

Status: Point in time view as at 24/02/2022.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2020, SCHEDULE 13. (See end of Document for details)

SCHEDULES

SCHEDULE 13

Section 100

JOINT AND SEVERAL LIABILITY OF COMPANY DIRECTORS ETC

Introduction

- 1 (1) This Schedule provides for an individual to be jointly and severally liable to the Commissioners for Her Majesty's Revenue and Customs, in certain circumstances involving insolvency or potential insolvency, for amounts payable to the Commissioners by a company.
- (2) Such liability arises where the individual is given a notice under—
- (a) paragraph 2(1) (tax avoidance and tax evasion cases),
 - (b) paragraph 3(1) (repeated insolvency and non-payment cases), or
 - (c) paragraph 5(1) (cases involving penalty for facilitating avoidance or evasion).

A notice under paragraph 2(1), 3(1) or 5(1) is referred to in this Schedule as a “joint liability notice”.

- (3) In this Schedule “company” has the same meaning as in the Corporation Tax Acts (see section 1121 of CTA 2010), except that it also includes a limited liability partnership.
- (4) Paragraph 18 makes provision about the application of this Schedule in relation to limited liability partnerships.

Tax avoidance and tax evasion cases

- 2 (1) An authorised HMRC officer may give a notice under this sub-paragraph to an individual if it appears to the officer that conditions A to E are met.
- (2) Condition A is that a company has—
- (a) entered into tax-avoidance arrangements, or
 - (b) engaged in tax-evasive conduct.
- (3) Condition B is that—
- (a) the company is subject to an insolvency procedure, or
 - (b) there is a serious possibility of the company becoming subject to an insolvency procedure.
- (4) Condition C is that—
- (a) the individual—
 - (i) was responsible (whether alone or with others) for the company entering into the tax-avoidance arrangements or engaging in the tax-evasive conduct, or

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- (ii) received a benefit which, to the individual's knowledge, arose (wholly or partly) from those arrangements or that conduct, at a time when the individual was a director or shadow director of the company or a participator in it, or
- (b) the individual took part in, assisted with or facilitated the tax-avoidance arrangements or the tax-evasive conduct at a time when the individual—
- (i) was a director or shadow director of the company, or
- (ii) was concerned, whether directly or indirectly, or was taking part, in the management of the company.
- (5) For the purposes of sub-paragraph (4)(a)(ii)—
- (a) an individual is treated as knowing anything that the individual could reasonably be expected to know;
- (b) an individual is treated as receiving anything that is received by a person with whom the individual is connected (within the meaning given by section 993 of ITA 2007).
- (6) Condition D is that there is, or is likely to be, a tax liability referable to the tax-avoidance arrangements or to the tax-evasive conduct (“the relevant tax liability”).
- (7) Condition E is that there is a serious possibility that some or all of the relevant tax liability will not be paid.
- (8) A notice under sub-paragraph (1) must—
- (a) specify the company to which the notice relates;
- (b) set out the reasons for which it appears to the officer that conditions A to E are met;
- (c) state the effect of the notice;
- (d) offer the individual a review of the decision to give the notice, and explain the effect of paragraph 11 (right of review);
- (e) explain the effect of paragraph 13 (right of appeal).
- (9) It must also—
- (a) specify the amount of the relevant tax liability, if the existence and amount of that liability have been established;
- (b) if not, indicate that the amount will be specified in a further notice.
- (10) Once the existence and amount of the relevant tax liability have been established in a case to which sub-paragraph (9)(b) applies, an authorised HMRC officer must give a further notice specifying that amount.
- (11) A notice under sub-paragraph (10) must—
- (a) be given to the individual to whom the notice under sub-paragraph (1) was given;
- (b) offer the individual a review of the decision to give the notice, and explain the effect of paragraph 11 (right of review);
- (c) explain the effect of paragraph 13 (right of appeal).
- (12) An individual who is given a notice under sub-paragraph (1) is jointly and severally liable with the company (and with any other individual who is given such a notice) for the relevant tax liability.

This is subject to paragraph 9 (interaction with penalties).

