

2016 No. 99

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

INHERITANCE TAX

The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2016

<i>Made</i>	- - - -	<i>1st February 2016</i>
<i>Laid before the House of Commons</i>		<i>2nd February 2016</i>
<i>Coming into force</i>	- -	<i>23rd February 2016</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 306(1)(a) and (b) and 317(2) of the Finance Act 2004(a).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2016 and come into force on 23rd February 2016.

(2) These Regulations do not have effect—

- (a) for the purposes of section 308(1) of the Finance Act 2004 (duties of promoter relating to any notifiable proposal)(b), if the relevant date(c) falls before 23rd February 2016;
- (b) for the purposes of section 308(3) of the Finance Act 2004 (duties of promoter relating to any notifiable arrangements), if the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements falls before 23rd February 2016;
- (c) for the purposes of section 309(1) of the Finance Act 2004 (duty of person dealing with promoter outside United Kingdom), and of section 310 of that Act (duty of parties to notifiable arrangements not involving promoter), if the date on which any transaction forming part of notifiable arrangements is entered into falls before 23rd February 2016.

(a) 2004 c.12. Section 317(2) was amended by section 56 of, and paragraphs 1 and 8 of Schedule 17 to, the Finance Act 2010 (c.13).

(b) Section 308 was amended by paragraph 2 of Schedule 38 to the Finance Act 2008 (c.9).

(c) Relevant date is defined in section 308(2) of Finance Act 2004 (c.12). Section 308(2) was amended by paragraphs 1 and 2 of Schedule 38 to Finance Act 2008 and paragraphs 1 and 3 of Schedule 17 to Finance Act 2010.

Amendment of the Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006

2. The Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006(a) are amended as provided for in regulations 3 to 9.

3.—(1) Regulation 2 (interpretation: general) is amended as follows.

(2) In paragraph (1) insert the following definitions in the appropriate places—

““CTA 2009” means the Corporation Tax Act 2009(b);”,

““CTA 2010” means the Corporation Tax Act 2010(c);”, and

““ITA 2007” means the Income Tax Act 2007(d);”.

(3) In paragraph (2) after the definition of “business” insert—

““generally accepted accounting practice” has the meaning given by section 1127 of CTA 2010;”.

4.—(1) Regulation 5 (prescribed descriptions of arrangements)(e) is amended as follows.

(2) For paragraph (1) substitute—

“(1) The following arrangements are prescribed for the purposes of Part 7 of the FA 2004 (disclosure of tax avoidance schemes)—

(a) in relation to income tax, corporation tax and capital gains tax, any arrangements which fall within any description specified in a provision of these Regulations listed in paragraph (2);

(b) in relation to inheritance tax, any arrangements which fall within any description specified in a provision of these Regulations listed in paragraph (2)(a) or (c).”

(3) In paragraph (2)—

(a) omit the “and” after sub-paragraph (g);

(b) after sub-paragraph (h) insert—

“and

(i) regulation 19 (description 9: financial products).”

5. In regulation 7(1)(e)(iii)(bb) (Description 2: Confidentiality where no promoter is involved)(f) for “Income Tax Act 2007” substitute “ITA 2007”.

6. For regulation 10 (Description 5: standardised tax products) substitute—

“Description 5: standardised tax products

10.—(1) Subject to regulation 11, arrangements are prescribed if a promoter makes the arrangements available for implementation by more than one person and the conditions in paragraph (2) are met.

(2) The conditions are that an informed observer (having studied the arrangements and having regard to all relevant circumstances) could reasonably be expected to conclude that—

(a) the arrangements have standardised, or substantially standardised, documentation—

(i) the purpose of which is to enable a person to implement the arrangements;

(a) S.I. 2006/1543, relevantly amended by S.I. 2009/2033, S.I. 2010/2834 and S.I. 2013/2595.

(b) 2009 c.4.

(c) 2010 c.4.

(d) 2007 c.3.

(e) Regulation 5 was amended by regulation 2 of S.I. 2009/2033, regulation 4 of S.I. 2010/2834 and regulation 9 of S.I. 2013/2595.

(f) Regulation 7 was amended by regulation 6 of S.I. 2010/2834 and regulations 6 to 8 of S.I. 2013/2595.

- (ii) the form of which is determined by the promoter; and
- (iii) the substance of which does not need to be tailored, to any material extent, to enable a person to implement the arrangements;
- (b) a person implementing the arrangements must enter into a specific transaction or series of specific transactions;
- (c) the transaction or series of transactions is standardised, or substantially standardised, in form; and
- (d) either the main purpose of the arrangements is to enable a person to obtain a tax advantage or the arrangements would be unlikely to be entered into but for the expectation of obtaining a tax advantage.”

