
STATUTORY INSTRUMENTS

2017 No. 1215

TAXES

The Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2017

<i>Made</i>	- - - -	<i>7th December 2017</i>
<i>Laid before the House of Commons</i>	- - - -	<i>8th December 2017</i>
<i>Coming into force</i>	- -	<i>1st January 2018</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers set out in the Schedule to the Regulations, make the following Regulations:

PART 1

Introduction

Citation and coming into force

1. These Regulations may be cited as the Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2017 and come into force on 1st January 2018.

Interpretation

2. In these Regulations—

“element”, in relation to a notifiable arrangement, includes the way in which the arrangement is structured;

“relevant indirect tax” means each indirect tax, except customs duties, relevant to a notifiable proposal or notifiable arrangement;

“the Schedule” means Schedule 17 to the Finance (No. 2) Act 2017(1);

“tax identifier number” means—

- (a) any registration number provided by HMRC to a person in respect of each relevant indirect tax; or

- (b) where no such number is provided, any unique taxpayer reference number provided by HMRC to the person.

PART 2

Persons not to be treated as promoters

Provision of services to members of the same group

3.—(1) A person (“A”) who carries on a relevant business is not to be treated as a promoter in relation to a notifiable proposal or a notifiable arrangement⁽²⁾ where—

- (a) A is a company;
- (b) A provides services to a company (“B”) in connection with—
 - (i) the notifiable proposal on the relevant date; or
 - (ii) the notifiable arrangement; and
- (c) B is a member of the same group as A.

(2) In paragraph (1)—

“relevant business” has the same meaning as in paragraph 8(4) of the Schedule;

“the relevant date” has the same meaning as in paragraph 11(3) of the Schedule.

(3) In paragraph (1)(c), whether B is a member of the same group as A is to be determined in accordance with paragraph 8(7) of the Schedule.

Employees

4.—(1) Subject to paragraph (4), a person (“C”) is not to be treated as a promoter⁽³⁾ in relation to a notifiable proposal or a notifiable arrangement where C is an employee of an employer (“D”) and—

- (a) D is a promoter in relation to the notifiable proposal or notifiable arrangement; or
- (b) D enters into any transaction forming part of the notifiable proposal or notifiable arrangement.

(2) In this regulation—

- (a) “employee” and “employer” have the same meanings as they have for the purposes of the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003⁽⁴⁾; and
- (b) “employee” includes a person who is an office holder and “employer” includes a person under whom an office holder holds office, where the provisions of those Parts that are expressed to apply to employments also apply to such persons.

(3) For the purposes of this regulation, where D is connected with another person (“E”), C is to be treated as an employee of E as well as being an employee of D.

(4) C is to be treated as a promoter where, but for this paragraph, a person would be under a duty under paragraph 17 of the Schedule.

(5) In this regulation, D is connected with E where D is closely bound to E by financial, economic or organisational links.

(2) See paragraph 3 of the Schedule for the definitions of “notifiable proposal” and “notifiable arrangements”.

(3) See paragraph 8 of the Schedule for the definition of “promoter”.

(4) 2003 c. 1. See section 3(2), which provides that “the employment income Parts” are Part 2 and Parts 3 to 7A. Section 3(2) was amended by paragraphs 2 and 4 of Schedule 2 to the Finance Act 2011 (c. 11).

Legal professional privilege

5. A person (“F”) is not to be treated as a promoter in relation to a notifiable proposal or a notifiable arrangement where F’s involvement with the notifiable proposal or notifiable arrangement is such that F is not required by virtue of paragraph 32 of the Schedule to provide all of the prescribed information under paragraph 11(1) or 12(1) of the Schedule.

Other circumstances

6.—(1) This regulation applies to a person (“G”) who, but for the following paragraphs, would be a promoter in relation to a notifiable proposal or a notifiable arrangement by virtue of paragraph 8(2)(a) or (3)(a) of the Schedule.

(2) G is not a promoter in relation to the notifiable proposal or notifiable arrangement where paragraph (3), (4) or (5) applies.

(3) This paragraph applies where G, in the course of providing tax advice, is not responsible for the design of any element of the notifiable proposal or notifiable arrangement from which the tax advantage expected to be obtained arises.

(4) This paragraph applies where G—

- (a) in the course of a relevant business described in paragraph 8(4)(a) of the Schedule, is to any extent responsible for the design of the notifiable proposal or notifiable arrangement; but
- (b) does not provide tax advice in the course of carrying out G’s responsibilities in relation to the notifiable proposal or notifiable arrangement.