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- (13) The amount of the individual's liability under sub-paragraph (12) is taken to be the amount specified under sub-paragraph (9)(a) or (10). For provision under which the amount so specified may be varied, see—
- (a) paragraph 10 (modification etc),
 - (b) paragraphs 11 and 12 (review), and
 - (c) paragraphs 13 and 14 (appeal).

Repeated insolvency and non-payment cases

- 3 (1) An authorised HMRC officer may give a notice under this sub-paragraph to an individual if it appears to the officer that conditions A to D are met.
- (2) A notice under sub-paragraph (1) may not be issued after the end of the period of two years beginning with the day on which HMRC first became aware of facts sufficient for them reasonably to conclude that conditions A to D are met.
- (3) Condition A is that there are at least two companies (“the old companies”) in the case of each of which—
- (a) the individual had a relevant connection with the company at any time during the period of five years ending with the day on which the notice is given (“the five-year period”),
 - (b) the company became subject to an insolvency procedure during the five-year period, and
 - (c) at the time when the company became subject to that procedure—
 - (i) the company had a tax liability, or
 - (ii) the company had failed to submit a relevant return or other document, or to make a relevant declaration or application, that it was required to submit or make, or
 - (iii) the company had submitted a relevant return or other document, or had made a relevant declaration or application, but an act or omission on the part of the company had prevented HMRC from dealing with it.
- In sub-paragraphs (ii) and (iii) “relevant” means relevant to the question whether the company had a tax liability or how much its tax liability was.
- (4) Condition B is that another company (“the new company”) is or has been carrying on a trade or activity that is the same as, or is similar to, a trade or activity previously carried on by—
- (a) each of the old companies (if there are two of them), or
 - (b) any two of the old companies (if there are more than two).
- (5) Condition C is that the individual has had a relevant connection with the new company at any time during the five-year period.
- (6) Condition D is that at the time when the notice is given—
- (a) at least one of the old companies referred to in sub-paragraph (4)(a) or (b) has a tax liability, and
 - (b) the total amount of the tax liabilities of those companies—
 - (i) is more than £10,000, and
 - (ii) is more than 50% of the total amount of those companies' liabilities to their unsecured creditors.

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- (7) An individual who is given a notice under sub-paragraph (1) is jointly and severally liable with the new company (and with any other individual who is given such a notice)—
- (a) for any tax liability that the new company has on the day on which the notice is given, and
 - (b) for any tax liability of the new company that arises—
 - (i) during the period of five years beginning with that day, and
 - (ii) while the notice continues to have effect.
- (8) If an old company referred to in sub-paragraph (4)(a) or (b) has a tax liability on the day on which an individual is given a notice under sub-paragraph (1), the individual is also jointly and severally liable with that company (and with any other individual who is given such a notice) for that liability.
- (9) Sub-paragraphs (7) and (8) are subject to paragraph 9 (interaction with penalties).
- (10) For the purposes of this paragraph—
- (a) an individual has a “relevant connection” with one of the old companies if the individual—
 - (i) is a director or shadow director of the company, or
 - (ii) is a participator in the company;
 - (b) an individual has a “relevant connection” with the new company if the individual—
 - (i) is a director or shadow director of the company,
 - (ii) is a participator in the company, or
 - (iii) is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (11) A notice under sub-paragraph (1) must—
- (a) set out the reasons for which it appears to the officer giving the notice that conditions A to D are met;
 - (b) state the effect of the notice;
 - (c) specify any amounts for which the individual is liable under sub-paragraph (7)(a) or (8);
 - (d) offer the individual a review of the decision to give the notice, and explain the effect of paragraph 11 (right of review);
 - (e) explain the effect of paragraph 13 (right of appeal).
- (12) The amount of the individual's liability under sub-paragraph (7)(a) or (8) is taken to be the amount specified under sub-paragraph (11)(c). For provision under which the amount so specified may be varied, see—
- (a) paragraph 10 (modification etc),
 - (b) paragraphs 11 and 12 (review), and
 - (c) paragraphs 13 and 14 (appeal).
- 4 (1) The Treasury may by regulations made by statutory instrument—
- (a) amend paragraph 3(6)(b)(i) by substituting a different amount for the one that is for the time being specified there;
 - (b) amend paragraph 3(6)(b)(ii) by substituting a different percentage for the one that is for the time being specified there.

