

SCHEDULES

SCHEDULE 17

Section 66

DISCLOSURE OF TAX AVOIDANCE SCHEMES: VAT AND OTHER INDIRECT TAXES

PART 1

DUTIES TO DISCLOSE AVOIDANCE SCHEMES ETC

Preliminary: application of definitions

1 The definitions in paragraphs 2, 3, and 7 to 10 apply for the purposes of this Schedule.

“Indirect tax”

2 (1) “Indirect tax” means any of the following—

VAT

insurance premium tax

general betting duty

pool betting duty

remote gaming duty

machine games duty

gaming duty

lottery duty

bingo duty

air passenger duty

hydrocarbon oils duty

tobacco products duty

duties on spirits, beer, wine, made-wine and cider

soft drinks industry levy

aggregates levy

landfill tax

climate change levy

customs duties.

(2) The Treasury may by regulations amend the list in sub-paragraph (1) by adding, varying or omitting an entry for a tax.

“Notifiable arrangements” and “notifiable proposal”

3 (1) “Notifiable arrangements” means any arrangements not excluded by sub-paragraph (2) which—

(a) fall within any description prescribed by the Treasury by regulations,

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- (b) enable, or might be expected to enable, any person to obtain a tax advantage in relation to any indirect tax that is so prescribed in relation to arrangements of that description, and
 - (c) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that tax advantage.
- (2) Arrangements that meet the requirements in paragraphs (a) to (c) of sub-paragraph (1) are not notifiable arrangements if they implement a proposal which is excluded from being a notifiable proposal by sub-paragraph (4).
- (3) “Notifiable proposal” means a proposal for arrangements which, if entered into, would be notifiable arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).
- (4) A proposal is not a notifiable proposal if any of the following occur before 1 January 2018—
 - (a) a promoter first makes a firm approach to another person in relation to the proposal,
 - (b) a promoter makes the proposal available for implementation by any other person, or
 - (c) a promoter first becomes aware of any transaction forming part of arrangements implementing the proposal.
- 4 (1) HMRC may apply to the tribunal for an order that—
 - (a) a proposal is notifiable, or
 - (b) arrangements are notifiable.
- (2) An application must specify—
 - (a) the proposal or arrangements in respect of which the order is sought, and
 - (b) the promoter.
- (3) On an application the tribunal may make the order only if satisfied that paragraph 3(1) (a) to (c) applies to the relevant arrangements and that they are not excluded from being notifiable by paragraph 3(2).
- 5 (1) HMRC may apply to the tribunal for an order that—
 - (a) a proposal is to be treated as notifiable, or
 - (b) arrangements are to be treated as notifiable.
- (2) An application must specify—
 - (a) the proposal or arrangements in respect of which the order is sought, and
 - (b) the promoter.
- (3) On an application the tribunal may make the order only if satisfied that HMRC—
 - (a) have taken all reasonable steps to establish whether the proposal or arrangements are notifiable, and
 - (b) have reasonable grounds for suspecting that the proposal or arrangements may be notifiable.
- (4) Reasonable steps under sub-paragraph (3)(a) may (but need not) include taking action under paragraph 29 or 30.
- (5) Grounds for suspicion under sub-paragraph (3)(b) may include—

- (a) the fact that the relevant arrangements fall within a description prescribed under paragraph 3(1)(a),
 - (b) an attempt by the promoter to avoid or delay providing information or documents about the proposal or arrangements under or by virtue of paragraph 29 or 30,
 - (c) the promoter's failure to comply with a requirement under or by virtue of paragraph 29 or 30 in relation to another proposal or other arrangements.
- (6) Where an order is made under this paragraph in respect of a proposal or arrangements, the relevant period for the purposes of sub-paragraph (1) of paragraph 11 or 12 in so far as it applies by virtue of the order is the period of 11 days beginning with the day on which the order is made.
- (7) An order under this paragraph in relation to a proposal or arrangements is without prejudice to the possible application of any of paragraphs 11 to 15, other than by virtue of this paragraph, to the proposal or arrangements.

“Tax advantage” in relation to VAT

- 6 (1) A person (P) obtains a tax advantage in relation to VAT if—
- (a) in any prescribed accounting period, the amount by which the output tax accounted for by P exceeds the input tax deducted by P is less than it would otherwise be;
 - (b) P obtains a VAT credit when P would otherwise not do so, or obtains a larger credit or obtains a credit earlier than would otherwise be the case;
 - (c) in a case where P recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case;
 - (d) in any prescribed accounting period, the amount of P's non-deductible tax is less than it otherwise would be;
 - (e) P avoids an obligation to account for tax.
- (2) In sub-paragraph (1)(d) “non-deductible tax”, in relation to a taxable person, means—
- (a) input tax for which the person is not entitled to credit under section 25 of VATA 1994,
 - (b) any VAT incurred by the person which is not input tax and in respect of which the person is not entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.
- (3) For the purposes of sub-paragraph (2)(b), the VAT “incurred” by a taxable person is—
- (a) VAT on the supply to the person of any goods or services,
 - (b) VAT on the acquisition by the person from another member State of any goods,
 - (c) VAT paid or payable by the person on the importation of any goods from a place outside the member States.
- (4) A person who is not a taxable person obtains a tax advantage in relation to VAT if that person's non-refundable tax is less than it otherwise would be.
- (5) In sub-paragraph (4) “non-refundable tax” means—

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- (a) VAT on the supply to the person of any goods or services,
- (b) VAT on the acquisition by the person from another member State of goods,
- (c) VAT paid or payable by the person on the importation of any goods from a place outside the member States,

but excluding (in each case) any VAT in respect of which the person is entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.

- (6) Terms used in this paragraph which are defined in section 96 of VATA 1994 have the meanings given by that section.

“Tax advantage” in relation to taxes other than VAT

- 7 “Tax advantage”, in relation to an indirect tax other than VAT, means—
- (a) relief or increased relief from tax,
 - (b) repayment or increased repayment of tax,
 - (c) avoidance or reduction of a charge to tax, an assessment of tax or a liability to pay tax,
 - (d) avoidance of a possible assessment to tax or liability to pay tax,
 - (e) deferral of a payment of tax or advancement of a repayment of tax, or
 - (f) avoidance of an obligation to deduct or account for tax.

“Promoter”

- 8 (1) This paragraph describes when a person (P) is a promoter in relation to a notifiable proposal or notifiable arrangements.
- (2) P is a promoter in relation to a notifiable proposal if, in the course of a relevant business, P—
- (a) is to any extent responsible for the design of the proposed arrangements,
 - (b) makes a firm approach to another person (C) in relation to the proposal with a view to P making the proposal available for implementation by C or any other person, or
 - (c) makes the proposal available for implementation by other persons.
- (3) P is a promoter in relation to notifiable arrangements if—
- (a) P is by virtue of sub-paragraph (2)(b) or (c) a promoter in relation to a notifiable proposal which is implemented by the arrangements, or
 - (b) if in the course of a relevant business, P is to any extent responsible for—
 - (i) the design of the arrangements, or
 - (ii) the organisation or management of the arrangements.
- (4) In this paragraph “relevant business” means any trade, profession or business which—
- (a) involves the provision to other persons of services relating to taxation, or
 - (b) is carried on by a bank or securities house.
- (5) In sub-paragraph (4)(b)—
- “bank” has the meaning given by section 1120 of CTA 2010, and
 - “securities house” has the meaning given by section 1009(3) of that Act.

