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Changes to legislation: Finance Act 2014, PART 1 is up to date with all changes known to be in force on or before 10 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)

SCHEDULES

SCHEDULE 34

PROMOTERS OF TAX AVOIDANCE SCHEMES: THRESHOLD CONDITIONS

PART 1

MEETING THE THRESHOLD CONDITIONS: GENERAL

Meaning of “threshold condition”

- 1 Each of the conditions described in paragraphs 2 to 12 is a “threshold condition”.

Deliberate tax defaulters

- 2 A person meets this condition if the Commissioners publish information about the person in reliance on section 94 of FA 2009 (publishing details of deliberate tax defaulters).

Breach of the Banking Code of Practice

- 3 A person meets this condition if the person is named in a report under section 285 as a result of the Commissioners determining that the person breached the Code of Practice on Taxation for Banks by reason of promoting arrangements which the person cannot have reasonably believed achieved a tax result which was intended by Parliament.

Dishonest tax agents

- 4 A person meets this condition if the person is given a conduct notice under paragraph 4 of Schedule 38 to FA 2012 (tax agents: dishonest conduct) and either—
- (a) the time period during which a notice of appeal may be given in relation to the notice has expired, or
 - (b) an appeal against the notice has been made and the tribunal has confirmed the determination referred to in sub-paragraph (1) of paragraph 4 of that Schedule.

Non-compliance with Part 7 of FA 2004

- 5 (1) A person meets this condition if the person fails to comply with any of the following provisions of Part 7 of FA 2004 (disclosure of tax avoidance schemes)—
- (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 the United Kingdom);

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- (c) section 310 (duty of parties to notifiable arrangements not involving promoter);
 - (d) section 313ZA (duty of promoter to provide details of clients).
- [^{F1}(2) For the purposes of sub-paragraph (1), a person (“P”) fails to comply with a provision mentioned in that sub-paragraph if and only if any of conditions A to C are met.
- (3) Condition A is met if—
- (a) the tribunal has determined that P has failed to comply with the provision concerned,
 - (b) the appeal period has ended, and
 - (c) the determination has not been overturned on appeal.
- (4) Condition B is met if—
- (a) the tribunal has determined for the purposes of section 118(2) of TMA 1970 that P is to be deemed not to have failed to comply with the provision concerned as P had a reasonable excuse for not doing the thing required to be done,
 - (b) the appeal period has ended, and
 - (c) the determination has not been overturned on appeal.
- (5) Condition C is met if P has admitted in writing to HMRC that P has failed to comply with the provision concerned.
- (6) The “appeal period” means—
- (a) the period during which an appeal could be brought against the determination of the tribunal, or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.]

Textual Amendments

- F1** Sch. 34 para. 5(2)-(6) substituted for Sch. 34 para. 5(2) (with effect in accordance with Sch. 19 para. 9 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 19 para. 6](#)

Criminal offences

- 6 (1) A person meets this condition if the person is charged with a relevant offence.
- (2) The fact that a person has been charged with an offence is disregarded for the purposes of this paragraph if—
- (a) the person has been acquitted of the offence, or
 - (b) the charge has been dismissed or the proceedings have been discontinued.
- (3) An acquittal is not taken into account for the purposes of sub-paragraph (2) if an appeal has been brought against the acquittal and has not yet been disposed of.
- (4) “Relevant offence” means any of the following—
- (a) an offence at common law of cheating in relation to the public revenue;
 - (b) in Scotland, an offence at common law of—
 - (i) fraud;