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- (2) A statutory instrument containing regulations under this paragraph—
- (a) is subject to annulment in pursuance of a resolution of the House of Commons, if the regulations increase the specified amount by no more than is necessary to reflect changes in the value of money;
 - (b) otherwise, may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

Cases involving penalty for facilitating avoidance or evasion

- 5 (1) An authorised HMRC officer may give a notice under this sub-paragraph to an individual if it appears to the officer that conditions A to D are met.
- (2) Condition A is that—
- (a) a penalty under any of the specified provisions (see sub-paragraph (6)) has been imposed on a company by HMRC, or
 - (b) proceedings have been commenced before the First-tier Tribunal for a penalty under any of those provisions to be imposed on a company.
- (3) Condition B is that—
- (a) the company is subject to an insolvency procedure, or
 - (b) there is a serious possibility of the company becoming subject to an insolvency procedure.
- (4) Condition C is that the individual was a director or shadow director of the company, or a participator in it, at the time of any act or omission in respect of which—
- (a) the penalty was imposed, or
 - (b) the proceedings for the penalty were commenced.
- (5) Condition D is that there is a serious possibility that some or all of the penalty will not be paid.
- (6) The specified provisions are—
- (a) section 98C(1) of the TMA 1970 (penalties for breach of certain obligations relating to disclosure of tax avoidance schemes by promoters etc of schemes);
 - (b) paragraphs 2 and 3 of Schedule 35 to FA 2014 (promoters of tax avoidance schemes: penalties);
 - (c) paragraph 1 of Schedule 20 to FA 2016 (penalties for enablers of offshore tax evasion or non-compliance);
 - (d) Part 1 of Schedule 16 to F(No.2)A 2017 (penalties for enablers of defeated tax avoidance);
 - (e) Part 2 of Schedule 17 to that Act (penalties for breach of certain obligations relating to disclosure of tax avoidance schemes by promoters etc of schemes);
 - [^{F1}(f) Schedule 13 to FA 2022 (penalties for facilitating avoidance schemes involving non-resident promoters).]
- (7) A notice under sub-paragraph (1) must—
- (a) specify the company to which the notice relates;
 - (b) set out the reasons for which it appears to the officer that conditions A to D are met;

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- (c) state the effect of the notice;
 - (d) offer the individual a review of the decision to give the notice, and explain the effect of paragraph 11 (right of review);
 - (e) explain the effect of paragraph 13 (right of appeal).
- (8) It must also—
- (a) specify the amount of the penalty, if sub-paragraph (2)(a) applies;
 - (b) if sub-paragraph (2)(b) applies, indicate that the amount will be specified in a further notice.
- (9) Once the existence and amount of the penalty have been established in a case where sub-paragraph (2)(b) applies, an authorised HMRC officer must give a further notice specifying that amount.
- (10) A notice under sub-paragraph (9) must—
- (a) be given to the individual to whom the notice under sub-paragraph (1) was given;
 - (b) offer the individual a review of the decision to give the notice, and explain the effect of paragraph 11 (right of review);
 - (c) explain the effect of paragraph 13 (right of appeal).
- (11) An individual who is given a notice under sub-paragraph (1) is jointly and severally liable with the company (and with any other individual who is given such a notice) for the amount of the penalty.
- (12) The amount of the individual's liability under sub-paragraph (11) is taken to be the amount specified under sub-paragraph (8)(a) or (9). For provision under which the amount so specified may be varied, see—
- (a) paragraph 10 (modification etc),
 - (b) paragraphs 11 and 12 (review), and
 - (c) paragraphs 13 and 14 (appeal).

