



Finance Act 2014

2014 CHAPTER 26

PART 5

PROMOTERS OF TAX AVOIDANCE SCHEMES

Introduction

234 Meaning of “relevant proposal” and “relevant arrangements”

- (1) “Relevant proposal” means a proposal for arrangements which (if entered into) would be relevant arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).
- (2) Arrangements are “relevant arrangements” if—
 - (a) they enable, or might be expected to enable, any person to obtain a tax advantage, and
 - (b) the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage.
- (3) “Tax advantage” includes—
 - (a) relief or increased relief from tax,
 - (b) repayment or increased repayment of tax,
 - (c) avoidance or reduction of a charge to tax or an assessment to tax,
 - (d) avoidance of a possible assessment to tax,
 - (e) deferral of a payment of tax or advancement of a repayment of tax, and
 - (f) avoidance of an obligation to deduct or account for tax.
- (4) “Arrangements” includes any agreement, scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.

235 Carrying on a business “as a promoter”

- (1) A person carrying on a business in the course of which the person is, or has been, a promoter in relation to a relevant proposal or relevant arrangements carries on that business “as a promoter”.
- (2) A person is a “promoter” in relation to a relevant proposal if the person—
 - (a) is to any extent responsible for the design of the proposed arrangements,
 - (b) makes a firm approach to another person in relation to the relevant proposal with a view to making the proposal available for implementation by that person or any other person, or
 - (c) makes the relevant proposal available for implementation by other persons.
- (3) A person is a “promoter” in relation to relevant arrangements if the person—
 - (a) is by virtue of subsection (2)(b) or (c), a promoter in relation to a relevant proposal which is implemented by the arrangements, or
 - (b) is responsible to any extent for the design, organisation or management of the arrangements.
- (4) For the purposes of this Part a person makes a firm approach to another person in relation to a relevant proposal if—
 - (a) the person communicates information about the relevant proposal to the other person at a time when the proposed arrangements have been substantially designed,
 - (b) the communication is made with a view to that other person or any other person entering into transactions forming part of the proposed arrangements, and
 - (c) the information communicated includes an explanation of the tax advantage that might be expected to be obtained from the proposed arrangements.
- (5) For the purposes of subsection (4) proposed arrangements have been substantially designed at any time if by that time the nature of the transactions to form them (or part of them) has been sufficiently developed for it to be reasonable to believe that a person who wished to obtain the tax advantage mentioned in subsection (4)(c) might enter into—
 - (a) transactions of the nature developed, or
 - (b) transactions not substantially different from transactions of that nature.
- (6) A person is not a promoter in relation to a relevant proposal or relevant arrangements by reason of anything done in prescribed circumstances.
- (7) Regulations under subsection (6) may contain provision having retrospective effect.

236 Meaning of “intermediary”

For the purposes of this Part a person (“A”) is an intermediary in relation to a relevant proposal if—

- (a) A communicates information about the relevant proposal to another person in the course of a business,
- (b) the communication is made with a view to that other person, or any other person, entering into transactions forming part of the proposed arrangements, and
- (c) A is not a promoter in relation to the relevant proposal.

Conduct notices

237 Duty to give conduct notice

- (1) Subsections (5) to (9) apply if an authorised officer becomes aware at any time that a person (“P”) who is carrying on a business as a promoter—
 - (a) has, in the period of 3 years ending with that time, met one or more threshold conditions, and
 - (b) was carrying on a business as a promoter when P met that condition.
- (2) Part 1 of Schedule 34 sets out the threshold conditions and describes how they are met.
- (3) Part 2 of that Schedule contains provision about the meeting of threshold conditions by bodies corporate.
- (4) See also Schedule 36 (which contains provision about the meeting of threshold conditions and other conditions by partnerships).
- (5) The authorised officer must determine whether or not P’s meeting of the condition mentioned in subsection (1)(a) (or, as the case requires, P’s meeting of all those conditions, taken together) should be regarded as significant in view of the purposes of this Part.
- (6) Subsection (5) does not apply if a conduct notice or a monitoring notice already has effect in relation to P.
- (7) If the authorised officer determines under subsection (5) that P’s meeting of the condition or conditions in question should be regarded as significant, the officer must give P a conduct notice, unless subsection (8) applies.
- (8) This subsection applies if the authorised officer determines that, having regard to the extent of the impact that P’s activities as a promoter are likely to have on the collection of tax, it is inappropriate to give P a conduct notice.
- (9) The authorised officer must determine under subsection (5) that the meeting of the condition (or all the conditions) mentioned in subsection (1)(a) should be regarded as significant if the condition (or any of the conditions) is in any of the following paragraphs of Schedule 34—
 - (a) paragraph 2 (deliberate tax defaulters);
 - (b) paragraph 3 (breach of Banking Code of Practice);
 - (c) paragraph 4 (dishonest tax agents);
 - (d) paragraph 6 (persons charged with certain offences);
 - (e) paragraph 7 (opinion notice of GAAR Advisory Panel).

238 Contents of a conduct notice

- (1) A conduct notice is a notice requiring the person to whom it has been given (“the recipient”) to comply with conditions specified in the notice.
- (2) Before deciding on the terms of a conduct notice, the authorised officer must give the person to whom the notice is to be given an opportunity to comment on the proposed terms of the notice.
- (3) A notice may include only conditions that it is reasonable to impose for any of the following purposes—

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- (a) to ensure that the recipient provides adequate information to its clients about relevant proposals, and relevant arrangements, in relation to which the recipient is a promoter;
 - (b) to ensure that the recipient provides adequate information about relevant proposals in relation to which it is a promoter to persons who are intermediaries in relation to those proposals;
 - (c) to ensure that the recipient does not fail to comply with any duty under a specified disclosure provision;
 - (d) to ensure that the recipient does not discourage others from complying with any obligation to disclose to HMRC information of a description specified in the notice;
 - (e) to ensure that the recipient does not enter into an agreement with another person (“C”) which relates to a relevant proposal or relevant arrangements in relation to which the recipient is a promoter, on terms which—
 - (i) impose a contractual obligation on C which falls within paragraph 11(2) or (3) of Schedule 34 (contractual terms restricting disclosure), or
 - (ii) impose on C obligations within both paragraph 11(4) and (5) of that Schedule (contractual terms requiring contribution to fighting funds and restricting settlement of proceedings);
 - (f) to ensure that the recipient does not promote relevant proposals or relevant arrangements which rely on, or involve a proposal to rely on, one or more contrived or abnormal steps to produce a tax advantage;
 - (g) to ensure that the recipient does not fail to comply with any stop notice which has effect under paragraph 12 of Schedule 34.
- (4) References in subsection (3) to ensuring that adequate information is provided about proposals or arrangements include—
- (a) ensuring the adequacy of the description of the arrangements or proposed arrangements;
 - (b) ensuring that the information includes an adequate assessment of the risk that the arrangements or proposed arrangements will fail;
 - (c) ensuring that the information does not falsely state, and is not likely to create a false impression, that HMRC have (formally or informally) considered, approved or expressed a particular opinion in relation to the proposal or arrangements.
- (5) In subsection (3)(c) “specified disclosure provision” means a disclosure provision that is specified in the notice; and for this purpose “disclosure provision” means any of the following—
- (a) section 308 of FA 2004 (disclosure of tax avoidance schemes: duties of promoter);
 - (b) section 312 of FA 2004 (duty of promoter to notify client of number);
 - (c) sections 313ZA and 313ZB of FA 2004 (duties to provide details of clients and certain others);
 - (d) Part 1 of Schedule 36 to FA 2008 (duties to provide information and produce documents).
- (6) In subsection (4)(b) “fail”, in relation to arrangements or proposed arrangements, means not result in a tax advantage which the arrangements or (as the case may be) proposed arrangements might be expected to result in.

