



Finance Act 2014

2014 CHAPTER 26

PART 5

PROMOTERS OF TAX AVOIDANCE SCHEMES

Conduct notices

237 Duty to give conduct notice

- (1) Subsections (5) to (9) apply if an authorised officer becomes aware at any time that a person (“P”) who is carrying on a business as a promoter—
 - (a) has, in the period of 3 years ending with that time, met one or more threshold conditions, and
 - (b) was carrying on a business as a promoter when P met that condition.
- (2) Part 1 of Schedule 34 sets out the threshold conditions and describes how they are met.
- (3) Part 2 of that Schedule contains provision about the meeting of threshold conditions by bodies corporate.
- (4) See also Schedule 36 (which contains provision about the meeting of threshold conditions and other conditions by partnerships).
- (5) The authorised officer must determine whether or not P's meeting of the condition mentioned in subsection (1)(a) (or, as the case requires, P's meeting of all those conditions, taken together) should be regarded as significant in view of the purposes of this Part.
- (6) Subsection (5) does not apply if a conduct notice or a monitoring notice already has effect in relation to P.
- (7) If the authorised officer determines under subsection (5) that P's meeting of the condition or conditions in question should be regarded as significant, the officer must give P a conduct notice, unless subsection (8) applies.

Status: Point in time view as at 17/07/2014.

Changes to legislation: Finance Act 2014, Cross Heading: Conduct notices is up to date with all changes known to be in force on or before 09 June 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)

- (8) This subsection applies if the authorised officer determines that, having regard to the extent of the impact that P's activities as a promoter are likely to have on the collection of tax, it is inappropriate to give P a conduct notice.
- (9) The authorised officer must determine under subsection (5) that the meeting of the condition (or all the conditions) mentioned in subsection (1)(a) should be regarded as significant if the condition (or any of the conditions) is in any of the following paragraphs of Schedule 34—
- (a) paragraph 2 (deliberate tax defaulters);
 - (b) paragraph 3 (breach of Banking Code of Practice);
 - (c) paragraph 4 (dishonest tax agents);
 - (d) paragraph 6 (persons charged with certain offences);
 - (e) paragraph 7 (opinion notice of GAAR Advisory Panel).

238 Contents of a conduct notice

- (1) A conduct notice is a notice requiring the person to whom it has been given (“the recipient”) to comply with conditions specified in the notice.
- (2) Before deciding on the terms of a conduct notice, the authorised officer must give the person to whom the notice is to be given an opportunity to comment on the proposed terms of the notice.
- (3) A notice may include only conditions that it is reasonable to impose for any of the following purposes—
- (a) to ensure that the recipient provides adequate information to its clients about relevant proposals, and relevant arrangements, in relation to which the recipient is a promoter;
 - (b) to ensure that the recipient provides adequate information about relevant proposals in relation to which it is a promoter to persons who are intermediaries in relation to those proposals;
 - (c) to ensure that the recipient does not fail to comply with any duty under a specified disclosure provision;
 - (d) to ensure that the recipient does not discourage others from complying with any obligation to disclose to HMRC information of a description specified in the notice;
 - (e) to ensure that the recipient does not enter into an agreement with another person (“C”) which relates to a relevant proposal or relevant arrangements in relation to which the recipient is a promoter, on terms which—
 - (i) impose a contractual obligation on C which falls within paragraph 11(2) or (3) of Schedule 34 (contractual terms restricting disclosure), or
 - (ii) impose on C obligations within both paragraph 11(4) and (5) of that Schedule (contractual terms requiring contribution to fighting funds and restricting settlement of proceedings);
 - (f) to ensure that the recipient does not promote relevant proposals or relevant arrangements which rely on, or involve a proposal to rely on, one or more contrived or abnormal steps to produce a tax advantage;
 - (g) to ensure that the recipient does not fail to comply with any stop notice which has effect under paragraph 12 of Schedule 34.

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- (4) References in subsection (3) to ensuring that adequate information is provided about proposals or arrangements include—
 - (a) ensuring the adequacy of the description of the arrangements or proposed arrangements;
 - (b) ensuring that the information includes an adequate assessment of the risk that the arrangements or proposed arrangements will fail;
 - (c) ensuring that the information does not falsely state, and is not likely to create a false impression, that HMRC have (formally or informally) considered, approved or expressed a particular opinion in relation to the proposal or arrangements.
- (5) In subsection (3)(c) “specified disclosure provision” means a disclosure provision that is specified in the notice; and for this purpose “disclosure provision” means any of the following—
 - (a) section 308 of FA 2004 (disclosure of tax avoidance schemes: duties of promoter);
 - (b) section 312 of FA 2004 (duty of promoter to notify client of number);
 - (c) sections 313ZA and 313ZB of FA 2004 (duties to provide details of clients and certain others);
 - (d) Part 1 of Schedule 36 to FA 2008 (duties to provide information and produce documents).
- (6) In subsection (4)(b) “fail”, in relation to arrangements or proposed arrangements, means not result in a tax advantage which the arrangements or (as the case may be) proposed arrangements might be expected to result in.
- (7) The Treasury may by regulations amend the definition of “disclosure provision” in subsection (5).

239 Section 238: supplementary

- (1) In section 238 the following expressions are to be interpreted as follows.
- (2) “Adequate” means adequate having regard to what it might be reasonable for a client or (as the case may be) an intermediary to expect; and “adequacy” is to be interpreted accordingly.
- (3) A person (“C”) is a “client” of a promoter, if at any time when a conduct notice has effect, the promoter—
 - (a) makes a firm approach to C in relation to a relevant proposal with a view to the promoter making the proposal available for implementation by C or another person;
 - (b) makes a relevant proposal available for implementation by C;
 - (c) takes part in the organisation or management of relevant arrangements entered into by C.
- (4) The recipient of a conduct notice “promotes” a relevant proposal if it—
 - (a) takes part in designing the proposal,
 - (b) makes a firm approach to a person in relation to the proposal with a view to making the proposal available for implementation by that person or another person, or

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- (c) makes the proposal available for implementation by persons (other than the recipient).
- (5) The recipient of a conduct notice “promotes” relevant arrangements if it takes part in designing, organising or managing the arrangements.

240 Amendment or withdrawal of conduct notice

- (1) This section applies where a conduct notice has been given to a person.
- (2) An authorised officer may at any time amend the notice.
- (3) An authorised officer—
 - (a) may withdraw the notice if the officer thinks it is not necessary for it to continue to have effect, and
 - (b) in considering whether or not that is necessary must take into account the person's record of compliance, or failure to comply, with the conditions in the notice.

241 Duration of conduct notice

- (1) A conduct notice has effect from the date specified in it as its commencement date.
- (2) A conduct notice ceases to have effect—
 - (a) at the end of the period of two years beginning with its commencement date, or
 - (b) if an earlier date is specified in it as its termination date, at the end of that day.
- (3) A conduct notice ceases to have effect if withdrawn by an authorised officer under section 240.
- (4) A conduct notice ceases to have effect in relation to a person when a monitoring notice takes effect in relation to that person.

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