counteraction becoming final is to be interpreted in accordance with section 210(8).

Alteration of assessment of penalty

6 (1) After notification of an assessment has been given to a person under paragraph 5(2), the assessment may not be altered except in accordance with this paragraph or paragraph 7, or on appeal.

(2) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the value of the counteracted advantage.

(3) An assessment may be revised as necessary if it operated by reference to an overestimate of the value of the counteracted advantage.

Revision of assessment following consequential relieving adjustment

7 (1) Sub-paragraph (2) applies where a person—

(a) is notified under section 210(7) of a consequential adjustment relating to a counteraction under section 209, and

(b) an assessment to a penalty in respect of that counteraction of which the person has been notified under paragraph 5(2) does not take account of that consequential adjustment.

(2) HMRC must make any alterations of the assessment that appear to HMRC to be just and reasonable in connection with the consequential amendment.

(3) Alterations under this paragraph may be made despite any time limit imposed by or under an enactment.

Aggregate penalties

8 (1) Sub-paragraph (3) applies where—

(a) two or more penalties are incurred by the same person and fall to be determined by reference to an amount of tax to which that person is chargeable,

(b) one of those penalties is incurred under section 212A, and

(c) one or more of the other penalties are incurred under a relevant penalty provision.

(2) But sub-paragraph (3) does not apply if section 212(2) of FA 2014 (follower notices: aggregate penalties) applies in relation to the amount of tax in question.

(3) The aggregate of the amounts of the penalties mentioned in subsection (1)(b) and (c), so far as determined by reference to that amount of tax, must not exceed—

(a) the relevant percentage of that amount, or

(b) in a case where at least one of the penalties is under paragraph 5(2)(b) of, or sub-paragraph (3)(b), (4)(b) or (5)(b) of paragraph 6 of, Schedule 55 to FA 2009, £300 (if greater).

(4) In the application of section 97A of TMA 1970 (multiple penalties) no account shall be taken of a penalty under section 212A.

(5) "Relevant penalty provision" means—

(a) Schedule 24 to FA 2007 (penalties for errors),

(b) Schedule 41 to FA 2008 (penalties: failure to notify etc),

(c) Schedule 55 to FA 2009 (penalties for failure to make returns etc), or

(d) Part 5 of Schedule 18 to FA 2016 (penalty under serial tax avoidance regime).

(6) "The relevant percentage" means—

(a) 200% in a case where at least one of the penalties is determined by reference to the percentage in—

(i) paragraph 4(4)(c) of Schedule 24 to FA 2007,

(ii) paragraph 6(4)(a) of Schedule 41 to FA 2008, or

(iii) paragraph 6(3A)(c) of Schedule 55 to FA 2009,

(b) 150% in a case where paragraph (a) does not apply and at least one of the penalties is determined by reference to the percentage in—

(i) paragraph 4(3)(c) of Schedule 24 to FA 2007,

(ii) paragraph 6(3)(a) of Schedule 41 to FA 2008, or

(iii) paragraph 6(3A)(b) of Schedule 55 to FA 2009,

(c) 140% in a case where neither paragraph (a) nor paragraph (b) applies and at least one of the penalties is determined by reference to the percentage in—

(i) paragraph 4(4)(b) of Schedule 24 to FA 2007,

(ii) paragraph 6(4)(b) of Schedule 41 to FA 2008, or

(iii) paragraph 6(4A)(c) of Schedule 55 to FA 2009,

(d) 105% in a case where at none of paragraphs (a), (b) and (c) applies and at least one of the penalties is determined by reference to the percentage in—

(i) paragraph 4(3)(b) of Schedule 24 to FA 2007,

(ii) paragraph 6(3)(b) of Schedule 41 to FA 2008, or

(iii) paragraph 6(4A)(b) of Schedule 55 to FA 2009, and

(e) in any other case, 100%.

Appeal against penalty

9 (1) A person may appeal against—

(a) the imposition of a penalty under section 212A, or

(b) the amount assessed under paragraph 5.

(2) An appeal under sub-paragraph (1)(a) may only be made on the grounds that the arrangements were not abusive or there was no tax advantage to be counteracted.

(3) An appeal under sub-paragraph (1)(b) may only be made on the grounds that the assessment was based on an overestimate of the value of the counteracted advantage (whether because the estimate was made by reference to adjustments which were not just and reasonable or for any other reason).

(4) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which notification of the penalty is given under paragraph 5(2).

(5) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(6) Sub-paragraph (5) does not apply—

(a) so as to require a person to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b) in respect of any other matter expressly provided for by this Part.

(7) On an appeal against the penalty the tribunal may affirm or cancel HMRC's decision.

(8) On an appeal against the amount of the penalty the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC has power to make.

(9) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (5)).

Mitigation of penalties

10 (1) The Commissioners may in their discretion mitigate a penalty under section 212A, or stay or compound any proceedings for such a penalty.

(2) They may also, after judgment, further mitigate or entirely remit the penalty.

Interpretation

11 In this Schedule—

(a) a reference to an "assessment" to tax is to be interpreted, in relation to inheritance tax, as a reference to a determination;

(b) "direct tax" means—

(i) income tax,

(ii) capital gains tax,

(iii) corporation tax (including any amount chargeable as if it were corporation tax or treated as corporation tax),

(iv) petroleum revenue tax, and

(v) diverted profits tax;

(c) a reference to a loss includes a reference to a charge, expense, deficit and any other amount which may be available for, or relied on to claim, a deduction or relief;

(d) a reference to a repayment of tax includes a reference to allowing a credit against tax or to a payment of a corporation tax credit;

(e) "corporation tax credit" means—

(i) an R&D tax credit under Chapter 2 or 7 of Part 13 of CTA 2009,

(ii) an R&D expenditure credit under Chapter 6A of Part 3 of CTA 2009,

(iii) a land remediation tax credit or life assurance company tax credit under Chapter 3 or 4 respectively of Part 14 of CTA 2009,

(iv) a film tax credit under Chapter 3 of Part 15 of CTA 2009,

(v) a television tax credit under Chapter 3 of Part 15A of CTA 2009,

(vi) a video game tax credit under Chapter 3 of Part 15B of CTA 2009,

(vii) a theatre tax credit under section 1217K of CTA 2009,

(viii) an orchestra tax credit under Chapter 3 of Part 15D of CTA 2009, or

(ix) a first-year tax credit under Schedule A1 to CAA 2001;

(f) "tax period" means a tax year, accounting period or other period in respect of which tax is charged;

(g) a reference to giving a document to HMRC includes a reference to communicating information to HMRC in any form and by any method (whether by post, fax, email, telephone or otherwise),

(h) a reference to giving a document to HMRC includes a reference to making a statement or declaration in a document."

(4) In section 209 (counteracting the tax advantages), after subsection (7) insert—

"(8) Where a matter is referred to the GAAR Advisory Panel under paragraph 5 or 6 of Schedule 43, the taxpayer (as defined in paragraph 3 of that Schedule) must not make any GAAR-related adjustments in relation to the taxpayer's tax affairs in the period (the "closed period") which—

(a) begins with the 31st day after the end of the 45 day period mentioned in paragraph 4(1) of that Schedule, and

(b) ends immediately before the day on which the taxpayer is given the notice under paragraph 12 of Schedule 43 (notice of final decision after considering opinion of GAAR Advisory Panel).

(9) Where a person has been given a pooling notice or a notice of binding under Schedule 43A in relation to any tax arrangements, the person must not make any GAAR-related adjustments in the period ("the closed period") that—

(a) begins with the 31st day after that on which that notice is given, and

(b) ends—

(i) in the case of a pooling notice, immediately before the day on which the person is given a notice under paragraph 8(2) or 9(2) of Schedule 43A, or a notice under paragraph 8(2) of Schedule 43B, in relation to the tax arrangements (notice of final decision after considering opinion of GAAR Advisory Panel), or

(ii) in the case of a notice of binding, with the 30th day after the day on which the notice is given.

(10) In this section "GAAR-related adjustments" means—

(a) for the purposes of subsection (8), adjustments which give effect (wholly or in part) to the proposed counteraction set out in the notice under paragraph 3 of Schedule 43;

(b) for the purposes of subsection (9), adjustments which give effect (wholly or partly) to the proposed counteraction set out in the notice of pooling or binding (as the case may be)."

(5) Schedule 43 (general anti-abuse rule: procedural requirements) is amended in accordance with subsections (6) to (9).