- (6) For the purposes of this paragraph anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business falling within sub-paragraph (4)(b) carried on by another company which is a member of the same group.
- (7) Section 170 of the TCGA 1992 has effect for determining for the purposes of sub-paragraph (6) whether two companies are members of the same group, but as if in that section—
- (a) for each of the references to a 75 per cent subsidiary there were substituted a reference to a 51 per cent subsidiary, and
 - (b) subsection (3)(b) and subsections (6) to (8) were omitted.
- (8) A person is not to be treated as a promoter by reason of anything done in prescribed circumstances.
- (9) In the application of this Schedule to a proposal or arrangements which are not notifiable, a reference to a promoter is a reference to a person who would be a promoter under this paragraph if the proposal or arrangements were notifiable.

“Introducer”

- 9 (1) A person is an introducer in relation to a notifiable proposal if the person makes a marketing contact with another person in relation to the proposal.
- (2) A person is not to be treated as an introducer by reason of anything done in prescribed circumstances.
- (3) In the application of this Schedule to a proposal or arrangements which are not notifiable, a reference to an introducer is a reference to a person who would be an introducer under this paragraph if the proposal or arrangements were notifiable.

“Makes a firm approach” and “marketing contact”

- 10 (1) A person makes a firm approach to another person in relation to a notifiable proposal if the person makes a marketing contact with the other person in relation to the proposal at a time when the proposed arrangements have been substantially designed.
- (2) A person makes a marketing contact with another person in relation to a notifiable proposal if—
- (a) the person communicates information about the proposal to the other person,
 - (b) the communication is made with a view to that other person, or any other person, entering into transactions forming part of the proposed arrangements, and
 - (c) the information communicated includes an explanation of the tax advantage that might be expected to be obtained from the proposed arrangements.
- (3) For the purposes of sub-paragraph (1) proposed arrangements have been substantially designed at any time if by that time the nature of the transactions to form part of them has been sufficiently developed for it to be reasonable to believe that a person who wished to obtain the tax advantage mentioned in sub-paragraph (2) might enter into—
- (a) transactions of the nature developed, or
 - (b) transactions not substantially different from transactions of that nature.

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Duties of promoter in relation to notifiable proposals or notifiable arrangements

- 11 (1) A person who is a promoter in relation to a notifiable proposal must, within the relevant period, provide HMRC with prescribed information relating to the proposal.
- (2) In sub-paragraph (1) “the relevant period” is the period of 31 days beginning with the relevant date.
- (3) In sub-paragraph (2) “the relevant date” is the earliest of the following—
- (a) the date on which the promoter first makes a firm approach to another person in relation to the proposal,
 - (b) the date on which the promoter makes the proposal available for implementation by any other person, or
 - (c) the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements implementing the proposal.
- 12 (1) A person who is a promoter in relation to notifiable arrangements must, within the relevant period after the date on which the person first becomes aware of any transaction forming part of the arrangements, provide HMRC with prescribed information relating to the arrangements.
- (2) In sub-paragraph (1) “the relevant period” is the period of 31 days beginning with that date.
- (3) The duty under sub-paragraph (1) does not apply if the notifiable arrangements implement a proposal in respect of which notice has been given to HMRC under paragraph 11(1).
- 13 (1) This paragraph applies where a person complies with paragraph 11(1) in relation to a notifiable proposal for arrangements and another person is—
- (a) also a promoter in relation to the proposal or is a promoter in relation to a notifiable proposal for arrangements which are substantially the same as the proposed arrangements (whether they relate to the same or different parties), or
 - (b) a promoter in relation to notifiable arrangements implementing the proposal or notifiable arrangements which are substantially the same as notifiable arrangements implementing the proposal (whether they relate to the same or different parties).
- (2) Any duty of the other person under paragraph 11(1) or 12(1) in relation to the notifiable proposal or notifiable arrangements is discharged if—
- (a) the person who complied with paragraph 11(1) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the proposed notifiable arrangements under paragraph 22(1), and
 - (b) the other person holds the information provided to HMRC in compliance with paragraph 11(1).
- 14 (1) This paragraph applies where a person complies with paragraph 12(1) in relation to notifiable arrangements and another person is—
- (a) a promoter in relation to a notifiable proposal for arrangements which are substantially the same as the notifiable arrangements (whether they relate to the same or different parties), or

- (b) also a promoter in relation to the notifiable arrangements or notifiable arrangements which are substantially the same (whether they relate to the same or different parties).
- (2) Any duty of the other person under paragraph 11(1) or 12(1) in relation to the notifiable proposal or notifiable arrangements is discharged if—
- (a) the person who complied with paragraph 12(1) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the notifiable arrangements under paragraph 22(1), and
 - (b) the other person holds the information provided to HMRC in compliance with paragraph 12(1).
- 15 Where a person is a promoter in relation to two or more notifiable proposals or sets of notifiable arrangements which are substantially the same (whether they relate to the same parties or different parties) the person need not provide information under paragraph 11(1) or 12(1) if the person has already provided information under either of those paragraphs in relation to any of the other proposals or arrangements.

Duty of promoter: supplemental information

- 16 (1) This paragraph applies where—
- (a) a promoter (P) has provided information in purported compliance with paragraph 11(1) or 12(1), but
 - (b) HMRC believe that P has not provided all the prescribed information.
- (2) HMRC may apply to the tribunal for an order requiring P to provide specified information about, or documents relating to, the notifiable proposal or arrangements.
- (3) The tribunal may make an order under sub-paragraph (2) in respect of information or documents only if satisfied that HMRC have reasonable grounds for suspecting that the information or documents—
- (a) form part of the prescribed information, or
 - (b) will support or explain the prescribed information.
- (4) A requirement by virtue of sub-paragraph (2) is to be treated as part of P's duty under paragraph 11(1) or 12(1).
- (5) In so far as P's duty under sub-paragraph (1) of paragraph 11 or 12 arises out of an order made by virtue of sub-paragraph (2) above the relevant period for the purposes of that sub-paragraph (1) is—
- (a) the period of 11 days beginning with the date of the order, or
 - (b) such longer period as HMRC may direct.

Duty of person dealing with promoter outside United Kingdom

- 17 (1) This paragraph applies where a person enters into any transaction forming part of any notifiable arrangements in relation to which—
- (a) a promoter is resident outside the United Kingdom, and
 - (b) no promoter is resident in the United Kingdom.
- (2) The person must, within the relevant period, provide HMRC with prescribed information relating to the arrangements.

