

## SCHEDULES

### SCHEDULE 19

#### LARGE BUSINESSES: TAX STRATEGIES AND SANCTIONS

#### PART 3

##### SANCTIONS FOR PERSISTENTLY UNCO-OPERATIVE LARGE BUSINESSES

###### *Large groups falling within Part 3*

- 35 A UK group falls within this Part of this Schedule (“this Part”) if—
- (a) the group has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),
  - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the group or members of the group which are unresolved (see paragraph 39), and
  - (c) there is a reasonable likelihood of further instances of the group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the group or members of the group.
- 36 (1) A UK group has “engaged in unco-operative behaviour” if—
- (a) a member of the group has satisfied either or both of the conditions listed in sub-paragraph (2), or
  - (b) two or more of the members of the group, taken together, have satisfied either or both of those conditions.
- (2) Those conditions are—
- (a) the behaviour condition (see paragraph 37);
  - (b) the arrangements condition (see paragraph 38).
- (3) A UK group has engaged in unco-operative behaviour “persistently” if—
- (a) a member of the group has done so persistently, or
  - (b) two or more members of the group, taken together, have done so persistently.
- (4) References in this Part to doing something “persistently” include doing it on a sufficient number of occasions for it to be clear that it represents a pattern of behaviour.
- 37 (1) A member of a UK group has, or two or more members of a UK group (taken together) have, “satisfied the behaviour condition” if it has, or they have, behaved in a manner which has delayed or otherwise hindered HMRC in the exercise of their functions in connection with determining the liability to UK taxation of the group or a member of the group.

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- (2) Factors which may indicate that a member of a UK group has behaved as described in sub-paragraph (1) include—
- (a) the extent to which HMRC have used statutory powers to obtain information relating to the UK group or members of the group;
  - (b) the reasons why those powers have been used;
  - (c) the number and seriousness of inaccuracies in, and omissions from, documents given to HMRC by or on behalf of the UK group or members of the group;
  - (d) the extent to which, in dealings with HMRC, members of the group (or people acting on their behalf) have relied on interpretations of legislation relating to UK taxation which, at the time, are speculative.
- (3) An interpretation of legislation relating to UK taxation is “speculative” if it is likely that a court or tribunal would disagree with it.
- 38 (1) A member of a UK group has “satisfied the arrangements condition” if it is a party to a tax avoidance scheme.
- (2) “Tax avoidance scheme” means—
- (a) arrangements in respect of which a notice of final decision has been given under—
    - (i) paragraph 12 of Schedule 43 to FA 2013,
    - (ii) paragraph 5 or 6 of Schedule 43A to FA 2013, or
    - (iii) paragraph 9 of Schedule 43B to FA 2013,
 stating that a tax advantage arising from the arrangements is to be counteracted;
  - (b) arrangements which are notifiable arrangements for the purposes of Part 7 of FA 2004 (disclosure of tax avoidance schemes), other than arrangements in relation to which HMRC have given notice under section 312(6) of FA 2004 (notice that promoters not under duty to provide clients with prescribed information);
  - (c) a scheme which is a notifiable scheme for the purposes of Schedule 11A to VATA 1994 (disclosure of avoidance schemes).
- 39 (1) There is a significant tax issue in respect of a UK group or a member of a UK group where—
- (a) there is a disagreement between HMRC and a member of the group about an issue affecting the amount of the liability of the group or a member of the group to UK taxation,
  - (b) the issue has been, or could be, referred to a court or tribunal to determine, and
  - (c) as regards the amount of the liability, the difference between HMRC’s view and the view of the member is, or is likely to be, not less than £2 million.
- (2) The reference in sub-paragraph (1)(a) to circumstances in which there is a disagreement include circumstances in which there is a reasonable likelihood of a disagreement.
- (3) The Treasury may by regulations substitute a higher amount for the amount for the time being specified in sub-paragraph (1)(c).
- 40 The references in paragraphs 36 to 39 to things done by a member of a UK group (“the group in question”)—

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- (a) include acts and omissions of a relevant body that is not a member of the group in question if they took place at a time when the relevant body was a member of a group headed by the body that is the head of the group in question;
- (b) do not include acts or omissions of a relevant body that is a member of the group in question if they took place at a time when the relevant body was not a member of a group headed by the body that is the head of the group in question.

