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SCHEDULES

SCHEDULE 17

Section 56

DISCLOSURE OF TAX AVOIDANCE SCHEMES

Introduction

1 Part 7 of FA 2004 (disclosure of tax avoidance schemes) is amended as follows.

Initial marketing

- 2 (1) Section 307 (meaning of “promoter”) is amended as follows.
- (2) In paragraph (a) of subsection (1), for the words from “business” to “makes” substitute “business, the person (“P”)—
- “(i) is to any extent responsible for the design of the proposed arrangements,
 - (ii) makes a firm approach to another person (“C”) in relation to the notifiable proposal with a view to P making the notifiable proposal available for implementation by C or any other person, or
 - (iii) makes”.
- (3) In paragraph (b) of that subsection, after “(a)(ii)” insert “ or (iii) ”.
- (4) After subsection (1) insert—
- “(1A) For the purposes of this Part a person is an introducer in relation to a notifiable proposal if the person makes a marketing contact with another person in relation to the notifiable proposal.”
- (5) After subsection (4) insert—
- “(4A) For the purposes of this Part a person makes a firm approach to another person in relation to a notifiable proposal if the person makes a marketing contact with the other person in relation to the notifiable proposal at a time when the proposed arrangements have been substantially designed.
- (4B) For the purposes of this Part a person makes a marketing contact with another person in relation to a notifiable proposal if—
- (a) the person communicates information about the notifiable proposal to the other person,
 - (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 advantage in relation to any tax that might be expected to be obtained from the proposed arrangements.

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- (4C) For the purposes of subsection (4A) proposed arrangements have been substantially designed at any time if by that time the nature of the transactions to form part of them has been sufficiently developed for it to be reasonable to believe that a person who wished to obtain the advantage mentioned in subsection (4B)(c) might enter into—
- (a) transactions of the nature developed, or
 - (b) transactions not substantially different from transactions of that nature.”
- (6) In subsection (5), after “promoter” insert “ or introducer ”.
- (7) In subsection (6), after “promoter” (in both places) insert “ or introducer ”.
- 3 (1) Section 308(2) (duties of promoter) is amended as follows.
- (2) For “earlier” substitute “ earliest ”.
- (3) Before paragraph (a) insert—
- “(za) the date on which the promoter first makes a firm approach to another person in relation to a notifiable proposal,”.
- 4 In section 313A(1) (pre-disclosure enquiry), for “of a proposal or arrangements” substitute “ or introducer of a proposal, or the promoter of arrangements, ”.
- 5 In section 318(1) (interpretation), after the definition of “HMRC” insert—
- ““introducer”, in relation to a notifiable proposal, has the meaning given by section 307;
- “make a firm approach” has the meaning given by section 307(4A);
- “make a marketing contact” has the meaning given by section 307(4B);”.

Promoters to provide client lists

- 6 After section 313 insert—

“313ZA Duty to provide details of clients

- (1) This section applies where a person who is a promoter in relation to notifiable arrangements is providing (or has provided) services to any person (“the client”) in connection with the notifiable arrangements and either—
- (a) the promoter is subject to the reference number information requirement, or
 - (b) the promoter has failed to comply with section 308(1) or (3) in relation to the notifiable arrangements (or the notifiable proposal for them) but would be subject to the reference number information requirement if a reference number had been allocated to the notifiable arrangements.
- (2) For the purposes of this section “the reference number information requirement” is the requirement under section 312(2) to provide to the client prescribed information relating to the reference number allocated to the notifiable arrangements.

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- (3) The promoter must, within the prescribed period after the end of the relevant period, provide HMRC with prescribed information in relation to the client.
- (4) In subsection (3) “the relevant period” means such period during which the promoter is or would be subject to the reference number information requirement as is prescribed.
- (5) The promoter need not comply with subsection (3) in relation to any notifiable arrangements at any time after HMRC have given notice under section 312(6) in relation to the notifiable arrangements.”
- 7 In section 316 (information to be provided in manner and form specified by HMRC), for “and 313(1) and (3)” substitute “, 313(1) and (3) and 313ZA(3)”.
- 8 In section 317(2) (regulations), after “may” insert “ make different provision for different cases and may ”.

Information provided to introducers

- 9 After section 313B insert—

“313C Information provided to introducers

- (1) Where HMRC suspect—
- (a) that a person (“P”) is an introducer in relation to a proposal, and
 - (b) that the proposal may be notifiable,
- they may by written notice require P to provide HMRC with prescribed information in relation to each person who has provided P with any information relating to the proposal.
- (2) A notice must specify the proposal to which it relates.
- (3) P must comply with a requirement under or by virtue of subsection (1) within—
- (a) the prescribed period, or
 - (b) such longer period as HMRC may direct.”