(5) This paragraph applies where G—

- (a) is not responsible for the design of all the elements of the notifiable proposal or notifiable arrangement from which the tax advantage expected to be obtained arises; and
- (b) could not reasonably be expected to have sufficient information as would enable G—
 - (i) to know whether or not the proposal or the arrangement is a notifiable proposal or a notifiable arrangement; or
 - (ii) to comply with paragraph 11(1) or 12(1) of the Schedule.

PART 3

Prescribed information, periods and times in relation to notifiable proposals and notifiable arrangements

Paragraphs 11(1), 12(1), 17(2) and 18(2) of the Schedule – duties on promoters and others

7.—(1) For the purposes of paragraphs 11(1), 12(1), 17(2) and 18(2) of the Schedule, the prescribed information is—

- (a) the particular information in paragraph (2);
- (b) the additional information in paragraph (3), if applicable; and
- (c) other information as might reasonably be expected to enable an officer of HMRC to comprehend the manner in which the notifiable proposal or notifiable arrangement is intended to operate.

(2) The particular information referred to in paragraph (1) means—

- (a) the name and address of the promoter but, where paragraph 18(2) of the Schedule applies, only to the extent that information is known to the person described in paragraph 18(1) of the Schedule;
 - (b) details of each provision of the Indirect Taxes (Notifiable Arrangements) Regulations 2017(5) by virtue of which the proposal for arrangements or the arrangement is a notifiable proposal or a notifiable arrangement;
 - (c) a summary of the notifiable proposal or notifiable arrangement and any name by which it is known;
 - (d) information which explains each element of the notifiable proposal or notifiable arrangement from which the tax advantage expected to be obtained arises; and
 - (e) details of the statutory provisions on which that expected tax advantage is based.
- (3) The additional information referred to in paragraph (1) means—
- (a) where paragraph 17(2) of the Schedule applies, the name and address of the person described in paragraph 17(1) of the Schedule;
 - (b) where paragraph 18(2) of the Schedule applies, the name and address of the person described in paragraph 18(1) of the Schedule.
- (4) Where—
- (a) paragraph 17(2) or 18(2) of the Schedule applies;
 - (b) but for this paragraph, a person would be required to provide prescribed information in relation to two or more notifiable proposals or notifiable arrangements;
 - (c) those notifiable proposals or notifiable arrangements are substantially the same (whether or not they relate to the same parties); and
 - (d) the person provides the prescribed information in relation to at least one of the notifiable proposals or notifiable arrangements,

the person is not required to provide that information in relation to the other notifiable proposals or notifiable arrangements.

Paragraph 18(2) of the Schedule - notifiable arrangements not involving promoters

- 8.—**(1) This regulation prescribes times for the purposes of paragraph 18(2) of the Schedule.
- (2) Except as provided by paragraph (3), the prescribed time is any time during the period of 30 days beginning with the relevant day.
- (3) Where paragraph 18(1) of the Schedule applies by virtue of the application of regulation 5, the prescribed time is any time during the period of 5 days beginning with the relevant day.
- (4) In this regulation, “relevant day” means the day after the day on which the person enters into the first transaction forming part of the notifiable arrangements.

Paragraphs 23(2) and 24(3) of the Schedule – duties of promoters and clients

- 9.—**(1) For the purposes of paragraphs 23(2) and 24(3) of the Schedule, the prescribed information is—
- (a) the name and address of the promoter;
 - (b) a summary of the notifiable proposal or notifiable arrangement and any name by which it is known;

- (c) each reference number⁽⁶⁾; and
 - (d) the date that each reference number was sent to the client.
- (2) In paragraph (1)—
- (a) where paragraph 23(2) of the Schedule applies, “the client” has the same meaning as in paragraph 23(1) of the Schedule; or
 - (b) where paragraph 24(3) of the Schedule applies, “the client” has the same meaning as in paragraph 24(1) of the Schedule.

Paragraph 25(2) of the Schedule – duties of clients to provide information to promoter

10.—(1) For the purposes of paragraph 25(2) of the Schedule, the prescribed information is that described in paragraph (2) or (3).

(2) The information referred to in paragraph (1) is each tax identifier number provided to the client.

(3) Where the information described in paragraph (2) is not provided to the client, the information referred to in paragraph (1) is a written statement to that effect.

(4) In this regulation, “the client” has the same meaning as in paragraph 25(1) of the Schedule.

