

SCHEDULES

SCHEDULE 36

PROMOTERS OF TAX AVOIDANCE SCHEMES: PARTNERSHIPS

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—

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- (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.
- (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);

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- (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.
- 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.