Textual Amendments

F1 Sch. 13 para. 5(6)(f) inserted (24.2.2022) by Finance Act 2022 (c. 3), s. 91(2)

“Tax-avoidance arrangements”

- 6 (1) In this Schedule “tax-avoidance arrangements” means—
- (a) arrangements in respect of which a notice has been given under paragraph 12 of Schedule 43 to FA 2013, paragraph 8 or 9 of Schedule 43A to that Act or paragraph 8 of Schedule 43B to that Act (notice of final decision after considering opinion of GAAR Advisory Panel) stating that a tax advantage is to be counteracted under the general anti-abuse rule;
 - (b) arrangements in respect of which a notice has been given under section 204 of FA 2014 (follower notice) and not withdrawn;
 - (c) DOTAS arrangements within the meaning given by subsection (5) of section 219 of that Act (circumstances in which an accelerated payment notice may be given);
 - (d) arrangements to which HMRC have allocated a reference number under paragraph 22 of Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance

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- schemes: VAT and other indirect taxes) or in respect of which the promoter must provide prescribed information under paragraph 23 of that Schedule;
- (e) arrangements in relation to which a relevant tribunal order has been made;
 - (f) arrangements that—
 - (i) are substantially the same as arrangements in relation to which a relevant tribunal order has been made (whether involving the same or different parties), and
 - (ii) have as their promoter the person specified as the promoter in the application for the order.
- (2) For the purposes of sub-paragraph (1)(e) and (f) a relevant tribunal order is made in relation to arrangements if the tribunal—
- (a) makes an order under—
 - (i) subsection (1)(a) of section 314A of FA 2004 (order to disclose), or
 - (ii) paragraph 4(1)(a) of Schedule 17 to F(No.2)A 2017 (corresponding provision for indirect taxes),that a proposal for the arrangements is notifiable;
 - (b) makes an order under—
 - (i) subsection (1)(b) of that section, or
 - (ii) paragraph 4(1)(b) of that Schedule,that the arrangements are notifiable;
 - (c) makes an order under—
 - (i) subsection (1)(a) of section 306A of FA 2004 (doubt as to notifiability), or
 - (ii) paragraph 5(1)(a) of Schedule 17 to F(No.2)A 2017,that a proposal for the arrangements is to be treated as notifiable;
 - (d) makes an order under—
 - (i) subsection (1)(b) of that section, or
 - (ii) paragraph 5(1)(b) of that Schedule,that the arrangements are to be treated as notifiable.
- (3) Section 307 of FA 2004 (meaning of “promoter”) applies for the purposes of sub-paragraph (1)(f)(ii).

In that section as it so applies—

- (a) references to a notifiable proposal are to be read as references to the proposal mentioned in sub-paragraph (2)(a) or (c);
- (b) references to notifiable arrangements are to be read as references to the arrangements mentioned in sub-paragraph (2)(b) or (d).

“Tax-evasive conduct”

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In this Schedule “tax-evasive conduct” means—

- (a) giving to HMRC any deliberately inaccurate return, claim, document or information, or
- (b) deliberately failing to comply with an obligation specified in the Table in paragraph 1 of Schedule 41 to FA 2008 (obligations to notify liability to tax, etc).

