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SCHEDULES

SCHEDULE 22

ASSET-BASED PENALTY FOR OFFSHORE INACCURACIES AND FAILURES

PART 4

PROCEDURE

Appeal

- 16 (1) P may appeal against a decision of HMRC that a penalty is payable by P.
(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

Commencement Information

- I1** Sch. 22 para. 16 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

- 17 (1) An appeal 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 review of the decision or about determination of the appeal by the First-tier Tribunal or the Upper Tribunal).
(2) Sub-paragraph (1) does not apply—
(a) so as to require P 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 Schedule.

Commencement Information

- I2** Sch. 22 para. 17 in force at 1.4.2017 with effect in accordance with reg. 2(b) by S.I. 2017/277, reg. 2(b)

- 18 (1) On an appeal under paragraph 16(1), the tribunal may affirm or cancel HMRC's decision.
(2) On an appeal under paragraph 16(2), the tribunal may—
(a) affirm HMRC's decision, or
(b) substitute for HMRC's decision another decision that HMRC had power to make.
(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 9—
(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

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- (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.
- (4) In sub-paragraph (3), “flawed” means flawed when considered in the light of the principles applied in proceedings for judicial review.
- (5) In this paragraph “tribunal” means the First-tier Tribunal or the Upper Tribunal (as appropriate by virtue of paragraph 17(1)).

Commencement Information

I3 [Sch. 22 para. 18](#) in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), **reg. 2(b)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)