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- (3) In sub-paragraph (2) “the relevant period” is the period of 6 days beginning with the day on which the person enters into the first transaction forming part of the arrangements.
- (4) Compliance with paragraph 11(1) or 12(1) by any promoter in relation to the arrangements discharges the person’s duty under sub-paragraph (1).

Duty of parties to notifiable arrangements not involving promoter

- 18 (1) This paragraph applies to any person who enters into any transaction forming part of notifiable arrangements as respects which neither that person nor any other person in the United Kingdom is liable to comply with paragraph 11(1), 12(1) or 17(2).
- (2) The person must at the prescribed time provide HMRC with prescribed information relating to the arrangements.

Duty to provide further information requested by HMRC

- 19 (1) This paragraph applies where—
- (a) a person has provided the prescribed information about notifiable proposals or arrangements in compliance with paragraph 11(1), 12(1), 17(2) or 18(2), or
 - (b) a person has provided information in purported compliance with paragraph 17(2) or 18(2) but HMRC believe that the person has not provided all the prescribed information.
- (2) HMRC may require the person to provide—
- (a) further specified information about the notifiable proposals or arrangements (in addition to the prescribed information under paragraph 11(1), 12(1), 17(2) or 18(2));
 - (b) documents relating to the notifiable proposals or arrangements.
- (3) Where HMRC impose a requirement on a person under this paragraph, the person must comply with the requirement within—
- (a) the period of 10 working days beginning with the day on which HMRC imposed the requirement, or
 - (b) such longer period as HMRC may direct.
- 20 (1) This paragraph applies where HMRC—
- (a) have required a person to provide information or documents under paragraph 19, but
 - (b) believe that the person has failed to provide the information or documents required.
- (2) HMRC may apply to the tribunal for an order requiring the person to provide the information or documents required.
- (3) The tribunal may make an order imposing such a requirement only if satisfied that HMRC have reasonable grounds for suspecting that the information or documents will assist HMRC in considering the notifiable proposals or arrangements.
- (4) Where the tribunal makes an order imposing such a requirement, the person must comply with the requirement within—

- (a) the period of 10 working days beginning with the day on which the tribunal made the order, or
- (b) such longer period as HMRC may direct.

Duty of promoters to provide updated information

- 21 (1) This paragraph applies where—
- (a) information has been provided under paragraph 11(1), or 12(1) about any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under paragraph 22, and
 - (b) after the provision of the information, there is a change in relation to the arrangements of a kind mentioned in sub-paragraph (2).
- (2) The changes referred to in sub-paragraph (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 arrangements or, in the case of proposed 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 sub-paragraph (1)(b) within 30 days after it is made.
- (4) Sub-paragraphs (5) and (6) apply for the purposes of sub-paragraph (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 sub-paragraph (3).
- (6) If a person provides information in compliance with sub-paragraph (3), the duty imposed by that sub-paragraph on any other person, so far as relating to the provision of that information, is discharged.

Arrangements to be given reference number

- 22 (1) Where a person (P) complies or purports to comply with paragraph 11(1), 12(1), 17(2) or 18(2) in relation to any notifiable proposal or notifiable arrangements, HMRC may within 90 days allocate a reference number to the notifiable arrangements or, in the case of a notifiable proposal, to the proposed notifiable arrangements.
- (2) If HMRC do so it must notify the number to P and (where the person is one who has complied or purported to comply with paragraph 11(1) or 12(1)), to any other person—
- (a) who is a promoter in relation to—
 - (i) the notifiable proposal (or arrangements implementing the notifiable proposal), or
 - (ii) the notifiable arrangements (or proposal implemented by the notifiable arrangements), and
 - (b) whose identity and address has been notified to HMRC by P.

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- (3) The allocation of a reference number to any notifiable arrangements (or proposed notifiable arrangements) is not to be regarded as constituting any indication by HMRC that the arrangements would or could as a matter of law result in the obtaining by any person of a tax advantage.
- (4) In this Part of this Schedule “reference number”, in relation to any notifiable arrangements, means the reference number allocated under this paragraph.

Duty of promoter to notify client of number

- 23 (1) This paragraph applies where a person who is a promoter in relation to notifiable arrangements is providing (or has provided) services to any person (“the client”) in connection with the arrangements.
- (2) The promoter must, within 30 days after the relevant date, provide the client with prescribed information relating to any reference number (or, if more than one, any one reference number) that has been notified to the promoter (whether by HMRC or any other person) in relation to—
- (a) the notifiable arrangements, or
 - (b) any arrangements substantially the same as the notifiable arrangements (whether involving the same or different parties).
- (3) In sub-paragraph (2) “the relevant date” means the later of—
- (a) the date on which the promoter becomes aware of any transaction which forms part of the notifiable arrangements, and
 - (b) the date on which the reference number is notified to the promoter.
- (4) But where the conditions in sub-paragraph (5) are met the duty imposed on the promoter under sub-paragraph (2) to provide the client with information in relation to notifiable arrangements is discharged
- (5) Those conditions are—
- (a) that the promoter is also a promoter in relation to a notifiable proposal and provides services to the client in connection with them both,
 - (b) the notifiable proposal and the notifiable arrangements are substantially the same, and
 - (c) the promoter has provided to the client, in a form and manner specified by HMRC, prescribed information relating to the reference number that has been notified to the promoter in relation to the proposed notifiable arrangements.
- (6) HMRC may give notice that, in relation to notifiable arrangements specified in the notice, promoters are not under the duty under sub-paragraph (2) after the date specified in the notice.

Duty of client to notify parties of number

- 24 (1) In this paragraph “client” means a person to whom 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 arrangements or proposal.
- (2) Sub-paragraph (3) applies where the client receives prescribed information relating to the reference number allocated to the arrangements or proposed arrangements,

- (3) The client must, within the relevant period, provide prescribed information relating to the reference number to any other person—
 - (a) who the client might reasonably be expected to know is or is likely to be a party to the arrangements or proposed arrangements, and
 - (b) who might reasonably be expected to gain a tax advantage in relation to any relevant tax by reason of the arrangements or proposed arrangements.
- (4) In sub-paragraph (3) “the relevant period” is the period of 30 days beginning with the later of—
 - (a) the day on which the client first becomes aware of any transaction forming part of the notifiable arrangements or proposed notifiable arrangements, and
 - (b) the day on which the prescribed information is notified to the client by the promoter under paragraph 23.
- (5) HMRC may give notice that, in relation to notifiable arrangements or a notifiable proposal specified in the notice, persons are not under the duty under sub-paragraph (3) after the date specified in the notice.
- (6) The duty under sub-paragraph (3) does not apply in prescribed circumstances.
- (7) For the purposes of this paragraph 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 paragraph 3(1).

Duty of client to provide information to promoter

- 25
- (1) This paragraph applies where a person who is a promoter in relation to notifiable arrangements has provided a person (“the client”) with the information prescribed under paragraph 23(2).
 - (2) The client must, within the relevant period, provide the promoter with prescribed information relating to the client.
 - (3) In sub-paragraph (2) “the relevant period” is the period of 11 days beginning with the later of—
 - (a) the date the client receives the reference number for the arrangements, and
 - (b) the date the client first enters into a transaction which forms part of the arrangements.
 - (4) The duty under sub-paragraph (2) is subject to any exceptions that may be prescribed.