Penalties

- 10 (1) Section 98C of TMA 1970 (penalties for failures to comply with duties relating to disclosure of tax avoidance schemes) is amended as follows.
- (2) In subsection (1)(a) (initial penalty for failing to comply with duties), for “£5,000” substitute—
- “(i) in the case of a provision mentioned in paragraph (a), (b) or (c) of that subsection, £600 for each day during the initial period (but see also subsections (2A), (2B) and (2ZC) below), and
 - (ii) in any other case, £5,000.”
- (3) In subsection (2)—
- (a) omit the “and” at the end of paragraph (da),
 - (b) after that paragraph insert—

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- “(db) section 313ZA (duty of promoter to provide details of clients),”, and
- (c) insert at the end “and
- (f) section 313C (duty of introducer to give details of persons who have provided information).”
- (4) After that subsection insert—
- “(2ZA) In this section “the initial period” means the period—
- (a) beginning with the relevant day, and
- (b) ending with the earlier of the day on which the penalty under subsection (1)(a)(i) is determined and the last day before the failure ceases;
- and for this purpose “the relevant day” is the day specified in relation to the failure in the following table.

Failure	Relevant day
A failure to comply with subsection (1) or (3) of section 308 in so far as the subsection applies by virtue of an order under section 306A	The first day after the end of the period prescribed under section 306A(6)
A failure to comply with subsection (1) or (3) of section 308 in so far as the subsection applies by virtue of an order under section 308A(2)	The first day after the end of the period prescribed under subsections (5) and (6)(a) of section 308A (as it may have been extended by a direction under subsection (6)(b) of that section)
Any other failure to comply with subsection (1) of section 308	The first day after the end of the period prescribed under that subsection
Any other failure to comply with subsection (3) of section 308	The first day after the end of the period prescribed under that subsection
A failure to comply with subsection (1) of section 309	The first day after the end of the period prescribed under that subsection
A failure to comply with section 310	The first day after the latest time by which section 310 must be complied with in the case concerned

- (2ZB) The amount of a penalty under subsection (1)(a)(i) is to be arrived at after taking account of all relevant considerations, including the desirability of its being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions having regard (in particular)—
- (a) in the case of a penalty for a person's failure to comply with section 308(1) or (3), to the amount of any fees received, or likely to have been received, by the person in connection with the notifiable proposal (or arrangements implementing the notifiable proposal), or with the notifiable arrangements, and
- (b) in the case of a penalty for a person's failure to comply with section 309(1) or 310, to the amount of any advantage gained, or

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sought to be gained, by the person in relation to any tax prescribed under section 306(1)(b) in relation to the notifiable arrangements.

(2ZC) If the maximum penalty under subsection (1)(a)(i) above appears inappropriately low after taking account of those considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.

(2ZD) Where it appears to an officer of Revenue and Customs that a penalty under subsection (1)(a)(i) above has been determined on the basis that the initial period begins with a day later than that which the officer considers to be the relevant day, an officer of Revenue and Customs may commence proceedings for a re-determination of the penalty.

(2ZE) The Treasury may by regulations vary—

(a) any of the sums for the time being specified in subsection (1) above, and

(b) the sum specified in subsection (2ZC) above.”

(5) In subsection (2A), for “amount specified in subsection (1)(b) above shall be increased to the prescribed sum” substitute “ amounts specified in subsection (1)(a)(i) and (b) above shall be increased to the prescribed sum in relation to days falling after the prescribed period ”.

(6) In subsection (2B), for “amount specified in subsection (1)(b)” substitute “ amounts specified in subsection (1)(a)(i) and (b) ”.

(7) In subsection (2C)(b), after “section” insert “ 306A or ”.

(8) In subsection (2D), after “under section” insert “ 306A or ”.

(9) In subsection (2E), after “under section” insert “ 306A or ”.

(10) In subsection (2F)—

(a) in the opening words, for “subsection (2C)” substitute “ this section ”, and

(b) in paragraph (c), after “subsection” insert “ (2ZE) or ”.

Commencement

11 (1) The amendments made by this Schedule come into force on such day as the Treasury may by order made by statutory instrument appoint.

(2) An order may appoint different days for different provisions or for different purposes.

Subordinate Legislation Made

P1 Sch. 17 para. 11 power fully exercised: 1.1.2011 appointed by {S.I. 2010/3019}, art. 2

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