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SCHEDULES

SCHEDULE 17

DISCLOSURE OF TAX AVOIDANCE SCHEMES: VAT AND OTHER INDIRECT TAXES

Modifications etc. (not altering text)

- C1** Sch. 17 modified (17.12.2020 for specified purposes, 31.12.2020 in so far as not already in force) by 1994 c. 23, **Sch. 9ZA para. 80** (as inserted by [Taxation \(Post-transition Period\) Act 2020 \(c. 26\)](#), s. 11(1)(e), Sch. 2 para. 2 (with s. 3(4), **Sch. 2 para. 7(7)-(10)**); S.I. 2020/1642, **reg. 9**)

PART 3

CONSEQUENTIAL AMENDMENTS

Serial tax avoidance

- 55 (1) Schedule 18 to FA 2016 (serial tax avoidance) is amended as follows.
- (2) In paragraph 4 (meaning of “tax”)—
- (a) number the current text as sub-paragraph (1) of that paragraph,
 - (b) in that sub-paragraph (1), in paragraph (j) after “VAT” insert “ and indirect taxes ”, and
 - (c) after that sub-paragraph (1) insert—

“(2) For the purposes of this Schedule “indirect tax” means any of the following—

 - insurance premium tax
 - general betting duty
 - pool betting duty
 - remote gaming duty
 - machine games duty
 - gaming duty
 - lottery duty
 - bingo duty
 - air passenger duty
 - hydrocarbon oils duty
 - tobacco products duty
 - duties on spirits, beer, wine, made-wine and cider
 - soft drinks industry levy
 - aggregates levy
 - landfill tax

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climate change levy
 customs duties.”

- (3) Before paragraph 9 (meaning of “disclosable VAT arrangements”) insert—
- “8A (1) For the purposes of this Schedule arrangements are “disclosable VAT arrangements” at any time if at that time sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies if the arrangements are disclosable Schedule 11A VAT arrangements (see paragraph 9).
- (3) This paragraph applies if—
- (a) the arrangements are notifiable arrangements for the purposes of Schedule 17 to FA 2017,
 - (b) the main benefit, or one of the main benefits that might be expected to arise from the arrangements is the obtaining of a tax advantage in relation to VAT (within the meaning of paragraph 6 of that Schedule), and
 - (c) a person—
 - (i) has provided information about the arrangements under paragraph 12(1), 17(2) or 18(2) of that Schedule, or
 - (ii) has failed to comply with any of those provisions in relation to the arrangements.
- (4) But for the purposes of this Schedule arrangements in respect of which HMRC have given notice under paragraph 23(6) of Schedule 17 (notice that promoters not under duty to notify client of reference number) are not to be regarded as “disclosable VAT arrangements”.
- (5) For the purposes of sub-paragraph (3)(c) a person who would be required to provide information under paragraph 12(1) of Schedule 17 to FA 2017—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under paragraph 11(1) of that Schedule, or
 - (b) but for paragraph 13, 14 or 15 of that Schedule,
- is treated as providing the information at the end of the period referred to in paragraph 12(1).”
- (4) In the heading before paragraph 9 after “ “Disclosable” insert “ Schedule 11A ”.
- (5) In paragraph 9—
- (a) for “this Schedule” substitute “ paragraph 8A ”, and
 - (b) after “ “disclosable” insert “ Schedule 11A ”.
- (6) After paragraph 9 insert—

“ “Disclosable indirect tax arrangements”

- 9A (1) For the purposes of this Schedule arrangements are “disclosable indirect tax arrangements” at any time if at that time—
- (a) the arrangements are notifiable arrangements for the purposes of Schedule 17 to FA 2017,
 - (b) the main benefit, or one of the main benefits that might be expected to arise from the arrangements is the obtaining of a tax advantage

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- in relation to an indirect tax other than VAT (within the meaning of paragraph 7 of that Schedule), and
- (c) a person—
- (i) has provided information about the arrangements under paragraph 12(1), 17(2) or 18(2) of that Schedule, or
 - (ii) has failed to comply with any of those provisions in relation to the arrangements.
- (2) But for the purposes of this Schedule arrangements in respect of which HMRC have given notice under paragraph 23(6) of Schedule 17 to FA 2016 (notice that promoters not under duty to notify client of reference number) are not to be regarded as “disclosable indirect tax arrangements”.
- (3) For the purposes of sub-paragraph (1)(c) a person who would be required to provide information under paragraph 12(1) of Schedule 17—
- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under paragraph 11(1) of that Schedule, or
 - (b) but for paragraph 13, 14 or 15 of that Schedule,
- is treated as providing the information at the end of the period referred to in paragraph 12(1).”
- (7) In the heading before paragraph 10 (meaning of “failure to comply”) for “and 9” substitute “ to 9A ”.
- (8) In paragraph 10(1) for “or 9(a)” substitute “ , 8A(2)(c), 9(a) or 9A(1)(c) ”.
- (9) In paragraph 11(1) (meaning of “relevant defeat”) for “E” substitute “ F ”.
- (10) After paragraph 16 (condition E) insert—