- (7) The Treasury may by regulations amend the definition of “disclosure provision” in subsection (5).

239 Section 238: supplementary

- (1) In section 238 the following expressions are to be interpreted as follows.
- (2) “Adequate” means adequate having regard to what it might be reasonable for a client or (as the case may be) an intermediary to expect; and “adequacy” is to be interpreted accordingly.
- (3) A person (“C”) is a “client” of a promoter, if at any time when a conduct notice has effect, the promoter—
- (a) makes a firm approach to C in relation to a relevant proposal with a view to the promoter making the proposal available for implementation by C or another person;
 - (b) makes a relevant proposal available for implementation by C;
 - (c) takes part in the organisation or management of relevant arrangements entered into by C.
- (4) The recipient of a conduct notice “promotes” a relevant proposal if it—
- (a) takes part in designing the proposal,
 - (b) makes a firm approach to a person in relation to the proposal with a view to making the proposal available for implementation by that person or another person, or
 - (c) makes the proposal available for implementation by persons (other than the recipient).
- (5) The recipient of a conduct notice “promotes” relevant arrangements if it takes part in designing, organising or managing the arrangements.

240 Amendment or withdrawal of conduct notice

- (1) This section applies where a conduct notice has been given to a person.
- (2) An authorised officer may at any time amend the notice.
- (3) An authorised officer—
- (a) may withdraw the notice if the officer thinks it is not necessary for it to continue to have effect, and
 - (b) in considering whether or not that is necessary must take into account the person’s record of compliance, or failure to comply, with the conditions in the notice.

241 Duration of conduct notice

- (1) A conduct notice has effect from the date specified in it as its commencement date.
- (2) A conduct notice ceases to have effect—
- (a) at the end of the period of two years beginning with its commencement date, or
 - (b) if an earlier date is specified in it as its termination date, at the end of that day.

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- (3) A conduct notice ceases to have effect if withdrawn by an authorised officer under section 240.
- (4) A conduct notice ceases to have effect in relation to a person when a monitoring notice takes effect in relation to that person.

Monitoring notices: procedure and publication

242 Monitoring notices: duty to apply to tribunal

- (1) If—
 - (a) a conduct notice has effect in relation to a person who is carrying on a business as a promoter, and
 - (b) an authorised officer determines that the person has failed to comply with one or more conditions in the notice,
 the authorised officer must apply to the tribunal for approval to give the person a monitoring notice.
- (2) An application under subsection (1) must include a draft of the monitoring notice.
- (3) Subsection (1) does not apply if—
 - (a) the condition (or all the conditions) mentioned in subsection (1)(b) were imposed under subsection (3)(a), (b) or (c) of section 238, and
 - (b) the authorised officer considers that the failure to comply with the condition (or all the conditions, taken together) is such a minor matter that it should be disregarded for the purposes of this section.
- (4) Where an authorised officer makes an application to the tribunal under subsection (1), the officer must at the same time give notice to the person to whom the application relates.
- (5) The notice under subsection (4) must state which condition (or conditions) the authorised officer has determined under subsection (1)(b) that the person has failed to comply with and the reasons for that determination.

243 Monitoring notices: tribunal approval

- (1) On an application under section 242, the tribunal may approve the giving of a monitoring notice only if—
 - (a) the tribunal is satisfied that, in the circumstances, the authorised officer would be justified in giving the monitoring notice, and
 - (b) the person to whom the monitoring notice is to be given (“the affected person”) has been given a reasonable opportunity to make representations to the tribunal.
- (2) The tribunal may amend the draft notice included with the application under section 242.
- (3) If the representations that the affected person makes to the tribunal include a statement that in the affected person’s view it was not reasonable to include the condition mentioned in section 242(1)(b) in the conduct notice, the tribunal must refuse to

approve the giving of the monitoring notice if it is satisfied that it was not reasonable to include that condition (but see subsection (4)).

- (4) If the representations made to the tribunal include the statement described in subsection (3) and the determination under section 242(1)(b) is a determination that there has been a failure to comply with more than one condition in the conduct notice—
- (a) subsection (3) does not apply, but
 - (b) in deciding whether or not to approve the giving of the monitoring notice, the tribunal is to assume, in the case of any condition that the tribunal considers it was not reasonable to include in the conduct notice, that there has been no failure to comply with that condition.

244 Monitoring notices: content and issuing

- (1) Where the tribunal has approved the giving of a monitoring notice, the authorised officer must give the notice to the person to whom it relates.
- (2) A monitoring notice given under subsection (1) or paragraph 9 or 10 of Schedule 36 must—
- (a) explain the effect of the monitoring notice and specify the date from which it takes effect;
 - (b) inform the recipient of the right to request the withdrawal of the monitoring notice under section 245.
- (3) In addition, a monitoring notice must—
- (a) if given under subsection (1), state which condition (or conditions) it has been determined the person has failed to comply with and the reasons for that determination;
 - (b) if given under paragraph 9 or 10 of Schedule 36, state the date of the original monitoring notice and name the partnership to which that notice was given.
- (4) The date specified under subsection (2)(a) must not be earlier than the date on which the monitoring notice is given.
- (5) In this Part, a person in relation to whom a monitoring notice has effect is called a “monitored promoter”.

245 Withdrawal of monitoring notice

- (1) A person in relation to whom a monitoring notice has effect may, at any time after the end of the period of 12 months beginning with the end of the appeal period, request that the notice should cease to have effect.
- (2) The “appeal period” means—
- (a) the period during which an appeal could be brought against the approval by the tribunal of the giving of the monitoring notice, or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.
- (3) A request under this section is to be made in writing to an authorised officer.

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- (4) Where a request is made under this section, an authorised officer must within 30 days beginning with the day on which the request is received determine either—
- (a) that the monitoring notice is to cease to have effect, or
 - (b) that the request is to be refused.
- (5) The matters to be taken into account by an authorised officer in making a determination under subsection (4) include—
- (a) whether or not the person subject to the monitoring notice has, since the time when the notice took effect, engaged in behaviour of a sort that conditions included in a conduct notice in accordance with section 238(3) could be used to regulate;
 - (b) whether or not it appears likely that the person will in the future engage in such behaviour;
 - (c) the person’s record of compliance, or failure to comply, with obligations imposed on it under this Part, since the time when the monitoring notice took effect.
- (6) An authorised officer—
- (a) may withdraw a monitoring notice if the officer thinks it is not necessary for it to continue to have effect, and
 - (b) in considering whether or not that is necessary, the officer must take into account the matters in paragraphs (a) to (c) of subsection (5).
- (7) If the authorised officer makes a determination under subsection (4)(a), or decides to withdraw a monitoring notice under subsection (6), the officer must also determine that the person is, or is not, to be given a follow-on conduct notice.
- (8) “Follow-on conduct notice” means a conduct notice taking effect immediately after the monitoring notice ceases to have effect.
- (9) Where the monitoring notice mentioned in subsection (1) is a replacement monitoring notice—
- (a) in subsection (1) the reference to the end of the appeal period is to be read as a reference to whichever is the later of the end of the appeal period for the original monitoring notice and the date the replacement monitoring notice takes effect, and
 - (b) in subsection (5)(a) and (c) the time referred to is to be read as the time when the original monitoring notice (see paragraph 11(2) of Schedule 36) took effect.

