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## SCHEDULES

### [<sup>F1</sup>SCHEDULE 34A

#### PROMOTERS OF TAX AVOIDANCE SCHEMES: DEFEATED ARRANGEMENTS

##### Textual Amendments

**F1** Sch. 34A inserted (15.9.2016) by Finance Act 2016 (c. 24), s. 160(5)

### PART 5

#### SUPPLEMENTARY

##### *“Adjustments”*

- 24 In this Schedule “adjustments” means any adjustments, whether by way of an assessment, the modification of an assessment or return, the amendment or disallowance of a claim, the entering into of a contract settlement or otherwise (and references to “making” adjustments accordingly include securing that adjustments are made by entering into a contract settlement).

##### *Meaning of “avoidance-related rule”*

- 25 (1) In this Schedule “avoidance-related rule” means a rule in Category 1 or 2.
- (2) A rule is in Category 1 if—
- (a) it refers (in whatever terms) to the purpose or main purpose or purposes of a transaction, arrangements or any other action or matter, and
  - (b) to whether or not the purpose in question is or involves the avoidance of tax or the obtaining of any advantage in relation to tax (however described).
- (3) A rule is also in Category 1 if it refers (in whatever terms) to—
- (a) expectations as to what are, or may be, the expected benefits of a transaction, arrangements or any other action or matter, and
  - (b) whether or not the avoidance of tax or the obtaining of any advantage in relation to tax (however described) is such a benefit.

For the purposes of paragraph (b) it does not matter whether the reference is (for instance) to the “sole or main benefit” or “one of the main benefits” or any other reference to a benefit.

- (4) A rule falls within Category 2 if as a result of the rule a person may be treated differently for tax purposes depending on whether or not purposes referred to in the rule (for instance the purposes of an actual or contemplated action or enterprise) are (or are shown to be) commercial purposes.

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- (5) For example, a rule in the following form would fall within Category 1 and within Category 2—

**“Example rule**

Section X does not apply to a company in respect of a transaction if the company shows that the transaction meets Condition A or B.

Condition A is that the transaction is effected—

- (a) for genuine commercial reasons, or
- (b) in the ordinary course of managing investments.

Condition B is that the avoidance of tax is not the main object or one of the main objects of the transaction.”

*“DOTAS arrangements”*

- 26 (1) For the purposes of this Schedule arrangements are “DOTAS arrangements” at any time if at that time a person—
- (a) has provided, information in relation to the arrangements under section 308(3), 309 or 310 of FA 2004, or
  - (b) has failed to comply with any of those provisions in relation to the arrangements.
- (2) But for the purposes of this Schedule “DOTAS arrangements” does not include arrangements in respect of which HMRC has given notice under section 312(6) of FA 2004 (notice that promoters not under duty to notify client of reference number).
- (3) For the purposes of sub-paragraph (1) a person who would be required to provide information under subsection (3) of section 308 of FA 2004—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under subsection (1) of that section, or
  - (b) but for subsection (4A), (4C) or (5) of that section,
- is treated as providing the information at the end of the period referred to in subsection (3) of that section.

*<sup>F2</sup> “Disclosable VAT or other indirect tax arrangements”*

**Textual Amendments**

**F2** Sch. 34A para. 26A and cross-heading inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by Finance (No. 2) Act 2017 (c. 32), s. 66(4), Sch. 17 para. 54(4)

- 26A (1) For the purposes of this Schedule arrangements are “disclosable VAT or other indirect tax arrangements” at any time if at that time—
- (a) the arrangements are disclosable Schedule 11A arrangements, or
  - (b) sub-paragraph (2) applies.
- (2) This sub-paragraph applies if a person—
- (a) has provided information in relation to the arrangements under paragraph 12(1), 17(2) or 18(2) of Schedule 17 to FA 2017, or

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- (b) has failed to comply with any of those provisions in relation to the arrangements.
- (3) But for the purposes of this Schedule arrangements in respect of which HMRC have given notice under paragraph 23(6) of that Schedule (notice that promoters not under duty to notify client of reference number) are not to be regarded as disclosable VAT or other indirect tax arrangements.
- (4) For the purposes of sub-paragraph (2) a person who would be required to provide information under paragraph 12(1) of that Schedule—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under paragraph 11(1) of that Schedule, or
  - (b) but for paragraph 13, 14 or 15 of that Schedule,
- is treated as providing the information at the end of the period referred to in paragraph 12(1).]