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- (ii) uttering;
- (c) an offence under section 17(1) of the Theft Act 1968 or section 17 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) (false accounting);
- (d) an offence under section 106A of TMA 1970 (fraudulent evasion of income tax);
- (e) an offence under section 107 of TMA 1970 (false statements: Scotland);
- (f) an offence under any of the following provisions of CEMA 1979—
 - (i) section 50(2) (improper importation of goods with intent to defraud or evade duty);
 - (ii) section 167 (untrue declarations etc);
 - (iii) section 168 (counterfeiting documents etc);
 - (iv) section 170 (fraudulent evasion of duty);
 - (v) section 170B (taking steps for the fraudulent evasion of duty);
- (g) an offence under any of the following provisions of VATA 1994—
 - (i) section 72(1) (being knowingly concerned in the evasion of VAT);
 - (ii) section 72(3) (false statement etc);
 - (iii) section 72(8) (conduct involving commission of other offence under section 72);
- (h) an offence under section 1 of the Fraud Act 2006 (fraud);
- (i) an offence under any of the following provisions of CRCA 2005—
 - (i) section 30 (impersonating a Commissioner or officer of Revenue and Customs);
 - (ii) section 31 (obstruction of officer of Revenue and Customs etc);
 - (iii) section 32 (assault of officer of Revenue and Customs);
- (j) an offence under regulation 45(1) of the Money Laundering Regulations 2007 (S.I. 2007/2157);
- (k) an offence under section 49(1) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (possession of articles for use in fraud).

Opinion notice of GAAR Advisory Panel

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A person meets this condition if—

- (a) arrangements in relation to which the person is a promoter have been referred to the GAAR Advisory Panel under Schedule 43 to FA 2013,
- (b) one or more opinion notices are given in relation to the arrangements under paragraph 11(3)(b) of that Schedule (opinion of sub-panel of GAAR Advisory Panel that arrangements are not reasonable), and
- (c) the notice, or the notices taken together, either—
 - (i) state the joint opinion of all the members of the sub-panel arranged under paragraph 10 of that Schedule, or
 - (ii) state the opinion of two or more members of that sub-panel.

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Disciplinary action [F² against a member of a trade or profession]

Textual Amendments

F2 Words in Sch. 34 para. 8 cross-heading substituted (with effect in accordance with Sch. 19 para. 9 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 19 para. 7\(3\)](#)

- 8 [F³(1) A person who carries on a trade or profession that is regulated by a professional body meets this condition if all of the following conditions are met—
- (a) the person is found guilty of misconduct of a prescribed kind,
 - (b) action of a prescribed kind is taken against the person in relation to that misconduct, and
 - (c) a penalty of a prescribed kind is imposed on the person as a result of that misconduct.]
- (2) Misconduct may only be prescribed for the purposes of sub-paragraph (1)(a) if it is misconduct other than misconduct in matters (such as the payment of fees) that relate solely or mainly to the person's relationship with the professional body.
- (3) A “professional body” means—
- (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland;
 - (c) the General Council of the Bar;
 - (d) the Faculty of Advocates;
 - (e) the General Council of the Bar of Northern Ireland;
 - (f) the Law Society;
 - (g) the Law Society of Scotland;
 - (h) the Law Society [F⁴of] Northern Ireland;
 - (i) the Association of Accounting Technicians;
 - (j) the Association of Chartered Certified Accountants;
 - (k) the Association of Taxation Technicians;
 - (l) any other prescribed body with functions relating to the regulation of a trade or profession.

Textual Amendments

F3 Sch. 34 para. 8(1) substituted (with effect in accordance with Sch. 19 para. 9 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 19 para. 7\(2\)](#)

F4 Word in Sch. 34 para. 8(3)(h) substituted (with effect in accordance with Sch. 19 para. 9 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 19 para. 7\(4\)](#)

Disciplinary action by a regulatory authority

- 9 (1) A person meets this condition if a regulatory authority imposes a relevant sanction on the person.
- (2) A “relevant sanction” is a sanction which is—
- (a) imposed in relation to misconduct other than misconduct in matters (such as the payment of fees) that relate solely or mainly to the person's relationship with the regulatory authority, and

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- (b) prescribed.
- (3) The following are regulatory authorities for the purposes of this paragraph—
 - (a) the Financial Conduct Authority;
 - (b) the Financial Services Authority;
 - (c) any other authority that may be prescribed.
- (4) Only authorities that have functions relating to the regulation of financial institutions may be prescribed under sub-paragraph (3)(c).

