



Finance Act 2004

2004 CHAPTER 12

PART 7

DISCLOSURE OF TAX AVOIDANCE SCHEMES

306 Meaning of “notifiable arrangements” and “notifiable proposal”

- (1) In this Part “notifiable arrangements” means any arrangements which—
- (a) fall within any description prescribed by the Treasury by regulations,
 - (b) enable, or might be expected to enable, any person to obtain an advantage in relation to any tax that is so prescribed in relation to arrangements of that description, and
 - (c) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage.
- (2) In this Part “notifiable proposal” means a proposal for arrangements which, if entered into, would be notifiable arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).

307 Meaning of “promoter”

- (1) For the purposes of this Part a person is a promoter—
- (a) in relation to a notifiable proposal, if, in the course of a relevant business—
 - (i) he is to any extent responsible for the design of the proposed arrangements, or
 - (ii) he makes the notifiable proposal available for implementation by other persons, and
 - (b) in relation to notifiable arrangements, if he is by virtue of paragraph (a)(ii) a promoter in relation to a notifiable proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for—
 - (i) the design of the arrangements, or
 - (ii) the organisation or management of the arrangements.

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- (2) In this section “relevant business” means any trade, profession or business which—
 - (a) involves the provision to other persons of services relating to taxation, or
 - (b) is carried on by a bank, as defined by section 840A of the Taxes Act 1988, or by a securities house, as defined by section 209A(4) of that Act.
- (3) For the purposes of this section anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business falling within subsection (2)(b) carried on by another company which is a member of the same group.
- (4) Section 170 of the Taxation of Chargeable Gains Act 1992 (c. 12) has effect for determining for the purposes of subsection (3) whether two companies are members of the same group, but as if in that section—
 - (a) for each of the references to a 75 per cent subsidiary there were substituted a reference to a 51 per cent subsidiary, and
 - (b) subsection (3)(b) and subsections (6) to (8) were omitted.
- (5) A person is not to be treated as a promoter for the purposes of this Part by reason of anything done in prescribed circumstances.

308 Duties of promoter

- (1) The promoter must, within the prescribed period after the relevant date, provide the Board with prescribed information relating to any notifiable proposal.
- (2) In subsection (1) “the relevant date” means the earlier of the following—
 - (a) the date on which the promoter makes a notifiable proposal available for implementation by any other person, or
 - (b) the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements implementing the notifiable proposal.
- (3) The promoter must, within the prescribed period after the date on which he first becomes aware of any transaction forming part of any notifiable arrangements, provide the Board with prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under subsection (1).
- (4) Where two or more persons are promoters in relation to the same notifiable proposal or notifiable arrangements, compliance by any of them with subsection (1) or (3) discharges the duty under either of those subsections of the other or others.
- (5) Where a person is a promoter in relation to two or more notifiable proposals or sets of notifiable arrangements which are substantially the same (whether they relate to the same parties or different parties), he need not provide information under subsection (1) or (3) if he has already provided information under either of those subsections in relation to any of the other proposals or arrangements.

309 Duty of person dealing with promoter outside United Kingdom

- (1) Any person (“the client”) who enters into any transaction forming part of any notifiable arrangements in relation to which—
 - (a) a promoter is resident outside the United Kingdom, and
 - (b) no promoter is resident in the United Kingdom,

must, within the prescribed period after doing so, provide the Board with prescribed information relating to the notifiable arrangements.

- (2) Compliance with section 308(1) by any promoter in relation to the notifiable arrangements discharges the duty of the client under subsection (1).

310 Duty of parties to notifiable arrangements not involving promoter

Any person who enters into any transaction forming part of notifiable arrangements as respects which neither he nor any other person in the United Kingdom is liable to comply with section 308 (duties of promoter) or section 309 (duty of person dealing with promoter outside the United Kingdom) must at the prescribed time provide the Board with prescribed information relating to the notifiable arrangements.