*“Disclosable [F3]Schedule 11A]VAT arrangements”*

#### Textual Amendments

- F3** Words in Sch. 34A para. 27 cross-heading inserted (16.11.2017 for specified purposes) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 54\(5\)](#)

- 27 For the purposes of [F4]paragraph 26A] arrangements are “disclosable [F5]Schedule 11A]VAT arrangements” at any time if at that time—
- (a) a person has complied with paragraph 6 of Schedule 11A to VATA 1994 in relation to the arrangements (duty to notify Commissioners),
  - (b) a person under a duty to comply with that paragraph in relation to the arrangements has failed to do so, or
  - (c) a reference number has been allocated to the scheme under paragraph 9 of that Schedule (voluntary notification of avoidance scheme which is not a designated scheme).

#### Textual Amendments

- F4** Words in Sch. 34A para. 27 substituted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 54\(6\)\(a\)](#)
- F5** Words in Sch. 34A para. 27 inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 54\(6\)\(b\)](#)

*Paragraphs 26 [F6]to 27]: supplementary*

#### Textual Amendments

- F6** Words in Sch. 34A para. 28 cross-heading substituted (16.11.2017 for specified purposes) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 54\(7\)](#)

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- 28 (1) A person “fails to comply” with any provision mentioned in paragraph 26(1)(a)<sup>F7</sup>, 26A(2)(a)] or 27(b) if and only if any of the conditions in sub-paragraphs (2) to (4) is met.
- (2) The condition in this sub-paragraph is that—
- (a) the tribunal has determined that the person has failed to comply with the provision concerned,
  - (b) the appeal period has ended, and
  - (c) the determination has not been overturned on appeal.
- (3) The condition in this sub-paragraph is that—
- (a) the tribunal has determined for the purposes of section 118(2) of TMA 1970 that the person is to be deemed not to have failed to comply with the provision concerned as the person 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.
- (4) The condition in this sub-paragraph is that the person admitted in writing to HMRC that the person has failed to comply with the provision concerned.
- (5) In this paragraph “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

**F7** Word in Sch. 34A para. 28(1) inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 66\(4\)](#), [Sch. 17 para. 54\(8\)](#)

#### *“Final” counteraction*

- 29 For the purposes of this Schedule the counteraction of a tax advantage or of arrangements is “final” when the assessment or adjustments made to effect the counteraction, and any amounts arising as a result of the assessment or adjustments, can no longer be varied, on appeal or otherwise.

#### *Inheritance tax, stamp duty reserve tax, VAT and petroleum revenue tax*

- 30 (1) In this Schedule, in relation to inheritance tax, each of the following is treated as a return—
- (a) an account delivered by a person under section 216 or 217 of IHTA 1984 (including an account delivered in accordance with regulations under section 256 of that Act);
  - (b) a statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account;
  - (c) information or a document provided by a person in accordance with regulations under section 256 of that Act;

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and such a return is treated as made by the person in question.

- (2) In this Schedule references to an assessment to tax, in relation to inheritance tax, stamp duty reserve tax and petroleum revenue tax, include a determination.
- (3) In this Schedule an expression used in relation to VAT has the same meaning as in VATA 1994.

*Power to amend*

- 31
- (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).
  - (2) An amendment by virtue of sub-paragraph (1) may, in particular, add, vary or remove conditions or categories (or otherwise vary the meaning of “ avoidance-related rule ”).
  - (3) Regulations under sub-paragraph (1) may include any amendment of this Part of this Act that is appropriate in consequence of an amendment made by virtue of sub-paragraph (1).]

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