246 Notification of determination under section 245

- (1) Where an authorised officer makes a determination under section 245(4), that officer, or an officer of Revenue and Customs with that officer’s approval, must notify the person who made the request of the determination.
- (2) If the determination is that the monitoring notice is to cease to have effect, the notice must—
- (a) specify the date from which the monitoring notice is to cease to have effect, and
 - (b) inform the person of the determination made under section 245(7).

- (3) If the determination is that the request is to be refused, the notice must inform the person who made the request—
 - (a) of the reasons for the refusal, and
 - (b) of the right to appeal under section 247.

247 Appeal against refusal to withdraw monitoring notice

- (1) A person may appeal against a refusal by an authorised officer of a request that a monitoring notice should cease to have effect.
- (2) Notice of appeal must be given—
 - (a) in writing to the officer who gave the notice of the refusal under section 245, and
 - (b) within the period of 30 days beginning with the day on which notice of the refusal was given.
- (3) The notice of appeal must state the grounds of appeal.
- (4) On an appeal that is notified to the tribunal, the tribunal may—
 - (a) confirm the refusal, or
 - (b) direct that the monitoring notice is to cease to have effect.
- (5) Subject to this section, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this section.

248 Publication by HMRC

- (1) An authorised officer may publish the fact that a person is a monitored promoter.
- (2) Publication under subsection (1) may also include the following information about the monitored promoter—
 - (a) its name;
 - (b) its business address or registered office;
 - (c) the nature of the business mentioned in section 242(1)(a);
 - (d) any other information that the authorised officer considers it appropriate to publish in order to make clear the monitored promoter’s identity.
- (3) The reference in subsection (2)(a) to the monitored promoter’s name includes any name under which it carries on a business as a promoter and any previous name or pseudonym.
- (4) Publication under subsection (1) may also include a statement of which of the conditions in a conduct notice it has been determined that the person (or, in the case of a replacement monitoring notice, the person to whom the original monitoring notice was given) has failed to comply with.
- (5) Publication may not take place before the end of the appeal period (or, in the case of a replacement monitoring notice, the appeal period for the original monitoring notice).
- (6) The “appeal period”, in relation to a monitoring notice, means—
 - (a) the period during which an appeal could be brought against the approval by the tribunal of the giving of the notice, or

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- (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.
- (7) Publication under this section is to be in such manner as the authorised officer thinks fit; but see subsection (8).
- (8) If an authorised officer publishes the fact that a person is a monitored promoter and the monitoring notice is withdrawn, the officer must publish the fact of the withdrawal in the same way as the officer published the fact that the person was a monitored promoter.

249 Publication by monitored promoter

- (1) A person who is given a monitoring notice (“the monitored promoter”) must give the persons mentioned in subsection (6) a notice stating—
- (a) that it is a monitored promoter, and
 - (b) which of the conditions in a conduct notice it has been determined that it (or, if the monitoring notice is a replacement monitoring notice, the person to whom that notice was given) has failed to comply with.
- (2) If the monitoring notice is a replacement monitoring notice, the notice under subsection (1) must also identify the original monitoring notice.
- (3) If regulations made by the Commissioners so require, the monitored promoter must publish on the internet—
- (a) the information mentioned in paragraph (a) and (b) of subsection (1), and
 - (b) its promoter reference number (see section 250).
- (4) Subsection (1) and any duty imposed under subsection (3) or (10) do not apply until the end of the period of 10 days beginning with the end of the appeal period (and also see subsection (9)).
- (5) The “appeal period” means—
- (a) the period during which an appeal could be brought against the approval by the tribunal of the giving of the monitoring notice, or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.
- (6) The notice under subsection (1) must be given—
- (a) to any person who becomes a client of the monitored promoter while the monitoring notice has effect, and
 - (b) (except in a case where the monitoring notice is a replacement monitoring notice) any person who is a client of the monitored promoter at the time the monitoring notice takes effect.
- (7) A person (“C”) is a client of a monitored promoter at the time a monitoring notice takes effect if during the period beginning with the date the conduct notice mentioned in subsection (1)(b) takes effect and ending with that time the promoter—
- (a) made a firm approach to C in relation to a relevant proposal with a view to the promoter making the proposal available for implementation by C or another person;

- (b) made a relevant proposal available for implementation by C;
 - (c) took part in the organisation or management of relevant arrangements entered into by C.
- (8) A person becomes a client of a monitored promoter if the promoter does any of the things mentioned in paragraph (a) to (c) of subsection (7) in relation to that person.
- (9) In the case of a person falling within subsection (6)(a), notice under subsection (1) may be given within the period of 10 days beginning with the day on which the person first became a client of the monitored promoter if that period would expire at a later date than the date on which notification would otherwise be required by virtue of subsection (4).
- (10) A monitored promoter must also include in any prescribed publication or prescribed correspondence—
 - (a) the information mentioned in paragraph (a) and (b) of subsection (1), and
 - (b) its promoter reference number (see section 250).
- (11) Notification under subsection (1), publication under subsection (3) or inclusion of the information required by subsection (10) is to be in such form and manner as is prescribed.
- (12) Where the monitoring notice mentioned in subsection (1) is a replacement monitoring notice, the reference in subsection (4) to the end of the appeal period is to be read as a reference to whichever is the later of the end of the appeal period for the original monitoring notice and the date the replacement monitoring notice takes effect.

Allocation and distribution of promoter reference number

250 Allocation of promoter reference number

- (1) Where a monitoring notice is given to a person (“the monitored promoter”) HMRC must as soon as practicable after the end of the appeal period—
 - (a) allocate the monitored promoter a reference number, and
 - (b) notify the relevant persons of that number.
- (2) “Relevant persons” means—
 - (a) the monitored promoter, and
 - (b) if the monitored promoter is resident outside the United Kingdom, any person who HMRC know is an intermediary in relation to a relevant proposal of the monitored promoter.
- (3) The “appeal period” means—
 - (a) the period during which an appeal could be brought against the approval by the tribunal of the giving of the monitoring notice, or
 - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.
- (4) The duty in subsection (1) does not apply if the monitoring notice is set aside following an appeal.

- (5) A number allocated to a person under this section is referred to in this Part as a “promoter reference number”.
- (6) Where the monitoring notice mentioned in subsection (1) is a replacement monitoring notice—
 - (a) in subsection (1) the reference to the end of the appeal period is to be read as a reference to whichever is the later of the end of the appeal period for the original monitoring notice and the date the replacement monitoring notice takes effect, and
 - (b) in subsection (4) the reference to the monitoring notice is to be read as a reference to the original monitoring notice.

251 Duty of monitored promoter to notify clients and intermediaries of number

- (1) This section applies where a person who is a monitored promoter (“the monitored promoter”) is notified under section 250 of a promoter reference number.
- (2) The monitored promoter must, within the relevant period, notify the promoter reference number to—
 - (a) any person who has become its client at any time in the period beginning with the day on which the monitoring notice in relation to the monitored promoter took effect and ending with the day on which the monitored promoter was notified of that number,
 - (b) any person who becomes its client after the end of the period mentioned in paragraph (a) but while the monitoring notice has effect,
 - (c) any person who the monitored promoter could reasonably be expected to know falls within subsection (4), and
 - (d) any person who the monitored promoter could reasonably be expected to know is a relevant intermediary in relation to a relevant proposal of the monitored promoter.
- (3) A person (“C”) becomes a client of a monitored promoter if the promoter does any of the following in relation to C—
 - (a) makes a firm approach to C in relation to a relevant proposal with a view to the promoter making the proposal available for implementation by C or another person;
 - (b) makes a relevant proposal available for implementation by C;
 - (c) takes part in the organisation or management of relevant arrangements entered into by C.
- (4) A person falls within this subsection if during the period beginning with the date the conduct notice took effect and ending with the date on which the monitoring notice took effect the person has entered into transactions forming part of relevant arrangements and those arrangements—
 - (a) enable, or are likely to enable, the person to obtain a tax advantage during the time a monitoring notice has effect, and
 - (b) are either relevant arrangements in relation to which the monitored promoter is or was a promoter or implement a relevant proposal in relation to which the monitored promoter was a promoter.
- (5) A person is a relevant intermediary in relation to a relevant proposal of a monitored promoter if the person meets the conditions in section 236(a) to (c) (meaning of

“intermediary”) at any time while the monitoring notice in relation to the monitored promoter has effect.