311 Arrangements to be given reference number

- (1) Where a person complies with section 308(1) or (3), 309(1) or 310 in relation to any notifiable proposal or notifiable arrangements, the Board may within 30 days—
- (a) allocate a reference number to the notifiable arrangements or, in the case of a notifiable proposal, to the proposed notifiable arrangements, and
 - (b) if it does so, notify the person of that number.
- (2) The allocation of a reference number to any notifiable arrangements (or proposed notifiable arrangements) is not to be regarded as constituting any indication by the Board that the arrangements could as a matter of law result in the obtaining by any person of a tax advantage.
- (3) In this Part “reference number”, in relation to any notifiable arrangements, means the reference number allocated under this section.

312 Duty of promoter to notify client of number

- (1) Any promoter who is providing services to any person (“the client”) in connection with notifiable arrangements must, within 30 days after the relevant date, provide the client with prescribed information relating to any reference number that has been notified to the promoter by the Board—
- (a) in relation to those arrangements, or
 - (b) in relation to arrangements which are substantially the same as those arrangements (whether made between the same parties or different parties).
- (2) In subsection (1) “the relevant date” means—
- (a) the date on which the promoter first becomes aware of any transaction forming part of the notifiable arrangements, or
 - (b) if later, the date on which the number is notified to the promoter under section 311.

313 Duty of parties to notifiable arrangements to notify Board of number, etc.

- (1) Any person who is a party to any notifiable arrangements must provide the Board with prescribed information relating to—
- (a) any reference number notified to him under section 311 by the Board or under section 312 by the promoter, and

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- (b) the time when he obtains or expects to obtain by virtue of the arrangements an advantage in relation to any relevant tax.
- (2) For the purposes of subsection (1) a tax is a “relevant tax” in relation to any notifiable arrangements if it is prescribed in relation to arrangements of that description by regulations under section 306.
- (3) Regulations under subsection (1) may—
- (a) in prescribed cases, require the number and other information to be included in any return or account which the person is required by or under any enactment to deliver to the Board, and
 - (b) in prescribed cases, require the number and other information to be provided separately to the Board at the prescribed time or times.
- (4) A person is not liable to a penalty under—
- (a) section 95 of the Taxes Management Act 1970 (c. 9) (incorrect return or accounts for income tax or capital gains tax),
 - (b) paragraph 8 of Schedule 2 to the Oil Taxation Act 1975 (c. 22) (incorrect returns and accounts for purposes of petroleum revenue tax),
 - (c) section 247 of the Inheritance Tax Act 1984 (c. 51) (provision of incorrect information for purposes of inheritance tax),
 - (d) any provision relating to incorrect or uncorrected returns made under section 98 of the Finance Act 1986 (c. 41) (administration of stamp duty reserve tax),
 - (e) paragraph 20 of Schedule 18 to the Finance Act 1998 (c. 36) (incorrect or uncorrected return for corporation tax),
 - (f) paragraph 8 of Schedule 10 to the Finance Act 2003 (c. 14) (incorrect or uncorrected return for purposes of stamp duty land tax), or
 - (g) any other prescribed provision,
- by reason of any failure to include in any return or account any reference number or other information required by virtue of subsection (3)(a) (but see section 98C of the Taxes Management Act 1970 for the penalty for failure to comply with this section).

314 Legal professional privilege

- (1) Nothing in this Part requires any person to disclose to the Board any privileged information.
- (2) In this Part “privileged information” means information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings.

315 Penalties

- (1) After section 98B of the Taxes Management Act 1970 insert—

“98C Notification under Part 7 of Finance Act 2004

- (1) A person who fails to comply with any of the provisions of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) mentioned in subsection (2) below shall be liable—
 - (a) to a penalty not exceeding £5,000, and