Duty of parties to notifiable arrangements to notify HMRC of number, etc

- 26
- (1) Any person (P) who is a party to any notifiable arrangements must provide HMRC with prescribed information relating to—
 - (a) any reference number notified to P under paragraph 23 or 24, and
 - (b) the time when P obtains or expects to obtain by virtue of the arrangements a tax advantage in relation to any relevant tax.
 - (2) For the purposes of sub-paragraph (1) a tax is a “relevant tax” in relation to any notifiable arrangements if it is prescribed in relation to arrangements of that description by regulations under paragraph 3(1).

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- (3) Regulations made by the Commissioners may—
- (a) in prescribed cases, require the information prescribed under sub-paragraph (1) to be given to HMRC—
 - (i) in the prescribed manner,
 - (ii) in the prescribed form,
 - (iii) at the prescribed time, and
 - (b) in prescribed cases, require the information prescribed under sub-paragraph (1) and such other information as is prescribed to be provided separately to HMRC at the prescribed time or times.
- (4) In sub-paragraph (3) “prescribed” includes being prescribed in a document made under a power conferred by regulations made by the Commissioners.
- (5) HMRC may give notice that, in relation to notifiable arrangements specified in the notice, persons are not under the duty under sub-paragraph (1) after the date specified in the notice.
- (6) The duty under sub-paragraph (1) does not apply in prescribed circumstances.

Duty of promoter to provide details of clients

- 27 (1) This paragraph applies where a person who is a promoter in relation to notifiable arrangements is providing (or has provided) services to any person (“the client”) in connection with the arrangements and either—
- (a) the promoter is subject to the reference number information requirement, or
 - (b) the promoter has failed to comply with paragraph 11(1) or 12(1) in relation to the arrangements (or the notifiable proposal for them) but would be subject to the reference number information requirement if a reference number had been allocated to the arrangements.
- (2) For the purposes of this paragraph “the reference number information requirement” is the requirement under paragraph 23(2) to provide to the client prescribed information relating to the reference number allocated to the notifiable arrangements.
- (3) The promoter must, within the prescribed period after the end of the relevant period, provide HMRC with prescribed information in relation to the client.
- (4) In sub-paragraph (3) “the relevant period” means such period (during which the promoter is or would be subject to the reference number information requirement) as is prescribed.
- (5) The promoter need not comply with sub-paragraph (3) in relation to any notifiable arrangements at any time after HMRC have given notice under paragraph 23(6) in relation to the arrangements.

Enquiry following disclosure of client details

- 28 (1) This paragraph applies where—
- (a) a person who is a promoter in relation to notifiable arrangements has provided HMRC with information in relation to a person (“the client”) under paragraph 27(3) (duty to provide client details), and
 - (b) HMRC suspect that a person other than the client is or is likely to be a party to the arrangements.

- (2) HMRC may by written notice require the promoter to provide prescribed information in relation to any person other than the client who the promoter might reasonably be expected to know is or is likely to be a party to the arrangements.
- (3) The promoter must comply with a requirement under or by virtue of sub-paragraph (2) within—
 - (a) the relevant period, or
 - (b) such longer period as HMRC may direct.
- (4) In sub-paragraph (3) “the relevant period” is the period of 11 days beginning with the day on which the promoter receives the notice under sub-paragraph (2).

Pre-disclosure enquiry

- 29
- (1) Where HMRC suspect that a person (P) is the promoter or introducer of a proposal, or the promoter of arrangements, which may be notifiable, they may by written notice require P to state—
 - (a) whether in P’s opinion the proposal or arrangements are notifiable by P, and
 - (b) if not, the reasons for P’s opinion.
 - (2) The notice must specify the proposal or arrangements to which it relates.
 - (3) For the purposes of sub-paragraph (1)(b)—
 - (a) it is not sufficient to refer to the fact that a lawyer or other professional has given an opinion,
 - (b) the reasons must show, by reference to this Part of this Schedule and regulations under it, why P thinks the proposal or arrangements are not notifiable by P, and
 - (c) in particular, if P asserts that the arrangements do not fall within any description prescribed under paragraph 3(1)(a), the reasons must provide sufficient information to enable HMRC to confirm the assertion.
 - (4) P must comply with a requirement under or by virtue of sub-paragraph (1) within—
 - (a) the relevant period, or
 - (b) such longer period as HMRC may direct.
 - (5) In sub-paragraph (4) “the relevant period” is the period of 11 days beginning with the day on which the notice under sub-paragraph (1) is issued.

Reasons for non-disclosure: supporting information

- 30
- (1) Where HMRC receive from a person (P) a statement of reasons why a proposal or arrangements are not notifiable by P, HMRC may apply to the tribunal for an order requiring P to provide specified information or documents in support of the reasons.
 - (2) P must comply with a requirement under or by virtue of sub-paragraph (1) within—
 - (a) the relevant period, or
 - (b) such longer period as HMRC may direct.
 - (3) In sub-paragraph (2) “the relevant period” is the period of 15 days beginning with the day on which the order concerned is made.
 - (4) The power under sub-paragraph (1)—

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- (a) may be exercised more than once, and
- (b) applies whether or not the statement of reasons was received under paragraph 29(1)(b).

Provision of information to HMRC by introducers

- 31 (1) This paragraph 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.
- (2) 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) A notice must specify the proposal to which it relates.
- (4) P must comply with a requirement under or sub-paragraph(2) within—
- (a) the relevant period, or
 - (b) such longer period as HMRC may direct.
- (5) In sub-paragraph (4) “the relevant period” is the period of 11 days beginning with the day on which the notice under sub-paragraph (2) is given.

Legal professional privilege

- 32 (1) Nothing in this Part of this Schedule requires any person to disclose to HMRC any privileged information.
- (2) In this Part of this Schedule “privileged information” means information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings.

Information

- 33 (1) This paragraph applies where a person is required to provide information under paragraph 23(2) or 24(3).
- (2) HMRC may specify additional information which must be provided by that person to the recipients under paragraph 23(2) or 24(3) at the same time as the information referred to in sub-paragraph (1).
- (3) HMRC may specify the form and manner in which the additional information is to be provided.
- (4) For the purposes of this paragraph “additional information” means information supplied by HMRC which relates to notifiable proposals or notifiable arrangements in general.
- 34 (1) HMRC may specify the form and manner in which information required to be provided by or under any of the information provisions must be provided if the provision is to be complied with.