(6) After paragraph 1 insert—

"Meaning of "tax appeal"

1A In this Part "tax appeal" means—

(a) an appeal under section 31 of TMA 1970 (income tax: appeals against amendments of self-assessment, amendments made by closure notices under section 28A or 28B of that Act, etc), including an appeal under that section by virtue of regulations under Part 11 of ITEPA 2003 (PAYE),

(b) an appeal under paragraph 9 of Schedule 1A to TMA 1970 (income tax: appeals against amendments made by closure notices under paragraph 7(2) of that Schedule, etc),

(c) an appeal under section 705 of ITA 2007 (income tax: appeals against counteraction notices),

(d) an appeal under paragraph 34(3) or 48 of Schedule 18 to FA 1998 (corporation tax: appeals against amendment of a company's return made by closure notice, assessments other than self-assessments, etc),

(e) an appeal under section 750 of CTA 2010 (corporation tax: appeals against counteraction notices),

(f) an appeal under section 222 of IHTA 1984 (appeals against HMRC determinations) other than an appeal made by a person against a determination in respect of a transfer of value at a time when a tax enquiry is in progress in respect of a return made by that person in respect of that transfer,

(g) an appeal under paragraph 35 of Schedule 10 to FA 2003 (stamp duty land tax: appeals against amendment of self-assessment, discovery assessments, etc),

(h) an appeal under paragraph 35 of Schedule 33 to FA 2013 (annual tax on enveloped dwellings: appeals against amendment of self-assessment, discovery assessments, etc),

(i) an appeal under paragraph 14 of Schedule 2 to the Oil Taxation Act 1975 (petroleum revenue tax: appeal against assessment, determination etc),

(j) an appeal under section 102 of FA 2015 (diverted profits tax: appeal against charging notice etc),

(k) an appeal under section 114 of FA 2016 (apprenticeship levy: appeal against an assessment), or

(l) an appeal against any determination of—

(i) an appeal within paragraphs (a) to (k), or

(ii) an appeal within this paragraph."

(7) In paragraph 3(2)(e), for "of paragraphs 5 and 6" substitute "of—

(i) paragraphs 5 and 6, and

(ii) sections 209(8) and (9) and 212A."

(8) After paragraph 4 insert—

"Corrective action by taxpayer

4A (1) If the taxpayer takes the relevant corrective action before the beginning of the closed period mentioned in section 209(8), the matter is not to be referred to the GAAR Advisory Panel.

(2) For the purposes of this Schedule the "relevant corrective action" is taken if (and only if) the taxpayer takes the steps set out in sub-paragraphs (3) and (4).

(3) The first step is that—

(a) the taxpayer amends a return or claim to counteract the tax advantage specified in the notice under paragraph 3, or

(b) if the taxpayer has made a tax appeal (by notifying HMRC or otherwise) on the basis that the tax advantage specified in

the notice under paragraph 3 arises from the tax arrangements specified in that notice, the taxpayer takes all necessary action to enter into an agreement with HMRC (in writing) for the purpose of relinquishing that advantage.

(4) The second step is that the taxpayer notifies HMRC—

(a) that the taxpayer has taken the first step, and

(b) of any additional amount which has or will become due and payable in respect of tax by reason of the first step being taken.

(5) Where the taxpayer takes the first step described in sub-paragraph (3)(b), HMRC may proceed as if the taxpayer had not taken the relevant corrective action if the taxpayer fails to enter into the written agreement.

(6) In determining the additional amount which has or will become due and payable in respect of tax for the purposes of sub-paragraph (4)(b), it is to be assumed that, where the taxpayer takes the necessary action as mentioned in sub-paragraph (3)(b), the agreement is then entered into.

(7) No enactment limiting the time during which amendments may be made to returns or claims operates to prevent the taxpayer taking the first step mentioned in sub-paragraph (3)(a) before the tax enquiry is closed (whether or not before the specified time).

(8) No appeal may be brought, by virtue of a provision mentioned in sub-paragraph (9), against an amendment made by a closure notice in respect of a tax enquiry to the extent that the amendment takes into account an amendment made by the taxpayer to a return or claim in taking the first step mentioned in sub-paragraph (3)(a).

(9) The provisions are—

(a) section 31(1)(b) or (c) of TMA 1970,

(b) paragraph 9 of Schedule 1A to TMA 1970,

(c) paragraph 34(3) of Schedule 18 to FA 1998,

(d) paragraph 35(1)(b) of Schedule 10 to FA 2003, and

(e) paragraph 35(1)(b) of Schedule 33 to FA 2013."

(9) Before paragraph 5 (but after the heading "Referral to GAAR Advisory Panel") insert—

"4B Paragraphs 5 and 6 apply if the taxpayer does not take the relevant corrective action (see paragraph 4A) by the beginning of the closed period mentioned in section 209(8)."

(10) In section 103ZA of TMA 1970 (disapplication of sections 100 to 103 in the case of certain penalties)—

(a) omit "or" at the end of paragraph (g), and

(b) after paragraph (g) insert

"(ga) section 212A of the Finance Act 2013 (general anti-abuse rule), or"

(11) In section 212 of FA 2014 (follower notices: aggregate penalties) (as amended by Schedule 18), in subsection (4)—

(a) omit "or" at the end of paragraph (c), and

(b) after paragraph (d) insert ", or

(e) section 212A of FA 2013 (general anti-abuse rule)."

(12) FA 2015 is amended in accordance with subsections (13) and (14).

(13) In section 120 (penalties in connection with offshore matters and offshore transfers), in subsection (1), omit "and" before paragraph (c) and after paragraph (c) insert— ", and

(d) Schedule 43C to FA 2013 (as amended by FA 2016)."

(14) In Schedule 20 to that Act, after paragraph 19 insert—

"General anti-abuse rule: aggregate penalties

20 (1) In Schedule 43C to FA 2013 (general anti-abuse rule: supplementary provision about penalty), sub-paragraph (6) of paragraph 8 is amended as follows.

(2) After paragraph (b) insert—

"(ba) 125% in a case where neither paragraph (a) nor paragraph (b) applies and at least one of the penalties is determined by reference to the percentage in—

(i) paragraph 4(2)(c) of Schedule 24 to FA 2007,

(ii) paragraph 6(2)(a) of Schedule 41 to FA 2008,

(iii) paragraph 6(3A)(a) of Schedule 55 to FA 2009,".

(3) In sub-paragraph (c) for "neither paragraph (a) nor paragraph (b) applies" substitute "none of paragraphs (a) to (ba) applies.

(4) In sub-paragraph (d) for "none of paragraphs (a), (b) and (c) applies" substitute "none of paragraphs (a) to (c) applies".

(15) The amendments made by this section have effect in relation to tax arrangements (within the meaning of Part 5 of FA 2013) entered into on or after the day on which this Act is passed.

Tackling frequent avoidance

159 Serial tax avoidance

Schedule 18 contains provision about the issue of warning notices to, and further sanctions for, persons who incur a relevant defeat in relation to arrangements.

160 Promoters of tax avoidance schemes

(1) Part 5 of FA 2014 (promoters of tax avoidance schemes) is amended as follows.

(2) After section 237 insert—

"**237A Duty to give conduct notice: defeat of promoted arrangements**

(1) If an authorised officer becomes aware at any time ("the relevant time") that a person ("P") who is carrying on a business as a promoter meets any of the conditions in subsections (11) to (13), the officer must determine whether or

not P's meeting of that condition should be regarded as significant in view of the purposes of this Part.

But see also subsection (14).

(2) An authorised officer must make the determination set out in subsection (3) if the officer becomes aware at any time ("the section 237A(2) relevant time") that—

(a) a person meets a condition in subsection (11), (12) or (13), and

(b) at the section 237A(2) relevant time another person ("P"), who is carrying on a business as a promoter, meets that condition by virtue of Part 4 of Schedule 34A (meeting the section 237A conditions: bodies corporate and partnerships).

(3) The authorised officer must determine whether or not—

(a) the meeting of the condition by the person as mentioned in subsection (2)(a), and

(b) P's meeting of the condition as mentioned in subsection (2)(b),

should be regarded as significant in view of the purposes of this Part.

(4) Subsections (1) and (2) do not apply if a conduct notice or monitoring notice already has effect in relation to P.

(5) Subsection (1) does not apply if, at the relevant time, an authorised officer is under a duty to make a determination under section 237(5) in relation to P.

(6) Subsection (2) does not apply if, at the section 237A(2) relevant time, an authorised officer is under a duty to make a determination under section 237(5) in relation to P.

(7) But in a case where subsection (1) does not apply because of subsection (5), or subsection (2) does not apply because of subsection (6), subsection (5) of section 237 has effect as if—

(a) the references in paragraph (a) of that subsection to "subsection (1)", and "subsection (1)(a)" included subsection (1) of this section, and

(b) in paragraph (b) of that subsection the reference to "subsection (1A)(a)" included a reference to subsection (2)(a) of this section and the reference to subsection (1A)(b) included a reference to subsection (2)(b) of this section.

