



Finance Act 2004

2004 CHAPTER 12

PART 7

DISCLOSURE OF TAX AVOIDANCE SCHEMES

306 Meaning of “notifiable arrangements” and “notifiable proposal”

- (1) In this Part “notifiable arrangements” means any arrangements which—
- fall within any description prescribed by the Treasury by regulations,
 - enable, or might be expected to enable, any person to obtain an advantage in relation to any tax that is so prescribed in relation to arrangements of that description, and
 - 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 advantage.
- (2) In this Part “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).

Commencement Information

- II** S. 306 wholly in force at 1.8.2004; s. 306 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

[^{F1}306A Doubt as to notifiability

- (1) HMRC may apply to the [^{F2}tribunal] for an order that—
- a proposal is to be treated as notifiable, or
 - arrangements are to be treated as notifiable.
- (2) An application must specify—
- the proposal or arrangements in respect of which the order is sought, and

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- (b) the promoter.
- (3) On an application the [^{F3}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 subsection (3)(a) may (but need not) include taking action under section 313A or 313B.
- (5) Grounds for suspicion under subsection (3)(b) may include—
 - (a) the fact that the relevant arrangements fall within a description prescribed under section 306(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 section 313A or 313B;
 - (c) the promoter's failure to comply with a requirement under or by virtue of section 313A or 313B in relation to another proposal or other arrangements.
- (6) Where an order is made under this section in respect of a proposal or arrangements, the prescribed period for the purposes of section 308(1) or (3) in so far as it applies by virtue of the order—
 - (a) shall begin after a date prescribed for the purpose, and
 - (b) may be of a different length than the prescribed period for the purpose of other applications of section 308(1) or (3).
- (7) An order under this section in relation to a proposal or arrangements is without prejudice to the possible application of section 308, other than by virtue of this section, to the proposal or arrangements.]

Textual Amendments

- F1** S. 306A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 108\(2\)](#) (with s. 108(10))
- F2** Word in s. 306A(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 429](#)
- F3** Word in s. 306A(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 429](#)

307 Meaning of “promoter”

- (1) For the purposes of this Part a person is a promoter—
 - (a) in relation to a notifiable proposal, if, in the course of a relevant business—
 - (i) he is to any extent responsible for the design of the proposed arrangements, or
 - (ii) he makes the notifiable proposal available for implementation by other persons, and
 - (b) in relation to notifiable arrangements, if he is by virtue of paragraph (a)(ii) a promoter in relation to a notifiable proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for—

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- (i) the design of the arrangements, or
 - (ii) the organisation or management of the arrangements.
- (2) In this section “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, as defined by [^{F4}section 1120 of the Corporation Tax Act 2010], or by a securities house, as defined by [^{F5}section 1009(3)] of that Act.
- (3) For the purposes of this section 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 subsection (2)(b) carried on by another company which is a member of the same group.
- (4) Section 170 of the Taxation of Chargeable Gains Act 1992 (c. 12) has effect for determining for the purposes of subsection (3) 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.
- (5) A person is not to be treated as a promoter for the purposes of this Part by reason of anything done in prescribed circumstances.
- [^{F6}(6) In the application of this Part 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 subsections (1) to (5) if the proposal or arrangements were notifiable.]

Textual Amendments

- F4** Words in s. 307(2)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 429\(a\)](#) (with [Sch. 2](#))
- F5** Words in s. 307(2)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 429\(b\)](#) (with [Sch. 2](#))
- F6** S. 307(6) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 108\(3\)](#) (with [s. 108\(10\)](#))

Commencement Information

- I2** S. 307 wholly in force at 1.8.2004; s. 307 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

308 Duties of promoter

- (1) [^{F7}A person who is a promoter in relation to a notifiable proposal] must, within the prescribed period after the relevant date, provide the Board with prescribed information relating to [^{F8}the] notifiable proposal.
- (2) In subsection (1) “the relevant date” means the earlier of the following—
 - (a) the date on which the promoter makes [^{F9}the] notifiable proposal available for implementation by any other person, or
 - (b) the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements implementing the notifiable proposal.