- (2) The “information provisions” are paragraphs 11(1), 12(1), 17(2), 18(2), 19(2), 21(3), 23(2), 24(3), 26(1) and (3), 27(3), 28(2), 29(1), 31(2) and 33(2).
- 35 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 of this Schedule.
- 36 (1) HMRC may publish information about—
- (a) any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under paragraph 22;
 - (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 sub-paragraph (4))—
- (a) any information relating to arrangements within sub-paragraph (1)(a), or a person within sub-paragraph (1)(b), that is prescribed information for the purposes of paragraph 11, 12, 17 or 18;
 - (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 sub-paragraph (1)(a);
 - (d) any other information that HMRC considers it appropriate to publish for the purpose of identifying arrangements within sub-paragraph (1)(a) or a person within sub-paragraph (1)(b).
- (3) The information may be published in any manner that HMRC considers appropriate.
- (4) No information may be published under this paragraph that identifies a person who enters into a transaction forming part of notifiable arrangements within sub-paragraph (1)(a).
- (5) But where a person who is a promoter within sub-paragraph (1)(b) is also a person mentioned in sub-paragraph (4), nothing in sub-paragraph (4) is to be taken as preventing the publication under this paragraph of information so far as relating to the person’s activities as a promoter.
- (6) Before publishing any information under this paragraph that identifies a person as a promoter within sub-paragraph (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.
- 37 (1) This paragraph applies if—
- (a) information about notifiable arrangements, or proposed notifiable arrangements, is published under paragraph 36,
 - (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)

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- (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 sub-paragraph (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 sub-paragraph (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 paragraph “tax arrangements” means arrangements in respect of which it would be reasonable to conclude (having regard to all the circumstances) that the main purpose, or one of the main purposes, was the obtaining of a tax advantage.

Power to vary certain relevant periods

- 38 The Commissioners may by regulations amend this Part of this Schedule with a view to altering the definition of “the relevant period” for the purposes of—
- paragraph 5(6)
 - paragraph 11(1)
 - paragraph 12(1)
 - paragraph 16(5)
 - paragraph 17(2)
 - paragraph 24(3)
 - paragraph 25(2)
 - paragraph 27(3)
 - paragraph 28(3)
 - paragraph 29(4)
 - paragraph 30(2))
 - paragraph 31(4).

PART 2

PENALTIES

Penalty for failure to comply with duties under Part 1 (apart from paragraph 26)

- 39 (1) A person who fails to comply with any of the provisions of Part 1 of this Schedule mentioned in sub-paragraph (2) is liable—
- (a) to a penalty not exceeding—
 - (i) in the case of a failure to comply with paragraph 11(1), 12(1), 17(2), 18(2) or 19, £600 for each day during the initial period for which the failure continues (but see also paragraphs 40(4) and 41), and
 - (ii) in any other case, £5,000, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a), to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under paragraph (a) was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (2) Those provisions are—
- (a) paragraph 11(1) (duty of promoter in relation to notifiable proposal),
 - (b) paragraph 12(1) (duty of promoter in relation to notifiable arrangements),
 - (c) paragraph 17(2) (duty of person dealing with promoter outside United Kingdom),
 - (d) paragraph 18(2) (duty of parties to notifiable arrangements not involving promoter),
 - (e) paragraph 19 (duty to provide further information requested by HMRC),
 - (f) paragraph 21 (duty of promoters to provide updated information),
 - (g) paragraph 23(2) (duty of promoter to notify client of reference number),
 - (h) paragraph 24(3) (duty of client to notify parties of reference number),
 - (i) paragraph 25(2) (duty of client to provide information to promoter),
 - (j) paragraph 27(3) (duty of promoter to provide details of clients),
 - (k) paragraph 28(3) (enquiry following disclosure of client details),
 - (l) paragraphs 29(4) and 30(2) (duty of promoter to respond to inquiry)
 - (m) paragraph 31(4) (duty of introducer to give details of persons who have provided information or have been provided with information, and
 - (n) paragraph 33 (duty to provide additional information).
- (3) In this paragraph “the initial period” means the period—
- (a) beginning with the relevant day, and
 - (b) ending with the earlier of the day on which the penalty under sub-paragraph (1)(a)(i) is determined and the last day before the failure ceases.
- (4) For the purposes of sub-paragraph (3)(a) “the relevant day” is the day specified in relation to the failure in the following table—

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<i>Failure</i>	<i>Relevant day</i>
A failure to comply with paragraph 11(1) or 12(1) in so far as it applies by virtue of an order under paragraph 5	The first day after the end of the relevant period described in paragraph 5(6)
A failure to comply with paragraph 11(1) or 12(1) in so far as it applies by virtue of an order under paragraph 16(2)	The first day after the end of the relevant period (whether that is the period described in sub-paragraph 16(5)(a) or that period as extended by a direction under paragraph 16(5)(b))
Any other failure to comply with sub-paragraph (1) of paragraph 11	The first day after the end of the relevant period described in paragraph 11(2)
Any other failure to comply with sub-paragraph (1) of paragraph 12	The first day after the end of the relevant period described in paragraph 12(2)
A failure to comply with paragraph 17(2)	The first day after the end of the relevant period described in paragraph 17(3)
A failure to comply with paragraph 18(2)	The first day after the latest time by which paragraph 18(2) should have been complied with in the case concerned
A failure to comply with paragraph 19	The first day after the end of the period within which the person must comply with paragraph 19
40	<p>(1) In the case of a failure to comply with paragraph 11(1), 12(1), 17(2), 18(2) or 19, the amount of the penalty under paragraph 39(1)(a)(i) is to be arrived at after taking account of all relevant considerations.</p> <p>(2) Those considerations include the desirability of the penalty being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions having regard (in particular)—</p> <p style="padding-left: 2em;">(a) in the case of a penalty for a promoter’s failure to comply with paragraph 11(1), 12(1) or 19, to the amount of any fees received, or likely to have been received, by the promoter in connection with the notifiable proposal (or arrangements implementing the notifiable proposal), or with the notifiable arrangements, and</p> <p style="padding-left: 2em;">(b) in the case of a penalty for a relevant person’s failure to comply with paragraph 17(2), 18(2) or 19, to the amount of any advantage gained, or sought to be gained, by the person in relation to any tax prescribed under paragraph 3(1)(b) in relation to the notifiable arrangements</p> <p>(3) In sub-paragraph (2)(b) “relevant person” means a person who enters into any transaction forming part of notifiable arrangements.</p> <p>(4) If the maximum penalty under paragraph 39(1)(a)(i) appears inappropriately low after taking account of all relevant considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.</p>

- 41 (1) This paragraph applies where a failure to comply with a provision mentioned in paragraph 39(2) concerns a proposal or arrangements in respect of which an order has been made under paragraph 4 or 5.
- (2) The amounts specified in paragraph 39(1)(a)(i) and (b) are increased to £5,000 in relation to days falling after the end of the period of 11 days beginning with the day on which the order is made.
- 42 (1) The Treasury may by regulations vary—
- (a) any of the sums for the time being specified in paragraph 39(1);
 - (b) the sum for the time being specified in paragraph 40(4);
 - (c) the period for the time being specified in paragraph 41(2);
 - (d) the sum for the time being specified in paragraph 41(2).
- (2) Regulations under this paragraph may include incidental or transitional provision.
- 43 Where it appears to an officer of Revenue and Customs that—
- (a) a penalty under paragraph 39(1)(a) has been imposed in a case where the maximum penalty is set by paragraph 39(1)(a)(i), and
 - (b) the maximum penalty was calculated on the basis that the initial period began with a day later than that which the officer considers to be the relevant day,
- an officer of Revenue and Customs may commence proceedings for a re-determination of the penalty.