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- (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under paragraph (a) was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (2) Those provisions are—
- (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 United Kingdom),
 - (c) section 310 (duty of parties to notifiable arrangements not involving promoter), or
 - (d) section 312(1) (duty of promoter to notify client of reference number).
- (3) A person who fails to comply with section 313(1) of the Finance Act 2004 (duties of parties to notifiable arrangements to notify Board of reference number, etc.) shall be liable to a penalty of the relevant sum.
- (4) In subsection (3) above “the relevant sum” means—
- (a) in relation to a person not falling within paragraph (b) or (c) below, £100 in respect of each scheme to which the failure relates,
 - (b) in relation to a person who has previously failed to comply with section 313(1) on one (and only one) occasion during the period of 36 months ending with the date on which the current failure to comply with that provision began, £500 in respect of each scheme to which the current failure relates (whether or not the same as the scheme to which the previous failure relates), or
 - (c) in relation to a person who has previously failed to comply with section 313(1) on two or more occasions during the period of 36 months ending with the date on which the current failure to comply with that provision began, £1,000 in respect of each scheme to which the current failure relates (whether or not the same as the schemes to which any of the previous failures relates).
- (5) In subsection (4) above “scheme” means any notifiable arrangements within the meaning of Part 7 of the Finance Act 2004.”
- (2) In section 100 of that Act (determination of penalties by officer of Board) at the end of subsection (2) (penalties to which subsection (1) of the section does not apply) insert “, or
- (f) section 98C(1)(a) above.”
- (3) In section 100C of that Act (penalty proceedings before Commissioners) after subsection (1) insert—
- “(1A) In its application to a penalty under section 98C(1)(a) above, subsection (1) above has effect with the omission of the words “General or”.”

316 Information to be provided in form and manner specified by Board

The information required by section 308(1) or (3), 309(1), 310, 312(1) or 313(1) must be provided in a form and manner specified by the Board.

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317 Regulations under Part 7

- (1) Any power of the Treasury or the Board to make regulations under this Part is exercisable by statutory instrument.
- (2) Regulations made by the Treasury or the Board under this Part may contain transitional provisions and savings.
- (3) A statutory instrument containing regulations made by the Treasury or the Board under any provision of this Part is subject to annulment in pursuance of a resolution of the House of Commons.

318 Interpretation of Part 7

- (1) In this Part—
 - “advantage”, in relation to any tax, means—
 - (a) relief or increased relief from, or repayment or increased repayment of, that tax, or the avoidance or reduction of a charge to that tax or an assessment to that tax or the avoidance of a possible assessment to that tax,
 - (b) the deferral of any payment of tax or the advancement of any repayment of tax, or
 - (c) the avoidance of any obligation to deduct or account for any tax;
 - “arrangements” includes any scheme, transaction or series of transactions;
 - “corporation tax” includes any amount which, by virtue of any of the provisions mentioned in paragraph 1 of Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns, assessments and related matters) is assessable and chargeable as if it were corporation tax;
 - “notifiable arrangements” has the meaning given by section 306(1);
 - “notifiable proposal” has the meaning given by section 306(2);
 - “prescribed”, except in section 306, means prescribed by regulations made by the Board;
 - “promoter”, in relation to notifiable arrangements or a notifiable proposal, has the meaning given by section 307;
 - “reference number”, in relation to notifiable arrangements, has the meaning given by section 311(3);
 - “tax” means—
 - (a) income tax,
 - (b) capital gains tax,
 - (c) corporation tax,
 - (d) petroleum revenue tax,
 - (e) inheritance tax,
 - (f) stamp duty land tax, or
 - (g) stamp duty reserve tax.
- (2) Subject to subsection (1), expressions which are defined in the Taxes Act 1988 for the purposes of the Tax Acts, as defined in section 831(2) of that Act, have the same meaning in this Part.

319 Part 7: commencement and savings

- (1) The following provisions of this Part come into force on the passing of this Act—
sections 306 to 315, so far as is necessary for enabling the making of any regulations for which they provide, and
sections 317 and 318 and this section.
- (2) Except as provided by subsection (1), the provisions of this Part come into force on 1st August 2004.
- (3) Section 308 does not apply to a promoter in the case of—
 - (a) any notifiable proposal as respects which the relevant date, as defined by subsection (2) of that section, fell before 18th March 2004,
 - (b) any notifiable arrangements which implement such a proposal, or
 - (c) any notifiable arrangements which include any transaction entered into before 18th March 2004.
- (4) Sections 309 and 310 do not apply in relation to notifiable arrangements which include any transaction entered into before 23rd April 2004.
- (5) Section 313 does not apply in relation to any notifiable arrangements in respect of which, by virtue of subsection (3) or (4), none of the duties imposed by sections 308 to 310 arises.