Exercise of information powers

- 10 (1) A person meets this condition if the person fails to comply with an information notice given under any of paragraphs 1, 2, 5 and 5A of Schedule 36 to FA 2008.
- (2) For the purposes of section 237, the failure to comply is taken to occur when the period within which the person is required to comply with the notice expires (without the person having complied with it).

Restrictive contractual terms

- 11 (1) A person (“P”) meets this condition if P enters into an agreement with another person (“C”) which relates to a relevant proposal or relevant arrangements in relation to which P is a promoter, on terms which—
 - (a) impose a contractual obligation on C which falls within sub-paragraph (2) or (3), or
 - (b) impose on C both obligations within sub-paragraph (4) and obligations within sub-paragraph (5).
- (2) A contractual obligation falls within this sub-paragraph if it prevents or restricts the disclosure by C to HMRC of information relating to the proposals or arrangements, whether or not by referring to a wider class of persons.
- (3) A contractual obligation falls within this sub-paragraph if it requires C to impose on any tax adviser to whom C discloses information relating to the proposals or arrangements a contractual obligation which prevents or restricts the disclosure of that information to HMRC by the adviser.
- (4) A contractual obligation falls within this sub-paragraph if it requires C to—
 - (a) meet (in whole or in part) the costs of, or contribute to a fund to be used to meet the costs of, any proceedings relating to arrangements in relation to which P is a promoter (whether or not implemented by C), or
 - (b) take out an insurance policy which insures against the risk of having to meet the costs connected with proceedings relating to arrangements which C has implemented and in relation to which P is a promoter.
- (5) A contractual obligation falls within this paragraph if it requires C to obtain the consent of P before—
 - (a) entering into any agreement with HMRC regarding arrangements which C has implemented and in relation to which P is a promoter, or
 - (b) withdrawing or discontinuing any appeal against any decision regarding such arrangements.

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(6) In sub-paragraph (5)(b), the reference to withdrawing or discontinuing an appeal includes any action or inaction which results in an appeal being discontinued.

(7) In this paragraph—

“proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in court), whether commenced or contemplated;

“tax adviser” means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person).

Continuing to promote certain arrangements

12 (1) A person (“P”) meets this condition if P has been given a stop notice and after the end of the notice period P—

- (a) makes a firm approach to another person (“C”) in relation to an affected proposal with a view to making the affected proposal available for implementation by C or another person, or
- (b) makes an affected proposal available for implementation by other persons.

(2) “Affected proposal” means a relevant proposal that is in substance the same as the relevant proposal specified in the stop notice in accordance with sub-paragraph (4)(c).

(3) An authorised officer may give a person (“P”) a notice (a “stop notice”) if each of these conditions is met—

- (a) a person has been given a follower notice under section 204 (circumstances in which a follower notice may be given) in relation to particular relevant arrangements;
- (b) P is a promoter in relation to a relevant proposal that is implemented by those arrangements;
- (c) 90 days have elapsed since the follower notice was given and—
 - (i) the follower notice has not been withdrawn, and
 - (ii) if representations objecting to the follower notice were made under section 207 (representations about a follower notice), HMRC have confirmed the follower notice.

(4) A stop notice must—

- (a) specify the arrangements which are the subject of the follower notice mentioned in sub-paragraph (3)(a),
- (b) specify the judicial ruling identified in that follower notice,
- (c) specify a relevant proposal in relation to which the condition in sub-paragraph (3)(b) is met, and
- (d) explain the effect of the stop notice.

(5) An authorised officer may determine that a stop notice given to a person is to cease to have effect.

(6) If an authorised officer makes a determination under sub-paragraph (5) the officer must give the person written notice of the determination.

(7) The notice must specify the date from which it takes effect, which may be earlier than the date on which the notice is given.

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(8) In this paragraph—

“the notice period” means the period of 30 days beginning with the day on which a stop notice is given;

“judicial ruling” means a ruling of a court or tribunal.

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