

SCHEDULES

SCHEDULE 2

Section 19

DISCLOSURE OF VALUE ADDED TAX AVOIDANCE SCHEMES

PART 1

PRINCIPAL AMENDMENTS OF VALUE ADDED TAX ACT 1994

1 After section 58 of the Value Added Tax Act 1994 (c. 23) insert—

“Disclosure of avoidance schemes

58A Disclosure of avoidance schemes

Schedule 11A (which imposes disclosure requirements relating to the use of schemes for avoiding VAT) shall have effect.”.

2 After Schedule 11 to that Act insert—

“SCHEDULE 11A

Section 58A

DISCLOSURE OF AVOIDANCE SCHEMES

Interpretation

1 In this Schedule—

- “designated scheme” has the meaning given by paragraph 3(4);
- “notifiable scheme” has the meaning given by paragraph 5(1);
- “scheme” includes any arrangements, transaction or series of transactions;
- “tax advantage” is to be read in accordance with paragraph 2.

Obtaining a tax advantage

2 (1) For the purposes of this Schedule, a person obtains a tax advantage if—

- (a) in any prescribed accounting period, the amount by which the output tax accounted for by him exceeds the input tax deducted by him is less than it otherwise would be, or
- (b) he obtains a VAT credit when he would not otherwise do so, or obtains a larger VAT credit or obtains a VAT credit earlier than would otherwise be the case.

(2) A person also obtains a tax advantage for the purposes of this Schedule if, in a case where he recovers input tax as a recipient of a supply before

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the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case.

Designation by order of avoidance schemes

- 3 (1) If it appears to the Treasury—
- (a) that a scheme of a particular description has been, or might be, entered into for the purpose of enabling any person to obtain a tax advantage, and
 - (b) that it is unlikely that persons would enter into a scheme of that description unless the main purpose, or one of the main purposes, of doing so was the obtaining by any person of a tax advantage,
- the Treasury may by order designate that scheme for the purposes of this paragraph.
- (2) A scheme may be designated for the purposes of this paragraph even though the Treasury are of the opinion that no scheme of that description could as a matter of law result in the obtaining by any person of a tax advantage.
- (3) The order must allocate a reference number to each scheme.
- (4) In this Schedule “designated scheme” means a scheme of a description designated for the purposes of this paragraph.

Designation by order of provisions included in or associated with avoidance schemes

- 4 (1) If it appears to the Treasury that a provision of a particular description is, or is likely to be, included in or associated with schemes that are entered into for the purpose of enabling any person to obtain a tax advantage, the Treasury may by order designate that provision for the purposes of this paragraph.
- (2) A provision may be designated under this paragraph even though it also appears to the Treasury that the provision is, or is likely to be, included in or associated with schemes that are not entered into for the purpose of obtaining a tax advantage.
- (3) In this paragraph “provision” includes any agreement, transaction, act or course of conduct.

Meaning of “notifiable scheme”

- 5 (1) For the purposes of this Schedule, a scheme is a “notifiable scheme” if—
- (a) it is a designated scheme, or
 - (b) although it is not a designated scheme, conditions A and B below are met in relation to it.
- (2) Condition A is that the scheme includes, or is associated with, a provision of a description designated under paragraph 4.

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- (3) Condition B is that the scheme has as its main purpose, or one of its main purposes, the obtaining of a tax advantage by any person.

Duty to notify Commissioners

- 6 (1) This paragraph applies in relation to a taxable person where—
- (a) the amount of VAT shown in a return in respect of a prescribed accounting period as payable by or to him is less than or greater than it would be but for any notifiable scheme to which he is party, or
 - (b) he makes a claim for the repayment of output tax or an increase in credit for input tax in respect of any prescribed accounting period in respect of which he has previously delivered a return and the amount claimed is greater than it would be but for such a scheme.
- (2) Where the scheme is a designated scheme, the taxable person must notify the Commissioners within the prescribed time, and in such form and manner as may be required by or under regulations, of the reference number allocated to the scheme under paragraph 3(3).
- (3) Where the scheme is not a designated scheme, the taxable person must, subject to sub-paragraph (4), provide the Commissioners within the prescribed time, and in such form and manner as may be required by or under regulations, with prescribed information relating to the scheme.
- (4) Sub-paragraph (3) does not apply where the scheme is one in respect of which any person has previously—
- (a) provided the Commissioners with prescribed information under paragraph 9, and
 - (b) provided the taxable person with a reference number notified to him by the Commissioners under paragraph 9(2)(b).
- (5) The taxable person is not obliged to comply with sub-paragraph (2) or (3) in relation to any scheme if he has on a previous occasion complied with that sub-paragraph in relation to that scheme.
- (6) This paragraph has effect subject to paragraph 7.

