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*Changes to legislation: Finance Act 2008, SCHEDULE 38 is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 38 **U.K.**

Section 116

#### DISCLOSURE OF TAX AVOIDANCE SCHEMES

##### *Amendments of Part 7 of FA 2004*

- 1 Part 7 of FA 2004 (disclosure of tax avoidance schemes) is amended as follows.
- 2 (1) Section 308 (duties of promoter) is amended as follows.
  - (2) In subsection (1)—
    - (a) for “The promoter” substitute “ A person who is a promoter in relation to a notifiable proposal ”, and
    - (b) for “any” substitute “ the ”.
  - (3) In subsection (2)(a), for “a” substitute “ the ”.
  - (4) In subsection (3)—
    - (a) for “The promoter” substitute “ A person who is a promoter in relation to notifiable arrangements ”, and
    - (b) for “any notifiable” substitute “ the notifiable ”.
  - (5) For subsection (4) substitute—

“(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—

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- (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).”

#### Commencement Information

- I1** Sch. 38 para. 2 in force at 1.11.2008 for the purposes of the amendments made by that paragraph (but not for the purposes of Stamp Duty Land Tax) by S.I. 2008/1935, art. 2(1) (with art. 2(2))
- I2** Sch. 38 para. 2 in force at 1.4.2010 for the purposes of Stamp Duty Land Tax by S.I. 2010/409, art. 2

- 3 In section 311(1) (arrangements to be given reference number)—
- (a) after “complies” insert “ or purports to comply ”,
  - (b) omit “may within 30 days”,
  - (c) before “allocate” insert “ may within 30 days ”, and
  - (d) for “notify the person of that number” substitute “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—
    - (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.”

#### Commencement Information

- I3** Sch. 38 para. 3 in force at 1.11.2008 for the purposes of the amendments made by that paragraph (but not for the purposes of Stamp Duty Land Tax) by S.I. 2008/1935, art. 2(1) (with art. 2(2))
- I4** Sch. 38 para. 3 in force at 1.4.2010 for the purposes of Stamp Duty Land Tax by S.I. 2010/409, art. 2

- 4 For section 312 substitute—

#### “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.

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- (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.
- (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.

### **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.

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- (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.”

#### Commencement Information

- I5** Sch. 38 para. 4 in force at 1.11.2008 for the purposes of the amendments made by that paragraph (but not for the purposes of Stamp Duty Land Tax) by S.I. 2008/1935, art. 2(1) (with art. 2(2))
- I6** Sch. 38 para. 4 in force at 1.4.2010 for the purposes of Stamp Duty Land Tax by S.I. 2010/409, art. 2

- 5 (1) Section 313 (duty of parties to notifiable arrangements to notify HMRC of number etc) is amended as follows.
- (2) In subsection (1)(a), omit “under section 311 by the Board or under section 312 by the promoter”.
- (3) In subsection (3)—
- for “under subsection (1)” substitute “ made by HMRC ”,
  - in paragraph (a), for “number and other information” substitute “ information prescribed under subsection (1) ”, and
  - in paragraph (b), for “number and other information” substitute “ information prescribed under subsection (1) and such other information as is prescribed ”.
- (4) Insert at the end—
- “(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.”

#### Commencement Information

- I7** Sch. 38 para. 5 in force at 1.11.2008 for the purposes of the amendments made by that paragraph (but not for the purposes of Stamp Duty Land Tax) by S.I. 2008/1935, art. 2(1) (with art. 2(2))
- I8** Sch. 38 para. 5 in force at 1.4.2010 for the purposes of Stamp Duty Land Tax by S.I. 2010/409, art. 2

- 6 For section 316 substitute—

#### “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).”

#### Commencement Information

- I9** Sch. 38 para. 6 in force at 1.11.2008 for the purposes of the amendments made by that paragraph (but not for the purposes of Stamp Duty Land Tax) by S.I. 2008/1935, art. 2(1) (with art. 2(2))

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**I10** Sch. 38 para. 6 in force at 1.4.2010 for the purposes of Stamp Duty Land Tax by S.I. 2010/409, art. 2

#### *Amendments of TMA 1970*

- 7 (1) Section 98C of TMA 1970 (penalties for failure to comply with duties under Part 7 of FA 2004) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (d), for “312(1)” substitute “ 312(2) ”, and
  - (b) after that paragraph (but before the “and”) insert—  
“(da) section 312A(2) (duty of client to notify parties of reference number),”.
- (3) In subsection (3)—
- (a) for “section 313(1)” substitute “ subsection (1) of section 313 ”, and
  - (b) after “etc.” insert “ or regulations under subsection (3) of that section ”.
- (4) In subsection (4), for “313(1)” (in both places) substitute “ subsection (1) of section 313 or regulations under subsection (3) of that section ”.

#### **Commencement Information**

- I11** Sch. 38 para. 7 in force at 1.11.2008 for the purposes of the amendments made by that paragraph (but not for the purposes of Stamp Duty Land Tax) by S.I. 2008/1935, art. 2(1) (with art. 2(2))
- I12** Sch. 38 para. 7 in force at 1.4.2010 for the purposes of Stamp Duty Land Tax by S.I. 2010/409, art. 2

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