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“Insolvency procedure” etc

- 8 (1) For the purposes of this Schedule a company is “subject to an insolvency procedure” if—
- (a) it is undergoing, or has undergone, a relevant winding up (see sub-paragraphs (2) and (3)),
 - (b) it is in administration (see sub-paragraph (4)) or is a company to which sub-paragraph (5) applies,
 - (c) it is in receivership (see sub-paragraph (6)),
 - (d) a relevant scheme (see sub-paragraph (7)) has effect in relation to it, or
 - (e) its name has been struck off the register under section 1000 or 1003 of the Companies Act 2006.
- (2) A company is “undergoing a relevant winding up” for the purposes of this paragraph if—
- (a) it is being wound up under—
 - (i) the Insolvency Act 1986 (“the 1986 Act”), or
 - (ii) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (“the 1989 Order”),
 otherwise than by way of a members' voluntary winding up,
 - (b) it is being wound up by way of a members' voluntary winding up under the 1986 Act, or the 1989 Order, and the period of 12 months beginning with the day on which that winding up commenced has expired without the company having paid its debts in full together with interest at the official rate, or
 - (c) a corresponding situation to a winding up under the 1986 Act or the 1989 Order exists in relation to the company under the law of a country or territory outside the United Kingdom.
- (3) A company has “undergone a relevant winding up” for the purposes of this paragraph if—
- (a) it has been wound up under the 1986 Act, or the 1989 Order, otherwise than by way of a members' voluntary winding up,
 - (b) it has been wound up by way of a members' voluntary winding up under the 1986 Act, or the 1989 Order, without having paid its debts in full together with interest at the official rate, or
 - (c) it has been wound up or dissolved under the law of a country or territory outside the United Kingdom.
- (4) A company is “in administration” for the purposes of this paragraph if—
- (a) it is in administration within the meaning given by paragraph 1 of Schedule B1 to the 1986 Act or paragraph 2 of Schedule B1 to the 1989 Order, or
 - (b) there is in force in relation to it under the law of a country or territory outside the United Kingdom any appointment corresponding to the appointment of an administrator under either of those Schedules.
- (5) This sub-paragraph applies to a company in respect of which—
- (a) a notice under sub-paragraph (1) of paragraph 84 of Schedule B1 to the 1986 Act (moving from administration to dissolution) has been registered under sub-paragraph (3) of that paragraph, or
 - (b) a notice under sub-paragraph (1) of paragraph 85 of Schedule B1 to the 1989 Order (corresponding provision for Northern Ireland) has been registered under sub-paragraph (3) of that paragraph,

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unless an order has been made in relation to that notice under sub-paragraph (7)(c) of that paragraph.

- (6) A company is “in receivership” for the purposes of this paragraph if—
- (a) there is (or, but for a temporary vacancy, would be) a person who in relation to the company—
 - (i) is acting as administrative receiver in accordance with Chapter 1 of Part 3 of the 1986 Act or Part 4 of the 1989 Order, or
 - (ii) is acting as receiver by virtue of section 51 of the 1986 Act, or
 - (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.
- (7) In this paragraph “relevant scheme” means a compromise or arrangement—
- (a) under Part 1 of the 1986 Act or Part 2 of the 1989 Order (company voluntary arrangements),
 - (b) under Part 26 of the Companies Act 2006 (arrangements and reconstructions), or
 - (c) under any corresponding provision of a country or territory outside the United Kingdom.

Interaction with penalties

- 9 The amount for which an individual is jointly and severally liable under paragraph 2 or 3 in respect of a company's tax liability is reduced by the amount of any penalty that the individual has paid in relation to that liability under any of the following provisions—
- (a) section 61 of VATA 1994 (VAT evasion: liability of directors etc);
 - (b) section 28 of FA 2003 (liability of directors etc where body corporate liable to penalty for evasion of customs duty etc);
 - (c) paragraph 19 of Schedule 24 to FA 2007 (liability of company officer where company liable to penalty under that Schedule);
 - (d) paragraph 22 of Schedule 41 to FA 2008 (liability of company officer where company liable to penalty under that Schedule).

Withdrawal or modification of notice

- 10 (1) HMRC must withdraw a joint liability notice given to an individual, by giving a further notice to the individual, if—
- (a) any of the relevant conditions were not met when the joint liability notice was given, or
 - (b) it is not necessary for the protection of the revenue for the notice to continue to have effect.
- (2) In this Schedule “relevant conditions” means—
- (a) conditions A to E in paragraph 2, in the case of a notice under paragraph 2(1);
 - (b) conditions A to D in paragraph 3, in the case of a notice under paragraph 3(1);
 - (c) conditions A to D in paragraph 5, in the case of a notice under paragraph 5(1).
- (3) HMRC must withdraw a notice given to an individual under paragraph 3(1), by giving a further notice to the individual, if—