Exemptions from duty to notify under paragraph 6

- 7 (1) Paragraph 6 does not apply to a taxable person in relation to a scheme—
- (a) where the taxable person is not a group undertaking in relation to any other undertaking and conditions A and B below, as they have effect in relation to the scheme, are met in relation to the taxable person, or
 - (b) where the taxable person is a group undertaking in relation to any other undertaking and conditions A and B below, as they have effect in relation to the scheme, are met in relation to the taxable person and every other group undertaking.
- (2) Condition A is that the total value of the person's taxable supplies and exempt supplies in the period of twelve months ending immediately

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before the beginning of the relevant period is less than the minimum turnover.

- (3) Condition B is that the total value of the person's taxable supplies and exempt supplies in the prescribed accounting period immediately preceding the relevant period is less than the appropriate proportion of the minimum turnover.
- (4) In sub-paragraphs (2) and (3) "the minimum turnover" means—
 - (a) in relation to a designated scheme, £600,000, and
 - (b) in relation to any other notifiable scheme, £10,000,000.
- (5) In sub-paragraph (3) "the appropriate proportion" means the proportion which the length of the prescribed accounting period bears to twelve months.
- (6) The value of a supply of goods or services shall be determined for the purposes of this paragraph on the basis that no VAT is chargeable on the supply.
- (7) The Treasury may by order substitute for the sum for the time being specified in sub-paragraph (4)(a) or (b) such other sum as they think fit.
- (8) This paragraph has effect subject to paragraph 8.
- (9) In this paragraph—

"relevant period" means the prescribed accounting period referred to in paragraph 6(1)(a) or (b);

"undertaking" and "group undertaking" have the same meanings as in Part 7 of the Companies Act 1985.

Power to exclude exemption

- 8 (1) The purpose of this paragraph is to prevent the maintenance or creation of any artificial separation of business activities carried on by two or more persons from resulting in an avoidance of the obligations imposed by paragraph 6.
- (2) In determining for the purposes of sub-paragraph (1) whether any separation of business activities is artificial, regard shall be had to the extent to which the different persons carrying on those activities are closely bound to one another by financial, economic and organisational links.
- (3) If the Commissioners make a direction under this section—
 - (a) the persons named in the direction shall be treated for the purposes of paragraph 7 as a single taxable person carrying on the activities of a business described in the direction with effect from the date of the direction or, if the direction so provides, from such later date as may be specified in the direction, and
 - (b) if paragraph 7 would not exclude the application of paragraph 6, in respect of any notifiable scheme, to that single taxable person, it shall not exclude the application of paragraph 6, in respect of that scheme, to the persons named in the direction.

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- (4) The Commissioners shall not make a direction under this section naming any person unless they are satisfied—
- (a) that he is making or has made taxable or exempt supplies,
 - (b) that the activities in the course of which he makes those supplies form only part of certain activities, the other activities being carried on concurrently or previously (or both) by one or more other persons, and
 - (c) that, if all the taxable and exempt supplies of the business described in the direction were taken into account, conditions A and B in paragraph 7(2) and (3), as those conditions have effect in relation to designated schemes, would not be met in relation to that business.
- (5) A direction under this paragraph shall be served on each of the persons named in it.
- (6) A direction under this paragraph remains in force until it is revoked or replaced by a further direction.

Voluntary notification of avoidance scheme that is not designated scheme

- 9 (1) Any person may, at any time, provide the Commissioners with prescribed information relating to a scheme or proposed scheme of a particular description which is (or, if implemented, would be) a notifiable scheme by virtue of paragraph 5(1)(b).
- (2) On receiving the prescribed information, the Commissioners may—
- (a) allocate a reference number to the scheme (if they have not previously done so under this paragraph), and
 - (b) notify the person who provided the information of the number allocated.

Penalty for failure to notify use of notifiable scheme

- 10 (1) A person who fails to comply with paragraph 6 shall be liable, subject to sub-paragraphs (2) and (3), to a penalty of an amount determined under paragraph 11.
- (2) Conduct falling within sub-paragraph (1) shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the failure.
- (3) Where, by reason of conduct falling within sub-paragraph (1)—
- (a) a person is convicted of an offence (whether under this Act or otherwise), or
 - (b) a person is assessed to a penalty under section 60,
- that conduct shall not give rise to a penalty under this paragraph.

