
STATUTORY INSTRUMENTS

2006 No. 1543

The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006

PART 3

Prescribed arrangements

Description 1: Confidentiality where promoter involved

6.—(1) Arrangements are prescribed if they satisfy—

- (a) Conditions 1 and 2; or
- (b) Conditions 1 and 3.

(2) The Conditions are as follows.

Condition 1

Any element of the arrangements (including the way in which the arrangements are structured) gives rise to the tax advantage expected to be obtained under the arrangements.

Condition 2

It might reasonably be expected that a promoter would wish the way in which that element of those arrangements secures a tax advantage to be kept confidential from any other promoter at any time in the period beginning with the opening date and ending with the appropriate date.

Condition 3

The promoter would, but for the requirements of these Regulations, wish to keep the way in which that element secures that advantage confidential from Her Majesty's Revenue and Customs for some or all of the period beginning with the opening date and ending with the appropriate date, and a reason for doing so is to facilitate repeated or continued use of the same element, or substantially the same element, in the future.

(3) In a case where—

- (a) by virtue of regulation 6 of the Promoters Regulations, no person is to be treated as the promoter in relation to the arrangements, or
- (b) by virtue of section 309(1) of FA 2004 (duty of person dealing with promoter outside United Kingdom), a user of the arrangement has a duty to provide prescribed information,

paragraph (2) shall have effect as if for Condition 3 there were substituted—

“The user of the arrangements wishes to keep confidential from Her Majesty's Revenue and Customs the way that element secures that advantage for some or all of the period beginning with the opening date and ending with the appropriate date.”

(4) In this regulation—

“the appropriate date” has the meaning given in regulation 8(1) of the Information Regulations, and the provisions of regulation 8 of those Regulations (prescribed information under

section 313 of FA 2004: timing and manner of delivery) apply for the purposes of determining that date; and

“the opening date” means the date of the first transaction forming part of the arrangements.

Description 2: Confidentiality where no promoter involved

7. Arrangements are prescribed if—
- (a) no person is a promoter in relation to them;
 - (b) the intended user of the arrangements is a business which is not a small or medium-sized enterprise;
 - (c) any element of the arrangements (including the way in which the arrangements are structured) gives rise to the tax advantage expected to be obtained under the arrangements;
 - (d) the user of those arrangements wishes the way in which that element is expected to secure a tax advantage to be kept confidential from Her Majesty’s Revenue and Customs for some or all of the period—
 - (i) beginning with the day on which he enters into the first transaction forming part of the notifiable arrangements, and
 - (ii) ending with the latest time at which he would first have had to provide Her Majesty’s Revenue and Customs with information under section 313 of FA 2004 in accordance with regulation 8 of the Information Regulations or otherwise include information about the arrangements in a return; and
 - (e) a reason for the user’s wishing to keep that element confidential from Her Majesty’s Revenue and Customs is to facilitate repeated or continued use of the same element, or substantially the same element, in the future.

Description 3: Premium Fee

8.—(1) Arrangements are prescribed if they are such that it might reasonably be expected that a promoter or a person connected with a promoter of arrangements that are the same as, or substantially similar to, the arrangements in question, would, but for the requirements to disclose information under these Regulations, be able to obtain a premium fee from a person experienced in receiving services of the type being provided.

But arrangements are not prescribed by this regulation if—

- (a) no person is a promoter in relation to them; and
 - (b) the tax advantage which may be obtained under the arrangements is intended to be obtained by an individual or a business which is a small or medium-sized enterprise.
- (2) For the purposes of paragraph (1), and in relation to any arrangements, a “premium fee” is a fee chargeable by virtue of any element of the arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained arises, and which is—
- (a) to a significant extent attributable to that tax advantage, or
 - (b) to any extent contingent upon the obtaining of that tax advantage.

Description 4: Off market terms

- 9.—(1) Arrangements are prescribed if—
- (a) the tax advantage expected to be obtained under the arrangements arises, to more than an incidental degree, from the inclusion in those arrangements of one or more financial products;

- (b) a promoter, or a person connected with the promoter, becomes party to one or more of those financial products; and
 - (c) the price of the financial product or products differs significantly from that which might reasonably be expected to apply in the open market upon its being, or their being, made available to the other party when compared with a product that is, or products that are, the same as, or substantially similar to, the product or products in question.
- (2) For the purpose of paragraph (1) a financial product is—
- (a) a loan;
 - (b) a contract which—
 - (i) is a derivative contract for the purposes of Schedule 26 to the Finance Act 2002⁽¹⁾;
 - (ii) would be such a derivative contract if paragraph 4 of that Schedule (contracts which are excluded by virtue of their underlying subject matter) were omitted; or
 - (iii) would be a derivative contract falling within sub-paragraph (i) or (ii) if it were a contract of a company;
 - (c) an agreement for the sale and repurchase of securities of the kind described in paragraphs (a) to (c) of subsection (1) of section 730A of ICTA⁽²⁾;
 - (d) a stock lending arrangement within the meaning given by section 263B(1) of the Taxation of Chargeable Gains Act 1992⁽³⁾;
 - (e) a share; or
 - (f) a contract, not being one of the above, which, whether alone or in combination with one or more other contracts (including any of the above), in substance represents the making of a loan, or the advancing or depositing of money, whatever its form and falls to be accounted for on that basis.