(8) If the authorised officer determines under subsection (1) that P's meeting of the condition in question should be regarded as significant, the officer must give P a conduct notice, unless subsection (10) applies.

(9) If the authorised officer determines under subsection (3) that—

(a) the meeting of the condition by the person as mentioned in subsection (2)(a), and

(b) P's meeting of the condition as mentioned in subsection (2)(b),

should be regarded as significant in view of the purposes of this Part, the officer must give P a conduct notice, unless subsection (10) applies.

(10) This subsection applies if the authorised officer determines that, having regard to the extent of the impact that P's activities as a promoter are likely to have on the collection of tax, it is inappropriate to give P a conduct notice.

(11) The condition in this subsection is that in the period of 3 years ending with the relevant time at least 3 relevant defeats have occurred in relation to P.

(12) The condition in this subsection is that at least two relevant defeats have occurred in relation to P at times when a single defeat notice under section 241A(2) or (6) had effect in relation to P.

(13) The condition in this subsection is that at least one relevant defeat has occurred in relation to P at a time when a double defeat notice under section 241A(3) had effect in relation to P.

(14) A determination that the condition in subsection (12) or (13) is met cannot be made unless—

(a) the defeat notice in question still has effect when the determination is made, or

(b) the determination is made on or before the 90th day after the day on which the defeat notice in question ceased to have effect.

(15) Schedule 34A sets out the circumstances in which a "relevant defeat" occurs in relation to a person and includes provision limiting what can amount to a further relevant defeat in relation to a person (see paragraph 6).

237B Duty to give further conduct notice where provisional notice not complied with

(1) An authorised officer must give a conduct notice to a person ("P") who is carrying on a business as a promoter if—

(a) a conduct notice given to P under section 237A(8)—

(i) has ceased to have effect otherwise than as a result of section 237D(2) or 241(3) or (4), and

(ii) was provisional immediately before it ceased to have effect,

(b) the officer determines that P had failed to comply with one or more conditions in the conduct notice,

(c) the conduct notice relied on a Case 3 relevant defeat,

(d) since the time when the conduct notice ceased to have effect, one or more relevant defeats falling within subsection (2) have occurred in relation to—

(i) P, and

(ii) any arrangements to which the Case 3 relevant defeat also relates, and

(e) had that relevant defeat or (as the case may be) those relevant defeats, occurred before the conduct notice ceased to have effect, an authorised officer would have been required to notify the person under section 237C(3) that the notice was no longer provisional.

(2) A relevant defeat falls within this subsection if it occurs by virtue of Case 1 or Case 2 in Schedule 34A.

(3) Subsection (1) does not apply if the authorised officer determines that, having regard to the extent of the impact that the person's activities as a promoter are likely to have on the collection of tax, it is inappropriate to give the person a conduct notice.

(4) Subsection (1) does not apply if a conduct notice or monitoring notice already has effect in relation to the person.

(5) For the purposes of this Part a conduct notice "relies on a Case 3 relevant defeat" if it could not have been given under the following condition.

The condition is that paragraph 9 of Schedule 34A had effect with the substitution of "100% of the tested arrangements" for "75% of the tested arrangements".

237C When a conduct notice given under section 237A(8) is "provisional"

(1) This section applies to a conduct notice which—

(a) is given to a person under section 237A(8), and

(b) relies on a Case 3 relevant defeat.

(2) The notice is "provisional" at all times when it has effect, unless an authorised officer notifies the person that the notice is no longer provisional.

(3) An authorised officer must notify the person that the notice is no longer provisional if subsection (4) or (5) applies.

(4) This subsection applies if—

(a) the condition in subsection (5)(a) is not met, and

(b) a full relevant defeat occurs in relation to P.

(5) This subsection applies if—

(a) two, or all three, of the relevant defeats by reference to which the conduct notice is given would not have been relevant defeats if paragraph 9 of Schedule 34A had effect with the substitution of "100% of the tested arrangements" for "75% of the tested arrangements", and

(b) the same number of full relevant defeats occur in relation to P.

(6) A "full relevant defeat" occurs in relation to P if—

(a) a relevant defeat occurs in relation to P otherwise than by virtue of Case 3 in paragraph 9 of Schedule 34A, or

(b) circumstances arise which would be a relevant defeat in relation to P by virtue of paragraph 9 of Schedule 34A if that paragraph had effect with the substitution of "100% of the tested arrangements" for "75% of the tested arrangements".

(7) In determining under subsection (6) whether a full relevant defeat has occurred in relation to P, assume that in paragraph 6 of Schedule 34A (provision limiting what can amount to a further relevant defeat in relation to a person) the first reference to a "relevant defeat" does not include a relevant defeat by virtue of Case 3 in paragraph 9 of Schedule 34A.

237D Judicial ruling upholding asserted tax advantage: effect on conduct notice which is provisional

(1) Subsection (2) applies if at any time—

(a) a conduct notice which relies on a Case 3 relevant defeat (see section 237B(5)) is provisional, and

(b) a court or tribunal upholds a corresponding tax advantage which has been asserted in connection with any of the related arrangements to which that relevant defeat relates (see paragraph 5(2) of Schedule 34A).

(2) The conduct notice ceases to have effect when that judicial ruling becomes final.

(3) An authorised officer must give the person to whom the conduct notice was given a written notice stating that the conduct notice has ceased to have effect.

(4) For the purposes of this section, a tax advantage is "asserted" in connection with any arrangements if a person makes a return, claim or election on the basis that the tax advantage arises from those arrangements.

In relation to the arrangements mentioned in paragraph (b) of subsection (1) "corresponding tax advantage" means a tax advantage corresponding to any tax advantage the counteraction of which contributed to the relevant defeat mentioned in that paragraph.

(5) For the purposes of this section a court or tribunal "upholds" a tax advantage if—

(a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and

(b) that judicial ruling is final.

(6) For the purposes of this Part a judicial ruling is "final" if it is—

(a) a ruling of the Supreme Court, or

(b) a ruling of any other court or tribunal in circumstances where—

(i) no appeal may be made against the ruling,

(ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,

(iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or

(iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.

(7) In this section references to "counteraction" include anything referred to as a counteraction in any of Conditions A to F in paragraphs 11 to 16 of Schedule 34A."

(3) After section 241 insert—

"Defeat notices

241A Defeat notices

(1) This section applies in relation to a person ("P") only if P is carrying on a business as a promoter.

(2) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give P a notice if the officer concerned has become aware of one (and only one) relevant defeat which has occurred in relation to P in the period of 3 years ending with the day on which the notice is given.

(3) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give P a notice if the officer concerned has become aware of two (but not more than two) relevant defeats which have occurred in relation to P in the period of 3 years ending with the day on which the notice is given.

(4) A notice under this section must be given by the end of the 90 days beginning with the day on which the matters mentioned in subsection (2) or (as the case may be) (3) come to the attention of HMRC.

(5) Subsection (6) applies if—

(a) a single defeat notice which had been given to P (under subsection (2) or (6)) ceases to have effect as a result of section 241B(1), and

(b) in the period when the defeat notice had effect a relevant defeat ("the further relevant defeat") occurred in relation to P.

(6) An authorised officer or an officer of Revenue and Customs with the approval of an authorised officer may give P a notice in respect of the further relevant defeat (regardless of whether or not it occurred in the period of 3 years ending with the day on which the notice is given).

(7) In this Part—

(a) "single defeat notice" means a notice under subsection (2) or (6);

(b) "double defeat notice" means a notice under subsection (3);

(c) "defeat notice" means a single defeat notice or a double defeat notice.

(8) A defeat notice must—

(a) set out the dates on which the look-forward period for the notice begins and ends;

(b) in the case of a single defeat notice, explain the effect of section 237A(12);

(c) in the case of a double defeat notice, explain the effect of section 237A(13).

(9) HMRC may specify what further information must be included in a defeat notice.

(10) "Look-forward period"—

(a) in relation to a defeat notice under subsection (2) or (3), means the period of 5 years beginning with the day after the day on which the notice is given;

(b) in relation to a defeat notice under subsection (6), means the period beginning with the day after the day on which the notice is given and ending at the end of the period of 5 years beginning with the day on which the further relevant defeat mentioned in subsection (6) occurred in relation to P.

(11) A defeat notice has effect throughout its look-forward period unless it ceases to have effect earlier in accordance with section 241B(1) or (4).

241B Judicial ruling upholding asserted tax advantage: effect on defeat notice

(1) If the relevant defeat to which a single defeat notice relates is overturned (see subsection (5)), the notice has no further effect on and after the day on which it is overturned.

(2) Subsection (3) applies if one (and only one) of the relevant defeats in respect of which a double defeat notice was given is overturned.

