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## SCHEDULES

### SCHEDULE 22

#### ASSET-BASED PENALTY FOR OFFSHORE INACCURACIES AND FAILURES

##### PART 4

##### PROCEDURE

##### *Assessment*

- 15 (1) Where a person (P) becomes liable for an asset-based penalty under paragraph 1, HMRC must—
- (a) assess the penalty,
  - (b) notify P, and
  - (c) state in the notice—
    - (i) the tax year to which the penalty relates, and
    - (ii) the investigation period within which that tax year falls (see paragraph 6).
- (2) A penalty under paragraph 1 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.
- (3) An assessment—
- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with an assessment to tax.
- (4) An assessment of an asset-based penalty under paragraph 1 must be made within the period allowed for making an assessment of the standard offshore tax penalty to which the asset-based penalty relates (and where an asset-based penalty relates to more than one standard offshore tax penalty, the assessment must be made within the latest of those periods).
- (5) In this Part of this Schedule references to an assessment to tax, in relation to inheritance tax, are to a determination.

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##### **Commencement Information**

**II** [Sch. 22 para. 15](#) in force at 1.4.2017 with effect in accordance with reg. 2(b) by [S.I. 2017/277](#), [reg. 2\(b\)](#)

##### *Appeal*

- 16 (1) P may appeal against a decision of HMRC that a penalty is payable by P.

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(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

**Commencement Information**

**I2** 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**

**I3** 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
  - (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**

**I4** 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\(3\)](#)