This paragraph is subject to the following qualifications.

(3) This regulation does not apply if the only financial products involved in the arrangements are assets held within an account which satisfies the conditions in the Individual Savings Accounts Regulations 1998⁽⁴⁾.

(4) For the purposes of this regulation a contract, or a combination of contracts, falls to be accounted for as a loan, or as the advancing or depositing of money, if the person entering into the arrangements—

- (a) is, in accordance with generally accepted accounting practice, required to treat the contract, or the combination of contracts, as a loan, deposit or other financial asset or obligation, or
- (b) would be so required if the person were a company to which the Companies Act 1985⁽⁵⁾ applied.

This is subject to the following qualification.

(5) Anything which is a finance lease for the purposes of generally accepted accounting practice does not fall to be accounted for as a loan for the purposes of this regulation.

(1) Schedule 26 has been amended by paragraph 2 of Schedule 9 to the Finance Act 2004, and [S.I. 2004/2201](#) and [3270, 2005/6462082](#) and [3440](#).

(2) Section 730A was inserted by section 80(1) of the Finance Act 1995 and was relevantly amended by paragraph 5 of Schedule 38 to the Finance Act 2003.

(3) Section 263B was inserted by paragraph 5(1) of Schedule 10 to the Finance Act 1997 (c. 16).

(4) [S.I. 1998/1870](#); amended by [S.I. 1998/3174, 2000/809, 2079](#) and [3112, 2001/908, 3629](#) and [3778, 2002/453, 1409, 1974](#) and [3158](#) and [2003/2747](#).

(5) [1985 c. 6](#).

(6) In this regulation “generally accepted accounting practice” has the meaning given by section 50 of the Finance Act 2004⁽⁶⁾.

Description 5: standardised tax products

10.—(1) Arrangements are prescribed if the arrangements are a standardised tax product.

But arrangements are excepted from being prescribed under this regulation if they are specified in regulation 11.

(2) For the purposes of paragraph (1) arrangements are a product if—

- (a) the arrangements have standardised, or substantially standardised, documentation—
 - (i) the purpose of which is to enable the implementation, by the client, of the arrangements; and
 - (ii) the form of which is determined by the promoter, and not tailored, to any material extent, to reflect the circumstances of the client;
- (b) a client must enter into a specific transaction or series of transactions; and
- (c) that transaction or that series of transactions are standardised, or substantially standardised in form.

(3) For the purpose of paragraph (1) arrangements are a tax product if it would be reasonable for an informed observer (having studied the arrangements) to conclude that the main purpose of the arrangements was to enable a client to obtain a tax advantage.

(4) For the purpose of paragraph (1) arrangements are standardised if a promoter makes the arrangements available for implementation by more than one other person.

Arrangements excepted from Description 5

11.—(1) The arrangements specified in this regulation are—

- (a) those described in paragraph (2); and
- (b) those which are of the same, or substantially the same, description as arrangements which were first made available for implementation before 1st August 2006.

(2) The arrangements referred to in paragraph (1)(a) are—

- (a) arrangements which consist solely of one or more plant or machinery leases (see regulation 14);
- (b) an enterprise investment scheme (Chapter 3 of Part 7 of ICTA and Schedules 5B and 5BA to TCGA 1992);
- (c) arrangements using a venture capital trust (see section 842AA of, and Schedule 15B to, ICTA and Schedule 5C to TCGA 1992);
- (d) arrangements qualifying under the corporate venturing scheme (see Schedule 15 to the Finance Act 2000);
- (e) arrangements qualifying for community investment tax relief (see Schedules 16 and 17 to the Finance Act 2002);
- (f) an account which satisfies the conditions in the Individual Savings Account Regulations 1998⁽⁷⁾;
- (g) an approved share incentive plan (see Chapter 6 of Part 7 of, and Schedule 2 to, ITEPA 2003);

⁽⁶⁾ 2004 c. 12. Section 50 was amended by paragraphs 49 and 50 of Schedule 4 to the Finance Act 2005 (c. 7).

⁽⁷⁾ S.I. 1998/1870.