(3) The notice is to be treated for the purposes of this Part (including this section) as if it had always been a single defeat notice given (in respect of the other of the two relevant defeats) on the date on which the notice was in fact given.

The look-forward period for the notice is accordingly unchanged.

(4) If both the relevant defeats to which a double defeat notice relates are overturned (on the same date), that notice has no further effect on and after that date.

(5) A relevant defeat specified in a defeat notice is "overturned" if—

(a) the notice could not have specified that relevant defeat if paragraph 9 of Schedule 34A had effect with the substitution of "100% of the tested arrangements" for "75% of the tested arrangements", and

(b) at a time when the notice has effect a court or tribunal upholds a corresponding tax advantage which has been asserted in connection with any of the related arrangements to which the relevant defeat relates (see paragraph 5(2) of Schedule 34A).

Accordingly the relevant defeat is overturned on the day on which the judicial ruling mentioned in paragraph (b) becomes final.

(6) If a defeat notice ceases to have effect as a result of subsection (1) or (4) an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, must notify the person to whom the notice was given that it has ceased to have effect.

(7) If subsection (3) has effect in relation to a defeat notice, an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, must notify the person of the effect of that subsection.

(8) For the purposes of this section, a tax advantage is "asserted" in connection with any arrangements if a person makes a return, claim or election on the basis that the tax advantage arises from those arrangements.

(9) In relation to the arrangements mentioned in paragraph (b) of subsection (5) "corresponding tax advantage" means a tax advantage corresponding to any tax advantage the counteraction of which contributed to the relevant defeat mentioned in that paragraph.

(10) For the purposes of this section a court or tribunal "upholds" a tax advantage if—

(a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and

(b) that judicial ruling is final.

(11) In this section references to "counteraction" include anything referred to as a counteraction in any of Conditions A to F in paragraphs 11 to 16 of Schedule 34A."

(4) In section 242 (monitoring notices: duty to apply to tribunal), after subsection (5) insert—

"(6) At a time when a notice given under section 237A is provisional, no determination is to be made under subsection (1) in respect of the notice.

(7) If a promoter fails to comply with conditions in a conduct notice at a time when the conduct notice is provisional, nothing in subsection (6) prevents those failures from being taken into account under subsection (1) at any subsequent time when the conduct notice is not provisional."

(5) After Schedule 34 insert—

"SCHEDULE
34A

PROMOTERS OF TAX AVOIDANCE SCHEMES: DEFEATED ARRANGEMENTS

PART 1

INTRODUCTION

1 In this Schedule—

(a) Part 2 is about the meaning of "relevant defeat";

(b) Part 3 contains provision about when a relevant defeat is treated as occurring in relation to a person;

(c) Part 4 contains provision about when a person is treated as meeting a condition in subsection (11), (12) or (13) of section 237A;

(d) Part 5 contains definitions and other supplementary provisions.

PART 2

MEANING OF "RELEVANT DEFEAT"

"Related" arrangements

2 (1) For the purposes of this Part of this Act, separate arrangements which persons have entered into are "related" to one another if (and only if) they are substantially the same.

(2) Sub-paragraphs (3) to (6) set out cases in which arrangements are to be treated as being "substantially the same" (if they would not otherwise be so treated under sub-paragraph (1)).

(3) Arrangements to which the same reference number has been allocated under Part 7 of FA 2004 (disclosure of tax avoidance schemes) are treated as being substantially the same.

For this purpose arrangements in relation to which information relating to a reference number has been provided in compliance with section 312 of FA 2004 are treated as arrangements to which that reference number has been allocated under Part 7 of that Act.

(4) Arrangements to which the same reference number has been allocated under paragraph 9 of Schedule 11A to VATA 1994 (disclosure of avoidance schemes) are treated as being substantially the same.

(5) Any two or more sets of arrangements which are the subject of follower notices given by reference to the same judicial ruling are treated as being substantially the same.

(6) Where a notice of binding has been given in relation to any arrangements ("the bound arrangements") on the basis that they are, for the purposes of Schedule 43A to FA 2013, equivalent arrangements in relation to another set of arrangements (the "lead arrangements")—

(a) the bound arrangements and the lead arrangements are treated as being substantially the same, and

(b) the bound arrangements are treated as being substantially the same as any other arrangements which, as a result of this sub-paragraph, are treated as substantially the same as the lead arrangements.

"Promoted arrangements"

3 (1) For the purposes of this Schedule arrangements are "promoted arrangements" in relation to a person if—

(a) they are relevant arrangements or would be relevant arrangements under the condition stated in sub-paragraph (2), and

(b) the person is carrying on a business as a promoter and—

(i) the person is or has been a promoter in relation to the arrangements, or

(ii) that would be the case if the condition in sub-paragraph (2) were met.

(2) That condition is that the definition of "tax" in section 283 includes, and has always included, value added tax.

Relevant defeat of single arrangements

4 (1) A defeat of arrangements (entered into by any person) which are promoted arrangements in relation to a person ("the promoter") is a "relevant defeat" in relation to the promoter if the condition in sub-paragraph (2) is met.

(2) The condition is that the arrangements are not related to any other arrangements which are promoted arrangements in relation to the promoter.

(3) For the meaning of "defeat" see paragraphs 10 to 16.

Relevant defeat of related arrangements

5 (1) This paragraph applies if arrangements (entered into by any person) ("Set A")—

(a) are promoted arrangements in relation to a person ("P"), and

(b) are related to other arrangements which are promoted arrangements in relation to P.

(2) If Case 1, 2 or 3 applies (see paragraphs 7 to 9) a relevant defeat occurs in relation to P and each of the related arrangements.

(3) "The related arrangements" means Set A and the arrangements mentioned in sub-paragraph (1)(b).

Limit on number of separate relevant defeats in relation to the same, or related, arrangements

6 In relation to a person, if there has been a relevant defeat of arrangements (whether under paragraph 4 or 5) there cannot be a further relevant defeat of—

(a) those particular arrangements, or

(b) arrangements which are related to those arrangements.

Case 1: counteraction upheld by judicial ruling

7 (1) Case 1 applies if—

(a) any of Conditions A to E is met in relation to any of the related arrangements, and

(b) in the case of those arrangements the decision to make the relevant counteraction has been upheld by a judicial ruling (which is final).

(2) In sub-paragraph (1) "the relevant counteraction" means the counteraction mentioned in paragraph 11(d), 12(1)(b), 13(1)(d), 14(1)(d) or 15(1)(d) (as the case requires).

Case 2: judicial ruling that avoidance-related rule applies

8 Case 2 applies if Condition F is met in relation to any of the related arrangements.

Case 3: proportion-based relevant defeat

9 (1) Case 3 applies if—

(a) at least 75% of the tested arrangements have been defeated, and

(b) no final judicial ruling in relation to any of the related arrangements has upheld a corresponding tax advantage which has been asserted in connection with any of the related arrangements.

(2) In this paragraph "the tested arrangements" means so many of the related arrangements (as defined in paragraph 5(3)) as meet the condition in sub-paragraph (3) or (4).

(3) Particular arrangements meet this condition if a person has made a return, claim or election on the basis that a tax advantage results from those arrangements and—

(a) there has been an enquiry or investigation by HMRC into the return, claim or election, or

(b) HMRC assesses the person to tax on the basis that the tax advantage (or any part of it) does not arise, or

(c) a GAAR counteraction notice has been given in relation to the tax advantage or part of it and the arrangements.

(4) Particular arrangements meet this condition if HMRC takes other action on the basis that a tax advantage which might be expected to arise from those arrangements, or is asserted in connection with them, does not arise.

(5) For the purposes of this paragraph a tax advantage has been "asserted" in connection with particular arrangements if a person has made a return, claim or election on the basis that the tax advantage arises from those arrangements.

(6) In sub-paragraph (1)(b) "corresponding tax advantage" means a tax advantage corresponding to any tax advantage the counteraction of which is taken into account by HMRC for the purposes of sub-paragraph (1)(a).

(7) For the purposes of this paragraph a court or tribunal "upholds" a tax advantage if—

(a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and

(b) that judicial ruling is final.

(8) In this paragraph references to "counteraction" include anything referred to as a counteraction in any of Conditions A to F in paragraphs 11 to 16.

(9) In this paragraph "GAAR counteraction notice" means—

(a) a notice such as is mentioned in sub-paragraph (2) of paragraph 12 of Schedule 43 to FA 2013 (notice of final decision to counteract),

(b) a notice under paragraph 8(2) or 9(2) of Schedule 43A to that Act (pooling or binding of arrangements) stating that the tax advantage is to be counteracted under the general anti-abuse rule, or

(c) a notice under paragraph 8(2) of Schedule 43B to that Act (generic referrals) stating that the tax advantage is to be counteracted under the general anti-abuse rule.