7.—(1) Regulation 11 (arrangements excepted from Description 5) is amended as follows.

(2) Omit paragraph (1).

(3) In paragraph (2)—

- (a) for “The arrangements referred to in paragraph (1)(a) are” substitute “The following arrangements are excepted from being prescribed under regulation 10”;
- (b) in sub-paragraph (b) for “Chapter 3 of Part 7 of ICTA 1988 and Schedules 5B and 5BA” substitute “Part 5 of ITA 2007 and Schedule 5B”;
- (c) in sub-paragraph (c) for “section 842AA of, and Schedule 15B to, ICTA 1988” substitute “Part 6 of ITA 2007”;
- (d) after sub-paragraph (n) insert—
 - “(o) arrangements which would be prescribed by regulation 19 but for regulation 21.”

8. In regulation 12 (Description 6: Loss schemes) for paragraph (b) substitute—

- “(b) an informed observer (having studied the arrangements and having regard to all relevant circumstances) could reasonably be expected to conclude that—
 - (i) the main benefit or one of the main benefits which could be expected to accrue to some or all of the individuals participating in the arrangements is the provision of losses, and
 - (ii) the arrangements (including the way they are structured) contain an element which is, or elements which are, unlikely to have been entered into by the individuals concerned were it not for the provision of those losses, and
 - (iii) those individuals would be expected to use those losses to reduce their liability to income tax or capital gains tax.”

9. After regulation 18 (Description 8: Employment income provided through third parties)(a) insert—

“Description 9: Financial products

19.—(1) Subject to regulation 21, arrangements are prescribed if—

- (a) condition 1 is met, and
- (b) it would be reasonable to expect an informed observer (having studied the arrangements and having regard to all relevant circumstances) to conclude that—
 - (i) condition 2 is met, and
 - (ii) either condition 3 or condition 4 is met.

(2) Condition 1 is that the arrangements include at least one financial product specified in regulation 20(1) (a “specified financial product”).

(a) Regulation 18 was substituted for regulation 17A by regulation 10 of S.I. 2013/2595.

(3) Condition 2 is that the main benefit, or one of the main benefits, of including a specified financial product in the arrangements is to give rise to a tax advantage.

(4) Condition 3 is that a specified financial product included in the arrangements contains at least one term which is unlikely to have been entered into by the persons concerned were it not for the tax advantage.

(5) Condition 4 is that the arrangements involve one or more contrived or abnormal steps without which the tax advantage could not be obtained.

(6) For the purposes of this regulation condition 3 is treated as not having been met if—

(a) the specified financial product includes a term requiring that it is held for a minimum period of time before it is redeemed and—

(i) section 135 or 136 of TCGA 1992(a) applies to the specified financial product, and

(ii) condition 3 is met only by virtue of that term; or

(b) the specified financial product includes a term whereby the issuing company can secure that the date for redemption falls before the end of the permitted period and—

(i) but for that term, the specified financial product would be an equity note, and

(ii) condition 3 is met only by virtue of that term.

(7) In paragraph (6)(b) “equity note” and “the permitted period” have the meanings given by section 1016 of CTA 2010.

(8) For the purposes of condition 4 a step is not to be treated as being contrived or abnormal if—

(a) that step involves only the transfer of an asset to which the condition in paragraph 15A(2)(b) of Schedule 7AC to TCGA 1992(b) applies; or

(b) that step involves only the issue of shares and—

(i) that step is taken to eliminate or substantially reduce the economic risk of holding a loan relationship or a derivative contract, or part of such a loan relationship or a derivative contract, which is attributable to fluctuations in exchange rates, and

(ii) the shares are treated for accounting purposes as a liability of the company in accordance with generally accepted accounting practice.

(9) For the purposes of this regulation, neither condition 3 nor condition 4 is treated as having been met if—

(a) the specified financial product includes a term providing for conversion into, or redemption in, a currency other than sterling, and

(b) both condition 3 and condition 4 are met only by virtue of that term.

20.—(1) The financial products specified in this paragraph are—

(a) a loan,

(b) a share,

(c) a derivative contract within the meaning given by section 576 of CTA 2009,

(d) a repo in respect of securities within the meaning given by section 263A(A1) of TCGA 1992(c),

(a) 1992 c.12. Sections 135 and 136 were substituted by paragraphs 7 and 9 of Schedule 45 to the Finance Act 2002 (c.23). Section 135 was amended by paragraph 23 to the Corporation Tax Act 2010.

(b) Schedule 7AC was inserted by paragraph 1 of Schedule 8 to the Finance Act 2002.

(c) Section 263A was inserted by section 80(4) of the Finance Act 1995 (c.4) and subsection (A1) was inserted by paragraph 9(2) of Schedule 12 to the Finance Act 2013 (c.29).