#### *Warning notices*

- 41 (1) A designated HMRC officer may give the head of a UK group a notice under this paragraph (a “warning notice”) if the officer considers that the group is a qualifying group that falls within this Part.
- (2) The notice must set out the reasons why the officer considers that the group falls within this Part.
- (3) The notice—
- (a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the group, and
  - (b) expires (if not previously withdrawn) at the end of the period of 15 months beginning with the day on which it was given.
- (4) Once a warning notice has been given —
- (a) it is immaterial for the purposes of this Part whether the group remains a qualifying group,
  - (b) the identity of the group is not to be regarded as altered by any change in its membership resulting from a relevant body—
    - (i) becoming a 51% subsidiary of a member of the group, or
    - (ii) ceasing to be a 51% subsidiary of another member of the group; and
  - (c) if the group becomes a UK sub-group of a foreign group it is to be treated as if it were still a UK group.
- (5) Sub-paragraph (4) applies while the group is subject to—
- (a) the warning notice, or
  - (b) any other notice under this Part issued as a result of the group having been given the warning notice.

#### *Special measures notices*

- 42 (1) This paragraph applies to a UK group if—
- (a) the head of the group has been given a warning notice in relation to the group that has not been withdrawn,
  - (b) the period of 12 months beginning with the day on which the warning notice was given has elapsed, and
  - (c) the period of 15 months beginning with that day has not elapsed.
- (2) If a designated HMRC officer considers that the group falls within this Part, the officer may give the head of the group a notice under this paragraph (a “special measures notice”).

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- (3) When considering whether the group falls within this Part, the officer may take into account any relevant behaviour, whether or not it is mentioned in the warning notice.
- (4) When deciding whether to give a special measures notice, the designated HMRC officer must consider any representations made by a member of the group before the end of the period of 12 months beginning with the day on which the warning notice was given.
- (5) The special measures notice must set out the reasons why the officer considers that the group falls within this Part.
- (6) Paragraph 45 deals with other circumstances in which a UK group may be given a special measures notice.
- 43 (1) A special measures notice—
- (a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the UK group, and
  - (b) expires, if not previously withdrawn, at the end of the period of 27 months beginning with the relevant day.
- (2) “The relevant day” means the later of—
- (a) the day on which the special measures notice was given, and
  - (b) the day on which it was last confirmed under paragraph 44.
- 44 (1) This paragraph applies to a UK group if—
- (a) the head of the group has been given a special measures notice in relation to the group which has not been withdrawn,
  - (b) the period of 24 months beginning with the relevant day has elapsed, and
  - (c) the period of 27 months beginning with that day has not elapsed.
- (2) If a designated HMRC officer considers that the group falls within this Part, the officer may give the head of the group a notice under this paragraph (a “confirmation notice”) confirming the special measures notice given in relation to the group.
- (3) When considering whether the group falls within this Part, the officer may take into account any relevant behaviour, whether or not it is mentioned in the special measures notice which is to be confirmed, in any previous confirmation notice or in the warning notice.
- (4) “The relevant day” has the same meaning as in paragraph 43(2).
- (5) The confirmation notice must set out the reasons why the officer considers that the group falls within this Part.
- (6) When deciding whether to give a confirmation notice, a designated HMRC officer must consider any representations made by a member of the group before the end of the period of 24 months beginning with the relevant day.
- (7) A confirmation notice—
- (a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the group, and
  - (b) expires, if not previously withdrawn, at the end of the period of 27 months beginning with the day on which it is given.
- 45 (1) This paragraph applies in relation to a UK group where—

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- (a) the head of the group has been given a warning notice or a special measures notice in relation to the group, and
  - (b) that notice has expired.
- (2) A designated HMRC officer may give the head of a UK group a special measures notice if—
- (a) it appears to the officer that—
    - (i) during the period of 6 months beginning with the day on which the notice mentioned in sub-paragraph (1)(a) expired (“the expiry day”), the group has engaged in unco-operative behaviour (see paragraphs 36 to 38), and
    - (ii) there is a reasonable likelihood that, if it had engaged in the behaviour before the notice expired, a designated HMRC officer would have considered that the group fell within this Part (so that a special measures notice or confirmation notice could have been given to the head of the group),
  - (b) during the period of 7 months beginning with the expiry day, a designated HMRC officer has notified the head of the group that the power under this paragraph may be exercised in relation to the group, and
  - (c) the period of 9 months beginning with that day has not elapsed.
- (3) When deciding whether to give a special measures notice under this paragraph, the officer must consider any representations made by a member of the group before the end of the period of 8 months beginning with the expiry day.

