

*Status: Point in time view as at 18/11/2015.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2015, SCHEDULE 19. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 19

Section 119

#### PROMOTERS OF TAX AVOIDANCE SCHEMES

1 Part 5 of FA 2014 (promoters of tax avoidance schemes) is amended as follows.

#### *Treating persons as meeting a threshold condition*

2 (1) Section 237 (duty to give conduct notice) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subsections (5) to (9) also apply if an authorised officer becomes aware at any time (“the relevant time”) that—

- (a) a person has, in the period of 3 years ending with the relevant time, met one or more threshold conditions,
- (b) at the relevant time another person (“P”) meets one or more of those conditions by virtue of Part 2 of Schedule 34 (meeting the threshold conditions: bodies corporate and partnerships), and
- (c) P is, at the relevant time, carrying on a business as a promoter.”

(3) In subsection (3), for the words from “the” to the end substitute “ when a person is treated as meeting a threshold condition ”.

(4) For subsection (5) substitute—

“(5) The authorised officer must determine—

- (a) in a case within subsection (1), whether or not P's meeting of the condition mentioned in subsection (1)(a) (or, if more than one condition is met, the meeting of all of those conditions, taken together) should be regarded as significant in view of the purposes of this Part, or
- (b) in a case within subsection (1A), whether or not—
  - (i) the meeting of the condition by the person as mentioned in subsection (1A)(a) (or, if more than one condition is met, the meeting of all of those conditions, taken together), and
  - (ii) P's meeting of the condition (or conditions) as mentioned in subsection (1A)(b),should be regarded as significant in view of those purposes.”

(5) In subsection (7), for “subsection (5)” substitute “ subsection (5)(a) ”.

(6) After subsection (7) insert—

“(7A) If the authorised officer determines under subsection (5)(b) that both—

- (a) the meeting of the condition or conditions by the person as mentioned in subsection (1A)(a), and

*Status: Point in time view as at 18/11/2015.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2015, SCHEDULE 19. (See end of Document for details)*

- (b) P's meeting of the condition or conditions as mentioned in subsection (1A)(b),  
 should be regarded as significant, the officer must give P a conduct notice, unless subsection (8) applies.”
- (7) In subsection (9), omit “mentioned in subsection (1)(a)”.
- (8) After subsection (9) insert—
- “(10) If, as a result of subsection (1A), subsections (5) to (9) apply to a person, this does not prevent the giving of a conduct notice to the person mentioned in subsection (1A)(a).”
- 3 In section 283 (interpretation of Part 5), in the definition of “conduct notice”, after “section 237(7)” insert “ or (7A) ”.
- 4 (1) Part 2 of Schedule 34 (meeting the threshold conditions) is amended as follows.
- (2) In the heading, at the end insert “ AND PARTNERSHIPS ”.
- (3) For paragraph 13 substitute—

*“Interpretation*

- 13A(1) This paragraph contains definitions for the purposes of this Part of this Schedule.
- (2) Each of the following is a “relevant body”—
- (a) a body corporate, and  
 (b) a partnership.
- (3) “Relevant time” means the time referred to in section 237(1A) (duty to give conduct notice to person treated as meeting threshold condition).
- (4) “Relevant threshold condition” means a threshold condition specified in any of the following paragraphs of this Schedule—
- (a) paragraph 2 (deliberate tax defaulters);  
 (b) paragraph 4 (dishonest tax agents);  
 (c) paragraph 6 (criminal offences);  
 (d) paragraph 7 (opinion notice of GAAR advisory panel);  
 (e) paragraph 8 (disciplinary action against a member of a trade or profession);  
 (f) paragraph 9 (disciplinary action by regulatory authority);  
 (g) paragraph 10 (failure to comply with information notice).
- (5) A person controls a body corporate if the person has power to secure that the affairs of the body corporate are conducted in accordance with the person's wishes—
- (a) by means of the holding of shares or the possession of voting power in relation to the body corporate or any other relevant body,  
 (b) as a result of any powers conferred by the articles of association or other document regulating the body corporate or any other relevant body, or  
 (c) by means of controlling a partnership.

