

## SCHEDULE 2

Article 3(2)

### PART 1

#### Provisions associated with schemes

##### *Confidentiality condition*

1. An agreement preventing or limiting the disclosure of how a scheme gives rise to a tax advantage.

##### *The sharing of the tax advantage with another party to the scheme or with the promoter.*

2.—(1) An agreement that the tax advantage to a person accruing from the operation of the scheme be shared to any extent with another party to it or another person promoting it.

(2) A person is a promoter of a scheme if, in the course of a trade, profession or business which involves the provision to other persons of services relating to taxation—

- (a) he is to any extent responsible for the design of the proposed arrangements; or
- (b) he invites persons to enter into contracts for the implementation of the proposed arrangements.

##### *Fee payable to a promoter which is in whole or in part contingent on tax savings from the scheme.*

3.—(1) An agreement that payment to a promoter of the scheme be contingent in whole or in part on the tax advantage accruing from the operation of the scheme.

(2) A person is a promoter of a scheme if, in the course of a trade, profession or business which involves the provision to other persons of services relating to taxation—

- (a) he is to any extent responsible for the design of the proposed arrangements; or
- (b) he invites persons to enter into contracts for the implementation of the proposed arrangements.

### PART 2

#### Provisions included in schemes

##### *Prepayment between connected parties*

4.—(1) A payment for a supply of goods or services between connected persons—

- (a) before the time applicable under section 6(2) or (3) of the Act; or
- (b) where the supply is a continuous supply and the payment is before the goods or services are provided.

(2) A supply is a continuous supply if it is a supply to which regulation 85 (leases treated as supplies of goods), 86 (supplies of water, gas or any form of power, heat, refrigeration or ventilation),

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90 (continuous supply of services), 91 (royalties and similar payments) or 93 (supplies in the construction industry) of the Value Added Tax Regulations 1995(1) applies.

(3) For the purposes of paragraph (1)(b) goods or services are provided at the time when, and to the extent that, the recipient receives the benefit of them.

*Funding by loan, share subscription or subscription in securities*

5. The funding in whole or in part of a supply of goods or services between connected persons by means of a loan between connected persons or the subscription for shares in, or securities issued by, a connected person.

*Off-shore loops*

6.—(1) A supply of a relevant service which is used or intended to be used, in whole or in part, directly or indirectly, in making to a person belonging in the United Kingdom, a supply which is zero-rated, exempt or treated as made in another country (and not in the United Kingdom) by virtue of section 7(10) of the Act (place of supply of services).

(2) A “relevant service” is a service of a description falling within—

- (a) article 3(a) of the Value Added Tax (Input Tax) (Specified Supplies) Order 1999(2) (services supplied to a person who belongs outside the member States);
- (b) article 3(b) of that Order (services directly linked to the export of goods to a place outside the member States), insofar as they are supplies of a description falling within item 2 of Group 5 of Schedule 9 (the making of any advance or any credit); or
- (c) article 3(c) of that Order (the provision of intermediary insurance or financial services);

or is a supply of a description specified in any of paragraphs 1 to 8 of Schedule 5 to the Act (services supplied where received), and the recipient of that supply belongs in a country, other than the Isle of Man, which is not a member State.

*Property transactions between connected persons*

7.—(1) A relevant grant where—

- (a) the grantor or grantee of the interest or right is a person who is not entitled to credit for all the input tax wholly attributable to the supplies he makes;
- (b) any work of construction, alteration, demolition, repair, maintenance or civil engineering has been or is to be carried out on the land; and
- (c) the grant is made to a person connected with the grantor.

(2) “Relevant grant” means the grant of any interest in or right over land or of any licence to occupy land or, in relation to land in Scotland, any personal right to call for or be granted any such interest or right, other than a grant of a description falling within item 1 of Group 5 (first grant of a major interest by a person constructing a building designed for dwelling, or intended for use solely for residential or charitable purposes; or by a person converting a non-residential building to residential use) or item 1 of Group 6 (first grant of a major interest in a protected building by a person reconstructing it) of Schedule 8.

(3) “Grant” includes an assignment or surrender and the supply made by the person to whom an interest is surrendered when there is a reverse surrender.

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(1) S.I.1995/2518; relevant amending instruments are S.I. 1997/1525, S.I. 1997/2887, S.I. 1998/765, S.I. 1999/1374.

(2) S.I. 1999/3121.

*Document Generated: 2023-07-27*

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