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- (a) at least one of the old companies (see paragraph 3(3)) is a company that—
 - (i) became subject to an insolvency procedure on the basis that it was being wound up by way of a members' voluntary winding up, and
 - (ii) pays its debts in full, together with interest at the official rate, after the end of the period of 12 months beginning with the day on which the members' voluntary winding up commenced but before the end of that winding up, and
 - (b) condition A in paragraph 3 would not have been met if that company, or each of them (if more than one), had not been subject to an insolvency procedure.
- (4) For the purposes of sub-paragraph (3)(a)(ii), the end of a members' voluntary winding up of a company happens when—
- (a) the company is dissolved in pursuance of the members' voluntary winding up, or
 - (b) the members' voluntary winding up becomes a creditors' voluntary winding up.
- (5) HMRC may withdraw a notice given to an individual under this Schedule, by giving a further notice to the individual, if they think it appropriate to do so even though sub-paragraph (1) or (3) does not apply.
- (6) Where an individual has been given a joint liability notice, HMRC may by further notice to the individual vary an amount specified—
- (a) under paragraph 2(9)(a) or (10), paragraph 3(11)(c) or paragraph 5(8)(a) or (9), or
 - (b) under this sub-paragraph,
- if it seems to them that the amount so specified is, or has become, too much or not enough.
- (7) Subject to sub-paragraph (8), a joint liability notice that is withdrawn under this paragraph is of no effect.
- (8) Where a joint liability notice is withdrawn under sub-paragraph (1)(b) or (3), the withdrawal of the notice does not give the individual a right to recover any amount that the individual has already paid to HMRC in response to the notice.

Right of review

- 11 (1) Where—
- (a) an individual is given a joint liability notice or a notice under paragraph 2(10) or 5(9), and
 - (b) before the end of the permitted period the individual communicates to HMRC written acceptance of the offer of a review contained in the notice,
- HMRC must review the decision to give the notice.
- (2) For the purposes of this paragraph “the permitted period” begins with the day on which the notice mentioned in sub-paragraph (1)(a) is given, and ends—
- (a) with the 30th day after that day, or
 - (b) if HMRC give the individual a further notice specifying a later day (an “extension notice”), with that day.
- (3) An extension notice—

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- (a) must be given before the permitted period would (but for the notice) have expired;
 - (b) must specify a day that is at least 30 days after the date of the extension notice;
 - (c) may be given even if one or more extension notices have already been given.
- (4) If the individual does not accept the offer of a review within the permitted period, HMRC must nevertheless review the decision in question if—
- (a) after the end of the permitted period, the individual gives HMRC a notice requesting a review out of time, and
 - (b) HMRC are satisfied that the individual had a reasonable excuse for not accepting the offer within the permitted period, and that the individual made the request without unreasonable delay after the excuse ceased to apply.
- (5) HMRC are not required to undertake or continue a review under this paragraph if the individual appeals under paragraph 13 against the notice in question.

Reviews under paragraph 11

- 12 (1) This paragraph applies where HMRC are required to undertake a review under paragraph 11.
- (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
- (3) HMRC must, in particular, have regard to steps taken before the beginning of the review—
- (a) by HMRC in reaching the decision, and
 - (b) by any person in seeking to resolve disagreement about the decision.
- (4) The review must take account of any representations made by the individual at a stage which gives HMRC a reasonable opportunity to consider them.
- (5) But it is not open to the individual to challenge the existence or amount of any tax liability of a company to which the joint liability notice in question relates.
- (6) At the conclusion of the review—
- (a) HMRC must set aside the notice to which the review relates if it appears to them that—
 - (i) any of the relevant conditions were not met when the notice was given, or
 - (ii) it is not necessary for the protection of the revenue for the notice to continue to have effect;
 - (b) HMRC must set aside the notice or vary an amount specified under paragraph 2(9)(a), 3(11)(c) or 5(8)(a), or (as the case may be) paragraph 2(10) or 5(9), if it appears to HMRC that the amount specified is incorrect;
 - (c) otherwise, HMRC must uphold the notice.
- (7) HMRC must give the individual notice of the conclusions of the review and their reasoning—
- (a) within the period of 45 days beginning with the relevant date, or
 - (b) within any other period that HMRC and the individual may agree.

