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SCHEDULES

SCHEDULE 18

SERIAL TAX AVOIDANCE

PART 4

RESTRICTION OF RELIEFS

Duty to give a restriction relief notice

- 19 (1) HMRC must give a person a written notice (a “restriction of relief notice”) if—
- (a) the person incurs a relevant defeat in relation to arrangements which the person has used in a warning period,
 - (b) the person has been given at least two warning notices in respect of other relevant defeats of arrangements which were used in that same warning period, and
 - (c) the defeats mentioned in paragraphs (a) and (b) meet the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) that each of the relevant defeats is by virtue of Condition A, B or C,
 - (b) that each of the relevant defeats relates to the misuse of a relief (see sub-paragraph (5)), and
 - (c) in the case of each of the relevant defeats, either—
 - (i) that the relevant counteraction (see sub-paragraph (7)) was made on the basis that a particular avoidance-related rule applies in relation to a person's affairs, or
 - (ii) that the misused relief is a loss relief.
- (3) In sub-paragraph (2)(c)—
- (a) the “misused relief” means the relief mentioned in sub-paragraph (5), and
 - (b) “loss relief” means any relief under Part 4 of ITA 2007 or Part 4 or 5 of CTA 2010.
- (4) A restriction of relief notice must—
- (a) explain the effect of paragraphs 20, 21 and 22, and
 - (b) set out when the restricted period is to begin and end.
- (5) For the purposes of this Part of this Schedule, a relevant defeat by virtue of Condition A, B or C “relates to the misuse of a relief” if—
- (a) the tax advantage in question, or part of the tax advantage in question, is or results from (or would but for the counteraction be or result from) a relief or increased relief from tax, or

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- (b) it is reasonable to conclude that the making of a particular claim for relief, or the use of a particular relief, is a significant component of the arrangements in question.
- (6) In sub-paragraph (5) “the tax advantage in question” means—
- (a) in relation to a defeat by virtue of Condition A, the tax advantage mentioned in paragraph 12(1)(a),
 - (b) in relation to a defeat by virtue of Condition B, the denied advantage (as defined in paragraph 13(4)), or
 - (c) in relation to a defeat by virtue of Condition C—
 - (i) the tax advantage mentioned in paragraph 14(2)(a), or, as the case requires,
 - (ii) the absence of the relevant obligation (as defined in paragraph 14(4)).
- (7) In this paragraph “the relevant counteraction”, in relation to a relevant defeat means—
- (a) in the case of a defeat by virtue of Condition A, the counteraction referred to in paragraph 12(1)(c);
 - (b) in the case of a defeat by virtue of Condition B, the action referred to in paragraph 13(1);
 - (c) in the case of a defeat by virtue of Condition C, the counteraction referred to in paragraph 14(1)(d).
- (8) If a person has been given a single warning notice in relation to two or more relevant defeats, the person is treated for the purposes of this paragraph as having been given a separate warning notice in relation to each of those relevant defeats.

Restriction of relief

- 20 (1) Sub-paragraphs (2) to (15) have effect in relation to a person to whom a relief restriction notice has been given.
- (2) The person may not, in the restricted period, make any claim for relief.
- (3) Sub-paragraph (2) does not have effect in relation to—
- (a) a claim for relief under Schedule 8 to FA 2003 (stamp duty land tax: charities relief);
 - (b) a claim for relief under Chapter 3 of Part 8 of ITA 2007 (gifts of shares, securities and real property to charities etc);
 - (c) a claim for relief under Part 10 of ITA 2007 (special rules about charitable trusts etc);
 - (d) a claim for relief under double taxation arrangements;
 - (e) an election under section 426 of ITA 2007 (gift aid: election to treat gift as made in previous year).
- (4) Claims under the following provisions in Part 4 of FA 2004 (registered pension schemes: tax reliefs etc) do not count as claims for relief for the purposes of this paragraph—
- section 192(4) (increase of basic rate limit and higher rate limit);
 - section 193(4) (net pay arrangements: excess relief);
 - section 194(1) (relief on making of a claim).