- (6) The “relevant period” means—
- (a) in the case of a person falling within subsection (2)(a), the period of 30 days beginning with the day of the notification mentioned in subsection (1),
 - (b) in the case of a person falling within subsection (2)(b), the period of 30 days beginning with the day on which the person first became a client in relation to the monitored promoter,
 - (c) in the case of a person falling within subsection (2)(c), the period of 30 days beginning with the later of the day of the notification mentioned in subsection (1) and the first day on which the monitored promoter could reasonably be expected to know that the person fell within subsection (4), and
 - (d) in the case of a person falling within subsection (2)(d), the period of 30 days beginning with the later of the day of the notification mentioned in subsection (1) and the first day on which the monitored promoter could reasonably be expected to know that the person was a relevant intermediary in relation to a relevant proposal of the monitored promoter.
- (7) In this section “the conduct notice” means the conduct notice that the monitored promoter failed to comply with which resulted in the monitoring notice being given to the monitored promoter.
- (8) Subsection (2)(c) is to be ignored in a case where the monitoring notice is a replacement monitoring notice.

252 Duty of those notified to notify others of promoter’s number

- (1) In this section “notified client” means—
- (a) a person who is notified of a promoter reference number under section 250 by reason of being a person falling within subsection (2)(b) of that section, and
 - (b) a person who is notified of a promoter reference number under section 251.
- (2) A notified client must, within 30 days of being notified as described in subsection (1), provide the promoter reference number to any other person who the notified client might reasonably be expected to know has become, or is likely to have become, a client in relation to the monitored promoter concerned at a time when the monitoring notice in relation to that monitored promoter had effect.
- (3) A person (“C”) becomes a client of a monitored promoter if the promoter does any of the following in relation to C—
- (a) makes a firm approach to C in relation to a relevant proposal with a view to the promoter making the proposal available for implementation by C or another person;
 - (b) makes a relevant proposal available for implementation by C;
 - (c) takes part in the organisation or management of relevant arrangements entered into by C.
- (4) Where the notified client is an intermediary in relation to a relevant proposal of the monitored promoter concerned, the notified client must also, within 30 days, provide the promoter reference number to—
- (a) any person to whom the notified client has, since the monitoring notice in relation to the monitored promoter concerned took effect, communicated

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in the course of a business information about a relevant proposal of the monitored promoter, and

- (b) any person who the notified client might reasonably be expected to know has, since that monitoring notice took effect, entered into, or is likely to enter into, transactions forming part of relevant arrangements in relation to which that monitored promoter is a promoter.
- (5) Subsection (2) or (4) does not impose a duty on a notified client to notify a person of a promoter reference number if the notified client reasonably believes that the person has already been notified of the promoter reference number (whether as a result of a duty under this section or as a result of any of the other provision of this Part).

253 Duty of persons to notify the Commissioners

- (1) If a person (“N”) is notified of a promoter reference number under section 250, 251 or 252, N must report the number to the Commissioners if N expects to obtain a tax advantage from relevant arrangements in relation to which the monitored promoter to whom the reference number relates (whether that is N or another person) is the promoter.
- (2) A report under this section—
 - (a) must be made in (or, if prescribed circumstances exist, submitted with) each tax return made by N for a period that is or includes a period for which the arrangements enable N to obtain a tax advantage (whether in relation to the tax to which the return relates or another tax);
 - (b) if no tax return falls within paragraph (a), or in the case mentioned in subsection (3), must contain such information, and be made in such form and manner and within such time, as is prescribed.
- (3) The case is that the tax return in which the report would (apart from this subsection) have been made is not submitted—
 - (a) by the filing date, or
 - (b) if there is no filing date in relation to the tax return concerned, by such other time that the tax return is required to be submitted by or under any enactment.
- (4) Where N expects to obtain the tax advantage referred to in subsection (1) in respect of inheritance tax, stamp duty land tax, stamp duty reserve tax or petroleum revenue tax—
 - (a) subsection (2) does not apply in relation to that tax advantage, and
 - (b) a report under this section in respect of that tax must be in such form and manner and contain such information and be made within such time as is prescribed.
- (5) Where the relevant arrangements referred to in subsection (1) give rise to N making a claim under section 261B of TCGA 1992 (treating trade loss as CGT loss) or for loss relief under Part 4 of ITA 2007 and that claim is not contained in a tax return, a report under this section must also be made in that claim.
- (6) In this section “tax return” means any of the following—
 - (a) a return under section 8 of TMA 1970 (income tax and capital gains tax: personal return);
 - (b) a return under section 8A of TMA 1970 (income tax and capital gains tax: trustee’s return);

- (c) a return under section 12AA of TMA 1970 (income tax and corporation tax: partnership return);
- (d) a company tax return under paragraph 3 of Schedule 18 to the FA 1998 (company tax return);
- (e) a return under section 159 or 160 of FA 2013 (returns and further returns for annual tax on enveloped dwellings).

Obtaining information and documents

254 Meaning of “monitored proposal” and “monitored arrangements”

- (1) For the purposes of this Part a relevant proposal in relation to which a person (“P”) is a promoter is a “monitored proposal” in relation to P if any of the following dates fell on or after the date on which a monitoring notice took effect—
- (a) the date on which P first made a firm approach to another person in relation to the relevant proposal;
 - (b) the date on which P first made the relevant proposal available for implementation by any other person;
 - (c) the date on which P first became aware of any transaction forming part of the proposed arrangements being entered into by any person.
- (2) For the purposes of this Part relevant arrangements in relation to which a person (“P”) is a promoter are “monitored arrangements” in relation to P if—
- (a) P was by virtue of section 235(2)(b) or (c) a promoter in relation to a relevant proposal which was implemented by the arrangements and any of the following fell on or after the date on which the monitoring notice took effect—
 - (i) the date on which P first made a firm approach to another person in relation to the relevant proposal;
 - (ii) the date on which P first made the relevant proposal available for implementation by any other person;
 - (iii) the date on which P first became aware of any transaction forming part of the proposed arrangements being entered into by any person,
 - (b) the date on which P first took part in designing, organising or managing the arrangements fell on or after the date on which a monitoring notice took effect, or
 - (c) the arrangements enable, or are likely to enable, the person who has entered into transactions forming them to obtain the tax advantage by reason of which they are relevant arrangements, at any time on or after the date on which a monitoring notice took effect.

255 Power to obtain information and documents

- (1) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may by notice in writing require any person (“P”) to whom this section applies—
- (a) to provide information, or
 - (b) to produce a document,
- if the information or document is reasonably required by the officer for any of the purposes in subsection (3).

Status: This is the original version (as it was originally enacted).