"Defeat" of arrangements

10 For the purposes of this Part of this Act a "defeat" of arrangements occurs if any of Conditions A to F (in paragraphs 11 to 16) is met in relation to the arrangements.

11 Condition A is that—

(a) a person has made a return, claim or election on the basis that a tax advantage arises from the arrangements,

(b) a notice given to the person under paragraph 12 of Schedule 43 to, paragraph 8(2) or 9(2) of Schedule 43A to or paragraph 8(2) of Schedule 43B to FA 2013 stated that the tax advantage was to be counteracted under the general anti-abuse rule,

(c) the tax advantage has been counteracted (in whole or in part) under the general anti-abuse rule, and

(d) the counteraction is final.

12 (1) Condition B is that a follower notice has been given to a person by reference to the arrangements (and not withdrawn) and—

(a) the person has complied with subsection (2) of section 208 of FA 2014 by taking the action specified in subsections (4) to (6) of that section in respect of the denied tax advantage (or part of it), or

(b) the denied tax advantage has been counteracted (in whole or in part) otherwise than as mentioned in paragraph (a) and the counteraction is final.

(2) In this paragraph "the denied tax advantage" is to be interpreted in accordance with section 208(3) of FA 2014.

(3) In this Schedule "follower notice" means a follower notice under Chapter 2 of Part 4 of FA 2014.

13 (1) Condition C is that—

(a) the arrangements are DOTAS arrangements,

(b) a person ("the taxpayer") has made a return, claim or election on the basis that a relevant tax advantage arises,

(c) the relevant tax advantage has been counteracted, and

(d) the counteraction is final.

(2) For the purposes of sub-paragraph (1) "relevant tax advantage" means a tax advantage which the arrangements might be expected to enable the taxpayer to obtain.

(3) For the purposes of this paragraph the relevant tax advantage is "counteracted" if adjustments are made in respect of the taxpayer's tax

position on the basis that the whole or part of that tax advantage does not arise.

14 (1) Condition D is that—

(a) the arrangements are disclosable VAT arrangements to which a taxable person is a party,

(b) the taxable person has made a return or claim on the basis that a relevant tax advantage arises,

(c) the relevant tax advantage has been counteracted, and

(d) the counteraction is final.

(2) For the purposes of sub-paragraph (1) "relevant tax advantage" means a tax advantage which the arrangements might be expected to enable the taxable person to obtain.

(3) For the purposes of this paragraph the relevant tax advantage is "counteracted" if adjustments are made in respect of the taxable person's tax position on the basis that the whole or part of that tax advantage does not arise.

15 (1) Condition E is that the arrangements are disclosable VAT arrangements to which a taxable person ("T") is a party and—

(a) the arrangements relate to the position with respect to VAT of a person other than T ("S") who has made supplies of goods or services to T,

(b) the arrangements might be expected to enable T to obtain a tax advantage in connection with those supplies of goods or services,

(c) the arrangements have been counteracted, and

(d) the counteraction is final.

(2) For the purposes of this paragraph the arrangements are "counteracted" if—

(a) HMRC assess S to tax or take any other action on a basis which prevents T from obtaining (or obtaining the whole of) the tax advantage in question, or

(b) adjustments are made on a basis such as is mentioned in paragraph (a).

16 (1) Condition F is that—

(a) a person has made a return, claim or election on the basis that a relevant tax advantage arises,

(b) the tax advantage, or part of the tax advantage would not arise if a particular avoidance-related rule (see paragraph 25) applies in relation to the person's tax affairs,

(c) it is held in a judicial ruling that the relevant avoidance-related rule applies in relation to the person's tax affairs, and

(d) the judicial ruling is final.

(2) For the purposes of sub-paragraph (1) "relevant tax advantage" means a tax advantage which the arrangements might be expected to enable the person to obtain.

PART 3

RELEVANT DEFEATS: ASSOCIATED PERSONS

Attribution of relevant defeats

17 (1) Sub-paragraph (2) applies if—

(a) there is (or has been) a person ("Q"),

(b) arrangements ("the defeated arrangements") have been entered into,

(c) an event occurs such that either—

(i) there is a relevant defeat in relation to Q and the defeated arrangements, or

(ii) the condition in sub-paragraph (i) would be met if Q had not ceased to exist,

(d) at the time of that event a person ("P") is carrying on a business as a promoter (or is carrying on what would be such a business under the condition in paragraph 3(2)), and

(e) Condition 1 or 2 is met in relation to Q and P.

(2) The event is treated for all purposes of this Part of this Act as a relevant defeat in relation to P and the defeated arrangements (whether or not it is also a relevant defeat in relation to Q, and regardless of whether or not P existed at any time when those arrangements were promoted arrangements in relation to Q).

(3) Condition 1 is that—

(a) P is not an individual,

(b) at a time when the defeated arrangements were promoted arrangements in relation to Q—

(i) P was a relevant body controlled by Q, or

(ii) Q was a relevant body controlled by P, and

(c) at the time of the event mentioned in sub-paragraph (1)(c)—

(i) Q is a relevant body controlled by P,

(ii) P is a relevant body controlled by Q, or

(iii) P and Q are relevant bodies controlled by a third person.

(4) Condition 2 is that—

(a) P and Q are relevant bodies,

(b) at a time when the defeated arrangements were promoted arrangements in relation to Q, a third person ("C") controlled Q, and

(c) C controls P at the time of the event mentioned in sub-paragraph (1)(c).

(5) For the purposes of sub-paragraphs (3)(b) and (4)(b), the question whether arrangements are promoted arrangements in relation to Q at any time is to be determined on the assumption that the reference to "design" in

paragraph (b) of section 235(3) (definition of "promoter" in relation to relevant arrangements) is omitted.

Deemed defeat notices

18 (1) This paragraph applies if—

(a) an authorised officer becomes aware at any time ("the relevant time") that a relevant defeat has occurred in relation to a person ("P") who is carrying on a business as a promoter,

(b) there have occurred, more than 3 years before the relevant time—

(i) one third party defeat, or

(ii) two third party defeats, and

(c) conditions A1 and B1 (in a case within paragraph (b)(i)), or conditions A2 and B2 (in a case within paragraph (b)(ii)), are met.

(2) Where this paragraph applies by virtue of sub-paragraph (1)(b)(i), this Part of this Act has effect as if an authorised officer had (with due authority), at the time of the time of the third party defeat, given P a single defeat notice under section 241A(2) in respect of it.

(3) Where this paragraph applies by virtue of sub-paragraph (1)(b)(ii), this Part of this Act has effect as if an authorised officer had (with due authority), at the time of the second of the two third party defeats, given P a double defeat notice under section 241A(3) in respect of the two third party defeats.

(4) Section 241A(8) has no effect in relation to a notice treated as given as mentioned in sub-paragraph (2) or (3).

(5) Condition A1 is that—

(a) a conduct notice or a single or double defeat notice has been given to the other person (see sub-paragraph (9)) in respect of the third party defeat,

(b) at the time of the third party defeat an authorised officer would have had power by virtue of paragraph 17 to give P a defeat notice in respect of the third party defeat, had the officer been aware that it was a relevant defeat in relation to P, and

(c) so far as the authorised officer mentioned in sub-paragraph (1)(a) is aware, the conditions for giving P a defeat notice in respect of the third party defeat have never been met (ignoring this paragraph).

(6) Condition A2 is that—

(a) a conduct notice or a single or double defeat notice has been given to the other person (see sub-paragraph (9)) in respect of each, or both, of the third party defeats,

(b) at the time of the second third party defeat an authorised officer would have had power by virtue of paragraph 17 to give P a double defeat notice in respect of the third party defeats, had the officer been aware that either of the third party defeats was a relevant defeat in relation to P, and

(c) so far as the authorised officer mentioned in sub-paragraph (1)(a) is aware, the conditions for giving P a defeat notice in respect of

those third party defeats (or either of them) have never been met (ignoring this paragraph).

(7) Condition B1 is that, had an authorised officer given P a defeat notice in respect of the third party defeat at the time of that relevant defeat, that defeat notice would still have effect at the relevant time (see sub-paragraph (1)).

(8) Condition B2 is that, had an authorised officer given P a defeat notice in respect of the two third party defeats at the time of the second of those relevant defeats, that defeat notice would still have effect at the relevant time.

(9) In this paragraph "third party defeat" means a relevant defeat which has occurred in relation to a person other than P.

Meaning of "relevant body" and "control"

19 (1) In this Part of this Schedule "relevant body" means—

(a) a body corporate, or

(b) a partnership.