- (h) an approved share option scheme (see Chapter 7 of Part 7 of, and Schedule 3 to, ITEPA 2003);
- (i) an approved CSOP scheme (see Chapter 8 of Part 7 of, and Schedule 4 to, ITEPA 2003);
- (j) the grant of one or more qualifying options which meet the requirements of Schedule 5 to ITEPA 2003 (enterprise management incentives)—
 - (i) together only with such other steps as are reasonably necessary in all the circumstances for the purposes of facilitating it, or
 - (ii) which fall to be notified to the Board in accordance with Part 7 of that Schedule;
- (k) a registered pension scheme (see section 150(2) of FA 2004);
- (l) an overseas pension scheme in respect of which tax relief is granted in the United Kingdom under section 615 of ICTA (exemption from tax for superannuation payments in respect of persons not resident in the United Kingdom or in respect of trades carried on wholly or partly outside the United Kingdom);
- (m) a pension scheme which is a relevant non-UK pension scheme within the meaning given by paragraph 1(5) of Schedule 34 to FA 2004;
- (n) a scheme to which section 731 of ITTOIA 2005 applies (periodical payments of personal injury damages).

Description 6: Loss schemes

12. Arrangements are prescribed if—

- (a) the promoter expects more than one individual to implement the same, or substantially the same, arrangements; and
- (b) the arrangements are such that an informed observer (having studied them) could reasonably conclude—
 - (i) that the main benefit of those arrangements which could be expected to accrue to some or all of the individuals participating in them is the provision of losses, and
 - (ii) that those individuals would be expected to use those losses to reduce their liability to income tax or capital gains tax.

Description 7: Leasing arrangements

13.—(1) Arrangements are prescribed if—

- (a) the arrangements include a plant or machinery lease (see regulation 14);
 - (b) one of the additional conditions is met (see regulation 15);
 - (c) the relevant value condition is met (see regulation 16); and
 - (d) the lease is not a short-term lease (see regulation 17).
- (2) But arrangements are not prescribed by this regulation if—
- (a) no person is a promoter in relation to them; and
 - (b) the tax advantage which may be obtained under the arrangements is intended to be obtained by an individual or a business which is a small or medium-sized enterprise.

Meaning of “plant or machinery lease”

14.—(1) A “plant or machinery lease” is any of the following—

- (a) any agreement or arrangement to which paragraph (2) applies,

- (b) any other agreement or arrangement to the extent that paragraph (3) applies to it,
- (c) where plant or machinery is the subject of a sale and finance leaseback, as defined in section 221 of CAA 2001⁽⁸⁾, the finance lease mentioned in subsection (1)(c) of that section;

and in these Regulations “lease”, “lessor” and “lessee” are to be construed accordingly.

- (2) This paragraph applies to an agreement or arrangement—
 - (a) under which a person (the lessor) grants to another person (the lessee) the right to use plant or machinery for a period, and
 - (b) which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as a lease.
- (3) This paragraph applies to an agreement or arrangement to the extent that—
 - (a) in accordance with generally accepted accounting practice, it falls (or would fall) to be treated as a lease, and
 - (b) it meets the conditions in paragraph (4).
- (4) The conditions are that, for the purposes of generally accepted accounting practice,—
 - (a) the agreement or arrangement conveys, or falls (or would fall) to be regarded as conveying, the right to use an asset, and
 - (b) the asset is plant or machinery.
- (5) In the case of an agreement or arrangement that falls (or would fall) within paragraph (2) or (3) immediately after the commencement of the term of the lease, the condition in paragraph (2)(b) or (3)(a) (as the case may be) is to be taken to be met as respects any time in the pre-commencement period.
- (6) For the purposes of paragraph (5), the “pre-commencement period” is the period that—
 - (a) begins with the inception of the lease, and
 - (b) ends with the commencement of the term of the lease.
- (7) In paragraph (6)(a), “inception”, in relation to a plant or machinery lease, means the earliest date on which all of the following conditions are met—
 - (a) there is a contract in writing for the lease between the lessor and the lessee;
 - (b) the contract is unconditional, or (if the contract is conditional) the conditions have been met; and
 - (c) no terms remain to be agreed.

The additional conditions

15.—(1) The first additional condition is that the arrangements are designed in such a way that one or more of the plant or machinery leases, comprised in the arrangements, are or would be entered into by—

- (a) one party who has or would have a right or entitlement to claim capital allowances under Part 2 of CAA 2001 (plant and machinery allowances) in respect of the expenditure incurred on the plant or machinery, and
- (b) another party who is not, or would not be, within the charge to corporation tax.

(2) A lease satisfies this condition if sub-paragraphs (a) and (b) of paragraph (1) are met, regardless of whether there are or would be (in addition to the parties mentioned in those sub-paragraphs) other parties to the lease who satisfy neither of those conditions.

