

SCHEDULES

SCHEDULE 36

Section 281

PROMOTERS OF TAX AVOIDANCE SCHEMES: PARTNERSHIPS

PART 1

PARTNERSHIPS AS PERSONS

“Person” includes a partnership

- 1 (1) Persons carrying on a business in partnership—
 - (a) are regarded as a person for the purposes of this Part of this Act;
 - (b) are referred to in this Part as a “partnership”.
- (2) But in this Part of this Act “partnership” does not include a body of persons forming a legal person that is distinct from themselves (and paragraphs 2 to 21 may accordingly be disregarded in applying this Part of this Act to such a body of persons).
- (3) In the references in this Part to carrying on a business in partnership, “partnership” has the same meaning as in the Partnership Act 1890.

Continuity of partnerships

- 2 A partnership is regarded for the purposes of this Part of this Act as continuing to be the same partnership (and the same person) regardless of a change in membership, provided that a person who was a member before the change remains a member after the change.

Meeting of conditions

- 3 (1) Accordingly, for the purposes of this Part of this Act a partnership is taken—
 - (a) to have done any act that bound the members, and
 - (b) to have failed to comply with any obligation of the firm which the members failed to comply with;but see sub-paragraph (3).
- (2) In sub-paragraph (1), “the members” means those who were the members of the partnership or (in the case of a limited partnership) the general partners of the partnership at the time when the act was done or the failure to comply occurred.
- (3) Where a member of a partnership (“M”) has done, or failed to do, an act at any time (“the earlier time”), the partnership is not treated at any later time as having done, or failed to do, that act unless—
 - (a) M, or
 - (b) another person who was a member of the partnership at the earlier time,

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is a member of the partnership at the later time.

(4) In this paragraph “firm” has the same meaning as in the Partnership Act 1890.

Threshold conditions: actions of partners in a personal capacity

- 4 (1) Sub-paragraph (2) applies where—
- (a) a relevant threshold condition is met by a person (“P”) at a time (“the earlier time”) when P is a controlling member, or managing partner, of a partnership,
 - (b) a determination under section 237 is made at a later time in relation to the partnership, and
 - (c) P is a controlling member, or managing partner, of the partnership at the time of the determination.
- (2) The partnership is regarded as having met the threshold condition at the earlier time (regardless of whether or not the partnership was bound by the act or omission as a result of which P met the threshold condition).
- (3) “Relevant threshold condition” means a threshold condition specified in any of the following paragraphs of Schedule 34—
- (a) paragraph 2 (deliberate tax defaulters);
 - (b) paragraph 4 (dishonest tax agents);
 - (c) paragraph 6 (criminal offences);
 - (d) paragraph 7 (opinion notice of GAAR advisory panel);
 - (e) paragraph 8 (disciplinary action by a professional body);
 - (f) paragraph 9 (disciplinary action by a regulatory authority);
 - (g) paragraph 10 (failure to comply with information notice).

PART 2

CONDUCT NOTICES AND MONITORING NOTICES

Conduct notices

- 5 (1) A conduct notice that is given to a partnership must state that it is a partnership conduct notice.
- (2) In accordance with paragraphs 1 and 2, where the person to whom a conduct notice is given is a partnership, section 238 authorises the imposition of conditions relating to—
- (a) the persons who are members of the partnership when the conduct notice is given, and
 - (b) any person who becomes a member of the partnership after the conduct notice is given.

Monitoring notices

- 6 A monitoring notice that is given to a partnership must state that it is a partnership monitoring notice.

Person continuing to carry on partnership business as a sole trader

- 7 (1) This paragraph applies where—
- (a) a person or persons have ceased to be members of a partnership,
 - (b) immediately before the cessation, a conduct notice or monitoring notice had effect in relation to the partnership, and
 - (c) immediately after the cessation, a person who was a member of the partnership immediately before the cessation is carrying on the business of the partnership, but not in partnership.
- (2) Where this paragraph applies, the conduct notice or monitoring notice continues (despite paragraphs 1 and 2) to have effect in relation to the person mentioned in sub-paragraph (1)(c) (but, in relation to times when the business is not being carried on in partnership, the notice is not regarded for the purposes of this Part of this Act as a notice that has been given to a partnership.)