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Part 7. (See end of Document for details)

- (3) [^{F10}A person who is a promoter in relation to notifiable arrangements] must, within the prescribed period after the date on which he first becomes aware of any transaction forming part of [^{F11}the notifiable] arrangements, provide the Board with prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under subsection (1).
- [^{F12}(4) Subsection (4A) applies where a person complies with subsection (1) in relation to a notifiable proposal for arrangements and another person is—
- (a) also a promoter in relation to the notifiable 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 notifiable proposal or notifiable arrangements which are substantially the same as notifiable arrangements implementing the notifiable proposal (whether they relate to the same or different parties).
- (4A) Any duty of the other person under subsection (1) or (3) in relation to the notifiable proposal or notifiable arrangements is discharged if—
- (a) the person who complied with subsection (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 section 311, and
 - (b) the other person holds the information provided to HMRC in compliance with subsection (1).
- (4B) Subsection (4C) applies where a person complies with subsection (3) 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).
- (4C) Any duty of the other person under subsection (1) or (3) in relation to the notifiable proposal or notifiable arrangements is discharged if—
- (a) the person who complied with subsection (3) 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 section 311, and
 - (b) the other person holds the information provided to HMRC in compliance with subsection (3).]

(5) 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), he need not provide information under subsection (1) or (3) if he has already provided information under either of those subsections in relation to any of the other proposals or arrangements.

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Part 7. (See end of Document for details)

Textual Amendments

- F7** Words in s. 308(1) substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 2\(2\)\(a\)](#); [S.I. 2008/1935, art. 2\(1\) \(with art. 2\(2\)\)](#); [S.I. 2010/409, art. 2](#)
- F8** Word in s. 308(1) substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 2\(2\)\(b\)](#); [S.I. 2008/1935, art. 2\(1\) \(with art. 2\(2\)\)](#); [S.I. 2010/409, art. 2](#)
- F9** Word in s. 308(2)(a) substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 2\(3\)](#); [S.I. 2008/1935, art. 2\(1\) \(with art. 2\(2\)\)](#); [S.I. 2010/409, art. 2](#)
- F10** Words in s. 308(3) substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 2\(4\)\(a\)](#); [S.I. 2008/1935, art. 2\(1\) \(with art. 2\(2\)\)](#); [S.I. 2010/409, art. 2](#)
- F11** Words in s. 308(3) substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 2\(4\)\(b\)](#); [S.I. 2008/1935, art. 2\(1\) \(with art. 2\(2\)\)](#); [S.I. 2010/409, art. 2](#)
- F12** S. 308(4)-(4C) substituted for s. 308(4) (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 2\(5\)](#); [S.I. 2008/1935, art. 2\(1\) \(with art. 2\(2\)\)](#); [S.I. 2010/409, art. 2](#)

Commencement Information

- I3** S. 308 wholly in force at 1.8.2004; s. 308 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

[^{F13}308A] Supplemental information

- (1) This section applies where—
 - (a) a promoter (P) has provided information in purported compliance with section 308(1) or (3), but
 - (b) HMRC believe that P has not provided all the prescribed information.
- (2) HMRC may apply to the [^{F14}tribunal] for an order requiring P to provide specified information about, or documents relating to, the notifiable proposal or arrangements.
- (3) The [^{F14}tribunal] may make an order under subsection (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 subsection (2) shall be treated as part of P's duty under section 308(1) or (3).
- (5) In so far as P's duty under section 308(1) or (3) arises out of a requirement by virtue of subsection (2) above, the prescribed period shall begin after a date prescribed for the purpose.
- (6) In so far as P's duty under section 308(1) or (3) arises out of a requirement by virtue of subsection (2) above, the prescribed period—
 - (a) may be of a different length than the prescribed period for the purpose of other applications of section 308(1) or (3), and

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(b) may be extended by HMRC by direction.]