- (e) a creditor repo, creditor quasi-repo, debtor repo or a debtor quasi-repo (within the meanings given by sections 543, 544, 548 and 549 of CTA 2009^(a) respectively),
- (f) a stock lending arrangement within the meaning given by section 263B(1) of TCGA 1992^(b),
- (g) an alternative finance arrangement within Chapter 6 of Part 6 of CTA 2009 or Part 10A of ITA 2007^(c),
- (h) a contract which, whether alone or in combination with one or more other contracts—
 - (i) is in accordance with generally accepted accounting practice required to be treated as a loan, deposit or other financial asset or obligation, or
 - (ii) would be required to be so treated by the person entering into the arrangements were that person a company to which the Companies Act 2006^(d) applies.

(2) Paragraph (1) does not specify a financial product held within an account which satisfies the conditions in regulation 4 of the Individual Savings Account Regulations 1998^(e).

Arrangements excepted from Description 9

21. Arrangements are excepted from being prescribed under regulation 19 if—

- (a) a promoter is a participating entity, or is part of a participating group, within the meaning of section 286 of the Finance Act 2014^(f); and
- (b) HMRC has confirmed, or could reasonably be expected to confirm, to the promoter that the arrangements are acceptable transactions under the Code of Practice on Taxation for Banks (as published by the Commissioners for Her Majesty's Revenue and Customs on 31st May 2013)^(g).

George Hollingbery
David Evennett

1st February 2016

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543) (“the 2006 Regulations”). They extend the scope of the confidentiality and premium fee hallmarks to include inheritance tax; make changes to aspects of the standardised tax products and losses hallmarks; and introduce a new hallmark relating to financial products.

Regulation 1 provides for citation, commencement and effect.

Regulation 2 introduces the amendments to the 2006 Regulations.

(a) Section 549 was amended by article 6(5) of S.I. 2009/2860.
 (b) Section 263B was inserted by paragraph 5(1) of Schedule 10 to the Finance Act 1997 (c.16).
 (c) Part 10A of the Income Tax Act 2007 was inserted by Part 1 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010 (c.8).
 (d) 2006 c.46.
 (e) S.I. 1998/1870; relevant amending instruments are regulation 3 of S.I. 2002/1974, regulations 5 and 6 of S.I. 2007/2119, regulation 4 of S.I. 2009/1994, regulation 3 of S.I. 2010/2957, regulations 4 and 5 of S.I. 2011/782, regulation 7 of S.I. 2011/1780, paragraph 22 of Schedule 2 to S.I. 2013/472, regulation 5 of S.I. 2014/1450 and regulation 5 of S.I. 2015/869.
 (f) 2014 c.26.
 (g) The Code is available at <https://www.gov.uk/government/publications/code-of-practice-on-taxation-for-banks>. For those without computer access, a copy of the code can be obtained without charge by writing to: FAO Banking Code Team, Large Business Financial, Floor 6 & 7, Bush House, S.W. Wing, The Strand, London, WC2B 4RD.

Regulation 3 amends regulation 2 of the 2006 Regulations.

Regulation 4 amends regulation 5 of the 2006 Regulations to extend the scope of the confidentiality and premium fee hallmarks to arrangements involving inheritance tax.

Regulation 5 updates a reference to the Income Tax Act 2007 to reflect that it has been defined in regulation 2 as the ITA 2007.

Regulation 6 substitutes a new description of standardised tax products hallmark in the 2006 Regulations. The amendment changes how the hallmark works by requiring the informed observer to consider all aspects of the test, rather than the previous position where the observer was required only to consider the purpose of the arrangements.

Regulation 7 removes the grandfathering provision from regulation 11 of the 2006 Regulations, updates statutory references and makes arrangements prescribed under regulation 10 subject to the exception in regulation 21.

Regulation 8 substitutes a new description of the Loss Scheme hallmark in the 2006 Regulations. The amendment refines the targeting of the hallmark by requiring the informed observer to consider whether the provision of losses is a main benefit, rather than the main benefit, and to consider whether the arrangements or their structure contain elements which are unlikely to have been entered were it not for the provision of those losses.

Regulation 9 inserts new regulations 19, 20 and 21 into the 2006 Regulations. New regulation 19 prescribes arrangements, for the purposes of section 306 of the Finance Act 2004, where certain conditions are met. Condition 1 is that one or more of the financial products specified by new regulation 20 has been used as part of the arrangements. Conditions 2 to 4 relate to particular circumstances which may exist in respect of such arrangements. New regulation 21 sets out arrangements that are excepted from new regulation 19.

A Tax Information and Impact Note covering this instrument was published on the 10th December 2014 alongside the Autumn Statement 2014 and is available on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

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