Persons leaving a partnership: conduct notices

- 8 (1) Sub-paragraphs (2) and (3) apply where—
- (a) a person (“P”) who was a controlling member of a partnership at the time when a conduct notice (“the original notice”) was given to the partnership has ceased to be a member of the partnership,
 - (b) the conduct notice had effect in relation to the partnership at the time of that cessation, and
 - (c) P is carrying on a business as a promoter.
- (2) An authorised officer may give P a conduct notice.
- (3) If P is carrying on a business as a promoter in partnership with one or more other persons and is a controlling member of that partnership (“the new partnership”), an authorised officer may give a conduct notice to the new partnership.
- (4) A conduct notice given under sub-paragraph (3) ceases to have effect if P ceases to be a member of the new partnership.
- (5) A notice under sub-paragraph (2) or (3) may not be given after the termination date of the original notice (under section 241(2)(a) or (b)).

Persons leaving a partnership: monitoring notices

- 9 (1) Sub-paragraphs (2) and (3) apply where—
- (a) a person (“P”) who was a controlling member of a partnership at the time when a monitoring notice was given to the partnership has ceased to be a member of the partnership,
 - (b) the monitoring notice had effect in relation to the partnership at the time of that cessation, and
 - (c) P is carrying on a business as a promoter.
- (2) An authorised officer may give P a monitoring notice.
- (3) If P is carrying on a business as a promoter in partnership with one or more other persons, and is a controlling member of that partnership (“the new partnership”), an authorised officer may give a monitoring notice to the new partnership.

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- (4) A monitoring notice given under sub-paragraph (3) ceases to have effect if P ceases to be a member of the new partnership.

Division of partnership business

- 10 (1) This paragraph applies if—
- (a) a person (“a departing partner”) who has been carrying on a business in partnership ceases to carry on the business in partnership,
 - (b) a conduct notice or a monitoring notice had effect in relation to the partnership immediately before the departing partner ceased to carry on the business in partnership, and
 - (c) the departing partner is continuing to carry on part (but not the whole) of the business (“the transferred part”).
- (2) The notice mentioned in sub-paragraph (1)(b) is referred to in this paragraph as “the original notice”.
- (3) An authorised officer may give the departing partner—
- (a) a conduct notice (if the original notice is a conduct notice);
 - (b) a monitoring notice (if the original notice is a monitoring notice).
- (4) If the departing partner is itself carrying on the transferred part of the business in partnership, the authorised officer may give that partnership (“the new partnership”)—
- (a) a conduct notice (if the original notice is a conduct notice);
 - (b) a monitoring notice (if the original notice is a monitoring notice).
- (5) A notice given under sub-paragraph (4) ceases to have effect if the departing partner ceases to be a member of the new partnership.
- (6) A notice under sub-paragraph (3)(a) or (4)(a) may not be given after the termination date of the original notice (under section 241(2)(a) or (b)).
- (7) It does not matter whether one, some or all of the persons who were carrying on the business in partnership are departing partners by virtue of sub-paragraph (1).

Notices under paragraphs 8 to 10: general

- 11 (1) In this Part of this Act—
- “replacement conduct notice” means a notice under paragraph 8(2) or (3) or 10(3)(a) or (4)(a);
- “replacement monitoring notice” means a notice given under paragraph 9(2) or (3) or 10(3)(b) or (4)(b).
- (2) In this Part of this Act, “the original monitoring notice” means—
- (a) in relation to a replacement monitoring notice given under paragraph 9(2), the monitoring notice mentioned in paragraph 9(1), and
 - (b) in relation to a replacement monitoring notice given under paragraph 10(3)(b) or (4)(b), the monitoring notice mentioned in paragraph 10(2),
- and that original monitoring notice is also the “original monitoring notice” in relation to any monitoring notice that (under paragraph 9(2) or (3) or 10(3)(b) or (4)(b)) replaces a replacement monitoring notice.

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- 12 A notice under paragraph 8(2) or (3) or 10(3)(a) or (4)(a)—
- (a) has no effect after the termination date of the original notice;
 - (b) must state that that date is its termination date.
- 13 An authorised officer may not give a replacement conduct notice or replacement monitoring notice to a person if a conduct notice or monitoring notice previously given to the person still has effect in relation to the person.