Textual Amendments

- F13** S. 308A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 108\(4\)](#) (with s. 108(10))
- F14** Word in s. 308A(2)(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 430](#)

309 Duty of person dealing with promoter outside United Kingdom

- (1) Any person (“the client”) who 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,
- must, within the prescribed period after doing so, provide the Board with prescribed information relating to the notifiable arrangements.
- (2) Compliance with section 308(1) by any promoter in relation to the notifiable arrangements discharges the duty of the client under subsection (1).

Commencement Information

- I4** S. 309 wholly in force at 1.8.2004; s. 309 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

310 Duty of parties to notifiable arrangements not involving promoter

Any person who enters into any transaction forming part of notifiable arrangements as respects which neither he nor any other person in the United Kingdom is liable to comply with section 308 (duties of promoter) or section 309 (duty of person dealing with promoter outside the United Kingdom) must at the prescribed time provide the Board with prescribed information relating to the notifiable arrangements.

Commencement Information

- I5** S. 310 wholly in force at 1.8.2004; s. 310 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

311 Arrangements to be given reference number

- (1) Where a person complies [^{F15}or purports to comply] with section 308(1) or (3), 309(1) or 310 in relation to any notifiable proposal or notifiable arrangements, the Board ^{F16}...
- (a) [^{F17}may within 30 days] allocate a reference number to the notifiable arrangements or, in the case of a notifiable proposal, to the proposed notifiable arrangements, and
 - (b) if it does so, [^{F18}must notify that number to the person and (where the person is one who has complied or purported to comply with section 308(1) or (3)) to any other person—

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- (i) who is a promoter in relation to the notifiable proposal (or arrangements implementing the notifiable proposal) or the notifiable arrangements (or proposal implemented by the notifiable arrangements), and
 - (ii) whose identity and address has been notified to HMRC by the person.]
- (2) The allocation of a reference number to any notifiable arrangements (or proposed notifiable arrangements) is not to be regarded as constituting any indication by the Board that the arrangements could as a matter of law result in the obtaining by any person of a tax advantage.
- (3) In this Part “reference number”, in relation to any notifiable arrangements, means the reference number allocated under this section.

Textual Amendments

- F15** Words in s. 311(1) inserted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 3\(a\)](#); S.I. 2008/1935, art. 2(1) (with art. 2(2)); S.I. 2010/409, art. 2
- F16** Words in s. 311(1) omitted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by virtue of [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 3\(b\)](#); S.I. 2008/1935, art. 2(1) (with art. 2(2)); S.I. 2010/409, art. 2
- F17** Words in s. 311(1) inserted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 3\(c\)](#); S.I. 2008/1935, art. 2(1) (with art. 2(2)); S.I. 2010/409, art. 2
- F18** Words in s. 311(1) substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\), Sch. 38 para. 3\(d\)](#); S.I. 2008/1935, art. 2(1) (with art. 2(2)); S.I. 2010/409, art. 2

Commencement Information

- I6** S. 311 wholly in force at 1.8.2004; s. 311 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

[^{F19}312 Duty of promoter to notify client of number

- (1) This section 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 notifiable 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 subsection (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.

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- (4) But where the conditions in subsection (5) are met the duty imposed on the promoter under subsection (2) to provide the client with information in relation to notifiable arrangements is discharged.
- (5) Those conditions are that —
- (a) 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 subsection (2) after the date specified in the notice.

Textual Amendments

F19 Ss. 312, 312A substituted for s. 312 (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\)](#), s. 116(2), [Sch. 38 para. 4](#); [S.I. 2008/1935](#), art. 2(1) (with [art. 2\(2\)](#)); [S.I. 2010/409](#), art. 2

312A Duty of client to notify parties of number

- (1) This section applies where a person (a “client”) 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 notifiable arrangements or notifiable proposal receives prescribed information relating to the reference number allocated to the notifiable arrangements or proposed notifiable arrangements.
- (2) The client must, within the prescribed 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.
- (3) For the purposes of subsection (1) 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.
- (4) 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 subsection (2) after the date specified in the notice.
- (5) The duty under subsection (2) does not apply in prescribed circumstances.]