“Condition F

16A(1) Condition F is that—

- (a) the arrangements are indirect tax arrangements,
 - (b) P has relied on the arrangements (see sub-paragraph (2)),
 - (c) the arrangements have been counteracted, and
 - (d) the counteraction is final.
- (2) For the purpose of sub-paragraph (1) P relies on the arrangements if—
- (a) P makes a return, claim, declaration or application for approval on the basis that a relevant tax advantage arises, or
 - (b) P fails to discharge a relevant obligation (“the disputed obligation”) and there is reason to believe that P's failure to discharge that obligation is connected with the arrangements.
- (3) For the purposes of sub-paragraph (2) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable P to obtain.
- (4) For the purposes of sub-paragraph (2) an obligation is a relevant obligation if the arrangements might be expected to have the result that the obligation does not arise.
- (5) For the purposes of this paragraph the arrangements are “counteracted” if—

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- (a) adjustments, other than taxpayer emendations, are made in respect of P's tax position —
 - (i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or
 - (ii) on the basis that the disputed obligation does (or did) arise, or
 - (b) an assessment to tax is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).
- (6) For the purposes of this paragraph a “counteraction” is final when the adjustments, assessment or action in question, and any amounts arising from the adjustments, assessment or action, can no longer be varied, on appeal or otherwise.
- (7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are disclosable indirect tax arrangements is when the counteraction becomes final.
- (8) The following are “taxpayer emendations” for the purposes of sub-paragraph (5)—
- (a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P's affairs in relation to the tax in question;
 - (b) an adjustment made by HMRC with respect to P's tax position (whether by way of an assessment or otherwise) as a result of a disclosure by P which meets the conditions in sub-paragraph (9).
- (9) The conditions are that the disclosure—
- (a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and
 - (b) was made at a time when P had no reason to believe that HMRC were about to begin enquiries into P's affairs in relation to the tax in question.”
- (11) In paragraph 17 (annual information notices)—
- (a) in sub-paragraph (3)(a) for “or election,” insert “ election, declaration or application for approval, ”,
 - (b) in sub-paragraphs (3)(b), (4) and (5)(a) for “DOTAS arrangements or VAT” substitute “ disclosable ”,
 - (c) in sub-paragraph (5) for “or election” insert “ election, declaration or application for approval ”, and
 - (d) after sub-paragraph (11) insert—
- “(12) In this paragraph “disclosable arrangements” means any of the following—
- (a) DOTAS arrangements,
 - (b) disclosable VAT arrangements, and
 - (c) disclosable indirect tax arrangements.”
- (12) In the heading before paragraph 28 (exclusion of VAT from Part 4 of Schedule) after “VAT” insert “ and indirect taxes ”.

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- (13) In paragraph 28 after “VAT” insert “ or any other indirect tax ”.
- (14) In paragraph 32 (value of counteracted advantage: basic rule for taxes other than VAT)—
- (a) in sub-paragraph (1) for “or C” substitute “ C or F ” and after paragraph (c) insert “;
 - (d) in the case of a relevant defeat incurred by virtue of Condition F, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in paragraph 16A(1)(d).”, and
 - (b) in sub-paragraph (2)(b) for “or (c)” substitute “ (c) or (d) ”.
- (15) In paragraph 35 (meaning of “the counteracted advantage” in paragraphs 33 and 34) in sub-paragraph (1) after paragraph (c) insert “;
- (d) in relation to a relevant defeat incurred by virtue of Condition F, means any tax advantage in respect of which the counteraction mentioned in paragraph 16A(1)(c) is made.”
- (16) In paragraph 43 (paragraph 42: meaning of “the relevant failure”) after sub-paragraph (7) insert—
- “(8) In relation to a relevant defeat incurred by virtue of Condition F, “the relevant failure” means the failures or inaccuracies as a result of which the adjustments, assessments, or other actions mentioned in paragraph 16A(5) are required.”
- (17) In paragraph 55 (time of “use” of defeated arrangements) after sub-paragraph (8) insert—
- “(8A) If the person incurs the relevant defeat by virtue of Condition F, the person is treated as having “used” the arrangements on the following dates—
- (a) the filing date of any return made by the person on the basis mentioned in paragraph 16A(2)(a);
 - (b) the date on which the person makes any claim, declaration or application for approval;
 - (c) the date of any failure by the person to comply with a relevant obligation (as defined in paragraph 16A(4)).”
- (18) In paragraph 58(1) (interpretation)—
- (a) after the definition of “contract settlement” insert—

““disclosable indirect tax arrangements” is to be interpreted in accordance with paragraph 9A;

“disclosable Schedule 11A VAT arrangements is to be interpreted in accordance with paragraph 9;”,
 - (b) after the definition of “HMRC” insert—

““indirect tax” has the meaning given by paragraph 4(2);”,
 - (c) in the definition of “disclosable VAT arrangements” for “9” substitute “ 8A ”, and
 - (d) in the definition of “tax” for “4” substitute “ 4(1) ”.

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Commencement Information

II [Sch. 17 para. 55](#) in force at Royal Assent for specified purposes and at 1.1.2018 otherwise, see [s. 66\(4\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. A1 para. 8(6)(b) omitted by [2022 c. 3 Sch. 1 para. 32\(b\)](#)
- Sch. A1 para. 8(2) substituted by [2022 c. 3 Sch. 1 para. 32\(a\)](#)