- (2) This section applies to—
- (a) any person who is a monitored promoter, and
 - (b) any person who is a relevant intermediary in relation to a monitored proposal of a monitored promoter,
- and in either case that monitored promoter is referred to below as “the relevant monitored promoter”.
- (3) The purposes mentioned in subsection (1) are—
- (a) considering the possible consequences of implementing a monitored proposal of the relevant monitored promoter for the tax position of persons implementing the proposal,
 - (b) checking the tax position of any person who the officer reasonably believes has implemented a monitored proposal of the relevant monitored promoter, or
 - (c) checking the tax position of any person who the officer reasonably believes has entered into transactions forming monitored arrangements of the relevant monitored promoter.
- (4) A person is a “relevant intermediary” in relation to a monitored proposal if the person meets the conditions in section 236(a) to (c) (meaning of “intermediary”) in relation to the proposal at any time after the person has been notified of a promoter reference number of a person who is a promoter in relation to the proposal.
- (5) In this section “checking” includes carrying out an investigation or enquiry of any kind.
- (6) In this section “tax position”, in relation to a person, means the person’s position as regards any tax, including the person’s position as regards—
- (a) past, present and future liability to pay any tax,
 - (b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any tax,
 - (c) claims, elections, applications and notices that have been or may be made or given in connection with the person’s liability to pay any tax,
 - (d) deductions or repayments of tax, or of sums representing tax, that the person is required to make—
 - (i) under PAYE regulations, or
 - (ii) by or under any other provision of the Taxes Acts, and
 - (e) the withholding by the person of another person’s PAYE income (as defined in section 683 of ITEPA 2003).
- (7) In this section the reference to the tax position of a person—
- (a) includes the tax position of a company that has ceased to exist and an individual who has died, and
 - (b) is to the person’s tax position at any time or in relation to any period.
- (8) A notice under subsection (1) which is given for the purpose of checking the tax position of a person mentioned in subsection (3)(b) or (c) may not be given more than 4 years after the person’s death.
- (9) A notice under subsection (1) may specify or describe the information or documents to be provided or produced.

- (10) Information or a document required as a result of a notice under subsection (1) must be provided or produced within—
- (a) the period of 10 days beginning with the day on which the notice was given, or
 - (b) such longer period as the officer who gives the notice may direct.

256 Tribunal approval for certain uses of power under section 255

- (1) An officer of Revenue and Customs may not, without the approval of the tribunal, give a notice under section 255 requiring a person (“A”) to provide information or produce a document which relates (in whole or in part) to a person who is neither A nor an undertaking in relation to which A is a parent undertaking.
- (2) An officer of Revenue and Customs may apply to the tribunal for the approval required by subsection (1); and an application for approval may be made without notice.
- (3) The tribunal may approve the giving of the notice only if—
 - (a) the application for approval is made by, or with the agreement of, an authorised officer,
 - (b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
 - (c) the person to whom the notice is to be given has been informed that the information or documents referred to in the notice are required and given a reasonable opportunity to make representations to an officer of Revenue and Customs, and
 - (d) the tribunal has been given a summary of any representations made by that person.
- (4) Where a notice is given under section 255 with the approval of the tribunal, it must state that it is given with that approval.
- (5) Paragraphs (c) and (d) of subsection (3) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.
- (6) In subsection (1) “parent undertaking” and “undertaking” have the same meaning as in the Companies Acts (see section 1161 and 1162 of, and Schedule 7 to, the Companies Act 2006).
- (7) A decision of the tribunal under this section is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).

257 Ongoing duty to provide information following HMRC notice

- (1) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give a notice to a person (“P”) in relation to whom a monitoring notice has effect.
- (2) A person to whom a notice is given under subsection (1) must provide prescribed information and produce prescribed documents relating to—
 - (a) all the monitored proposals and all the monitored arrangements in relation to which the person is a promoter at the time of the notice, and
 - (b) all the monitored proposals and all the monitored arrangements in relation to which the person becomes a promoter after that time.

Status: This is the original version (as it was originally enacted).

- (3) The duty under subsection (2)(b) does not apply in relation to any proposals or arrangements in relation to which the person first becomes a promoter after the monitoring notice ceases to have effect.
- (4) A notice under subsection (1) must specify the time within which information must be provided or a document produced and different times may be specified for different cases.

258 Duty of person dealing with non-resident monitored promoter

- (1) This section applies where a monitored promoter who is resident outside the United Kingdom has failed to comply with a duty under section 255 or 257 to provide information about a monitored proposal or monitored arrangements.
- (2) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give a notice to a relevant person which—
 - (a) specifies or describes the information which the monitored promoter has failed to provide, and
 - (b) requires the person to provide the information.
- (3) A “relevant person” means—
 - (a) any person who is an intermediary in relation to the monitored proposal concerned, and
 - (b) any person (“A”) to whom the monitored promoter has made a firm approach in relation to the monitored proposal concerned with a view to making the proposal available for implementation by a person other than A.
- (4) If an authorised officer is not aware of any person to whom a notice could be given under subsection (2) the authorised officer, or an officer of Revenue and Customs with the approval of the authorised officer, may give a notice to any person who has implemented the proposal which—
 - (a) specifies or describes the information which the monitored promoter has failed to provide, and
 - (b) requires the person to provide the information.
- (5) If the duty mentioned in subsection (1) relates to monitored arrangements an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give a notice to any person who has entered into any transaction forming part of the monitored arrangements concerned which—
 - (a) specifies or describes the information which the monitored promoter has failed to provide, and
 - (b) requires the person to provide the information.
- (6) A notice under this section may be given only if the officer giving the notice reasonably believes that the person to whom the notice is given is able to provide the information requested.
- (7) Information required as a result of a notice under this section must be provided within—
 - (a) the period of 10 days beginning with the day on which the notice was given, or
 - (b) such longer period as the officer who gives the notice may direct.

259 Monitored promoters: duty to provide information about clients

- (1) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give notice to a person in relation to whom a monitoring notice has effect (“the monitored promoter”).
- (2) A person to whom a notice is given under subsection (1) must, for each relevant period, give the officer who gave the notice the information set out in subsection (9) in respect of each person who was its client with reference to that relevant period (see subsections (5) to (8)).
- (3) Each of the following is a “relevant period”—
 - (a) the calendar quarter in which the notice under subsection (1) was given but not including any time before the monitoring notice takes effect,
 - (b) the period (if any) beginning with the date the monitoring notice takes effect and ending immediately before the beginning of the period described in paragraph (a), and
 - (c) each calendar quarter after the period described in paragraph (a) but not including any time after the monitoring notice ceases to have effect.
- (4) Information required as a result of a notice under subsection (1) must be given—
 - (a) within the period of 30 days beginning with the end of the relevant period concerned, or
 - (b) in the case of a relevant period within subsection (3)(b), within the period of 30 days beginning with the day on which the notice under subsection (1) was given if that period would expire at a later time than the period given by paragraph (a).
- (5) A person (“C”) is a client of the monitored promoter with reference to a relevant period if—
 - (a) the promoter did any of the things mentioned in subsection (6) in relation to C at any time during that period, or
 - (b) the person falls within subsection (7).
- (6) Those things are that the monitored promoter—
 - (a) made a firm approach to C in relation to a relevant proposal with a view to the promoter making the proposal available for implementation by C or another person;
 - (b) made a relevant proposal available for implementation by C;
 - (c) took part in the organisation or management of relevant arrangements entered into by C.
- (7) A person falls within this subsection if the person has entered into transactions forming part of relevant arrangements and those arrangements—
 - (a) enable the person to obtain a tax advantage either in that relevant period or a later relevant period, and
 - (b) are either relevant arrangements in relation to which the monitored promoter is or was a promoter, or implement a relevant proposal in relation to which the monitored promoter was a promoter.
- (8) But a person is not a client of the monitored promoter with reference to a relevant period if—

Status: This is the original version (as it was originally enacted).