---

*Status: Point in time view as at 18/11/2015.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2015, SCHEDULE 19. (See end of Document for details)*

---

- (6) A person controls a partnership if the person is a controlling member or the managing partner of the partnership.
- (7) “Controlling member” has the same meaning as in Schedule 36 (partnerships).
- (8) “Managing partner”, in relation to a partnership, means the member of the partnership who directs, or is on a day-to-day level in control of, the management of the business of the partnership.

*Treating persons under another's control as meeting a threshold condition*

- 13B (1) A relevant body (“RB”) is treated as meeting a threshold condition at the relevant time if—
- (a) the threshold condition was met by a person (“C”) at a time when—
    - (i) C was carrying on a business as a promoter, or
    - (ii) RB was carrying on a business as a promoter and C controlled RB, and
  - (b) RB is controlled by C at the relevant time.
- (2) Where C is an individual sub-paragraph (1) applies only if the threshold condition mentioned in sub-paragraph (1)(a) is a relevant threshold condition.
- (3) For the purposes of determining whether the requirements of sub-paragraph (1) are met by reason of meeting the requirement in sub-paragraph (1)(a)(i), it does not matter whether RB existed at the time when the threshold condition was met by C.

*Treating persons in control of others as meeting a threshold condition*

- 13C (1) A person other than an individual is treated as meeting a threshold condition at the relevant time if—
- (a) a relevant body (“A”) met the threshold condition at a time when A was controlled by the person, and
  - (b) at the time mentioned in paragraph (a) A, or another relevant body (“B”) which was also at that time controlled by the person, carried on a business as a promoter.
- (2) For the purposes of determining whether the requirements of sub-paragraph (1) are met it does not matter whether A or B (or neither) exists at the relevant time.

*Treating persons controlled by the same person as meeting a threshold condition*

- 13D (1) A relevant body (“RB”) is treated as meeting a threshold condition at the relevant time if—
- (a) RB or another relevant body met the threshold condition at a time (“time T”) when it was controlled by a person (“C”),
  - (b) at time T, there was a relevant body controlled by C which carried on a business as a promoter, and
  - (c) RB is controlled by C at the relevant time.

*Status: Point in time view as at 18/11/2015.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2015, SCHEDULE 19. (See end of Document for details)*

- (2) For the purposes of determining whether the requirements of sub-paragraph (1) are met it does not matter whether—
- (a) RB existed at time T, or
  - (b) any relevant body (other than RB) by reason of which the requirements of sub-paragraph (1) are met exists at the relevant time.”

- 5 In Schedule 36 (partnerships)—
- (a) omit paragraph 4 (threshold conditions: actions of partners in a personal capacity) and the italic heading before it,
  - (b) omit paragraph 20 (definition of “managing partner”) and the italic heading before it, and
  - (c) in paragraph 21 (power to amend definitions) omit “or 20”.

*Failure to comply with Part 7 of FA 2004*

- 6 In Schedule 34 (threshold conditions), in paragraph 5 (non-compliance with Part 7 of FA 2004), for sub-paragraph (2) substitute—

“(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.”

*Disciplinary action in relation to professionals etc*

- 7 (1) In Schedule 34 (threshold conditions), paragraph 8 (disciplinary action: professionals etc) is amended as follows.

---

*Status: Point in time view as at 18/11/2015.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2015, SCHEDULE 19. (See end of Document for details)*

---

(2) For sub-paragraph (1) substitute—

“(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.”

(3) In the heading, for “*by a professional body*” substitute “*against a member of a trade or profession*”.

(4) In sub-paragraph (3), in paragraph (h), for “for” substitute “of”.

#### *Power to amend Schedule 34*

- 8 In Part 3 of Schedule 34 (power to amend), at the end of paragraph 14(2) insert—
- “(c) vary any of the circumstances described in paragraphs 13B to 13D in which a person is treated as meeting a threshold condition (including by amending paragraph 13A);
  - (d) add new circumstances in which a person will be so treated.”

#### *Commencement*

- 9 The amendments made by paragraphs 2 to 7 have effect for the purposes of determining whether a person meets a threshold condition in a period of three years ending on or after the day on which this Act is passed.

**Status:**

Point in time view as at 18/11/2015.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2015, SCHEDULE 19.