⁽⁸⁾ Section 221 was amended by paragraph 3 of Schedule 21 to the Finance Act 2001 (c. 9).

(3) A party who acts merely as a guarantor under the lease is to be disregarded for the purposes of paragraph (1)(b).

- (4) The second additional condition is that the arrangements include provision designed to—
- (a) remove from the lessor the whole, or the greater part, of any risk, which would otherwise fall directly or indirectly upon the lessor, of sustaining a loss if payments due under the lease are not made in accordance with its terms, and
 - (b) do so by the provision of money or a money debt.

For the purposes of this paragraph “money” and “money debt” have the same meanings as they have in section 702(6) of ITEPA 2003.

- (5) The third additional condition is that the arrangements are designed to consist of, or include—
- (a) a sale and finance leaseback arrangement (within the meaning of section 221 of CAA 2001), or
 - (b) a lease and finance leaseback (within the meaning of section 228F(5) of CAA 2001(9)).

The third additional condition is subject to the following paragraphs of this regulation.

(6) In a case falling within paragraph (5)(a) the third additional condition does not apply if the arrangements are designed in such a way that—

- (a) the assets leased or to be leased under the sale and finance leaseback are or will be unused and not second-hand at the time when the assets are acquired or created; and
- (b) the interval between the acquisition or creation of the asset and the sale of the asset under the sale and finance leaseback arrangement is not more than four months.

(7) The third additional condition does not apply if plant or machinery which is, or which the promoter expects to become, a fixture, is leased with relevant land, unless the plant or machinery is used for storage or production.

Here “used for storage or production” means used for the purposes of—

- (a) storing, moving or displaying goods to be sold in the course of a trade;
- (b) manufacturing goods or materials;
- (c) subjecting goods or materials to a process;
- (d) storing goods or materials—
 - (i) which are to be used in the manufacture of other goods or materials;
 - (ii) which are to be subjected to a process in the course of a trade;
 - (iii) which having been subjected in the course of a trade to process, manufactured or produced, have not yet been delivered to a purchaser; or
 - (iv) upon their arrival in the United Kingdom from a place outside it.

(8) But paragraph (7) does not apply (so that, accordingly, the third additional condition is met) if the arrangements are designed in such a way that—

- (a) the qualifying expenditure incurred on the fixture referred to in paragraph (7) amounts or will amount to more than 50% of the aggregate value of the assets subject to the lease, and
- (b) the rent payable under the lease is directly or indirectly dependent on the availability of capital allowances under Part 2 of CAA 2001 in respect of expenditure on any plant or machinery comprised in the lease.

(9) In determining the value of the assets comprised in the lease the following rules apply.

Rule 1

The value of the land subject to the lease is the market value of the lessor's interest.

Rule 2

The value of the plant or machinery subject to the lease is to be determined in the same manner as for the purposes of regulation 16(1).

(10) In this regulation—

“fixture” has the meaning given by section 173(1) of CAA 2001;

“relevant land” has the meaning given by section 173(2) of CAA 2001.

The relevant value condition

16.—(1) The relevant value condition is met if—

- (a) the lower of the cost to the lessor, or the market value, of any one asset forming part of the plant and machinery leased or to be leased under the arrangements is at least £10,000,000; or
- (b) the aggregate of the lower of the costs to the lessor, or the market values, of all of the assets forming part of the plant and machinery leased or to be leased under the arrangements is at least £25,000,000.

(2) For the purposes of paragraph (1) the market value of plant or machinery leased or to be leased under the arrangements is to be determined on the assumption of a disposal—

- (a) by an absolute owner;
- (b) free from all encumbrances; and
- (c) in the open market.

(3) “Absolute owner” in the application of paragraph (2)(a) to Scotland, means the owner.

Short-term leases

17.—(1) For the purposes of regulation 13(1)(d) a lease whose term is 2 years or less is a short-term lease.

But a lease is not a short-term lease if any of the following Conditions apply.

In those Conditions “L” is the lessee.

(2) Condition A is that the lease contains an option exercisable by L to extend the term so that the total term exceeds 2 years.

(3) Condition B is that at the time of the inception of the lease, other arrangements have been entered into which contemplate the extension of the lease to L which, if carried out, would extend the term of the lease so that it exceeds 2 years.

(4) Condition C is that—

- (a) a person leases an asset to L under a lease that would, apart from this paragraph, be a short-term lease,
- (b) the inception of that lease is on or after the date on which these Regulations come into force,
- (c) at or about the time of the inception of that lease, arrangements are entered into for the asset to be leased to one or more other persons under one or more other leases, and
- (d) in the aggregate, the term of the lease to L and the terms of the leases to such of those other persons as are connected with L exceed 2 years.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*
