

Govt 215-233

Mr Stephen Timms Labour East Ham

**Govt Clause 96 Schedule 24**

**Govt 215**

Schedule 24, page 260, line 33, leave out 'HMRC think that'.

**Govt 216**

Schedule 24, page 262, line 18, leave out 'HMRC think that'.

**Govt 217**

Schedule 24, page 262, line 18, leave out 'them' and insert 'HMRC,'.

**Govt 218**

Schedule 24, page 262, line 41, leave out 'HMRC think that'.

**Govt 219**

Schedule 24, page 265, line 22, leave out 'HMRC think that'.

**Govt 220**

Schedule 24, page 265, line 24, leave out 'HMRC think'.

**Govt 221**

Schedule 24, page 265, line 26, leave out 'HMRC think that'.

**Govt 222**

Schedule 24, page 265, line 28, leave out 'HMRC think'.

**Govt 223**

Schedule 24, page 265, line 30, leave out 'HMRC think that'.

**Govt 224**

Schedule 24, page 265, line 32, leave out 'HMRC think'.

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**Govt 225**

Schedule 24, page 265, line 34, leave out ‘HMRC think that’.

**Govt 226**

Schedule 24, page 265, line 36, leave out ‘HMRC think’.

**Govt 227**

Schedule 24, page 265, line 38, leave out ‘HMRC think that’.

**Govt 228**

Schedule 24, page 265, line 40, leave out ‘HMRC think’.

**Govt 229**

Schedule 24, page 265, line 42, leave out ‘HMRC think that’.

**Govt 230**

Schedule 24, page 265, line 44, leave out ‘HMRC think’.

**Govt 231**

Schedule 24, page 267, line 10, leave out ‘HMRC think that’.

**Govt 232**

Schedule 24, page 267, line 19, leave out ‘they think that’.

**Govt 233**

Schedule 24, page 269, line 9, leave out ‘HMRC think’.

**EXPLANATORY NOTE**

**GOVERNMENT AMENDMENT TO CLAUSE 96 SCHEDULE  
24:**

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### SUMMARY

1. This amendment addresses concerns expressed about use of the phrase “HMRC think” in Schedule 24. The amendment removes “HMRC think”, without replacing it, in each instance except one. The meaning and effect of the Schedule is not changed by this amendment.

### BACKGROUND NOTE

2. There has been extensive consultation about the new penalty regime. It has attracted widespread support and the consultation process itself has been commended.
3. But one issue has caused particular concern: the use of the term “HMRC think”. It has caused disquiet on two main grounds. Firstly it is contended that the phrase “HMRC think” suggests the process of charging a penalty is subjective rather than objective. Secondly it is suggested that its use may restrict the role of the Tribunal in an appeal against a penalty, to one of reviewing rather than replacing HMRC’s decision.
4. HMRC must consider the facts and evidence to reach a decision about a penalty: how much tax has been understated, the behaviour that caused the understatement and the extent of the taxpayer’s disclosure. This is so whether or not “HMRC think” is in the legislation. Inclusion of the phrase may have appeared to underplay the evidential basis for penalty decisions and given the impression that the process is more subjective than it is. This is the reason for this amendment.
5. Taxpayers may appeal to an independent tribunal both as to whether a penalty is due at all and as to its amount. The Tribunal may replace HMRC’s decision within the framework

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set out in legislation. Inclusion or exclusion of “HMRC think” does not alter this.

6. Any alternative language such as “have reasonable grounds for believing” would be less clear and have unwelcome wider implications for the statute book, for example creating problems with other statutory phrases such as “is satisfied that” or “best judgement”.
7. “Think” is used in over 3000 instances in other statutes. It is used to indicate where a judgement has to be made and to make clear who will make that judgement. The judgements usually involve matters of discretion looking forward. The penalties decisions in this Schedule can be distinguished because they are based on a retrospective review of facts and evidence.
8. The one place where “think” is to be retained is in paragraph 11 (1) Schedule 24 which says HMRC may reduce penalties “if they think it is right due to special circumstances”. This is a discretionary measure and the use of think is considered to still be appropriate.