
STATUTORY INSTRUMENTS

2017 No. 1215

**The Indirect Taxes (Disclosure of
Avoidance Schemes) Regulations 2017**

PART 2

Persons not to be treated as promoters

Provision of services to members of the same group

3.—(1) A person (“A”) who carries on a relevant business is not to be treated as a promoter in relation to a notifiable proposal or a notifiable arrangement⁽¹⁾ where—

- (a) A is a company;
- (b) A provides services to a company (“B”) in connection with—
 - (i) the notifiable proposal on the relevant date; or
 - (ii) the notifiable arrangement; and
- (c) B is a member of the same group as A.

(2) In paragraph (1)—

“relevant business” has the same meaning as in paragraph 8(4) of the Schedule;

“the relevant date” has the same meaning as in paragraph 11(3) of the Schedule.

(3) In paragraph (1)(c), whether B is a member of the same group as A is to be determined in accordance with paragraph 8(7) of the Schedule.

Employees

4.—(1) Subject to paragraph (4), a person (“C”) is not to be treated as a promoter⁽²⁾ in relation to a notifiable proposal or a notifiable arrangement where C is an employee of an employer (“D”) and—

- (a) D is a promoter in relation to the notifiable proposal or notifiable arrangement; or
- (b) D enters into any transaction forming part of the notifiable proposal or notifiable arrangement.

(2) In this regulation—

- (a) “employee” and “employer” have the same meanings as they have for the purposes of the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003⁽³⁾; and
- (b) “employee” includes a person who is an office holder and “employer” includes a person under whom an office holder holds office, where the provisions of those Parts that are expressed to apply to employments also apply to such persons.

(1) See paragraph 3 of the Schedule for the definitions of “notifiable proposal” and “notifiable arrangements”.

(2) See paragraph 8 of the Schedule for the definition of “promoter”.

(3) 2003 c. 1. See section 3(2), which provides that “the employment income Parts” are Part 2 and Parts 3 to 7A. Section 3(2) was amended by paragraphs 2 and 4 of Schedule 2 to the Finance Act 2011 (c. 11).

(3) For the purposes of this regulation, where D is connected with another person (“E”), C is to be treated as an employee of E as well as being an employee of D.

(4) C is to be treated as a promoter where, but for this paragraph, a person would be under a duty under paragraph 17 of the Schedule.

(5) In this regulation, D is connected with E where D is closely bound to E by financial, economic or organisational links.

Legal professional privilege

5. A person (“F”) is not to be treated as a promoter in relation to a notifiable proposal or a notifiable arrangement where F’s involvement with the notifiable proposal or notifiable arrangement is such that F is not required by virtue of paragraph 32 of the Schedule to provide all of the prescribed information under paragraph 11(1) or 12(1) of the Schedule.

Other circumstances

6.—(1) This regulation applies to a person (“G”) who, but for the following paragraphs, would be a promoter in relation to a notifiable proposal or a notifiable arrangement by virtue of paragraph 8(2)(a) or (3)(a) of the Schedule.

(2) G is not a promoter in relation to the notifiable proposal or notifiable arrangement where paragraph (3), (4) or (5) applies.

(3) This paragraph applies where G, in the course of providing tax advice, is not responsible for the design of any element of the notifiable proposal or notifiable arrangement from which the tax advantage expected to be obtained arises.

(4) This paragraph applies where G—

- (a) in the course of a relevant business described in paragraph 8(4)(a) of the Schedule, is to any extent responsible for the design of the notifiable proposal or notifiable arrangement; but
- (b) does not provide tax advice in the course of carrying out G’s responsibilities in relation to the notifiable proposal or notifiable arrangement.

(5) This paragraph applies where G—

- (a) is not responsible for the design of all the elements of the notifiable proposal or notifiable arrangement from which the tax advantage expected to be obtained arises; and
- (b) could not reasonably be expected to have sufficient information as would enable G—
 - (i) to know whether or not the proposal or the arrangement is a notifiable proposal or a notifiable arrangement; or
 - (ii) to comply with paragraph 11(1) or 12(1) of the Schedule.