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- (8) In sub-paragraph (7) “relevant date” means—
- (a) the date on which HMRC received the individual's notification accepting the offer of a review (in a case falling within paragraph 11(1)), or
 - (b) the date on which HMRC decided to undertake the review (in a case falling within paragraph 11(4)).
- (9) Where HMRC do not give notice of the conclusions within the time period specified in sub-paragraph (7)—
- (a) the notice to which the review relates is treated as upheld, and
 - (b) HMRC must notify the individual accordingly.
- (10) Where a joint liability notice is set aside under sub-paragraph (6)(a)(ii), the setting aside of the notice does not give the individual a right to recover any amount that the individual has already paid to HMRC in response to the notice.

Right of appeal

- 13 (1) An individual who has been given—
- (a) a joint liability notice, or
 - (b) a notice under paragraph 2(10) or 5(9),
- may appeal against the notice to the First-tier Tribunal.
- (2) An appeal under this paragraph must be made before—
- (a) the end of the period of 30 days beginning with the day on which the notice appealed against is given, or
 - (b) if later, the end of the permitted period (within the meaning given by paragraph 11(2)).

This is subject to sub-paragraphs (3) to (5).

- (3) Where HMRC are required to undertake a review under paragraph 11 in respect of a notice, any appeal in respect of that notice must be made within the period of 30 days beginning with the date of the notice under paragraph 12(7) communicating the conclusions of the review (“the conclusion date”).
- (4) Where HMRC are requested to undertake a review in accordance with paragraph 11(4)—
- (a) no appeal may be made unless HMRC have notified the individual as to whether or not a review will be undertaken;
 - (b) if HMRC have notified the individual that a review will be undertaken, any appeal must be made within the period of 30 days beginning with the conclusion date;
 - (c) if HMRC have notified the individual that a review will not be undertaken, an appeal may be made only if the tribunal gives permission.
- (5) Where paragraph 12(9) applies, any appeal must be made—
- (a) after the end of the period specified in paragraph 12(7), and
 - (b) before the end of the period of 30 days beginning with the date of the notice under paragraph 12(9)(b).
- (6) An appeal may be made after the end of the period specified in sub-paragraph (2), (3), (4)(b) or (5)(b) if the tribunal gives permission.

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Appeals under paragraph 13

- 14 (1) On an appeal under paragraph 13—
- (a) the tribunal must set aside the notice appealed against if it appears to the tribunal that—
 - (i) any of the relevant conditions were not met when the notice was given, or
 - (ii) it is not necessary for the protection of the revenue for the notice to continue to have effect;
 - (b) the tribunal must set aside the notice or vary an amount specified under paragraph 2(9)(a), 3(11)(c) or 5(8)(a), or (as the case may be) paragraph 2(10) or 5(9), if it appears to the tribunal that the amount specified is incorrect;
 - (c) otherwise, the tribunal must uphold the notice.
- (2) It is not open to an individual appealing under paragraph 13 to challenge the existence or amount of any tax liability of a company to which the joint liability notice in question relates.
- (But see paragraph 15, under which the individual may in certain circumstances pursue an appeal in place of the company.)
- (3) Where a notice is set aside under sub-paragraph (1)(a)(ii), the setting aside of the notice does not give the individual a right to recover any amount that the individual has already paid to HMRC in response to the notice.

Appeal in respect of liability of company

- 15 (1) Where—
- (a) an individual is made jointly and severally liable by a joint liability notice for a tax liability of a company,
 - (b) an appeal by the company in respect of that liability has been commenced (whether before or after the joint liability notice is given) but has not been determined, and
 - (c) the company is subject to an insolvency procedure,
- the individual is entitled to be a party to the proceedings, and may continue the appeal if the company is unable or unwilling to do so.
- (2) Where—
- (a) an individual is made jointly and severally liable by a joint liability notice for a tax liability of a company, and
 - (b) the company is subject to an insolvency procedure and does not make an appeal in respect of that liability,
- an appeal in respect of that liability may be made in the name of the individual.
- (3) An appeal made under sub-paragraph (2) may be commenced within the period of 30 days beginning with the day on which the joint liability notice is given (even if a time limit for the company to appeal has expired).