- (a) the person has previously been a client of the monitored promoter with reference to a different relevant period,
 - (b) the promoter complied with the duty in subsection (2) in respect of the person for that relevant period, and
 - (c) the information provided as a result of complying with that duty remains accurate.
- (9) The information mentioned in subsection (2) is—
- (a) the person’s name and address, and
 - (b) such other information about the person as may be prescribed.
- (10) Where the monitoring notice mentioned in subsection (1) is a replacement monitoring notice, subsection (5)(b) does not impose a duty on the monitored promoter concerned to provide information about a person who has entered into transactions forming part of relevant arrangements (as described in subsection (7)) if the monitored promoter reasonably believes that information about that person has, in relation to those arrangements, already been provided under the original monitoring notice.

260 Intermediaries: duty to provide information about clients

- (1) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give notice to a person (“the intermediary”) who is an intermediary in relation to a relevant proposal which is a monitored proposal of a person in relation to whom a monitoring notice has effect (“the monitored promoter”).
- (2) A person to whom a notice is given under subsection (1) must, for each relevant period, give the officer who gave the notice the information set out in subsection (7) in respect of each person who was its client with reference to that relevant period (see subsections (5) to (6)).
- (3) Each of the following is a “relevant period”—
- (a) the calendar quarter in which the notice under subsection (1) was given but not including any time before the intermediary was first notified under section 250, 251 or 252 of the promoter reference number of the monitored promoter,
 - (b) the period (if any) beginning with the date of the notification under section 250, 251 or 252 and ending immediately before the beginning of the period described in paragraph (a), and
 - (c) each calendar quarter after the period described in paragraph (a) but not including any time after the monitoring notice mentioned in subsection (1) ceases to have effect.
- (4) Information required as a result of a notice under subsection (1) must be given—
- (a) within the period of 30 days beginning with the end of the relevant period concerned, or
 - (b) in the case of a relevant period within subsection (3)(b), within the period of 30 days beginning with the day on which the notice under subsection (1) was given if that period would expire at a later time than the period given by paragraph (a).
- (5) A person (“C”) is a client of the intermediary with reference to a relevant period if during that period—

- (a) the intermediary communicated information to C about a monitored proposal in the course of a business, and
 - (b) the communication was made with a view to C, or any other person, entering into transactions forming part of the proposed arrangements.
- (6) But a person is not a client of the intermediary with reference to a relevant period if—
- (a) the person has previously been a client of the intermediary with reference to a different relevant period,
 - (b) the intermediary complied with the duty in subsection (2) in respect of the person for that relevant period, and
 - (c) the information provided as a result of complying with that duty remains accurate.
- (7) The information mentioned in subsection (2) is—
- (a) the person’s name and address, and
 - (b) such other information about the person as may be prescribed.

261 Enquiry following provision of client information

- (1) This section applies where—
- (a) a person (“the notifying person”) has provided information under section 259 or 260 about a person who was a client of the notifying person with reference to a relevant period (within the meaning of the section concerned) in connection with a particular relevant proposal or particular relevant arrangements, and
 - (b) an authorised officer suspects that a person in respect of whom information has not been provided under section 259 or 260—
 - (i) has at any time been, or is likely to be, a party to transactions implementing the proposal, or
 - (ii) is a party to a transaction forming (in whole or in part) particular relevant arrangements.
- (2) The authorised officer may by notice in writing require the notifying person to provide prescribed information in relation to any person whom the notifying person might reasonably be expected to know—
- (a) has been, or is likely to be, a party to transactions implementing the proposal, or
 - (b) is a party to a transaction forming (in whole or in part) the relevant arrangements.
- (3) But a notice under subsection (2) does not impose a requirement on the notifying person to provide information which the notifying person has already provided to an authorised officer under section 259 or 260.
- (4) The notifying person must comply with a requirement under subsection (2) within—
- (a) 10 days of the notice, or
 - (b) such longer period as the authorised officer may direct.

262 Information required for monitoring compliance with conduct notice

- (1) This section applies where a conduct notice has effect in relation to a person.

Status: This is the original version (as it was originally enacted).

- (2) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may (as often as is necessary for the purpose mentioned below) by notice in writing require the person—
- (a) to provide information, or
 - (b) to produce a document,
- if the information or document is reasonably required for the purpose of monitoring whether and to what extent the person is complying with the conditions in the conduct notice.

263 Duty to notify HMRC of address

If, on the last day of a calendar quarter, a monitoring notice has effect in relation to a person (“the monitored promoter”) the monitored promoter must within 30 days of the end of the calendar quarter inform an authorised officer of its current address.

264 Failure to provide information: application to tribunal

- (1) This section applies where—
- (a) a person (“P”) has provided information or produced a document in purported compliance with section 255, 257, 258, 259, 260, 261 or 262, but
 - (b) an authorised officer suspects that P has not provided all the information or produced all the documents required under the section concerned.
- (2) The authorised officer, or an officer of Revenue and Customs with the approval of the authorised officer, may apply to the tribunal for an order requiring P to—
- (a) provide specified information about persons who are its clients for the purposes of the section to which the application relates,
 - (b) provide specified information, or information of a specified description, about a monitored proposal or monitored arrangements,
 - (c) produce specified documents relating to a monitored proposal or monitored arrangements.
- (3) The tribunal may make an order under subsection (2) in respect of information or documents only if satisfied that the officer has reasonable grounds for suspecting that the information or documents—
- (a) are required under section 255, 257, 258, 259, 260, 261 or 262 (as the case may be), or
 - (b) will support or explain information required under the section concerned.
- (4) A requirement by virtue of an order under subsection (2) is to be treated as part of P’s duty under section 255, 257, 258, 259, 260, 261 or 262 (as the case may be).
- (5) Information or a document required as a result of subsection (2) must be provided, or the document produced, within the period of 10 days beginning with the day on which the order under subsection (2) was made.
- (6) An authorised officer may, by direction, extend the 10 day period mentioned in subsection (5).

265 Duty to provide information to monitored promoter

- (1) This section applies where a person has been notified of a promoter reference number
 - (a) under section 250 by reason of being a person falling within subsection (2)(b) of that section, or
 - (b) under section 251 or 252.
- (2) The person notified (“C”) must within 10 days notify the person whose promoter reference number it is of—
 - (a) C’s national insurance number (if C has one), and
 - (b) C’s unique tax reference number (if C has one).
- (3) If C has neither a national insurance number nor a unique tax reference number, C must within 10 days inform the person whose promoter reference number it is of that fact.
- (4) A unique tax reference number is an identification number allocated to a person by HMRC.
- (5) Subsection (2) or (3) does not impose a duty on C to provide information which C has already provided to the person whose promoter reference number it is.

Obtaining information and documents: appeals

266 Appeals against notices imposing information etc requirements

- (1) This section applies where a person is given a notice under section 255, 257, 258, 259, 260, 261 or 262.
- (2) The person to whom the notice is given may appeal against the notice or any requirement under the notice.
- (3) Subsection (2) does not apply—
 - (a) to a requirement to provide any information or produce any document that forms part of the person’s statutory records, or
 - (b) if the tribunal has approved the giving of the notice under section 256.
- (4) For the purposes of this section, information or a document forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of—
 - (a) the Taxes Acts, or
 - (b) any other enactment relating to a tax.
- (5) Information and documents cease to form part of a person’s statutory records when the period for which they are required to be preserved by the enactments mentioned in subsection (4) has expired.
- (6) Notice of appeal must be given—
 - (a) in writing to the officer who gave the notice, and
 - (b) within the period of 30 days beginning with the day on which the notice was given.
- (7) The notice of appeal must state the grounds of the appeal.