Penalty for failure to comply with duties under paragraph 26

- 44 (1) A person who fails to comply with—
- (a) paragraph 26(1), or
 - (b) regulations under paragraph 26(3),
- is liable to a penalty not exceeding the relevant sum.
- (2) The relevant sum is £5,000 in respect of each scheme to which the failure relates unless the person falls within sub-paragraph (3) or (4).
- (3) If the person has previously failed to comply with paragraph 26(1) or regulations under paragraph 26(3) on one (and only one) occasion during the period of 36 months ending with the date on which the current failure began, the relevant sum is £7,500 in respect of each scheme to which the current failure relates (whether or not the same as any scheme to which the previous failure relates).
- (4) If the person has previously failed to comply with paragraph 26(1) or regulations under paragraph 26(3) on two or more occasions during the period of 36 months ending with the date on which the current failure began, the relevant sum is £10,000 in respect of each scheme to which the current failure relates (whether or not the same as any scheme to which any of the previous failures relates).
- (5) In this paragraph “scheme” means any notifiable arrangements.

Penalty proceedings before First-tier tribunal

- 45 (1) An authorised officer may commence proceedings before the First-tier Tribunal for any penalty under paragraph 39(1)(a).

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- (2) In sub-paragraph (1) “authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of this paragraph.
- (3) Proceedings for a penalty may not be commenced more than 12 months after evidence of facts sufficient to justify the bringing of proceedings comes to the knowledge of HMRC.
- (4) If the First-tier Tribunal decide that the penalty is payable by the person—
 - (a) the penalty is for all purposes to be treated as if it were tax charged in an assessment and due and payable,
 - (b) the person may appeal to the Upper Tribunal against the decision that the penalty is payable, and
 - (c) the person may appeal to the Upper Tribunal against the decision as to the amount of the penalty.
- (5) On an appeal under sub-paragraph (4)(b) the Upper Tribunal may, if it appears that no penalty has been incurred, cancel the decision of the First-tier Tribunal.
- (6) On an appeal under sub-paragraph (4)(c) the Upper Tribunal may—
 - (a) affirm the decision of the First-tier Tribunal as to the amount of the penalty, or
 - (b) substitute for that decision a decision that the First-tier Tribunal had power to make.

Assessment of penalties under paragraph 39(1)(b) or 44

- 46 (1) Where a person is liable to a penalty under paragraph 39(1)(b) or 44 an authorised officer may assess the amount due by way of a penalty.
- (2) An assessment may not be made more than 12 months after evidence of facts sufficient to justify the making of the assessment first comes to the knowledge of HMRC.
- (3) A notice of an assessment under sub-paragraph (1) stating—
 - (a) the date on which it is issued, and
 - (b) the time within which an appeal against the assessment may be made,
 must be served on the person liable to the penalty.
- (4) After the notice has been served the assessment may not be altered except in accordance with this paragraph or on appeal.
- (5) If it is discovered by an authorised officer that the amount of a penalty assessed under this paragraph is or has become insufficient the officer may make an assessment in a further amount so that the penalty is set at the amount which, in the officer’s opinion, is correct or appropriate.
- (6) A penalty imposed by a decision under this paragraph—
 - (a) is due and payable at the end of the period of 30 days beginning with the date of the issue of the notice of the decision, and
 - (b) is to be treated for all purposes as if it were tax charged in an assessment and due and payable.
- (7) In this paragraph “authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of this paragraph.

- 47 (1) Where a person (P) is served with notice of an assessment under paragraph 46—
- (a) P may appeal against the decision that a penalty is payable by P, and
 - (b) P may appeal against the decision as to the amount of the penalty.
- (2) An appeal under sub-paragraph (1) is to be treated for procedural purposes in the same way as an appeal against an assessment to the relevant tax (including by the application of any provision about the bringing of an appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal)
- (3) Sub-paragraph (2) does not apply—
- (a) so as to require P to pay a penalty before an appeal under sub-paragraph (1) is determined, or
 - (b) in respect of any other matter expressly provided for by this Schedule.
- (4) On an appeal under sub-paragraph (1)(a) the tribunal may affirm or cancel the decision that a penalty is payable by P.
- (5) On an appeal under sub-paragraph (1)(b) the tribunal may—
- (a) affirm the decision as to the amount of the penalty, or
 - (b) substitute for that decision another decision that the authorised officer had power to make.
- (6) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (2)).

Reasonable excuse

- 48 (1) Liability to a penalty under this Part of this Schedule does not arise in relation to a particular failure to comply if the person concerned (P) satisfies HMRC or the relevant tribunal (as the case may be) that there is a reasonable excuse for the failure.
- (2) For this purpose—
- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P’s control,
 - (b) where P relied on any other person to do anything, that cannot be a reasonable excuse unless P took reasonable care to avoid the failure,
 - (c) where P had a reasonable excuse but the excuse has ceased, P is to be treated as continuing to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased, and
 - (d) reliance on advice is to be taken automatically not to be a reasonable excuse if the advice was addressed to, or was given to, a person other than P or takes no account of P’s individual circumstances.
- 49 (1) The making of an order under paragraph 4 or 5 against P does not of itself mean that P either did or did not have a reasonable excuse for non-compliance before the order was made.
- (2) Where an order is made under paragraph 4 or 5 then for the purposes of paragraph 48—
- (a) the person identified in the order as the promoter of the proposal or arrangements cannot, in respect of any time after the end of the prescribed period mentioned in paragraph 41, rely on doubt as to notifiability as a reasonable excuse for failure to comply with paragraph 11(1) or 12(1), and

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- (b) any delay in compliance with that provision after the end of that period is not capable of being a reasonable excuse unless attributable to something other than doubt as to notifiability.
- 50 (1) Where a person fails to comply with—
- (a) paragraph 17(2) and the promoter for the purposes of paragraph 17 is a monitored promoter, or
 - (b) paragraph 18(2) and the arrangements for the purposes of paragraph 18 are arrangements of a monitored promoter,
- then for the purposes of paragraph 48 legal advice which the person took into account is to be disregarded in determining whether the person had a reasonable excuse, if the advice was given or procured by that monitored promoter.
- (2) In determining for the purpose of paragraph 48 whether or not a person who is a monitored promoter had a reasonable excuse for a failure to do something, reliance on legal advice is to be taken automatically not to constitute a reasonable excuse if either—
- (a) the advice was not based on a full and accurate description of the facts, or
 - (b) the conclusions in the advice that the person relied on were unreasonable.
- (3) In this paragraph “monitored promoter” means a person who is a monitored promoter for the purposes of Part 5 of FA 2014

PART 3

CONSEQUENTIAL AMENDMENTS

VATA 1994

- 51 In section 77(4A) of VATA 1994 (cases in which the time allowed for assessment is 20 years), in paragraph (d) after “11A” insert “or an obligation under paragraph 17(2) or 18(2) of Schedule 17 to FA 2017”.