(2) For the purposes of this Part of this Schedule a person controls a body corporate if the person has power to secure that the affairs of the body corporate are conducted in accordance with the person's wishes—

(a) by means of the holding of shares or the possession of voting power in relation to the body corporate or any other relevant body,

(b) as a result of any powers conferred by the articles of association or other document regulating the body corporate or any other relevant body, or

(c) by means of controlling a partnership.

(3) For the purposes of this Part of this Schedule a person controls a partnership if the person is a controlling member or the managing partner of the partnership.

(4) In this paragraph "controlling member" has the same meaning as in Schedule 36 (partnerships).

(5) In this paragraph "managing partner", in relation to a partnership, means the member of the partnership who directs, or is on a day-to-day level in control of, the management of the business of the partnership.

PART 4

MEETING SECTION 237A CONDITIONS: BODIES CORPORATE AND PARTNERSHIPS

Treating persons under another's control as meeting section 237A condition

20 (1) A relevant body ("RB") is treated as meeting a section 237A condition at the section 237A(2) relevant time if—

(a) that condition was met by a person ("C") at a time when—

(i) C was carrying on a business as a promoter, or

(ii) RB was carrying on a business as a promoter and C controlled RB, and

(b) RB is controlled by C at the section 237A(2) relevant time.

(2) Sub-paragraph (1) does not apply if C is an individual.

(3) For the purposes of determining whether the requirements of sub-paragraph (1) are met by reason of meeting the requirement in sub-paragraph (1)(a)(i), it does not matter whether RB existed at the time when C met the section 237A condition.

Treating persons in control of others as meeting section 237A condition

21 (1) A person other than an individual is treated as meeting a section 237A condition at the section 237A(2) relevant time if—

(a) a relevant body ("A") met the condition at a time when A was controlled by the person, and

(b) at the time mentioned in paragraph (a) A, or another relevant body ("B") which was also at that time controlled by the person, carried on a business as a promoter.

(2) For the purposes of determining whether the requirements of sub-paragraph (1) are met it does not matter whether A or B (or neither) exists at the section 237A(2) relevant time.

Treating persons controlled by the same person as meeting section 237A condition

22 (1) A relevant body ("RB") is treated as meeting a section 237A condition at the section 237A(2) relevant time if—

(a) another relevant body met that condition at a time ("time T") when it was controlled by a person ("C"),

(b) at time T, there was a relevant body controlled by C which carried on a business as a promoter, and

(c) RB is controlled by C at the section 237A(2) relevant time.

(2) For the purposes of determining whether the requirements of sub-paragraph (1) are met it does not matter whether—

(a) RB existed at time T, or

(b) any relevant body (other than RB) by reason of which the requirements of sub-paragraph (1) are met exists at the section 237A(2) relevant time.

Interpretation

23 (1) In this Part of this Schedule—

"control" has the same meaning as in Part 3 of this Schedule;

"relevant body" has the same meaning as in Part 3 of this Schedule;

"section 237A(2) relevant time" means the time referred to in section 237A(2);

"section 237A condition" means any of the conditions in section 237A(11), (12) and (13).

(2) For the purposes of paragraphs 20(1)(a), 21(1)(a) and 22(1)(a), the condition in section 237A(11) (occurrence of 3 relevant defeats in the 3 years ending with the relevant time) is taken to have been met by a person at any time if at least 3 relevant defeats have occurred in relation to the person in the period of 3 years ending with that time.

PART 5

SUPPLEMENTARY

"Adjustments"

24 In this Schedule "adjustments" means any adjustments, whether by way of an assessment, the modification of an assessment or return, the amendment or disallowance of a claim, the entering into of a contract settlement or otherwise (and references to "making" adjustments accordingly include securing that adjustments are made by entering into a contract settlement).

Meaning of "avoidance-related rule"

25 (1) In this Schedule "avoidance-related rule" means a rule in Category 1 or 2.

(2) A rule is in Category 1 if—

(a) it refers (in whatever terms) to the purpose or main purpose or purposes of a transaction, arrangements or any other action or matter, and

(b) to whether or not the purpose in question is or involves the avoidance of tax or the obtaining of any advantage in relation to tax (however described).

(3) A rule is also in Category 1 if it refers (in whatever terms) to—

(a) expectations as to what are, or may be, the expected benefits of a transaction, arrangements or any other action or matter, and

(b) whether or not the avoidance of tax or the obtaining of any advantage in relation to tax (however described) is such a benefit.

For the purposes of paragraph (b) it does not matter whether the reference is (for instance) to the "sole or main benefit" or "one of the main benefits" or any other reference to a benefit.

(4) A rule falls within Category 2 if as a result of the rule a person may be treated differently for tax purposes depending on whether or not purposes referred to in the rule (for instance the purposes of an actual or contemplated action or enterprise) are (or are shown to be) commercial purposes.

(5) For example, a rule in the following form would fall within Category 1 and within Category 2—

Example rule

Section X does not apply to a company in respect of a transaction if the company shows that the transaction meets Condition A or B.

Condition A is that the transaction is effected—

(a) for genuine commercial reasons, or

(b) in the ordinary course of managing investments.

Condition B is that the avoidance of tax is not the main object or one of the main objects of the transaction."

"DOTAS arrangements"

26 (1) For the purposes of this Schedule arrangements are "DOTAS arrangements" at any time if at that time a person—

(a) has provided, information in relation to the arrangements under section 308(3), 309 or 310 of FA 2004, or

(b) has failed to comply with any of those provisions in relation to the arrangements.

(2) But for the purposes of this Schedule "DOTAS arrangements" does not include arrangements in respect of which HMRC has given notice under section 312(6) of FA 2004 (notice that promoters not under duty to notify client of reference number).

(3) For the purposes of sub-paragraph (1) a person who would be required to provide information under subsection (3) of section 308 of FA 2004—

(a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under subsection (1) of that section, or

(b) but for subsection (4A), (4C) or (5) of that section,

is treated as providing the information at the end of the period referred to in subsection (3) of that section.

"Disclosable VAT arrangements"

27 For the purposes of this Schedule arrangements are "disclosable VAT arrangements" at any time if at that time—

(a) a person has complied with paragraph 6 of Schedule 11A to VATA 1994 in relation to the arrangements (duty to notify Commissioners),

(b) a person under a duty to comply with that paragraph in relation to the arrangements has failed to do so, or

(c) a reference number has been allocated to the scheme under paragraph 9 of that Schedule (voluntary notification of avoidance scheme which is not a designated scheme).

Paragraphs 26 and 27: supplementary

28 (1) A person "fails to comply" with any provision mentioned in paragraph 26(1)(a) or 27(b) if and only if any of the conditions in sub-paragraphs (2) to (4) is met.

(2) The condition in this sub-paragraph is that—

(a) the tribunal has determined that the person has failed to comply with the provision concerned,

(b) the appeal period has ended, and

(c) the determination has not been overturned on appeal.

(3) The condition in this sub-paragraph is that—

(a) the tribunal has determined for the purposes of section 118(2) of TMA 1970 that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done,

(b) the appeal period has ended, and

(c) the determination has not been overturned on appeal.

(4) The condition in this sub-paragraph is that the person admitted in writing to HMRC that the person has failed to comply with the provision concerned.

(5) In this paragraph "the appeal period" means—

(a) the period during which an appeal could be brought against the determination of the tribunal, or

(b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.

"Final" counteraction

29 For the purposes of this Schedule the counteraction of a tax advantage or of arrangements is "final" when the assessment or adjustments made to effect the counteraction, and any amounts arising as a result of the assessment or adjustments, can no longer be varied, on appeal or otherwise.

Inheritance tax, stamp duty reserve tax, VAT and petroleum revenue tax

30 (1) In this Schedule, in relation to inheritance tax, each of the following is treated as a return—

(a) an account delivered by a person under section 216 or 217 of IHTA 1984 (including an account delivered in accordance with regulations under section 256 of that Act);

(b) a statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account;

(c) information or a document provided by a person in accordance with regulations under section 256 of that Act;

and such a return is treated as made by the person in question.

(2) In this Schedule references to an assessment to tax, in relation to inheritance tax, stamp duty reserve tax and petroleum revenue tax, include a determination.

(3) In this Schedule an expression used in relation to VAT has the same meaning as in VATA 1994.

Power to amend

31 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).

(2) An amendment by virtue of sub-paragraph (1) may, in particular, add, vary or remove conditions or categories (or otherwise vary the meaning of "avoidance-related rule").

(3) Regulations under sub-paragraph (1) may include any amendment of this Part of this Act that is appropriate in consequence of an amendment made by virtue of sub-paragraph (1)."

(6) In section 241 (duration of conduct notice), after subsection (4) insert—

"(5) See also section 237D(2) (provisional conduct notice affected by judicial ruling)."

