

Status: Point in time view as at 26/03/2015.

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SCHEDULES

SCHEDULE 17

Section 117

DISCLOSURE OF TAX AVOIDANCE SCHEMES

Requirement to update DOTAS information

1 After section 310B of FA 2004 insert—

“310C Duty of promoters to provide updated information

- (1) This section applies where—
 - (a) information has been provided under section 308 about any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under section 311, and
 - (b) after the provision of the information, there is a change in relation to the arrangements of a kind mentioned in subsection (2).
- (2) The changes referred to in subsection (1)(b) are—
 - (a) a change in the name by which the notifiable arrangements, or proposed notifiable arrangements, are known;
 - (b) a change in the name or address of any person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal.
- (3) A person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal must inform HMRC of the change mentioned in subsection (1)(b) within 30 days after it is made.
- (4) Subsections (5) and (6) apply for the purposes of subsection (3) where there is more than one person who is a promoter in relation to the notifiable arrangements or proposal.
- (5) If the change in question is a change in the name or address of a person who is a promoter in relation to the notifiable arrangements or proposal, it is the duty of that person to comply with subsection (3).
- (6) If a person provides information in compliance with subsection (3), the duty imposed by that subsection on any other person, so far as relating to the provision of that information, is discharged.”

2 In section 316 of that Act (information to be provided in form and manner specified by HMRC), in subsection (2), after “310A,” insert “ 310C, ”.

3 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), after paragraph (ca) insert—
“(cb) section 310C (duty of promoters to provide updated information),”.

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Arrangements to be given reference number

- 4 In section 311(1)(a) of FA 2004 (period for allocation of reference number to arrangements) for “30 days” substitute “ 90 days ”.

Notification of employees

- 5 (1) Section 312A of FA 2004 (duty of client to notify parties of number) is amended as follows.

- (2) After subsection (2) insert—

“(2A) Where the client—

- (a) is an employer, and
- (b) by reason of the arrangements or proposed arrangements, receives or might reasonably be expected to receive an advantage, in relation to any relevant tax, in relation to the employment of one or more of the client's employees,

the client must, within the prescribed period, provide to each of the client's relevant employees prescribed information relating to the reference number.”

- (3) For subsection (3) substitute—

“(3) For the purposes of this section—

- (a) a tax is a “relevant tax”, in relation to arrangements or arrangements proposed in a proposal of any description, if it is prescribed in relation to arrangements or proposals of that description by regulations under section 306;
- (b) “relevant employee” means an employee in relation to whose employment the client receives or might reasonably be expected to receive the advantage mentioned in subsection (2A);
- (c) “employee” includes a former employee;
- (d) a reference to employment includes holding an office (and references to “employee” and “employer” are to be construed accordingly).”

- (4) In subsection (4), for “the duty under subsection (2)” substitute “ one or both of the duties under this section ”.

- (5) In subsection (5), after “subsection (2)” insert “ or (2A) ”.

- 6 In section 313 of that Act (duty of parties to notifiable arrangements to notify Board of number, etc), after subsection (5) insert—

“(6) The duty under subsection (1) does not apply in prescribed circumstances.”

- 7 In section 316 of that Act (information to be provided in form and manner specified by HMRC), in subsection (2), after “312A(2)” insert “ and (2A) ”.

- 8 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), in paragraph (da), after “312A(2)” insert “ and (2A) ”.

Employers' duty of disclosure

- 9 After section 313ZB of FA 2004 insert—

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“313ZC Duty of employer to notify HMRC of details of employees etc