*Circumstances in which warning and special measures notices are treated as having been given*

- 46 (1) Sub-paragraphs (2) and (3) apply where—
- (a) a relevant body (“B1”) is given a warning notice, and
  - (b) before the notice ceases to have effect, B1 becomes a member of a group headed by another relevant body (“H1”).
- (2) H1 is to be treated as having been given a warning notice on the day on which the warning notice was given to B1.
- (3) A warning notice treated as given under sub-paragraph (2) is valid whether or not, on the day mentioned in that sub-paragraph, H1 was the head of a qualifying UK group that fell within this Part.
- (4) Sub-paragraphs (5) to (7) apply where—
- (a) a relevant body (“B2”) is given a special measures notice, and
  - (b) before the notice ceases to have effect, B2 becomes a member of a group headed by another relevant body (“H2”).
- (5) H2 is to be treated as having been given a special measures notice on the day on which the special measures notice was given to B2.
- (6) A special measures notice treated as given under sub-paragraph (5) is valid whether or not, on the day mentioned in that sub-paragraph, H2 was the head of a qualifying UK group that fell within this Part.
- (7) Paragraph 47(1) does not by virtue of sub-paragraphs (5) and (6) of this paragraph apply to an inaccuracy in a document given to HMRC by or on behalf of a person—

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- (a) at a time when the person was a member of a group headed by H2, but
  - (b) before the day B2 becomes a member of H2.
- (8) Sub-paragraphs (9) and (10) apply where—
- (a) a relevant body (“B3”) is given a confirmation notice, and
  - (b) before the notice ceases to have effect, B3 becomes a member of a group headed by another relevant body (“H3”).
- (9) H3 is to be treated as having been given a confirmation notice on the day on which the confirmation notice was given to B3.
- (10) A confirmation notice treated as given under sub-paragraph (9) is valid whether or not, on the day mentioned in that sub-paragraph, H3 was the head of a qualifying UK group that fell within this Part.
- (11) The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to relevant bodies in other circumstances described in the regulations.
- (12) Regulations under this paragraph may, in particular—
- (a) make provision about the validity of notices treated as given by virtue of the regulations;
  - (b) make provision about the effect of paragraph 47(1) in cases involving such notices.

*Sanctions: liability for penalties for errors in documents given to HMRC*

- 47 (1) For the purposes of Schedule 24 to FA 2007 (penalties for errors), an inaccuracy in a document given to HMRC by or on behalf of a person is to be treated as being due to failure by the person to take reasonable care if—
- (a) the document was given to HMRC at a time when the person was a member of a group subject to a special measures notice, and
  - (b) the inaccuracy—
    - (i) relates to a tax avoidance scheme (as defined in paragraph 38) entered into by the person at a time when the person was a member of a group subject to a special measures notice, or
    - (ii) is, entirely or partly, attributable to an interpretation of legislation relating to UK taxation which, at the time the document was given to HMRC, was speculative.
- (2) A group is “subject to a special measures notice” if a special measures notice—
- (a) has been given to the head of the group in relation to the group, and
  - (b) is in force.
- (3) An interpretation of legislation relating to UK taxation is “speculative” if it is likely that a court or tribunal would disagree with it.
- (4) Sub-paragraph (1) does not apply to an inaccuracy if—
- (a) it is deliberate on the part of the person or someone acting on the person’s behalf,
  - (b) it is in fact due to a failure by the person or someone acting on the person’s behalf to take reasonable care, or
  - (c) it is treated as due to such a failure by virtue of another enactment.

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48 In Schedule 24 to FA 2007 (penalties for errors), at the end of paragraph 3 (meaning of “careless” etc) insert—

“(3) Paragraph 47 of Schedule 19 to FA 2016 (special measures for persistently unco-operative large businesses) provides for certain inaccuracies to be treated, for the purposes of this Schedule, as being due to a failure by P to take reasonable care.”

*Sanctions: Commissioners publishing information*

49 (1) If a group is subject to a confirmed special measures notice, the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) may publish the following information—

- (a) the name of the group, including any previous name;
- (b) the address or registered office of the head of the group;
- (c) any other information that the Commissioners consider it appropriate to publish in order to identify the group;
- (d) the fact that the group is subject to a confirmed special measures notice.

(2) A group is “subject to a confirmed special measures notice” if sub-paragraph (3) or (4) is satisfied.

(3) This sub-paragraph is satisfied if—

- (a) a special measures notice has been given to the head of the group and confirmed under paragraph 44, and
- (b) the special measures notice is in force.

(4) This sub-paragraph is satisfied if—

- (a) a special measures notice has been given to the head of the group and confirmed under paragraph 44,
- (b) that notice has ceased to have effect,
- (c) a further special measures notice has been given to the head of the group under paragraph 45 in the period of 9 months beginning with the day on which the special measures notice mentioned in paragraph (a) ceased to have effect, and
- (d) that notice is in force.

(5) Before publishing the information, the Commissioners must—

- (a) inform the head of the group that they are considering doing so, and
- (b) allow the head of the group a reasonable opportunity to make representations about whether the information should be published.

(6) If, after information about a group is published under this paragraph, the group ceases to be subject to a confirmed special measures notice, the Commissioners must publish a notice stating that the group is no longer subject to a confirmed special measures notice.

(7) A notice under sub-paragraph (6) must be published before the end of the period of 30 days beginning with the day on which the special measures notice is withdrawn or has expired.