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- (5) The person may not, in the restricted period, surrender group relief under Part 5 of CTA 2010.
- (6) No deduction is to be made under section 83 of ITA 2007 (carry forward against subsequent trade profits) in calculating the person's net income for a relevant tax year.
- (7) No deduction is to be made under section 118 of ITA 2007 (carry-forward property loss relief) in calculating the person's net income for a relevant tax year.
- (8) The person is not entitled to relief under section 448 (annual payments: relief for individuals) or 449 (annual payments: relief for other persons) of ITA 2007 for any payment made in the restricted period.
- (9) No deduction of expenses referable to a relevant accounting period is to be made under section 1219(1) of CTA 2009 (expenses of management of a company's investment business).
- (10) No reduction is to be made under section 45(4) of CTA 2010 (carry-forward of trade loss relief) in calculating the profits for a relevant accounting period of a trade carried on by the person.
- (11) In calculating the total amount of chargeable gains accruing to a person in a relevant tax year (or part of a relevant tax year), no losses are to be deducted under subsections (2) to (2B) of section 2 of TCGA 1992 (persons and gains chargeable to capital gains tax, and allowable losses).
- (12) In calculating the total amount of ATED-related chargeable gains accruing to a person in a relevant tax year, no losses are to be deducted under subsection (3) of section 2B of TCGA 1992 (persons chargeable to capital gains tax on ATED-related gains).
- (13) In calculating the total amount of chargeable NRCGT gains accruing to a person in a relevant tax year on relevant high value disposals, no losses are to be deducted under subsection (2) of section 14D of TCGA 1992 (persons chargeable to capital gains tax on NRCGT gains).
- (14) If the person is a company, no deduction is to be made under section 62 of CTA 2010 (relief for losses made in UK property business) from the company's total profits of a relevant accounting period.
- (15) No deduction is to be made under regulation 18 of the Unauthorised Unit Trusts (Tax) Regulations 2013 (S.I. 2013/2819) (relief for deemed payments by trustees of an exempt unauthorised unit trust) in calculating the person's net income for a relevant tax year.
- (16) In this paragraph “relevant tax year” means any tax year the first day of which is in the restricted period.
- (17) In this paragraph “relevant accounting period” means an accounting period the first day of which is in the restricted period.
- (18) In this paragraph “double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the UK).

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The restricted period

- 21 (1) In paragraphs 19 and 20 (and this paragraph) “the restricted period” means the period of 3 years beginning with the day on which the relief restriction notice is given.
- (2) If during the restricted period (or the restricted period as extended under this sub-paragraph) the person to whom a relief restriction notice has been given incurs a further relevant defeat meeting the conditions in sub-paragraph (4), HMRC must give the person a written notice (a “restricted period extension notice”).
- (3) A restricted period extension notice extends the restricted period to the end of the period of 3 years beginning with the day on which the further relevant defeat occurs.
- (4) The conditions mentioned in sub-paragraph (2) are that—
- (a) the relevant defeat is incurred by virtue of Condition A, B or C in relation to arrangements which the person used in the warning period mentioned in paragraph 19(1)(a), and
 - (b) the warning notice given to the person in respect of the relevant defeat relates to the misuse of a relief.
- (5) If the person to whom a relief restriction notice has been given incurs a relevant defeat which meets the conditions in sub-paragraph (4) after the restricted period has expired but before the end of a concurrent warning period, HMRC must give the person a restriction of relief notice.
- (6) In sub-paragraph (5) “concurrent warning period” means a warning period which at some time ran concurrently with the restricted period.

Reasonable excuse

- 22 (1) If a person who has incurred a relevant defeat satisfies HMRC or, on an appeal under paragraph 24, the First-tier Tribunal or Upper Tribunal that the person had a reasonable excuse for the matters to which that relevant defeat relates, then—
- (a) for the purposes of paragraph 19(1)(a) and 21(2) and (5), the person is treated as not having incurred that relevant defeat, and
 - (b) for the purposes of paragraph 19(1)(b) and (c) any warning notice given to the person which relates to that relevant defeat is treated as not having been given to the person.
- (2) For the purposes of this paragraph, in the case of a person (“P”)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
 - (b) where P relies on another person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant failure, and
 - (c) where P had reasonable excuse for the relevant failure but the excuse had ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.
- (3) In determining for the purposes of this paragraph whether or not a person (“P”) had a reasonable excuse for any action, failure or inaccuracy, reliance on advice is to be taken automatically not to constitute a reasonable excuse if the advice is addressed to, or was given to, a person other than P or takes no account of P’s individual circumstances.

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- (4) In this paragraph “relevant failure”, in relation to a relevant defeat, is to be interpreted in accordance with sub-paragraphs (2) to (7) of paragraph 43.