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that a person who is a promoter in relation to notifiable arrangements or a notifiable proposal is providing (or has provided) services in connection with the notifiable arrangements or notifiable proposal to a person (“the client”).
- (3) Condition B is that the client receives information under section 312(2) or as mentioned in section 312(5).
- (4) Condition C is that the client is an employer in circumstances where, as a result of the notifiable arrangement or proposed notifiable arrangement—
 - (a) one or more of the client's employees receive, or might reasonably be expected to receive, in relation to their employment, an advantage in relation to any relevant tax, or
 - (b) the client receives or might reasonably be expected to receive such an advantage in relation to the employment of one or more of the client's employees.
- (5) Where an employee is within subsection (4)(a), or is an employee mentioned in subsection (4)(b), the client must provide HMRC with prescribed information relating to the employee at the prescribed time or times.
- (6) The client need not comply with subsection (5) in relation to any notifiable arrangements at any time after HMRC have given notice under section 312(6) or 313(5) in relation to the notifiable arrangements.
- (7) The duty under subsection (5) does not apply in prescribed circumstances.
- (8) Section 312A(3) applies for the purposes of this section as it applies for the purposes of that section.”

10 In section 316 of that Act (information to be provided in form and manner specified by HMRC), in subsection (2), for “and 313ZA(3)” substitute “, 313ZA(3) and 313ZC(5)”.

11 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), after paragraph (dc) insert—
“(dca) section 313ZC (duty of employer to provide details of employees etc),”.

Identifying scheme users

12 (1) Section 313C of FA 2004 (information provided to introducers) is amended as follows.

(2) For subsection (1) substitute—

- “(1) This section applies where HMRC suspect—
- (a) that a person (“P”) is an introducer in relation to a proposal, and
 - (b) that the proposal may be notifiable.

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(1A) HMRC may by written notice require P to provide HMRC with one or both of the following—

- (a) prescribed information in relation to each person who has provided P with any information relating to the proposal;
- (b) prescribed information in relation to each person with whom P has made a marketing contact in relation to the proposal.”

(3) In subsection (3), for “or by virtue of subsection (1)” substitute “ subsection (1A) ”.

(4) For the heading substitute “ Provision of information to HMRC by introducers ”.

13 In section 98C of TMA 1970 (notification under Part 7 of FA 2004: penalties), in subsection (2)(f) after “information” insert “ or have been provided with information ”.

Additional information

14 “After section 316 of FA 2004 insert—

Duty to provide additional information

316A) This section applies where a person is required to provide information under section 312(2) or 312A(2) or (2A).

(2) HMRC may specify additional information which must be provided by that person to the recipients under section 312(2) or 312A(2) or (2A) at the same time as the information referred to in subsection (1).

(3) HMRC may specify the form and manner in which the additional information is to be provided.

(4) For the purposes of this section “additional information” means information supplied by HMRC which relates to notifiable proposals or notifiable arrangements in general.”

15 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), omit the “and” at the end of paragraph (e) and after paragraph (f) insert “, and

(g) section 316A (duty to provide additional information).”

Protection of persons making voluntary disclosures

16 “After section 316A of FA 2004 insert—

Confidentiality

316B No duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by any person to HMRC of information or documents which the person has reasonable grounds for suspecting will assist HMRC in determining whether there has been a breach of any requirement imposed by or under this Part.”

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Publication of DOTAS information

17 After section 316B of FA 2004 insert—

“316C Publication by HMRC

- (1) HMRC may publish information about—
 - (a) any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under section 311;
 - (b) any person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal.
- (2) The information that may be published is (subject to subsection (4))—
 - (a) any information relating to arrangements within subsection (1)(a), or a person within subsection (1)(b), that is prescribed information for the purposes of section 308, 309 or 310;
 - (b) any ruling of a court or tribunal relating to any such arrangements or person (in that person's capacity as a promoter in relation to a notifiable proposal or arrangements);
 - (c) the number of persons in any period who enter into transactions forming part of notifiable arrangements within subsection (1)(a);
 - (d) whether arrangements within subsection (1)(a) are APN relevant (see subsection (7));
 - (e) any other information that HMRC considers it appropriate to publish for the purpose of identifying arrangements within subsection (1)(a) or a person within subsection (1)(b).
- (3) The information may be published in any manner that HMRC considers appropriate.
- (4) No information may be published under this section that identifies a person who enters into a transaction forming part of notifiable arrangements within subsection (1)(a).
- (5) But where a person who is a promoter within subsection (1)(b) is also a person mentioned in subsection (4), nothing in subsection (4) is to be taken as preventing the publication under this section of information so far as relating to the person's activities as a promoter.
- (6) Before publishing any information under this section that identifies a person as a promoter within subsection (1)(b), HMRC must—
 - (a) inform the person that they are considering doing so, and
 - (b) give the person reasonable opportunity to make representations about whether it should be published.
- (7) Arrangements are “APN relevant” for the purposes of subsection (2)(d) if HMRC has indicated in a publication that it may exercise (or has exercised) its power under section 219 of the Finance Act 2014 (accelerated payment notices) by virtue of the arrangements being DOTAS arrangements within the meaning of that section.