Publication under section 248

- 14 Where the monitored promoter referred to in section 248(2) is a partnership, paragraphs (a), (b) and (d) of that subsection are to be read as referring to details of the partnership (for instance, the name under which the business of the partnership is carried on), not to details of particular partners.

PART 3

RESPONSIBILITY OF PARTNERS

Responsibility of partners

- 15 (1) A notice given to a partnership under this Part of this Act has effect, at any time, in relation to the persons who are members of the partnership at that time (“the responsible partners”).
- (2) Sub-paragraph (1) does not affect any liability of a person who has ceased to be a member of a partnership in respect of things that the responsible partners did or failed to do before that person ceased to be a member of the partnership.
- (3) Anything required to be done by the responsible partners under or by virtue of a provision of this Part of this Act is required to be done by all the responsible partners (but see paragraph 18).
- (4) In relation to any right (such as a right of appeal) conferred by this Part of this Act references to a person have the meaning that is appropriate in consequence of sub-paragraphs (1) to (3).

Joint and several liability of responsible partners

- 16 (1) Where the responsible partners are liable to a penalty under this Part of this Act, or to interest on such a penalty, their liability is joint and several.
- (2) No amount may be recovered under sub-paragraph (1) from a person who did not become a responsible partner until after the relevant time.
- (3) “The relevant time” means—
- (a) in relation to so much of the penalty as is payable in respect of any day, or to interest on so much of a penalty as is so payable, the beginning of that day;
 - (b) in relation to any other penalty, or interest on such a penalty, the time when the act or omission occurred that caused the penalty to become payable.

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Service of notices

- 17 (1) Any notice given to a partnership by an officer of Revenue and Customs under this Part of this Act must be served either—
- (a) on all the persons who are members of the partnership when the notice is given, or
 - (b) on a representative partner.
- (2) “Representative partner” means—
- (a) a nominated partner, or
 - (b) if no partner has been nominated under paragraph 18(2), a partner designated by an authorised officer as a representative partner.
- (3) A designation under sub-paragraph (2), or the revocation of such a designation, has effect only when notice of the designation, or revocation, has been given to the partnership by an authorised officer.

Nominated partners

- 18 (1) Anything required to be done by the responsible partners under this Part of this Act may instead be done by any nominated partner.
- (2) “Nominated partner” means a partner nominated by a majority of the partners to act as the representative of the partnership for the purposes of this Part of this Act.
- (3) A nomination under sub-paragraph (2), or the revocation of such a nomination, has effect only after notice of the nomination, or revocation, has been given to an authorised officer.

PART 4

INTERPRETATION

Meaning of “controlling member”

- 19 (1) For the purposes of this Schedule a person (“P”) is a “controlling member” of a partnership at any time when the person has a right to a share of more than half the assets, or of more than half the income, of the partnership.
- (2) For that purpose there are to be attributed to P any interests or rights of—
- (a) any individual who is connected with P (if P is an individual), and
 - (b) any body corporate that P controls.
- (3) An individual is “connected” with P if the individual is—
- (a) P’s spouse or civil partner;
 - (b) a relative of P;
 - (c) the spouse or civil partner of a relative of P;
 - (d) a relative of P’s spouse or civil partner, or
 - (e) the spouse or civil partner of a relative of P’s spouse or civil partner.
- (4) In sub-paragraph (3) “relative” means brother, sister, ancestor or lineal descendant.
- (5) P controls a body corporate (“B”) if P has power to secure—

- (a) by means of the holding of shares or the possession of voting power in relation to B or any other body corporate, or
 - (b) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate,
- that the affairs of B are conducted in accordance with P’s wishes.

Meaning of “managing partner”

- 20 In this Schedule “managing partner”, in relation to a partnership, means a member of the partnership who directs or is on a day-to-day level in control of, the management of the business of the partnership.

Power to amend definitions

- 21 (1) The Treasury may by regulations amend paragraph 19 or 20.
- (2) Regulations under sub-paragraph (1) may include any amendment of this Schedule that is necessary in consequence of any amendment made by virtue of sub-paragraph (1).