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SCHEDULES

SCHEDULE 16

PENALTIES FOR ENABLERS OF DEFEATED TAX AVOIDANCE

PART 4

PERSONS WHO “ENABLED” THE ARRANGEMENTS

Persons who “enabled” the arrangements

- 7 (1) A person is a person who “enabled” the arrangements mentioned in paragraph 1 if that person is—
- (a) a designer of the arrangements (see paragraph 8),
 - (b) a manager of the arrangements (see paragraph 9),
 - (c) a person who marketed the arrangements to T (see paragraph 10),
 - (d) an enabling participant in the arrangements (see paragraph 11), or
 - (e) a financial enabler in relation to the arrangements (see paragraph 12).
- (2) This paragraph is subject to paragraph 13 (excluded persons).

Designers of arrangements

- 8 (1) For the purposes of paragraph 7 a person is a “designer” of the arrangements if that person was, in the course of a business carried on by that person, to any extent responsible for the design of—
- (a) the arrangements, or
 - (b) a proposal which was implemented by the arrangements;
- but this is subject to sub-paragraph (2).
- (2) Where a person would (in the absence of this sub-paragraph) fall within sub-paragraph (1) because of having provided advice which was used in the design of the arrangements or of a proposal, that person does not because of that advice fall within that sub-paragraph unless—
- (a) the advice is relevant advice, and
 - (b) the knowledge condition is met.
- (3) Advice is “relevant advice” if—
- (a) the advice or any part of it suggests arrangements or an alteration of proposed arrangements, and
 - (b) it is reasonable to assume that the suggestion was made with a view to arrangements being designed in such a way that a tax advantage (or a greater tax advantage) might be expected to arise from them.

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- (4) The knowledge condition is that, when the advice was provided, the person providing it knew or could reasonably be expected to know—
- (a) that the advice would be used in the design of abusive tax arrangements or of a proposal for such arrangements, or
 - (b) that it was likely that the advice would be so used.
- (5) For the purposes of sub-paragraph (3), advice is not to be taken to “suggest” anything—
- (a) which is put forward by the advice for consideration, but
 - (b) which the advice can reasonably be read as recommending against.
- (6) In sub-paragraph (3)—
- (a) the reference in paragraph (a) to arrangements or an alteration of proposed arrangements includes a proposal for arrangements or an alteration of a proposal for arrangements, and
 - (b) the reference in paragraph (b) to arrangements includes arrangements proposed by a proposal.
- (7) For the purposes of this paragraph—
- (a) references to advice include an opinion;
 - (b) advice is “used” in a design if the advice is taken account of in that design.

Managers of arrangements

- 9 (1) For the purposes of paragraph 7 a person is a “manager” of the arrangements if that person—
- (a) was, in the course of a business carried on by that person, to any extent responsible for the organisation or management of the arrangements, and
 - (b) when carrying out any functions in relation to the organisation or management of the arrangements, knew or could reasonably be expected to know that the arrangements involved were abusive tax arrangements.
- (2) Where—
- (a) a person is, in the course of a business carried on by the person, to any extent responsible for facilitating T's withdrawal from the arrangements, and
 - (b) it is reasonable to assume that the obtaining of a tax advantage is not T's purpose (or one of T's purposes) in withdrawing from the arrangements,
- that person is not because of anything done in the course of facilitating that withdrawal to be regarded as to any extent responsible for the organisation or management of the arrangements.

Marketers of arrangements

- 10 For the purposes of paragraph 7 a person “marketed” the arrangements to T if, in the course of a business carried on by that person—
- (a) that person made available for implementation by T a proposal which has since been implemented, in relation to T, by the arrangements, or
 - (b) that person—
 - (i) communicated information to T or another person about a proposal which has since been implemented, in relation to T, by the arrangements, and

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- (ii) did so with a view to T entering into the arrangements or transactions forming part of the arrangements.

Enabling participants

- 11 For the purposes of paragraph 7 a person is “an enabling participant” in the arrangements if—
- (a) that person is a person (other than T) who enters into the arrangements or a transaction forming part of the arrangements,
 - (b) without that person's participation in the arrangements or transaction (or the participation of another person in the arrangements or transaction in the same capacity as that person), the arrangements could not be expected to result in a tax advantage for T, and
 - (c) when that person entered into the arrangements or transaction, that person knew or could reasonably be expected to know that what was being entered into was abusive tax arrangements or a transaction forming part of such arrangements.

Financial enablers

- 12 (1) For the purposes of paragraph 7 a person is a “financial enabler” in relation to the arrangements if—
- (a) in the course of a business carried on by that person, that person provided a financial product (directly or indirectly) to a relevant party,
 - (b) it is reasonable to assume that the purpose (or a purpose) of the relevant party in obtaining the financial product was to participate in the arrangements, and
 - (c) when the financial product was provided, the person providing it knew or could reasonably be expected to know that the purpose (or a purpose) of obtaining it was to participate in abusive tax arrangements.
- (2) In this paragraph “a relevant party” means T or an enabling participant in the arrangements within the meaning given by paragraph 11.
- (3) Any reference in this paragraph to a person's providing a financial product to a relevant party includes (but is not limited to) the person's doing any of the following—
- (a) providing a loan to a relevant party;
 - (b) issuing or transferring a share to a relevant party;
 - (c) entering into arrangements with a relevant party such that—
 - (i) the person becomes a party to a relevant contract within the meaning of section 577 of CTA 2009 (derivative contracts);
 - (ii) there is a repo in respect of securities within the meaning of section 263A(A1) of TCGA 1992;
 - (iii) the person or the relevant party has a creditor repo, creditor quasi-repo, debtor repo or debtor quasi-repo within the meaning of sections 543, 544, 548 and 549 of CTA 2009;
 - (d) entering into a stock lending arrangement, within the meaning of section 263B(1) of TCGA 1992, with a relevant party;
 - (e) entering into an alternative finance arrangement, within the meaning of Chapter 6 of Part 6 of CTA 2009 or Part 10A of ITA 2007, with a relevant party;

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- (f) entering into a contract with a relevant party 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 if the person were a company to which the Companies Act 2006 applies;
- and references to obtaining a financial product are to be read accordingly.
- (4) The Treasury may by regulations amend sub-paragraph (3).

Excluded persons

- 13 (1) A person who—
- (a) would (in the absence of this paragraph) be regarded for the purposes of this Schedule as having enabled particular arrangements mentioned in paragraph 1, but
 - (b) is a person within sub-paragraph (2),
- is not to be regarded as having enabled those arrangements.
- (2) The persons within this sub-paragraph are—
- (a) T;
 - (b) where T is a company, any company in the same group as T.

Powers to add categories of enabler and to provide exceptions

- 14 (1) The Treasury may by regulations add to the categories of persons who, in relation to arrangements mentioned in paragraph 1, are for the purposes of this Schedule persons who enabled the arrangements.
- (2) The Treasury may by regulations provide that a person who would otherwise be regarded for the purposes of this Schedule as having enabled arrangements is not to be so regarded where conditions prescribed by the regulations are met.
- (3) Regulations under this paragraph may—
- (a) amend this Part of this Schedule;
 - (b) make supplementary, incidental, and consequential provision, including provision amending any other Part of this Schedule;
 - (c) make transitional provision.

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