(7) After section 281 insert—

"**281A VAT**

(1) In the provisions mentioned in subsection (2)—

(a) "tax" includes value added tax, and

(b) "tax advantage" has the meaning given by section 234(3) and also includes a tax advantage as defined in paragraph 1 of Schedule 11A to VATA 1994.

(2) Those provisions are—

(a) section 237D;

(b) section 241B;

(c) Schedule 34A.

(3) Other references in this Part to "tax" are to be read as including value added tax so far as that is necessary for the purposes of sections 237A to 237D, 241A and 241B and Schedule 34A; but "tax" does not include value added tax in section 237A(10) or 237B(3)."

(8) In section 282 (regulations), in subsection (3), after paragraph (b) insert—

"(ba) paragraph 31 of Schedule 34A,".

(9) In section 283(1) (interpretation of Part 5)—

(a) in the definition of "conduct notice", after paragraph (a) insert—

"(aa) section 237A(8),

(ab) section 237B(1),";

(b) in the definition of "tax", after ""tax"" insert "(except in provisions to which section 281A applies)";

(c) in the definition of ""tax advantage"", after "234(3)" insert "(but see also section 281A)";

(d) at the appropriate places insert—

""contract settlement" means an agreement in connection with a person's liability to make a payment to the Commissioners under or by virtue of an enactment;"

""defeat", in relation to arrangements, has the meaning given by paragraph 10 of Schedule 34A;"

""defeat notice" has the meaning given by section 241A(7);"

""double defeat notice" has the meaning given by section 241A(7);"

""final", in relation to a judicial ruling, is to be interpreted in accordance with section 237D(6);"

""judicial ruling" means a ruling of a court or tribunal on one or more issues;"

""look-forward period, in relation to a defeat notice, has the meaning given by section 241A(10);"

""provisional", in relation to a conduct notice given under section 237A(8), is to be interpreted in accordance with section 237C;"

""relevant defeat", in relation to a person, is to be interpreted in accordance with Schedule 34A;"

""related", in relation to arrangements, is to be interpreted in accordance with paragraph 2 of Schedule 34A;"

""relies on a Case 3 relevant defeat" is to be interpreted in accordance section 237B(5);"

""single defeat notice" has the meaning given by section 241A(7)."

(10) Schedule 36 (promoters of tax avoidance schemes: partnerships) is amended in accordance with subsections (11) to (16).

(11) In Part 2, before paragraph 5 insert—

"Defeat notices

4A A defeat notice that is given to a partnership must state that it is a partnership defeat notice.".

(12) In paragraph 7(1)(b) after "a" insert "defeat notice,".

(13) In paragraph 7(2) after "the" insert "defeat notice,".

(14) After paragraph 7 insert—

"Persons leaving partnership: defeat notices

7A (1) Sub-paragraphs (2) and (3) apply where—

(a) a person ("P") who was a controlling member of a partnership at the time when a defeat notice ("the original notice") was given to the partnership has ceased to be a member of the partnership,

(b) the defeat notice had effect in relation to the partnership at the time of that cessation, and

(c) P is carrying on a business as a promoter.

(2) An authorised officer may give P a defeat notice.

(3) If P is carrying on a business as a promoter in partnership with one or more other persons and is a controlling member of that partnership ("the

new partnership"), an authorised officer may give a defeat notice to the new partnership.

(4) A defeat notice given under sub-paragraph (3) ceases to have effect if P ceases to be a member of the new partnership.

(5) A notice under sub-paragraph (2) or (3) may not be given after the original notice has ceased to have effect.

(6) A defeat notice given under sub-paragraph (2) or (3) is given in respect of the relevant defeat or relevant defeats to which the original notice relates."

(15) In paragraph 10—

(a) in sub-paragraph (1)(b) for "conduct notice or a" substitute ", defeat notice, conduct notice or";

(b) in sub-paragraph (3), after "partner—" insert—

"(za) a defeat notice (if the original notice is a defeat notice);".

(c) in sub-paragraph (4), after "("the new partnership")—" insert—

"(za) a defeat notice (if the original notice is a defeat notice);"

(d) after sub-paragraph (5) insert—

"(5A) A notice under sub-paragraph (3)(za) or (4)(za) may not be given after the end of the look-forward period of the original notice."

(16) After paragraph 11 insert—

"11A The look-forward period for a notice under paragraph 7A(2) or (3) or 10(3)(za) or (4)(za)—

(a) begins on the day after the day on which the notice is given, and

(b) continues to the end of the look-forward period for the original notice (as defined in paragraph 7A(1)(a) or 10(2), as the case may be)."

(17) Part 2 of Schedule 2 to the National Insurance Contributions Act 2015 (application of Part 5 of FA 2014 to national insurance contributions) is amended in accordance with subsections (18) and (19).

(18) After paragraph 30 insert—

"Threshold conditions

30A (1) In paragraph 5 of Schedule 34 (non-compliance with Part 7 of FA 2004), in sub-paragraph (4)—

(a) paragraph (a) includes a reference to a decision having been made for corresponding NICs purposes that P is to be deemed not to have failed to comply with the provision concerned as P had a reasonable excuse for not doing the thing required to be done, and

(b) the reference in paragraph (c) to a determination is to be read accordingly.

(2) In this paragraph "corresponding NICs purposes" means the purposes of any provision of regulations under section 132A of SSAA 1992.

Relevant defeats

30B (1) Schedule 34A (promoters of tax avoidance schemes: defeated arrangements) has effect with the following modifications.

(2) References to an assessment (or an assessment to tax) include a NICs decision relating to a person's liability for relevant contributions.

(3) References to adjustments include a payment in respect of a liability to pay relevant contributions (and the definition of "adjustments" in paragraph 24 accordingly has effect as if such payments were included in it).

(4) In paragraph 9(3) the reference to an enquiry into a return includes a relevant contributions dispute (as defined in paragraph 6 of this Schedule).

(5) In paragraph 28(3)—

(a) paragraph (a) includes a reference to a decision having been made for corresponding NICs purposes that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done, and

(b) the reference in paragraph (c) to a determination is to be read accordingly.

"Corresponding NICs purposes" means the purposes of any provision of regulations under section 132A of SSAA 1992."

(19) In paragraph 31 (interpretation)—

(a) before paragraph (a) insert—

"(za) NICs decision" means a decision under section 8 of SSC(TF)A 1999 or Article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (SI 1999/671);"

(b) in paragraph (b), for "are to sections of" substitute "or Schedules are to sections of, or Schedules to".

(20) For the purposes of sections 237A and 241A of FA 2014, a defeat (by virtue of any of Conditions A to F in Schedule 34A to that Act) of arrangements is treated as not having occurred if—

(a) there has been a final judicial ruling on or before the day on which this Act is passed as a result of which the counteraction referred to in paragraph 11(d), 12(1)(b), 13(1)(d), 14(1)(d) or 15(1)(d) (as the case may be) is final for the purposes of Schedule 34A of that Act, or

(b) (in the case of a defeat by virtue of Condition F in Schedule 34A) the judicial ruling mentioned in paragraph 16(1)(d) of that Schedule becomes final on or before the day on which this Act is passed.

(21) Subsection (20) does not apply in relation to a person (who is carrying on a business as a promoter) if at any time after 17 July 2014 that person or an associated person takes action as a result of which the person taking the action—

(a) becomes a promoter in relation to the arrangements, or arrangements related to those arrangements, or

(b) would have become a promoter in relation to arrangements mentioned in paragraph (a) had the person not already been a promoter in relation to those arrangements.

(22) For the purposes of sections 237A and 241A of FA 2014, a defeat of arrangements is treated as not having occurred if it would (ignoring this sub-paragraph) have occurred—

(a) on or before the first anniversary of the day on which this Act is passed, and

(b) by virtue of any of Conditions A to E in Schedule 34A to FA 2014, but otherwise than as a result of a final judicial ruling.

(23) For the purposes of subsection (21) a person ("Q") is an "associated person" in relation to another person ("P") at any time when any of the following conditions is met—

(a) P is a relevant body which is controlled by Q;

(b) Q is a relevant body, P is not an individual and Q is controlled by P;

(c) P and Q are relevant bodies and a third person controls P and Q.

(24) In subsection (23) "relevant body" and "control" are to be interpreted in accordance with paragraph 19 of Schedule 34A to FA 2014.

(25) In subsections (20) to (22) expressions used in Part 5 of FA 2014 (as amended by this section) have the same meaning as in that Part.

161 Large businesses: tax strategies and sanctions for persistently unco-operative behaviour

(1) Schedule 19 contains provisions relating to—

(a) the publication of tax strategies by bodies which are or are part of a large business,

(b) the imposition of sanctions for such bodies where there has been persistent unco-operative behaviour.