Status: This is the original version (as it was originally enacted).

- (8) On an appeal that is notified to the tribunal, the tribunal may—
 - (a) confirm the notice or a requirement under the notice,
 - (b) vary the notice or such a requirement, or
 - (c) set aside the notice or such a requirement.
- (9) Where the tribunal confirms or varies the notice or a requirement, the person to whom the notice was given must comply with the notice or requirement—
 - (a) within such period as is specified by the tribunal, or
 - (b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the tribunal's decision.
- (10) A decision of the tribunal on an appeal under this section is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).
- (11) Subject to this section, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this section.

Obtaining information and documents: supplementary

267 Form and manner of providing information

- (1) The Commissioners may specify the form and manner in which information required to be provided or documents required to be produced by sections 255 to 264 must be provided or produced if the provision is to be complied with.
- (2) The Commissioners may specify that a document must be produced for inspection—
 - (a) at a place agreed between the person and an officer of Revenue and Customs, or
 - (b) at such place (which must not be a place used solely as a dwelling) as an officer of Revenue and Customs may reasonably specify.
- (3) The production of a document in compliance with a notice under this Part is not to be regarded as breaking any lien claimed on the document.

268 Production of documents: compliance

- (1) Where the effect of a notice under section 255, 257 or 262 is to require a person to produce a document, the person may comply with the requirement by producing a copy of the document, subject to any conditions or exceptions that may be prescribed.
- (2) Subsection (1) does not apply where—
 - (a) the effect of the notice is to require the person to produce the original document, or
 - (b) an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, subsequently makes a request in writing to the person for the original document.
- (3) Where an officer requests a document under subsection (2)(b), the person to whom the request is made must produce the document—
 - (a) within such period, and
 - (b) at such time and by such means,

as is reasonably requested by the officer.

269 Exception for certain documents or information

- (1) Nothing in this Part requires a person to provide or produce—
 - (a) information that relates to the conduct of a pending appeal relating to tax or any part of a document containing such information,
 - (b) journalistic material (as defined in section 13 of the Police and Criminal Evidence Act 1984) or information contained in such material, or
 - (c) personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984) or information contained in such records (but see subsection (2)).
- (2) A notice under this Part may require a person—
 - (a) to produce documents, or copies of documents, that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records (“personal information”), and
 - (b) to provide any information contained in such records that is not personal information.

270 Limitation on duty to produce documents

- Nothing in this Part requires a person to produce a document—
- (a) which is not in the possession or power of that person, or
 - (b) if the whole of the document originates more than 6 years before the requirement to produce it would, if it were not for this section, arise.

271 Legal professional privilege

- (1) Nothing in this Part requires any person to disclose to HMRC any privileged information.
- (2) “Privileged information” means information with respect to which a claim to legal professional privilege by the person who would (ignoring the effect of this section) be required to disclose it, could be maintained in legal proceedings.
- (3) In the case of legal proceedings in Scotland, the reference in subsection (2) to legal professional privilege is to be read as a reference to confidentiality of communications.

272 Tax advisers

- (1) This section applies where a notice is given under section 258(4) or (5) and the person to whom the notice is given is a tax adviser.
- (2) The notice does not require a tax adviser—
 - (a) to provide information about relevant communications, or
 - (b) to produce documents which are the tax adviser’s property and consist of relevant communications.
- (3) Subsection (2) does not have effect in relation to—

Status: This is the original version (as it was originally enacted).

- (a) information explaining any information or document which the person to whom the notice is given has, as tax accountant, assisted any person in preparing for, or delivering to, HMRC, or
 - (b) a document which contains such information.
- (4) But subsection (2) is not disapplied by subsection (3) if the information in question has already been provided, or a document containing the information has already been produced, to an officer of Revenue and Customs.
- (5) In this section—
- “relevant communications” means communications between the tax adviser and—
 - (a) a person in relation to whose tax affairs the tax adviser has been appointed, or
 - (b) any other tax adviser of such a person,
 the purpose of which is the giving or obtaining of advice about any of those tax affairs, and
 - “tax adviser” means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person).

273 Confidentiality

- (1) No duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by a relevant client or a relevant intermediary to HMRC of information or documents about—
- (a) a monitored promoter, or
 - (b) relevant proposals or relevant arrangements in relation to which a monitored promoter is a promoter.
- (2) “Relevant client” means a person in relation to whom the monitored promoter mentioned in subsection (1)(a) or (b)—
- (a) has made a firm approach in relation to a relevant proposal with a view to making the proposal available for implementation by that person or another person;
 - (b) has made a relevant proposal available for implementation by that person;
 - (c) took part in the organisation or management of relevant arrangements entered into by that person.
- (3) “Relevant intermediary” means a person who is an intermediary in relation to a relevant proposal in relation to which the monitored promoter mentioned in subsection (1)(a) or (b) is a promoter.
- (4) The relevant proposal or relevant arrangements mentioned in subsection (2) or (3) need not be the relevant proposals or relevant arrangements to which the disclosure relates.

Penalties

274 Penalties

Schedule 35 contains provision about penalties for failure to comply with provisions of this Part.

275 Failure to comply with Part 7 of the Finance Act 2004

In section 98C of TMA 1970 (notification under Part 7 of FA 2004), after subsection (2E) insert—

“(2EA) Where a person fails to comply with—

- (a) section 309 of that Act and the promoter for the purposes of that section is a monitored promoter for the purposes of Part 5 of the Finance Act 2014, or
- (b) section 310 of that Act and the arrangements for the purposes of that section are arrangements of such a monitored promoter,

then for the purposes of section 118(2) of this Act legal advice which the person took into account is to be disregarded in determining whether the person had a reasonable excuse, if the advice was given or procured by that monitored promoter.

(2EB) In determining for the purpose of section 118(2) of this Act whether or not a person who is a monitored promoter within the meaning of Part 5 of the Finance Act 2014 had a reasonable excuse for a failure to do anything required to be done under a provision mentioned in subsection (2), reliance on legal advice is to be taken automatically not to constitute a reasonable excuse if either—

- (a) the advice was not based on a full and accurate description of the facts, or
- (b) the conclusions in the advice that the person relied on were unreasonable.”

276 Limitation of defence of reasonable care

(1) Subsection (2) applies where—

- (a) a person gives HMRC a document of a kind listed in the Table in paragraph 1 of Schedule 24 to FA 2007 (penalties for providing inaccurate documents to HMRC), and
- (b) the document contains an inaccuracy.

(2) In determining whether or not the inaccuracy was careless for the purposes of paragraph 3(1)(a) of Schedule 24 to FA 2007, reliance by the person on legal advice relating to relevant arrangements in relation to which a monitored promoter is a promoter is to be disregarded if the advice was given or procured by a person who was a monitored promoter in relation to the arrangements.

277 Extended time limit for assessment

(1) In section 36 of TMA 1970 (loss of tax brought about carelessly or deliberately), in subsection (1A)—

- (a) omit the “or” following paragraph (b), and
- (b) at the end of paragraph (c) insert “or
- (d) attributable to arrangements which were expected to give rise to a tax advantage in respect of which the person was under an obligation to notify the Commissioners for Her Majesty’s Revenue and Customs under section 253 of the Finance Act 2014 (duty to notify Commissioners of promoter reference number) but failed to do so.”.

Status: This is the original version (as it was originally enacted).