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Part 7. (See end of Document for details)

Textual Amendments

F19 Ss. 312, 312A substituted for s. 312 (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\)](#), [Sch. 38 para. 4](#); [S.I. 2008/1935, art. 2\(1\)](#) (with [art. 2\(2\)](#)); [S.I. 2010/409, art. 2](#)

313 Duty of parties to notifiable arrangements to notify Board of number, etc.

- (1) Any person who is a party to any notifiable arrangements must provide the Board with prescribed information relating to—
 - (a) any reference number notified to him ^{F20} ..., and
 - (b) the time when he obtains or expects to obtain by virtue of the arrangements an advantage in relation to any relevant tax.
- (2) For the purposes of subsection (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 section 306.
- (3) Regulations [^{F21}made by HMRC] may—
 - (a) in prescribed cases, require the [^{F22}information prescribed under subsection (1)] to be included in any return or account which the person is required by or under any enactment to deliver to the Board, and
 - (b) in prescribed cases, require the [^{F23}information prescribed under subsection (1) and such other information as is prescribed] to be provided separately to the Board at the prescribed time or times.
- (4) A person is not liable to a penalty under—
 - ^{F24}(a) any provision relating to incorrect or uncorrected returns made under section 98 of the Finance Act 1986 (administration of stamp duty reserve tax),
 - (b) Schedule 24 to the Finance Act 2007 (penalties for errors), or
 - (c) any other prescribed provision,]by reason of any failure to include in any return or account any reference number or other information required by virtue of subsection (3)(a) (but see section 98C of the Taxes Management Act 1970 for the penalty for failure to comply with this section).
- ^{F25}(5) HMRC may give notice that, in relation to notifiable arrangements specified in the notice, persons are not under the duty under subsection (1) after the date specified in the notice.]

Textual Amendments

- F20** Words in s. 313(1)(a) omitted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by virtue of [Finance Act 2008 \(c. 9\), s. 116\(2\)](#), [Sch. 38 para. 5\(2\)](#); [S.I. 2008/1935, art. 2\(1\)](#) (with [art. 2\(2\)](#)); [S.I. 2010/409, art. 2](#)
- F21** Words in s. 313(3) substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\)](#), [Sch. 38 para. 5\(3\)\(a\)](#); [S.I. 2008/1935, art. 2\(1\)](#) (with [art. 2\(2\)](#)); [S.I. 2010/409, art. 2](#)
- F22** Words in s. 313(3)(a) substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\), s. 116\(2\)](#), [Sch. 38 para. 5\(3\)\(b\)](#); [S.I. 2008/1935, art. 2\(1\)](#) (with [art. 2\(2\)](#)); [S.I. 2010/409, art. 2](#)

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Part 7. (See end of Document for details)

- F23** Words in s. 313(3)(b) substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by Finance Act 2008 (c. 9), s. 116(2), **Sch. 38 para. 5(3)(c)**; S.I. 2008/1935, art. 2(1) (with art. 2(2)); S.I. 2010/409, art. 2
- F24** S. 313(4)(a)-(c) substituted for s. 313(4)(a)-(g) (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), **Sch. 1 para. 26**
- F25** S. 313(5) inserted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by Finance Act 2008 (c. 9), s. 116(2), **Sch. 38 para. 5(4)**; S.I. 2008/1935, art. 2(1) (with art. 2(2)); S.I. 2010/409, art. 2

Commencement Information

- I7** S. 313 wholly in force at 1.8.2004; s. 313 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

[^{F26}313A Pre-disclosure enquiry

- (1) Where HMRC suspect that a person (P) is the promoter of a proposal or 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) A notice must specify the proposal or arrangements to which it relates.
- (3) For the purpose of subsection (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 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 section 306(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 subsection (1) within—
 - (a) the prescribed period, or
 - (b) such longer period as HMRC may direct.

Textual Amendments

- F26** Ss. 313A, 313B inserted (19.7.2007) by Finance Act 2007 (c. 11), **s. 108(5)** (with s. 108(10))

313B Reasons for non-disclosure: supporting information

- (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 [^{F27}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 subsection (1) within—
 - (a) the prescribed period, or
 - (b) such longer period as HMRC may direct.
- (3) The power under subsection (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 section 313A(1)(b).]

