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STATUTORY INSTRUMENTS

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**2017 No. 1174**

**The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2017**

**Amendment of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012**

**12.**—(1) In regulation 21 (information to be provided in form and manner specified by HMRC)(1)—

- (a) in paragraph (2) after “11A,” insert “11C,” and
- (b) for “and 16(3)” insert “, 16(3) and 16B(5)”.

(2) After regulation 21 insert—

**“Duty to provide additional information**

**21A.**—(1) This regulation applies where a person is required to provide information under regulation 13(2) or 14(2) or (2A).

(2) HMRC may specify additional information which must be provided by that person to the recipients under regulation 13(2) or 14(2) or (2A) at the same time as the information referred to in paragraph (1).

(3) HMRC may specify the form and manner in which the additional information is to be provided.

(4) For the purposes of this regulation “additional information” means information supplied by HMRC which relates to notifiable contribution proposals or notifiable contribution arrangements in general.

**Confidentiality**

**21B.** No duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by any person to HMRC of information or documents which the person has reasonable grounds for suspecting will assist HMRC in determining whether there has been a breach of any requirement imposed by or under these Regulations.

**Publication by HMRC**

**21C.**—(1) HMRC may publish information about—

- (a) any notifiable contribution arrangements, or proposed notifiable contribution arrangements, to which a reference number is allocated under regulation 12;
- (b) any person who is a promoter in relation to the notifiable contribution arrangements or, in the case of proposed notifiable contribution arrangements, the notifiable contribution proposal.

(2) The information that may be published is (subject to paragraph (4))—

- (a) any information relating to arrangements within paragraph (1)(a), or a person within paragraph (1)(b), that is prescribed information for the purposes of regulation 8, 10 or 11;
  - (b) any ruling of a court or tribunal relating to any such arrangements or person (in that person's capacity as a promoter in relation to a notifiable contribution proposal or notifiable contribution arrangements);
  - (c) the number of persons in any period who enter into transactions forming part of notifiable contribution arrangements within paragraph (1)(a);
  - (d) whether notifiable contribution arrangements within paragraph (1)(a) are APN relevant;
  - (e) any other information that HMRC considers it appropriate to publish for the purpose of identifying arrangements within paragraph (1)(a) or a person within paragraph (1)(b).
- (3) The information may be published in any manner that HMRC considers appropriate.
- (4) No information may be published under this regulation that identifies a person who enters into a transaction forming part of notifiable contribution arrangements within paragraph (1)(a).
- (5) But where a person who is a promoter within paragraph (1)(b) is also a person mentioned in paragraph (4), nothing in paragraph (4) is to be taken as preventing the publication under this regulation of information so far as relating to the person's activities as a promoter.
- (6) Before publishing any information under this regulation that identifies a person as a promoter within paragraph (1)(b), HMRC must—
- (a) inform the person that they are considering doing so, and
  - (b) give the person reasonable opportunity to make representations about whether it should be published.
- (7) Arrangements are "APN relevant" for the purposes of paragraph (2)(d) if HMRC has indicated in a publication that it may exercise (or has exercised) its power under section 219 of the Finance Act 2014(2) (accelerated payment notices) by virtue of the arrangements being DOTAS arrangements within the meaning of that section.

### **Subsequent judicial rulings**

- 21D.**—(1) This regulation applies if—
- (a) information about notifiable contribution arrangements, or proposed notifiable contribution arrangements, is published under regulation 21C,
  - (b) at any time after the information is published, a ruling of a court or tribunal is made in relation to contribution arrangements, and
  - (c) HMRC is of the opinion that the ruling is relevant to the arrangements mentioned in sub-paragraph (a).
- (2) A ruling is "relevant" to the arrangements if—
- (a) the principles laid down, or reasoning given, in the ruling would, if applied to the arrangements, allow the purported advantage arising from the arrangements in relation to contributions, and

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(2) 2014 c. 26. Section 219 was amended by section 157(18) to (20) of the Finance Act 2016 (c. 24). Section 219 has been applied to "relevant contributions" by paragraph 1 of Part 1 of Schedule 2 to the National Insurance Contributions Act 2015 (c.5) with the modifications contained in the rest of that part of the Schedule. Paragraph 22 defines "relevant contributions" for the purposes of the application of Part 4 of the Finance Act 2014 to national insurance contributions. Paragraph 16 makes specific modifications to section 219.

- (b) the ruling is final.
- (3) HMRC must publish information about the ruling.
- (4) The information must be published in the same manner as HMRC published the information mentioned in sub-paragraph (1)(a) (and may also be published in any other manner that HMRC considers appropriate).
- (5) A ruling is “final” if it is—
  - (a) a ruling of the Supreme Court, or
  - (b) a ruling of any other court or tribunal in circumstances where—
    - (i) no appeal may be made against the ruling,
    - (ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,
    - (iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or
    - (iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.
- (6) Where a ruling is final by virtue of paragraph (5)(b)(ii), (iii) or (iv), the ruling is to be treated as made at the time when the paragraph in question is first satisfied.
- (7) In this regulation, “contribution arrangements” means arrangements in respect of which it would be reasonable to conclude (having regard to all the circumstances) that the obtaining of an advantage in relation to contributions was the main purpose, or one of the main purposes.”.