Mitigation of restriction of relief

- 23 (1) The Commissioners may mitigate the effects of paragraph 20 in relation to a person (“P”) so far as it appears to them that there are exceptional circumstances such that the operation of that paragraph would otherwise have an unduly serious impact with respect to the tax affairs of P or another person.
- (2) For the purposes of sub-paragraph (1) the Commissioners may modify the effects of paragraph 20 in any way they think appropriate, including by allowing P access to the whole or part of a relief to which P would otherwise not be entitled as a result of paragraph 20.

Appeal

- 24 (1) A person may appeal against—
- (a) a relief restriction notice, or
 - (b) a restricted period extension notice.
- (2) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which the notice is given.
- (3) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (4) On an appeal the tribunal may—
- (a) cancel HMRC's decision, or
 - (b) affirm that decision with or without any modifications in accordance with sub-paragraph (5).
- (5) On an appeal the tribunal may rely on paragraph 23 (mitigation of restriction of relief) —
- (a) to the same extent as HMRC (which may mean applying the same mitigation as HMRC to a different starting point), or
 - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 23 was flawed.
- (6) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (3)).

Meaning of “avoidance-related rule”

- 25 (1) In this Part of this Schedule “avoidance-related rule” means a rule in Category 1 or 2.
- (2) A rule is in Category 1 if it refers (in whatever terms)—
- (a) to the purpose or main purpose or purposes of a transaction, arrangements or any other action or matter, and
 - (b) to whether or not the purpose in question is or involves the avoidance of tax or the obtaining of any advantage in relation to tax (however described).

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- (3) A rule is also in Category 1 if it refers (in whatever terms) to—
- (a) expectations as to what are, or may be, the expected benefits of a transaction, arrangements or any other action or matter, and
 - (b) whether or not the avoidance of tax or the obtaining of any advantage in relation to tax (however described) is such a benefit.

For the purposes of paragraph (b) it does not matter whether the reference is (for instance) to the “sole or main benefit” or “one of the main benefits” or any other reference to a benefit.

- (4) A rule falls within Category 2 if as a result of the rule a person may be treated differently for tax purposes depending on whether or not purposes referred to in the rule (for instance the purposes of an actual or contemplated action or enterprise) are (or are shown to be) commercial purposes.

- (5) For example, a rule in the following form would fall within Category 1 and within Category 2—

Example rule

Section X does not apply to a company in respect of a transaction if the company shows that the transaction meets Condition A or B. Condition A is that the transaction is effected—

- (a) for genuine commercial reasons, or
- (b) in the ordinary course of managing investments.”

Meaning of “relief”

- 26 The following are “reliefs” for the purposes of this Part of this Schedule—
- (a) any relief from tax (however described) which must be claimed, or which is not available without making an election,
 - (b) relief under section 1219 of CTA 2009 (expenses of management of a company's investment business),
 - (c) any relief (not falling within paragraph (a)) under Part 4 of ITA 2007 (loss relief) or Part 4 or 5 of CTA 2010 (loss relief and group relief), and
 - (d) any relief (not falling within paragraph (a) or (b)) under a provision listed in section 24 of ITA 2007 (reliefs deductible at Step 2 of the calculation of income tax liability).

“Claim” for relief

- 27 In this Part of this Schedule “claim for relief” includes any election or other similar action which is in substance a claim for relief.

VAT ^{F1} and indirect taxes]

Textual Amendments

- F1** Words in Sch. 18 para. 28 heading inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(12\)](#)

- 28 In this Part of this Schedule “tax” does not include VAT [^{F2} or any other indirect tax].

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Textual Amendments

- F2** Words in Sch. 18 para. 28 inserted (16.11.2017 for specified purposes, 1.1.2018 in so far as not already in force) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 66(4), [Sch. 17 para. 55\(13\)](#)

Power to amend

- 29 (1) The Treasury may by regulations—
- (a) amend paragraph 20;
 - (b) amend paragraph 26.
- (2) Regulations under sub-paragraph (1)(a) may, in particular, alter the application of paragraph 20 in relation to any relief, exclude any relief from its application or extend its application to further reliefs.
- (3) Regulations under sub-paragraph (1)(b) may amend the meaning of “relief” in any way (including by extending or limiting the meaning).
- (4) Regulations under this paragraph may—
- (a) make supplementary, incidental and consequential provision;
 - (b) make transitional provision.
- (5) Regulations under this paragraph are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

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