Textual Amendments

- F26** Ss. 313A, 313B inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **s. 108(5)** (with s. 108(10))
- F27** Word in s. 313B(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 431**

314 Legal professional privilege

- (1) Nothing in this Part requires any person to disclose to the Board any privileged information.
- (2) In this Part “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.

Commencement Information

- I8** S. 314 wholly in force at 1.8.2004; s. 314 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

[^{F28}314A Order to disclose

- (1) HMRC may apply to the [^{F29}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 [^{F30}tribunal] may make the order only if satisfied that section 306(1)(a) to (c) applies to the relevant arrangements.]

Textual Amendments

- F28** S. 314A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **s. 108(6)** (with s. 108(10))
- F29** Word in s. 314A(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 432**
- F30** Word in s. 314A(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 432**

315 Penalties

- (1) After section 98B of the Taxes Management Act 1970 insert—

Status: Point in time view as at 01/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Part 7. (See end of Document for details)

“98C Notification under Part 7 of Finance Act 2004

- (1) A person who fails to comply with any of the provisions of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) mentioned in subsection (2) below shall be liable—
 - (a) to a penalty not exceeding £5,000, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a) above, 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) section 308(1) and (3) (duty of promoter in relation to notifiable proposals and notifiable arrangements),
 - (b) section 309(1) (duty of person dealing with promoter outside United Kingdom),
 - (c) section 310 (duty of parties to notifiable arrangements not involving promoter), or
 - (d) section 312(1) (duty of promoter to notify client of reference number).
- (3) A person who fails to comply with section 313(1) of the Finance Act 2004 (duties of parties to notifiable arrangements to notify Board of reference number, etc.) shall be liable to a penalty of the relevant sum.
- (4) In subsection (3) above “the relevant sum” means—
 - (a) in relation to a person not falling within paragraph (b) or (c) below, £100 in respect of each scheme to which the failure relates,
 - (b) in relation to a person who has previously failed to comply with section 313(1) on one (and only one) occasion during the period of 36 months ending with the date on which the current failure to comply with that provision began, £500 in respect of each scheme to which the current failure relates (whether or not the same as the scheme to which the previous failure relates), or
 - (c) in relation to a person who has previously failed to comply with section 313(1) on two or more occasions during the period of 36 months ending with the date on which the current failure to comply with that provision began, £1,000 in respect of each scheme to which the current failure relates (whether or not the same as the schemes to which any of the previous failures relates).
- (5) In subsection (4) above “scheme” means any notifiable arrangements within the meaning of Part 7 of the Finance Act 2004.”
- (2) In section 100 of that Act (determination of penalties by officer of Board) at the end of subsection (2) (penalties to which subsection (1) of the section does not apply) insert “, or
 - (f) section 98C(1)(a) above.”
- (3) In section 100C of that Act (penalty proceedings before Commissioners) after subsection (1) insert—

Status: Point in time view as at 01/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Part 7. (See end of Document for details)

“(1A) In its application to a penalty under section 98C(1)(a) above, subsection (1) above has effect with the omission of the words “General or”.”

Commencement Information

I9 S. 315 wholly in force at 1.8.2004; s. 315 in force for certain purposes at Royal Assent and otherwise in force at 1.8.2004 see s. 319(1)

[^{F31}316 Information to be provided in form and manner specified by HMRC

- (1) HMRC may specify the form and manner in which information required to be provided by any of the information provisions must be provided if the provision is to be complied with.
- (2) The “information provisions” are sections 308(1) and (3), 309(1), 310, 312(2), 312A(2) and 313(1) and (3).]

Textual Amendments

F31 S. 316 substituted (1.11.2008 except for the purposes of Stamp Duty Land tax, 1.4.2010 in so far as not already in force) by [Finance Act 2008 \(c. 9\)](#), s. 116(2), [Sch. 38 para. 6](#); [S.I. 2008/1935](#), art. 2(1) (with art. 2(2)); [S.I. 2010/409](#), art. 2

317 Regulations under Part 7

- (1) Any power of the Treasury or the Board to make regulations under this Part is exercisable by statutory instrument.
- (2) Regulations made by the Treasury or the Board under this Part may contain transitional provisions and savings.
- (3) A statutory instrument containing regulations made by the Treasury or the Board under any provision of this Part is subject to annulment in pursuance of a resolution of the House of Commons.

