These notes refer to the Finance Act 2015 (c.11)
which received Royal Assent on 26 March 2015

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 117 and Schedule 17: Disclosure of Tax Avoidance Schemes

Summary

1. This section and Schedule make changes to the Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of the Finance Act (FA) 2004. In particular the Schedule changes the information that employers must provide to employees and to HM Revenue & Customs (HMRC) in relation to avoidance involving their employees. It provides HMRC with a power to identify users of undisclosed avoidance schemes, increases the penalty for users who do not comply with their reporting requirements under DOTAS and introduces protection for those wishing to voluntarily provide information about potential failures to comply with the DOTAS. It also introduces a requirement, under which promoters of tax avoidance schemes must notify HMRC of relevant changes to notified schemes and provides for HMRC to publish information about promoters and schemes that are notified under the regime.

2. These changes will take effect on and after the day of Royal Assent to Finance Act 2015, to improve the information provided to users of tax avoidance schemes and to HMRC and to improve compliance with the DOTAS regime more generally.

Details of the Section

3. Section 117 introduces Schedule 17.

Details of the Schedule

4. Paragraph 1 introduces a new section 310C into FA 2004. It requires promoters to notify HMRC within 30 days if the name of a scheme, or the name or address of a promoter, changes after a reference number has been issued under section 311 of FA 2004. Subsections (4), (5) and (6) of section 310C address the position where there is more than one promoter in relation to the notified scheme. A promoter is only obliged to provide information about changes to a promoter’s details that apply specifically to itself and the requirement on a promoter to provide information is satisfied if that information has been provided by another promoter.

5. Paragraph 3 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 310C of FA 2004.

6. Paragraph 4 amends section 311(1) of FA 2004 to increase the period within which HMRC may allocate a reference number to notifiable proposals or arrangements from 30 to 90 days.

7. Paragraph 5 introduces a new subsection (2A) into section 312A of FA 2004. It requires that where an employer receives, or might reasonably be expected to receive, a tax

advantage from notifiable arrangements relating to an employee's employment, the employer must provide prescribed information to the employee.

8. Paragraph 8 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 312A(2A) of FA 2004.

9. Paragraph 9 introduces a new section 313ZC into FA 2004. It requires employers to provide HMRC with prescribed information at the prescribed time about each employee to whom they have provided information in accordance with section 312A of FA 2004. The duty on the employees to provide similar information under section 313 of FA 2004 is disapplied in Regulations in circumstances where section 313ZC of FA 2004 applies.

10. Paragraph 6 amends section 313 of FA 2004, as a consequence of the changes made in paragraph 9, so that the requirements of section 313 of FA 2004 can be disapplied in Regulations in cases where an employer is required to provide prescribed information about employees under new section 313ZC of FA 2004.

11. Paragraph 11 amends section 98C of the Taxes Management Act 1970 to introduce penalties where a person has failed to provide information required under section 313ZC of FA 2004.

12. Paragraph 12 amends section 313C of FA 2004. It enables HMRC to require a person suspected of being an introducer in relation to a notifiable proposal to provide prescribed information about those with whom they have made a marketing contact within the meaning of section 307(4B) of FA 2004.

13. Paragraph 13 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 313C of FA 2004.

14. Paragraph 14 introduces a new section 316A into FA 2004. It enables HMRC to include information not directly related to the reference number issued under section 311 of FA 2004 on the form which promoters or other persons must use to provide that number to other persons under section 312 or section 312A of FA 2004.

15. Paragraph 15 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 316A of FA 2004.

16. Paragraph 16 introduces a new section 316B into FA 2004. It enables persons to voluntarily provide information or documents to HMRC which they suspect may assist HMRC in determining whether there has been a breach of any of the requirements of Part 7 of FA 2004.

17. Paragraph 17 introduces a new section 316C into FA 2004. It enables HMRC to publish information about promoters and schemes that are notified under Part 7 of FA 2004 and which have been issued with a reference number under section 311 of FA 2004. HMRC must inform a promoter before publishing any information which would identify that person as a promoter and may not publish any information that will identify scheme users.

18. Paragraph 17 also introduces a new section 316D into FA 2004. It requires HMRC to publish information about court rulings that are relevant to the earlier publication of information under section 316C of FA 2004 and to publish it in the same manner as the original publication.

19. Paragraph 18 amends section 98C(3) of the Taxes Management Act 1970. It increases the penalties for users of tax avoidance schemes who fail to correctly provide information about the reference number to HMRC under section 313 of FA 2004. The penalties are increased to an amount not exceeding £5,000, £7,500 and £10,000 for each of the three categories of failures mentioned in that subsection.

20. Paragraph 19 sets out transitional provisions for new section 310C of FA 2004. The new section takes effect only for schemes which are notified under section 308 and issued with a reference number under section 311 of FA 2004 on or after the day on which Finance Act 2015 is passed.

21. Paragraph 20 sets out transitional provisions for section 312A(4) of FA 2004. It treats any notice given under section 312A(4) of FA 2004 before Finance Act 2015 is passed as given also in relation to section 312A(2A) of FA 2004.

22. Paragraph 21 sets out transitional provisions for new section 316C of FA 2004. The new section takes effect only for schemes which are notified and issued with a reference number under section 311 of FA 2004 on or after the day on which Finance Act 2015 is passed, and in relation to court rulings given on or after that day.

Background Note

23. The Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of FA 2004 is designed to give HMRC early warning of tax avoidance schemes. This provides HMRC with the opportunity to consider changes in the law to close loopholes and to challenge schemes that it believes do not work. It requires a person, usually the person who designs or sells the tax avoidance scheme, to provide details of their scheme to HMRC if it meets certain criteria. The changes being made will improve the information provided to HMRC and to users of tax avoidance schemes as well as improving compliance with the DOTAS regime more generally. The publication of information about promoters and schemes notified under the regime and issued with reference number will help would-be users to better understand the serious risks they face when getting involved with tax avoidance.