Promoters of tax avoidance schemes

- 52 Part 5 of FA 2014 (promoters of tax avoidance schemes) is amended as follows.
- 53 (1) Section 281A (VAT: meaning of “tax advantage”) is amended as follows.
- (2) In the heading after “VAT” insert “and other indirect taxes”.
 - (3) In subsection (1)—
 - (a) in paragraph (a) after “VAT” insert “and other indirect taxes”, and
 - (b) in paragraph (b) for the words from “in paragraph 1” to the end substitute “for VAT in paragraph 6, and for other indirect taxes in paragraph 7, of Schedule 17 to FA 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes).
 - (4) In subsection (3) after “value added tax” (in both places) insert “or other indirect taxes”.
 - (5) After subsection (3) insert—

“(4) In this section “indirect tax” has the same meaning as in Schedule 17 to FA 2017.”

- 54 (1) Schedule 34A (defeated arrangements) is amended as follows.
- (2) In paragraph 2(4) after “”schemes”” insert “or paragraph 22 of Schedule 17 to FA 2017 (disclosure of avoidance schemes: VAT and other indirect taxes).
- (3) In paragraph 14—
- (a) in sub-paragraph (1)(a) after “VAT” insert “or other indirect tax”, and
 - (b) in sub-paragraphs (1)(a) and (b), (2) and (3) omit “taxable”.
- (4) After paragraph 26 insert—

““Disclosable VAT or other indirect tax arrangements”

- 26A (1) For the purposes of this Schedule arrangements are “disclosable VAT or other indirect tax arrangements” at any time if at that time—
- (a) the arrangements are disclosable Schedule 11A arrangements, or
 - (b) sub-paragraph (2) applies.
- (2) This sub-paragraph applies if a person—
- (a) has provided information in relation to the arrangements under paragraph 12(1), 17(2) or 18(2) of Schedule 17 to FA 2017, or
 - (b) has failed to comply with any of those provisions in relation to the arrangements.
- (3) But for the purposes of this Schedule arrangements in respect of which HMRC have given notice under paragraph 23(6) of that Schedule (notice that promoters not under duty to notify client of reference number) are not to be regarded as disclosable VAT or other indirect tax arrangements.
- (4) For the purposes of sub-paragraph (2) a person who would be required to provide information under paragraph 12(1) of that Schedule—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under paragraph 11(1) of that Schedule, or
 - (b) but for paragraph 13, 14 or 15 of that Schedule,
- is treated as providing the information at the end of the period referred to in paragraph 12(1).”
- (5) In the heading before paragraph 27, after ““disclosable”” insert “Schedule 11A”.
- (6) In paragraph 27—
- (a) for “this Schedule” substitute “paragraph 26A”, and
 - (b) after ““disclosable”” insert “Schedule 11A”.
- (7) In the heading before paragraph 28 for “and 27” substitute “to 27”.
- (8) In paragraph 28(1) after “26(1)(a)” insert “26A(2)(a)”

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Serial tax avoidance

55 (1) Schedule 18 to FA 2016 (serial tax avoidance) is amended as follows.

(2) In paragraph 4 (meaning of “tax”)—

- (a) number the current text as sub-paragraph (1) of that paragraph,
- (b) in that sub-paragraph (1), in paragraph (j) after “VAT” insert “and indirect taxes”, and
- (c) after that sub-paragraph (1) insert—

“(2) For the purposes of this Schedule “indirect tax” means any of the following—

insurance premium tax
 general betting duty
 pool betting duty
 remote gaming duty
 machine games duty
 gaming duty
 lottery duty
 bingo duty
 air passenger duty
 hydrocarbon oils duty
 tobacco products duty
 duties on spirits, beer, wine, made-wine and cider
 soft drinks industry levy
 aggregates levy
 landfill tax
 climate change levy
 customs duties.”

(3) Before paragraph 9 (meaning of “disclosable VAT arrangements”) insert—

“8A (1) For the purposes of this Schedule arrangements are “disclosable VAT arrangements” at any time if at that time sub-paragraph (2) or (3) applies.

(2) This sub-paragraph applies if the arrangements are disclosable Schedule 11A VAT arrangements (see paragraph 9).

(3) This paragraph applies if—

- (a) the arrangements are notifiable arrangements for the purposes of Schedule 17 to FA 2017,
- (b) the main benefit, or one of the main benefits that might be expected to arise from the arrangements is the obtaining of a tax advantage in relation to VAT (within the meaning of paragraph 6 of that Schedule), and
- (c) a person—
 - (i) has provided information about the arrangements under paragraph 12(1), 17(2) or 18(2) of that Schedule, or
 - (ii) has failed to comply with any of those provisions in relation to the arrangements.

- (4) But for the purposes of this Schedule arrangements in respect of which HMRC have given notice under paragraph 23(6) of Schedule 17 (notice that promoters not under duty to notify client of reference number) are not to be regarded as “disclosable VAT arrangements”.
- (5) For the purposes of sub-paragraph (3)(c) a person who would be required to provide information under paragraph 12(1) of Schedule 17 to FA 2017—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under paragraph 11(1) of that Schedule, or
 - (b) but for paragraph 13, 14 or 15 of that Schedule,
- is treated as providing the information at the end of the period referred to in paragraph 12(1).”
- (4) In the heading before paragraph 9 after ““Disclosable” insert “Schedule 11A”.
- (5) In paragraph 9—
- (a) for “this Schedule” substitute “paragraph 8A”, and
 - (b) after ““disclosable” insert “Schedule 11A”.
- (6) After paragraph 9 insert—

““Disclosable indirect tax arrangements”

- 9A (1) For the purposes of this Schedule arrangements are “disclosable indirect tax arrangements” at any time if at that time—
- (a) the arrangements are notifiable arrangements for the purposes of Schedule 17 to FA 2017,
 - (b) the main benefit, or one of the main benefits that might be expected to arise from the arrangements is the obtaining of a tax advantage in relation to an indirect tax other than VAT (within the meaning of paragraph 7 of that Schedule), and
 - (c) a person—
 - (i) has provided information about the arrangements under paragraph 12(1), 17(2) or 18(2) of that Schedule, or
 - (ii) has failed to comply with any of those provisions in relation to the arrangements.
- (2) But for the purposes of this Schedule arrangements in respect of which HMRC have given notice under paragraph 23(6) of Schedule 17 to FA 2016 (notice that promoters not under duty to notify client of reference number) are not to be regarded as “disclosable indirect tax arrangements”.
- (3) For the purposes of sub-paragraph (1)(c) a person who would be required to provide information under paragraph 12(1) of Schedule 17—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under paragraph 11(1) of that Schedule, or
 - (b) but for paragraph 13, 14 or 15 of that Schedule,

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is treated as providing the information at the end of the period referred to in paragraph 12(1).”

