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STATUTORY INSTRUMENTS

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**2017 No. 1216**

**The Indirect Taxes (Notifiable Arrangements) Regulations 2017**

**PART 3**

**Notifiable arrangements – general**

**Notifiable arrangements in relation to any indirect tax**

**8.** The arrangements described in this Part are prescribed as notifiable arrangements in relation to any indirect tax.

**Commencement Information**

**II** Reg. 8 in force at 1.1.2018, see [reg. 1](#)

**Confidentiality - promoters**

**9.—(1)** An arrangement which meets the following description is a notifiable arrangement.

(2) It might reasonably be expected, were it not for this regulation, that a promoter of the arrangement would wish that after the material date—

- (a) the arrangement; or
- (b) any element of the arrangement which obtains, or which may obtain, a tax advantage,

be kept confidential from HMRC or another promoter.

(3) Such a wish may reasonably be expected where—

- (a) it is reasonable to conclude that the promoter intends to continue or to repeat the use after the material date of—
  - (i) the arrangement; or
  - (ii) any element of the arrangement which obtains, or which may obtain, a tax advantage or substantially the same as such an element; or
- (b) the promoter—
  - (i) does not provide supplementary material to a client or to a person who is to be a party to the arrangement; or
  - (ii) does provide supplementary material to such a person but discourages the person from retaining it.

(4) For the purposes of paragraph (2), regulation 5 (persons who are not to be treated as promoters by virtue of legal professional privilege) of the Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2017(1) is to be ignored.

(5) In paragraph (3)(b), “supplementary material” means any promotional material, data or written professional advice concerning the arrangement.

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**Commencement Information**

**I2** Reg. 9 in force at 1.1.2018, see [reg. 1](#)

**Small and medium-sized enterprises**

**10.**—(1) In regulation 11, “small or medium-sized enterprise” means a small or medium-sized enterprise as defined in this regulation.

(2) A small or medium-sized enterprise means a business carried on by a person where in respect of the relevant period—

- (a) fewer than 250 persons were employed in the business; and
- (b) the turnover of the business was less than £50 million.

(3) Where the relevant period is an accounting period of more or less than 12 months, the amount of the turnover for that period must be increased or decreased proportionately on a time basis, or, if it appears that that method would work unreasonably or unjustly, on a just and reasonable basis.

(4) Where the person who carries on the business—

- (a) is a body corporate and that body and one or more other bodies corporate are eligible to be treated as members of a group; or
- (b) is associated with another person,

in paragraph (2)(a) and (b), “the business” includes the business of each body corporate eligible to be treated as a member of the group or of each associated person, as appropriate.

(5) In this regulation—

- (a) “associated” has the meaning given by paragraph 48 of Schedule 18 to the Finance Act 2016(2);
- (b) “eligible to be treated as members of a group” has the meaning given by section 43A of the Value Added Tax Act 1994(3); and
- (c) “relevant period” means—
  - (i) the accounting period of the business which applies to the indirect tax in question; or
  - (ii) where there is no such accounting period, the period of 12 months, which ended immediately before the date on which it is reasonable to conclude that the arrangement to which regulation 11 applies commenced.

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**Commencement Information**

**I3** Reg. 10 in force at 1.1.2018, see [reg. 1](#)

**Confidentiality – other persons**

**11.**—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) In respect of the arrangement there is no promoter but a person (“P”)—

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(2) 2016 c. 24.

(3) Section 43A was inserted by paragraph 2 of Schedule 2 to the Finance Act 1999 (c. 16). It is amended by S.I. 2009/1890.

- (a) is, or is likely to be, a party to the arrangement; or
- (b) uses, or is likely to use, the arrangement,

for the purposes of a business carried on by P.

(3) Paragraph (2) does not apply where the business carried on by P is a small or medium-sized enterprise.

(4) It might reasonably be expected, were it not for this regulation, that P would wish that after the material date—

- (a) the arrangement; or
- (b) any element of the arrangement which obtains, or which may obtain, a tax advantage, be kept confidential from HMRC.

(5) Such a wish may reasonably be expected where it is reasonable to conclude that P intends—

- (a) to continue or to repeat the use after the material date of—
  - (i) the arrangement; or
  - (ii) any element of the arrangement which obtains, or which may obtain, a tax advantage or substantially the same as such an element; or
- (b) to reduce the risk that, were HMRC to have the information which may be required to be provided to it by virtue of the arrangement being a notifiable arrangement, HMRC may—
  - (i) investigate or examine any return, claim or declaration made by P or another person to HMRC; or
  - (ii) withhold payment of any or all of an amount claimed from HMRC by P or another person.

**Commencement Information**

**I4** Reg. 11 in force at 1.1.2018, see [reg. 1](#)

**Premium fees**

**12.**—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) It might reasonably be expected, were it not for this regulation, that a promoter (“P”) of the arrangement or another person (“Q”) would be able to obtain a premium fee in relation to—

- (a) the arrangement; or
  - (b) any element of the arrangement which obtains, or which may obtain, a tax advantage.
- (3) In paragraph (2), “premium fee” means a fee which is—
- (a) obtained from a person experienced in receiving services of the type provided by P or Q;
  - (b) to a significant extent attributable to the tax advantage obtained, or which may be obtained, by the arrangement or any element of the arrangement; and
  - (c) to any extent contingent upon that tax advantage being obtained as a matter of law.

**Commencement Information**

**I5** Reg. 12 in force at 1.1.2018, see [reg. 1](#)

### Standardised tax products

13.—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) A promoter of the arrangement makes it available for implementation by more than one other person.

(3) It might reasonably be concluded by a person who has studied the arrangement and who has had regard to all relevant circumstances that conditions 1 to 3 are met.

(4) Condition 1 is that the arrangement has standardised or substantially standardised documentation—

- (a) the purpose of which is to enable a person other than the promoter to implement the arrangement;
- (b) the form of which is determined by the promoter; and
- (c) the substance of which does not need to be tailored to any material extent to enable a person to implement the arrangement.

(5) Condition 2 is that—

- (a) a person who intends to implement the arrangement must enter into a specific transaction or series of specific transactions; and
- (b) the transaction or series of transactions is standardised or substantially standardised in form.

(6) Condition 3 is that—

- (a) the main purpose of the arrangement is to enable a person to obtain a tax advantage; or
- (b) it is unlikely that a person would enter into the arrangement were it not that the person or another person may obtain a tax advantage.

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#### Commencement Information

**I6** Reg. 13 in force at 1.1.2018, see [reg. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Indirect Taxes (Notifiable Arrangements) Regulations 2017, PART 3.