(8) The Commissioners may publish information and notices under this paragraph in any manner they consider appropriate.

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*Application of Part 3 to large UK sub-groups*

- 50 (1) A UK sub-group of a foreign group falls within this Part if—
- (a) the sub-group has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),
  - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the sub-group or members of the sub-group which are unresolved (see paragraph 39), and
  - (c) there is a reasonable likelihood of further instances of the sub-group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the sub-group or members of the sub-group.
- (2) Paragraphs 36 to 40 apply in relation to a UK sub-group as they apply in relation to a UK group.
- (3) Paragraphs 41 to 45 apply in relation to the head of a UK sub-group of a foreign group that is a qualifying group at the material time as they apply in relation to the head of a UK group.
- (4) In the application of paragraph 41 in the case of a UK sub-group, sub-paragraph (4) has effect in relation to a UK sub-group as if for paragraphs (b) and (c) there were substituted—
- “(b) the identity of the sub-group is not to be regarded as altered by any change in its membership resulting from a relevant body—
    - (i) becoming a 51% subsidiary of a member of the sub-group, or
    - (ii) ceasing to be a 51% subsidiary of another member of the sub- group; and
  - (c) if the sub-group becomes a UK sub-group of another foreign group, it is to be treated as if it were still a UK sub-group of the original foreign group.”
- (5) As applied by this paragraph, paragraphs 36 to 45 have effect as if references to a UK group (including in references to the head of a UK group or members of a UK group) were references to a UK sub-group.
- (6) In paragraphs 40, 41, 46, 47 and 49, references to a group (including in references to the head of a group or members of a group) include a UK sub-group.
- (7) In paragraph 46, references to the head of a UK group include the head of a UK sub-group.

*Application of Part 3 to large companies*

- 51 (1) A UK company falls within this Part if—
- (a) the company has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),
  - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the company which are unresolved (see paragraph 39), and



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- (c) there is a reasonable likelihood of further instances of the company engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the company.
- (2) Paragraphs 36 to 39 apply in relation to a company as they apply in relation to a UK group.
- (3) Paragraphs 41 to 45 apply in relation to a company as they apply in relation to the head of a UK group.
- (4) As applied by this paragraph, paragraphs 36 to 39 and 41 to 45 have effect as if references to a UK group, the head of a UK group or a member of a UK group were references to a company.
- (5) Paragraph 47 applies in relation to a company as it applies in relation to a member of a group.
- (6) Paragraph 49 applies in relation to a company as it applies in relation to a group.
- (7) As applied by this paragraph, paragraphs 47 and 49 have effect as if references to a group, the head of a group or a member of a group were references to a company.

#### *Application of Part 3 to large partnerships*

- 52 (1) A UK partnership falls within this Part if—
- (a) the partnership has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),
  - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the partnership which are unresolved (see paragraph 39), and
  - (c) there is a reasonable likelihood of further instances of the partnership engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the partnership.
- (2) Paragraphs 36 to 39 of this Schedule apply in relation to a UK partnership as they apply in relation to a UK group.
  - (3) Paragraphs 41 to 45 of this Schedule apply in relation to the representative partner of a UK partnership as they apply in relation to the head of a UK group.
  - (4) As applied by this paragraph, paragraphs 36 to 39 and 41 to 45 have effect as if—
    - (a) references to a UK group were references to a UK partnership;
    - (b) references to the head of a UK group were references to the representative partner of a UK partnership;
    - (c) references to a member of a UK group were references to a partner of a UK partnership, acting in the person's capacity as such.
  - (5) The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to the representative partner of a UK partnership in circumstances described in the regulations.
  - (6) Paragraph 46(12) applies to regulations under this paragraph.

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- (7) Paragraph 47 applies in relation to an inaccuracy in a document given to HMRC by a partner of a UK partnership, acting in the person's capacity as such, as if—
- (a) references to a group were references to a partnership;
  - (b) references to the head of a group were references to the representative partner of a partnership;
  - (c) references to a member of a group were references to a partner of a partnership.
- (8) Paragraph 47 applies in relation to an inaccuracy in any other document given to HMRC on behalf of a UK partnership as if—
- (a) references to a person included a UK partnership;
  - (b) references to a group, or a member of a group, were references to a UK partnership;
  - (c) references to the head of a group were references to the representative partner of a UK partnership.
- (9) Paragraph 49 applies in relation to a UK partnership as it applies in relation to a group.
- (10) As applied by this paragraph, paragraph 49 has effect as if—
- (a) references to a group were references to a UK partnership;
  - (b) references to the head of a group were references to the representative partner of a UK partnership.

*Meaning of “designated HMRC officer”*

- 53 In this Part “designated HMRC officer” means an officer of Revenue and Customs who has been designated by the Commissioners for Her Majesty's Revenue and Customs for the purposes of this Part.