- (2) In paragraph 12B of Schedule 2 to OTA 1975 (extended time limits for assessment of petroleum revenue tax)—
- (a) in sub-paragraph (1), after “sub-paragraph (2)” insert “and (2A)”,
 - (b) after sub-paragraph (2) insert—

“(2A) In a case involving a relevant situation brought about by arrangements which were expected to give rise to a tax advantage in respect of which a participator (or a person acting on behalf of a participator) was under an obligation to notify the Board under section 253 of the Finance Act 2014 (duty to notify Commissioners of promoter reference number) but failed to do so, an assessment (or an amendment of an assessment) on the participator may be made at any time not more than 20 years after the end of the relevant chargeable period.”,
 - (c) in sub-paragraph (5), for “or (2)” substitute “, (2) or (2A)”, and
 - (d) in sub-paragraph (6), for “or (2)” substitute “, (2) or (2A)”.
- (3) In section 240 of IHTA 1984 (underpayments)—
- (a) in subsection (3) for “and (5)” substitute “to (5A)”,
 - (b) in subsection (5), for “those dates” substitute “the dates in subsection (2)(a) and (b)”,
 - (c) after subsection (5) insert—

“(5A) Proceedings in a case involving a loss of tax attributable to arrangements which were expected to give rise to a tax advantage in respect of which a person liable for the tax was under an obligation to make a report under section 253 of the Finance Act 2014 (duty to notify Commissioners of promoter reference number) but failed to do so, may be brought at any time not more than 20 years after the later of the dates in subsection (2)(a) and (b).”, and
 - (d) in subsection (8), for “, (5) and (6)” substitute “to (6)”.
- (4) In paragraph 46 of Schedule 18 to FA 1998 (general time limits for assessments to corporation tax), in sub-paragraph (2A)—
- (a) omit the “or” following paragraph (b), and
 - (b) at the end of paragraph (c) insert “or
 - (d) attributable to arrangements which were expected to give rise to a tax advantage in respect of which the company was under an obligation to notify the Commissioners for Her Majesty’s Revenue and Customs under section 253 of the Finance Act 2014 (duty to notify Commissioners of promoter reference number) but failed to do so.”.
- (5) In paragraph 31 of Schedule 10 to FA 2003 (time limit for assessment of stamp duty land tax), in sub-paragraph (2A)—
- (a) omit the “or” following paragraph (b), and
 - (b) at the end of paragraph (c) insert “or
 - (d) attributable to arrangements which were expected to give rise to a tax advantage in respect of which the person was under an obligation to notify the Commissioners for Her Majesty’s Revenue and Customs under section 253 of the Finance Act

2014 (duty to notify Commissioners of promoter reference number) but failed to do so.”.

- (6) In paragraph 25 of Schedule 33 to FA 2013 (time limit for assessment: annual tax on enveloped dwellings), in sub-paragraph (4)—
- (a) omit the “or” following paragraph (b), and
 - (b) at the end of paragraph (c) insert “, or
 - (d) attributable to arrangements which were expected to give rise to a tax advantage in respect of which the person was under an obligation to notify the Commissioners for Her Majesty’s Revenue and Customs under section 253 of FA 2014 (duty to notify Commissioners of promoter reference number) but failed to do so.”

Offences

278 Offence of concealing etc documents

- (1) A person is guilty of an offence if—
- (a) the person is required to produce a document by a notice given under section 255,
 - (b) the tribunal approved the giving of the notice under section 256, and
 - (c) the person conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, that document.
- (2) Subsection (1) does not apply if the person acts after the document has been produced to an officer of Revenue and Customs in accordance with section 255, unless the officer has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).
- (3) Subsection (1) does not apply, in a case to which section 268(1) applies, if the person acts after the end of the expiry of 6 months beginning with the day on which a copy of the document was produced in accordance with that section unless, before the expiry of that period, an officer of Revenue and Customs makes a request for the original document under section 268(2)(b).

279 Offence of concealing etc documents following informal notification

- (1) A person is guilty of an offence if the person conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, a document after an officer of Revenue and Customs has informed the person in writing that—
- (a) the document is, or is likely, to be the subject of a notice under section 255, and
 - (b) the officer of Revenue and Customs intends to seek the approval of the tribunal to the giving of the notice.
- (2) A person is not guilty of an offence under this section if the person acts after—
- (a) at least 6 months has expired since the person was, or was last, informed as described in subsection (1), or
 - (b) a notice has been given to the person under section 255, requiring the document to be produced.

Status: This is the original version (as it was originally enacted).

280 Penalties for offences

- (1) A person who is guilty of an offence under section 278 or 279 is liable—
 - (a) on summary conviction, to—
 - (i) in England and Wales, a fine, or
 - (ii) in Scotland or Northern Ireland, a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both.
- (2) In relation to an offence committed before section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, subsection (1)(a)(i) has effect as if the reference to “a fine” were a reference to “a fine not exceeding the statutory maximum”.

Supplemental

281 Partnerships

Schedule 36 contains provision about the application of this Part to partnerships.

282 Regulations under this Part

- (1) Regulations under this Part are to be made by statutory instrument.
- (2) Apart from an instrument to which subsection (3) applies, a statutory instrument containing regulations made under this Part is subject to annulment in pursuance of a resolution of the House of Commons.
- (3) A statutory instrument containing (whether alone or with other provision) regulations made under—
 - (a) section 238(7),
 - (b) paragraph 14 of Schedule 34,
 - (c) paragraph 5(1) of Schedule 35, or
 - (d) paragraph 21 of Schedule 36,
 may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (4) Regulations under this Part—
 - (a) may make different provision for different purposes;
 - (b) may include transitional provision and savings.

283 Interpretation of this Part

- (1) In this Part—
 - “arrangements” has the meaning given by section 234(4);
 - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
 - “calendar quarter” means a period of 3 months beginning with 1 January, 1 April, 1 July or 1 October;

Status: This is the original version (as it was originally enacted).

“conduct notice” means a notice of the description in section 238 that is given under—

- (a) section 237(7),
- (b) section 245(7), or
- (c) paragraph 8(2) or (3) or 10(3)(a) or (4)(a) of Schedule 36;

“HMRC” means Her Majesty’s Revenue and Customs;

“firm approach” has the meaning given by section 235(4);

“monitored promoter” has the meaning given by section 244(5);

“monitored proposal” and “monitored arrangements” have the meaning given by section 254;

“monitoring notice” means a notice given under section 244(1) or paragraph 9(2) or (3) or 10(3)(b) or (4)(b) of Schedule 36;

“the original monitoring notice” has the meaning given by paragraph 11(2) of Schedule 36;

“prescribed” means prescribed, or of a description prescribed, in regulations made by the Commissioners;

“promoter reference number” has the meaning given by section 250(5);

“relevant arrangements” has the meaning given by section 234(2);

“relevant proposal” has the meaning given by section 234(1);

“replacement conduct notice” has the meaning given by paragraph 11(1) of Schedule 36;

“replacement monitoring notice” has the meaning given by paragraph 11(1) of Schedule 36;

“tax” means—

- (a) income tax,
- (b) capital gains tax,
- (c) corporation tax,
- (d) petroleum revenue tax,
- (e) inheritance tax,
- (f) stamp duty land tax,
- (g) stamp duty reserve tax, or
- (h) annual tax on enveloped dwellings;

“tax advantage” has the meaning given by section 234(3);

“Taxes Acts” has the same meaning as in TMA 1970 (see section 118(1) of that Act);

“the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

- (2) A reference in a provision of this Part to an authorised officer is to an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purposes of that provision.
- (3) A reference in a provision of this Part to meeting a threshold condition is to meeting one of the conditions described in paragraphs 2 to 12 of Schedule 34.