Proceedings for determination of penalty to be imposed on company

- 16 Where an individual is given a notice under paragraph 5(1) in a case where paragraph 5(2)(b) applies (proceedings commenced before First-tier Tribunal for

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penalty to be imposed on company), the individual is entitled to be a party to the proceedings referred to in that provision.

Cases where company has ceased to exist

- 17 (1) Where a joint liability notice is given to an individual at a time when the company to which the notice relates has ceased to exist, a reference in this Schedule to the individual being jointly and severally liable with the company for an amount is to be read as—
- (a) a reference to the individual being solely liable for that amount (where no other individual is given a joint liability notice in respect of it), or
 - (b) a reference to the individual being jointly and severally liable for that amount with each other individual who is given a joint liability notice in respect of it.
- (2) The tax liability at a particular time of a company which no longer exists at that time is treated for the purposes of this Schedule as being whatever it was immediately before the company ceased to exist.

Application to limited liability partnerships

- 18 (1) This paragraph has effect for the purposes of this Schedule as it applies in relation to a limited liability partnership.
- (2) A reference to a director or shadow director of a company, or a participator in it, is to be read as a reference to a member or shadow member of the limited liability partnership.
- (3) A reference in paragraph 8 to the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 is to that Act or Order as applied or incorporated by regulations under section 14 of the Limited Liability Partnerships Act 2000.
- (4) A reference in paragraph 8 to the Companies Act 2006 is to that Act as applied or incorporated by regulations under section 15 of the Limited Liability Partnerships Act 2000.

Interpretation

- 19 In this Schedule—
- “authorised HMRC officer” means an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for Her Majesty's Revenue and Customs for the purpose of this Schedule;
 - “company” has the meaning given by paragraph 1(3);
 - “contract settlement” means an agreement in connection with a person's liability to make a payment to HMRC under or by virtue of an enactment;
 - “creditors' voluntary winding up” has the meaning given by—
 - (a) section 90 of the Insolvency Act 1986 (“the 1986 Act”) (in relation to England and Wales and Scotland), or
 - (b) Article 76 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (“the 1989 Order”) (in relation to Northern Ireland);
 - “director” has the meaning given by section 250 of the Companies Act 2006;

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- “joint liability notice” has the meaning given by paragraph 1(2);
- “HMRC” means Her Majesty's Revenue and Customs;
- “insolvency procedure” has the meaning given by paragraph 8;
- “limited liability partnership” means a body incorporated under the Limited Liability Partnerships Act 2000;
- “member”, in relation to a limited liability partnership, has the same meaning as in the Limited Liability Partnerships Act 2000 (see section 4 of that Act);
- “members' voluntary winding up” has the meaning given by—
- (a) section 90 of the 1986 Act (in relation to England and Wales and Scotland), or
 - (b) Article 76 of the 1989 Order (in relation to Northern Ireland);
- “notice” means notice in writing;
- “notify” means notify in writing;
- “the official rate”, in relation to interest, means the rate payable under section 189 of the 1986 Act or (as the case may be) Article 160 of the 1989 Order;
- “participator” has the meaning given by section 454 of CTA 2010;
- “relevant conditions” has the meaning given by paragraph 10(2);
- “shadow director” has the meaning given by section 251 of the Companies Act 2006;
- “shadow member”, in relation to a limited liability partnership, means a person in accordance with whose directions or instructions the members of the partnership are accustomed to act (except that a person is not treated as a shadow member by reason only that the members of the partnership act on advice given by the person in a professional capacity);
- “tax-avoidance arrangements” has the meaning given by paragraph 6;
- “tax-evasive conduct” has the meaning given by paragraph 7;
- “tax liability”, in relation to a company, means any amount payable to the Commissioners for Her Majesty's Revenue and Customs by the company under or by virtue of an enactment or under a contract settlement;
- “unsecured creditor” has the meaning given by—
- (a) section 248 of the 1986 Act (in relation to England and Wales and Scotland);
 - (b) Article 5(1) of the 1989 Order (in relation to Northern Ireland).

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Changes to legislation:

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