- (7) In the heading before paragraph 10 (meaning of “failure to comply”) for “and 9” substitute “to 9A”.
- (8) In paragraph 10(1) for “or 9(a)” substitute “, 8A(2)(c), 9(a) or 9A(1)(c)”.
- (9) In paragraph 11(1) (meaning of “relevant defeat”) for “E” substitute “F”.
- (10) After paragraph 16 (condition E) insert—

“Condition F

16A (1) Condition F is that—

- (a) the arrangements are indirect tax arrangements,
 - (b) P has relied on the arrangements (see sub-paragraph (2),
 - (c) the arrangements have been counteracted, and
 - (d) the counteraction is final.
- (2) For the purpose of sub-paragraph (1) P relies on the arrangements if—
- (a) P makes a return, claim, declaration or application for approval on the basis that a relevant tax advantage arises, or
 - (b) P fails to discharge a relevant obligation (“the disputed obligation”) and there is reason to believe that P’s failure to discharge that obligation is connected with the arrangements.
- (3) For the purposes of sub-paragraph (2) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable P to obtain.
- (4) For the purposes of sub-paragraph (2) an obligation is a relevant obligation if the arrangements might be expected to have the result that the obligation does not arise.
- (5) For the purposes of this paragraph the arrangements are “counteracted” if—
- (a) adjustments, other than taxpayer emendations, are made in respect of P’s tax position —
 - (i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or
 - (ii) on the basis that the disputed obligation does (or did) arise, or
 - (b) an assessment to tax is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).
- (6) For the purposes of this paragraph a “counteraction” is final when the adjustments, assessment or action in question, and any amounts arising from the adjustments, assessment or action, can no longer be varied, on appeal or otherwise.

- (7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are disclosable indirect tax arrangements is when the counteraction becomes final.
- (8) The following are “taxpayer emendations” for the purposes of sub-paragraph (5)—
- (a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P’s affairs in relation to the tax in question;
 - (b) an adjustment made by HMRC with respect to P’s tax position (whether by way of an assessment or otherwise) as a result of a disclosure by P which meets the conditions in sub-paragraph (9).
- (9) The conditions are that the disclosure—
- (a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and
 - (b) was made at a time when P had no reason to believe that HMRC were about to begin enquiries into P’s affairs in relation to the tax in question.”
- (11) In paragraph 17 (annual information notices)—
- (a) in sub-paragraph (3)(a) for “or election,” insert “election, declaration or application for approval,”
 - (b) in sub-paragraphs (3)(b), (4) and (5)(a) for “DOTAS arrangements or VAT” substitute “disclosable”,
 - (c) in sub-paragraph (5) for “or election” insert “election, declaration or application for approval”, and
 - (d) after sub-paragraph (11) insert—
- “(12) In this paragraph “disclosable arrangements” means any of the following—
- (a) DOTAS arrangements,
 - (b) disclosable VAT arrangements, and
 - (c) disclosable indirect tax arrangements.”
- (12) In the heading before paragraph 28 (exclusion of VAT from Part 4 of Schedule) after “VAT” insert “and indirect taxes”.
- (13) In paragraph 28 after “VAT” insert “or any other indirect tax”.
- (14) In paragraph 32 (value of counteracted advantage: basic rule for taxes other than VAT)—
- (a) in sub-paragraph (1) for “or C” substitute “C or F” and after paragraph (c) insert “;
 - (d) in the case of a relevant defeat incurred by virtue of Condition F, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in paragraph 16A(1)(d).”, and
 - (b) in sub-paragraph (2)(b) for “or (c)” substitute “(c) or (d)”.
- (15) In paragraph 35 (meaning of “the counteracted advantage” in paragraphs 33 and 34) in sub-paragraph (1) after paragraph (c) insert “;

Status: This is the original version (as it was originally enacted).

- (d) in relation to a relevant defeat incurred by virtue of Condition F, means any tax advantage in respect of which the counteraction mentioned in paragraph 16A(1)(c) is made.”
- (16) In paragraph 43 (paragraph 42: meaning of “the relevant failure”) after sub-paragraph (7) insert—
- “(8) In relation to a relevant defeat incurred by virtue of Condition F, “the relevant failure” means the failures or inaccuracies as a result of which the adjustments, assessments, or other actions mentioned in paragraph 16A(5) are required.”
- (17) In paragraph 55 (time of “use” of defeated arrangements) after sub-paragraph (8) insert—
- “(8A) If the person incurs the relevant defeat by virtue of Condition F, the person is treated as having “used” the arrangements on the following dates—
- (a) the filing date of any return made by the person on the basis mentioned in paragraph 16A(2)(a);
- (b) the date on which the person makes any claim, declaration or application for approval;
- (c) the date of any failure by the person to comply with a relevant obligation (as defined in paragraph 16A(4)).”
- (18) In paragraph 58(1) (interpretation)—
- (a) after the definition of “contract settlement” insert—
- ““disclosable indirect tax arrangements” is to be interpreted in accordance with paragraph 9A;
- “disclosable Schedule 11A VAT arrangements is to be interpreted in accordance with paragraph 9;”;
- (b) after the definition of “HMRC” insert—
- ““indirect tax” has the meaning given by paragraph 4(2);”;
- (c) in the definition of “disclosable VAT arrangements” for “9” substitute “8A”, and
- (d) in the definition of “tax” for “4” substitute “4(1)”.

PART 4

SUPPLEMENTAL

Regulations

- 56 (1) Any power of the Treasury or the Commissioners to make regulations under this Schedule is exercisable by statutory instrument.
- (2) Regulations made under any such power may make different provision for different cases and may contain transitional provisions and savings.
- (3) A statutory instrument containing regulations made by the Treasury under paragraph 2(2) or 42(1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

- (4) Any other statutory instrument containing regulations made under this Schedule, if made without a draft having been approved by a resolution of the House of Commons, is subject to annulment in pursuance of a resolution of the House of Commons.

Interpretation

57

In this Schedule—

“arrangements” includes any scheme, transaction or series of transactions;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“company” has the meaning given by section 1121 of the Corporation Tax Act 2010;

“HMRC” means Her Majesty’s Revenue and Customs;

“indirect tax” has the meaning given by paragraph 2(1);

“introducer” is to be construed in accordance with paragraph 9;

“makes a firm approach” has the meaning given by paragraph 10(1);

“makes a marketing contact” has the meaning given by paragraph 10(2);

“marketing contact” has the meaning give by paragraph 10(2);

“notifiable arrangements” has the meaning given by paragraph 3(1);

“notifiable proposal” has the meaning given by paragraph 3(3);

“prescribed” (except in or in references to paragraph 3(1)(a)), means prescribed by regulations made by HMRC;

“promoter” is to be construed in accordance with paragraph 8;

“reference number”, in relation to notifiable arrangements, has the meaning given by paragraph 22(4);

“TCEA 2007” means the Tribunals, Courts and Enforcement Act 2007;

“tax advantage” means a tax advantage within the meaning of—

(a) paragraph 6 (in relation to VAT), or

(b) paragraph 7 (in relation to indirect taxes other than VAT);

“trade” includes every venture in the nature of a trade;

“tribunal” means the First-tier tribunal, or where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

“working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.