^{F32}317A Special Commissioners: procedure

Textual Amendments

F32 S. 317A omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 433](#)

318 Interpretation of Part 7

- (1) In this Part—
“advantage”, in relation to any tax, means—

Status: Point in time view as at 01/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Part 7. (See end of Document for details)

- (a) relief or increased relief from, or repayment or increased repayment of, that tax, or the avoidance or reduction of a charge to that tax or an assessment to that tax or the avoidance of a possible assessment to that tax,
- (b) the deferral of any payment of tax or the advancement of any repayment of tax, or
- (c) the avoidance of any obligation to deduct or account for any tax;

[^{F33}“company” has the meaning given by section 1121 of the Corporation Tax Act 2010;]

“corporation tax” includes any amount which, by virtue of any of the provisions mentioned in paragraph 1 of Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns, assessments and related matters) is assessable and chargeable as if it were corporation tax;

[^{F34}“HMRC” means the Commissioners for Her Majesty's Revenue and Customs;]

“notifiable arrangements” has the meaning given by section 306(1);

“notifiable proposal” has the meaning given by section 306(2);

“prescribed”, except in section 306, means prescribed by regulations made by the Board;

“promoter”, in relation to notifiable arrangements or a notifiable proposal, has the meaning given by section 307;

“reference number”, in relation to notifiable arrangements, has the meaning given by section 311(3);

^{F35}

“tax” means—

- (a) income tax,
- (b) capital gains tax,
- (c) corporation tax,
- (d) petroleum revenue tax,
- (e) inheritance tax,
- (f) stamp duty land tax, or
- (g) stamp duty reserve tax.

[^{F36}“trade” includes every venture in the nature of trade.]

[^{F37}“tribunal” means the First-tier tribunal, or where determined by or under Tribunal Procedure Rules, the Upper Tribunal.]

^{F38}(2)

Textual Amendments

- F33** Words in s. 318(1) inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 302\(2\)\(a\)](#) (with Sch. 9 paras. 1-9, 22)
- F34** Words in s. 318(1) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 108\(8\)\(a\)](#) (with s. 108(10))
- F35** Words in s. 318(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\), art. 1\(2\), Sch. 1 para. 434\(2\)](#)
- F36** Words in s. 318(1) inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 302\(2\)\(b\)](#) (with Sch. 9 paras. 1-9, 22)

Status: Point in time view as at 01/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, Part 7. (See end of Document for details)

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| <p>F37 Words in s. 318(1) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 1 para. 434(3)</p> <p>F38 S. 318(2) repealed (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 8 para. 302(3), Sch. 10 Pt. 13 (with Sch. 9 paras. 1-9, 22)</p> |
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319 Part 7: commencement and savings

- (1) The following provisions of this Part come into force on the passing of this Act—
sections 306 to 315, so far as is necessary for enabling the making of any regulations for which they provide, and
sections 317 and 318 and this section.
- (2) Except as provided by subsection (1), the provisions of this Part come into force on 1st August 2004.
- (3) Section 308 does not apply to a promoter in the case of—
 - (a) any notifiable proposal as respects which the relevant date, as defined by subsection (2) of that section, fell before 18th March 2004,
 - (b) any notifiable arrangements which implement such a proposal, or
 - (c) any notifiable arrangements which include any transaction entered into before 18th March 2004.
- (4) Sections 309 and 310 do not apply in relation to notifiable arrangements which include any transaction entered into before 23rd April 2004.
- (5) Section 313 does not apply in relation to any notifiable arrangements in respect of which, by virtue of subsection (3) or (4), none of the duties imposed by sections 308 to 310 arises.

Status:

Point in time view as at 01/04/2010.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2004, Part 7.