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Amount of penalty

- 11 (1) Where the failure mentioned in paragraph 10(1) relates to a notifiable scheme that is not a designated scheme, the amount of the penalty is £5,000.
- (2) Where the failure mentioned in paragraph 10(1) relates to a designated scheme, the amount of the penalty is 15 per cent. of the VAT saving (as determined under sub-paragraph (3)).
- (3) For this purpose the VAT saving is—
- (a) to the extent that the case falls within paragraph 6(1)(a), the aggregate of—
 - (i) the amount by which the amount of VAT that would, but for the scheme, have been shown in returns in respect of the relevant periods as payable by the taxable person exceeds the amount of VAT that was shown in those returns as payable by him, and
 - (ii) the amount by which the amount of VAT that was shown in such returns as payable to the taxable person exceeds the amount of VAT that would, but for the scheme, have been shown in those returns as payable to him, and
 - (b) to the extent that the case falls within paragraph 6(1)(b), the amount by which the amount claimed exceeds the amount which the taxable person would, but for the scheme, have claimed.
- (4) In sub-paragraph (3)(a) “the relevant periods” means the prescribed accounting periods beginning with that in respect of which the duty to comply with paragraph 6 first arose and ending with the earlier of the following—
- (a) the prescribed accounting period in which the taxable person complied with that paragraph, and
 - (b) the prescribed accounting period immediately preceding the notification by the Commissioners of the penalty assessment.

Penalty assessments

- 12 (1) Where any person is liable under paragraph 10 to a penalty of an amount determined under paragraph 11, the Commissioners may, subject to sub-paragraph (3), assess the amount due by way of penalty and notify it to him accordingly.
- (2) The fact that any conduct giving rise to a penalty under paragraph 10 may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.
- (3) In a case where the penalty falls to be calculated by reference to the VAT saving as determined under paragraph 11(3) and the VAT that would, but for the scheme, have been shown in returns as payable by or to the taxable person cannot be readily attributed to any one or more prescribed accounting periods, it shall be treated for the purposes of this Schedule as VAT that would, but for the scheme, have been shown as payable

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- by or to the taxable person in returns for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the penalty.
- (4) No assessment to a penalty under this paragraph shall be made more than two years from the time when facts sufficient, in the opinion of the Commissioners, to indicate that there has been a failure to comply with paragraph 6 in relation to a notifiable scheme came to the Commissioners' knowledge.
- (5) Where the Commissioners notify a person of a penalty in accordance with sub-paragraph (1), the notice of assessment shall specify—
- (a) the amount of the penalty,
 - (b) the reasons for the imposition of the penalty,
 - (c) how the penalty has been calculated, and
 - (d) any reduction of the penalty in accordance with section 70.
- (6) Where a person is assessed under this paragraph to an amount due by way of penalty and is also assessed under section 73(1), (2), (7), (7A) or (7B) for any of the prescribed accounting periods to which the assessment under this paragraph relates, the assessments may be combined and notified to him as one assessment, but the amount of the penalty shall be separately identified in the notice.
- (7) If an amount is assessed and notified to any person under this paragraph, then unless, or except to the extent that, the assessment is withdrawn or reduced, that amount shall be recoverable as if it were VAT due from him.
- (8) Subsection (10) of section 76 (notification to certain persons acting for others) applies for the purposes of this paragraph as it applies for the purposes of that section.
- 13 Regulations under this Schedule—
- (a) may make different provision for different circumstances, and
 - (b) may include transitional provisions or savings.”.

PART 2

CONSEQUENTIAL AMENDMENTS

- 3 In section 70 of the Value Added Tax Act 1994 (c. 23) (mitigation of penalties), in subsection (1) after “69A” insert “or under paragraph 10 of Schedule 11A”.
- 4 In section 83 of that Act (appeals) after paragraph (z) insert—
- “(za) a direction under paragraph 8 of Schedule 11A,
 - (zb) any liability to a penalty under paragraph 10(1) of Schedule 11A, any assessment under paragraph 12(1) of that Schedule or the amount of such an assessment;”.
- 5 (1) Section 84 of that Act (further provisions relating to appeals) is amended as follows.
- (2) In subsection (3), for “or (ra)” substitute “, (ra) or (zb)”.
- (3) After subsection (6) insert—

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“(6A) Without prejudice to section 70, nothing in section 83(zb) shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 11 of Schedule 11A.”.

- 6 In section 97 of that Act (orders, rules and regulations) in subsection (4) (which lists powers exercisable subject to affirmative procedure in the House of Commons) after paragraph (f) insert—

“(g) an order under paragraph 3 or 4 of Schedule 11A.”.