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316D Section 316C: subsequent judicial rulings

- (1) This section applies if—
 - (a) information about notifiable arrangements, or proposed notifiable arrangements, is published under section 316C,
 - (b) at any time after the information is published, a ruling of a court or tribunal is made in relation to tax arrangements, and
 - (c) HMRC is of the opinion that the ruling is relevant to the arrangements mentioned in paragraph (a).
- (2) A ruling is “relevant” to the arrangements if—
 - (a) the principles laid down, or reasoning given, in the ruling would, if applied to the arrangements, allow the purported advantage arising from the arrangements in relation to tax, and
 - (b) the ruling is final.
- (3) HMRC must publish information about the ruling.
- (4) The information must be published in the same manner as HMRC published the information mentioned in subsection (1)(a) (and may also be published in any other manner that HMRC considers appropriate).
- (5) A ruling is “final” if it is—
 - (a) a ruling of the Supreme Court, or
 - (b) a ruling of any other court or tribunal in circumstances where—
 - (i) no appeal may be made against the ruling,
 - (ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,
 - (iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or
 - (iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.
- (6) Where a ruling is final by virtue of sub-paragraph (ii), (iii) or (iv) of subsection (5)(b), the ruling is to be treated as made at the time when the sub-paragraph in question is first satisfied.
- (7) In this section “tax arrangements” means arrangements in respect of which it would be reasonable to conclude (having regard to all the circumstances) that the obtaining of an advantage in relation to tax was the main purpose, or one of the main purposes.”

Increase in penalties for failure to comply with section 313 of FA 2004

- 18 In section 98C of TMA 1970 (notification under Part 7 of FA 2004)—
- (a) in subsection (3) for “penalty of the relevant sum” substitute “ penalty not exceeding the relevant sum ”, and
 - (b) in subsection (4)—

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- (i) in paragraph (a) for “£100” substitute “ £5,000 ”,
- (ii) in paragraph (b) for “£500” substitute “ £7,500 ”, and
- (iii) in paragraph (c) for “£1,000” substitute “ £10,000 ”.

Transitional provisions

- 19 (1) Section 310C of FA 2004 applies in relation to notifiable arrangements, or proposed notifiable arrangements, only if a reference number under section 311 of that Act is allocated to the arrangements on or after the day on which this Act is passed.
- (2) But section 310C of FA 2004 does not apply in relation to notifiable arrangements, or proposed notifiable arrangements, where prescribed information relating to the arrangements was provided to HMRC before that day in compliance with section 308 of that Act.
- 20 Any notice given by HMRC under section 312A(4) of FA 2004 (notice that section 312A(2) duty does not apply) before the day on which this Act is passed is treated on and after that day as given also in relation to the duty under section 312A(2A) of that Act.
- 21 (1) Section 316C of FA 2004 applies in relation to notifiable arrangements, or proposed notifiable arrangements, only if a reference number under section 311 of that Act is allocated to the arrangements on or after the day on which this Act is passed.
- (2) But section 316C of FA 2004 does not apply in relation to notifiable arrangements, or proposed notifiable arrangements, where prescribed information relating to the arrangements was provided to HMRC before that day in compliance with section 308, 309 or 310 of that Act.
- (3) Section 316C(2)(b) of FA 2004 applies in relation to a ruling of a court or tribunal only if the ruling is given on or after the day on which this Act is passed.

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