(2) That Schedule, so far as relating to the publication of a tax strategy for a financial year of a relevant body or other entity, has effect only where the financial year begins on or after the day on which this Act is passed.

(3) An officer of HMRC may not give a warning notice under Part 3 of that Schedule to a relevant body or other entity before the beginning of its first financial year beginning on or after the day on which this Act is passed.

(4) In this section and Schedule 19 "HMRC" means Her Majesty's Revenue and Customs.

Offshore activities

162 Penalties for enablers of offshore tax evasion or non-compliance

(1) Schedule 20 makes provision for penalties for persons who enable offshore tax evasion or non-compliance by other persons.

(2) Subsection (1) and that Schedule come into force on such day as the Treasury may appoint by regulations made by statutory instrument.

(3) Regulations under this section may—

(a) commence a provision generally or only for specified purposes,
(b) appoint different days for different purposes, and
(c) make supplemental, incidental and transitional provision in connection with the coming into force of any provision of the Schedule.

163 Penalties in connection with offshore matters and offshore transfers

(1) Schedule 21 contains provisions amending—
(a) Schedule 24 to FA 2007 (penalties for errors in tax returns etc),
(b) Schedule 41 to FA 2008 (penalties for failure to notify etc), and
(c) Schedule 55 to FA 2009 (penalties for failure to make return etc).

(2) That Schedule comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.

(3) Regulations under this section may—
(a) commence a provision generally or only for specified purposes,
(b) appoint different days for different provisions or for different purposes, and
(c) make supplemental, incidental and transitional provision.

164 Offshore tax errors etc: publishing details of deliberate tax defaulters

(1) Section 94 of FA 2009 (publishing details of deliberate tax defaulters) is amended as follows.

(2) After subsection (4), insert—

"(4A) Subsection (4B) applies where a person who is a body corporate or a partnership has incurred—
(a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or
(b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).

(4B) The Commissioners may publish the information mentioned in subsection (4) in respect of any individual who—
(a) controls the body corporate or the partnership (within the meaning of section 1124 of CTA 2010), and
(b) has obtained a tax advantage as a result of the inaccuracy or failure.

(4C) Subsection (4D) applies where one or more trustees of a settlement have incurred—
(a) a penalty under paragraph 1 of Schedule 24 to FA 2007 in respect of a deliberate inaccuracy which involves an offshore matter or an offshore transfer (within the meaning of paragraph 4A of that Schedule), or
(b) a penalty under paragraph 1 of Schedule 41 to FA 2008 in respect of a deliberate failure which involves an offshore matter or an offshore transfer (within the meaning of paragraph 6A of that Schedule).

(4D) The Commissioners may publish the information mentioned in subsection (4) in respect of any trustee who is an individual and who has obtained a tax advantage as a result of the inaccuracy or failure."

(3) In subsection (6), after "information" insert "about a person under subsection (1),".

(4) After subsection (6), insert—

"(6A) Before publishing any information about an individual under subsection (4B) or (4D), the Commissioners—

(a) must inform the individual that they are considering doing so, and

(b) afford the individual reasonable opportunity to make representations about whether it should be published."

(5) In subsection (10)—

(a) omit the word "or" at the end of paragraph (a), and after that paragraph insert—

"(aa) paragraph 10A of that Schedule to the full extent permitted following an unprompted disclosure,";

(b) after paragraph (b) insert ", or

(c) paragraph 13A of that Schedule to the full extent permitted following an unprompted disclosure."

(6) For subsection (16) substitute—

"(16) In this section—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"tax advantage" has the meaning given by section 208 of FA 2013."

(7) The amendments made by this section come into force on such day as the Treasury may by regulations made by statutory instrument appoint.

165 Asset-based penalties for offshore inaccuracies and failures

(1) Schedule 22 contains provision imposing asset-based penalties on certain taxpayers who have been charged a penalty for deliberate offshore inaccuracies and failures.

(2) That Schedule comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.

(3) Regulations under subsection (2) may—

(a) commence a provision generally or only for specified purposes,

(b) appoint different days for different provisions or for different purposes, and

(c) make supplemental, incidental and transitional provision.

166 Offences relating to offshore income, assets and activities

(1) After section 106A of TMA 1970 insert—

"Offshore income, assets and activities

106B Offence of failing to give notice of being chargeable to tax

(1) A person who is required by section 7 to give notice of being chargeable to income tax or capital gains tax (or both) for a year of assessment and who has not given that notice by the end of the notification period commits an offence if—

(a) the tax in question is chargeable (wholly or in part) on or by reference to offshore income, assets or activities, and

(b) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.

(2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to give the notice required by section 7.

(3) In this section "the notification period" has the same meaning as in section 7 (see subsection (1C) of that section).

106C Offence of failing to deliver return

(1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if—

(a) the return is not delivered by the end of the withdrawal period,

(b) an accurate return would have disclosed liability to income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and

(c) the total amount of income tax and capital gains tax that is chargeable for the year of assessment on or by reference to offshore income, assets or activities exceeds the threshold amount.

(2) It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse for failing to deliver the return.

(3) In this section "the withdrawal period" has the same meaning as in section 8B (see subsection (6) of that section).

106D Offence of making inaccurate return

(1) A person who is required by a notice under section 8 to make and deliver a return for a year of assessment commits an offence if, at the end of the amendment period—

(a) the return contains an inaccuracy the correction of which would result in an increase in the amount of income tax or capital gains tax (or both) that is chargeable for the year of assessment on or by reference to offshore income, assets or activities, and

(b) the amount of that increase exceeds the threshold amount.

(2) It is a defence for a person accused of an offence under this section to prove that the person took reasonable care to ensure that the return was accurate.

(3) In this section "the amendment period" means the period for amending the return under section 9ZA.

106E Exclusions from offences under sections 106B to 106D

(1) A person is not guilty of an offence under section 106B, 106C or 106D if the capacity in which the person is required to give the notice or make and deliver the return is—

(a) as a relevant trustee of a settlement, or

(b) as the executor or administrator of a deceased person.

(2) The Treasury may by regulations provide that a person is not guilty of an offence under section 106B, 106C or 106D if—

(a) conditions specified in the regulations are met, or

(b) circumstances so specified exist.

(3) The conditions may (in particular) include conditions in relation to the income, assets or activities on or by reference to which the tax in question is chargeable.

106F Offences under sections 106B to 106D: supplementary provision

(1) Where a period of time is extended under subsection (2) of section 118 by HMRC, the tribunal or an officer (but not where a period is otherwise extended under that subsection), any reference in section 106B, 106C or 106D to the end of the period is to be read as a reference to the end of the period as so extended.

(2) The Treasury may by regulations specify the amount (which must not be less than £25,000) that is to be the threshold amount for the purposes of sections 106B to 106D.

(3) The Treasury may by regulations make provision as to the calculation for the purposes of sections 106B to 106D of—

(a) the amount of tax that is chargeable on or by reference to offshore income, assets or activities, and

(b) the increase in the amount of tax that is so chargeable as a result of correcting an inaccuracy.

(4) In sections 106B to 106D and this section "offshore income, assets or activities" means—

(a) income arising from a source in a territory outside the United Kingdom,

(b) assets situated or held in a territory outside the United Kingdom, or

(c) activities carried on wholly or mainly in a territory outside the United Kingdom.

(5) In subsection (4), "assets" has the meaning given in section 21(1) of the 1992 Act, but also includes sterling.

106G Penalties for offences under sections 106B to 106D

(1) A person guilty of an offence under section 106B, 106C or 106D is liable on summary conviction—

(a) in England and Wales, to a fine or to imprisonment for a term not exceeding 51 weeks or to both, and

(b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

(2) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (1)(a) to 51 weeks is to be read as a reference to 6 months.

106H Regulations under sections 106E and 106F

(1) This section makes provision about regulations under sections 106E and 106F.

(2) If the regulations contain a reference to a document or any provision of a document and it appears to the Treasury that it is necessary or expedient for the reference to be construed as a reference to that document or that provision as amended from time to time, the regulations may make express provision to that effect.

(3) The regulations—

(a) may make different provision for different cases, and

(b) may include incidental, supplemental, consequential and transitional provision and savings.

(4) The regulations are to be made by statutory instrument.

(5) An instrument containing the regulations is subject to annulment in pursuance of a resolution of the House of Commons."

(2) The amendment made by this section comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.

(3) The regulations—

(a) may appoint different days for different purposes, and

(b) may include incidental, supplemental, consequential and transitional provision and savings.

(4) The amendment made by this section does not have effect in relation to—

(a) a failure to give a notice required by section 7 of TMA 1970,

(b) a failure to make and deliver a return required by section 8 of TMA 1970, or

(c) a return required by section 8 that contains an inaccuracy,

if the notice or return relates to a tax year before that in which the amendment comes into force.