Paragraph 26(1) and (3) of the Schedule – duty of parties to notifiable arrangements to notify HMRC of number etc

11.—(1) For the purposes of paragraph 26(1) of the Schedule, the prescribed information is—

- (a) the name and address of the person (“P”) providing the information;
- (b) each reference number;
- (c) the accounting period in which, or the date on which, P expects a tax advantage to arise in relation to a relevant indirect tax;
- (d) each tax identifier number provided to P;
- (e) a declaration made by P which confirms the accuracy and completeness of the information provided and which states whether P is also—
 - (i) a client;
 - (ii) another party to the notifiable proposal or notifiable arrangement; or
 - (iii) an introducer⁽⁷⁾ or a promoter in relation to the notifiable proposal or notifiable arrangement.

(2) In paragraph (1), “client” has the same meaning as in paragraph 23(1) or 24(1) of the Schedule, as the case may be.

(3) HMRC may by notice prescribe the time for the giving of the prescribed information described in paragraph (1) in such cases as are prescribed in the notice, how that information must be provided to HMRC and the address to which it must be sent.

Paragraph 27(3) of the Schedule – duty of promoter to provide details of clients

12.—(1) For the purposes of paragraph 27(3) of the Schedule, the following information is prescribed in relation to each notifiable arrangement to which paragraph 27(1) of the Schedule applies—

- (a) each reference number;

⁽⁶⁾ See paragraph 22(4) of the Schedule for the definition of “reference number”.

⁽⁷⁾ See paragraph 9 of the Schedule for the definition of “introducer”.

- (b) the name and address of each client;
 - (c) the prescribed information (if any) provided by the client to the promoter as described in regulation 10;
 - (d) the name and address of the promoter; and
 - (e) the date of the end of the relevant period in relation to which the information is provided.
- (2) In paragraph (1)(b), the name and address of a client is—
- (a) the address to which the promoter has sent, or would have sent, the prescribed information described in regulation 11(1) in compliance with paragraph 23(2) of the Schedule; or
 - (b) the address of the client shown on any register held by HMRC for the indirect tax to which the notifiable arrangement relates or most closely relates.
- (3) Paragraph (4) applies on the expiry of the prescribed period of 30 days referred to in regulation 13(2), where the prescribed period is extended to 60 days under regulation 13(3).
- (4) Where this paragraph applies, the prescribed information is a written statement that the client has not complied with paragraph 25(2) of the Schedule and that the period to do so has not expired.
- (5) Paragraph (6) applies—
- (a) on the expiry of the prescribed period of 60 days under regulation 13(3); and
 - (b) where the client has not complied with paragraph 25(2) of the Schedule.
- (6) Where this paragraph applies, the prescribed information is a written statement that the client has not complied with paragraph 25(2) of the Schedule.

Paragraph 27(3) and (4) of the Schedule – duty of promoter to provide details of clients

13.—(1) Paragraphs (2) and (3) prescribe the period for the purposes of paragraph 27(3) of the Schedule.

(2) Except as provided by paragraph (3), the prescribed period is the period of 30 days.

(3) Where—

- (a) on the sixteenth day after the end of the relevant period (as defined by paragraph 27(4) of the Schedule), the relevant period (as defined by paragraph 25(3) of the Schedule) has not expired; and
- (b) by that day, the client has not complied with paragraph 25(2) of the Schedule,

the prescribed period in respect of the prescribed information described in regulation 12(1)(c) is the period of 60 days.

(4) The prescribed period for the purposes of the relevant period (as defined in paragraph 27(4) of the Schedule) is each calendar quarter.

Paragraph 28(2) of the Schedule – enquiry by HMRC

14. For the purposes of paragraph 28(2) of the Schedule, where HMRC has given a written notice further to that paragraph, the prescribed information is—

- (a) the name and address of any person (“P”) other than the client, as described in paragraph 28(2) of the Schedule, who—
 - (i) sells, or is likely to sell, the notifiable proposal or notifiable arrangement; or
 - (ii) has achieved, or is likely to achieve, a tax advantage by implementing the notifiable proposal or notifiable arrangement;
- (b) each tax identifier number provided to P; and

- (c) sufficient information as might reasonably be expected to enable an officer of HMRC to comprehend the manner in which P is involved in the notifiable proposal or notifiable arrangement.

Paragraph 31(2) of the Schedule – provision of information to HMRC by introducers

15. For the purposes of paragraph 31(2) of the Schedule, the prescribed information is the name and address of—

- (a) P as described in paragraph 31(1)(a) of the Schedule;
- (b) each person who has provided P with information relating to the notifiable proposal or notifiable arrangement; and
- (c) each person with whom P has made a marketing contact.

Justin Holliday
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Two of the Commissioners for Her Majesty's
Revenue and Customs

7th December 2017

SCHEDULE

Preamble

Powers

These Regulations are made in exercise of the powers contained in the following paragraphs of Schedule 17 to the Finance (No. 2) Act 2017—

- (a) 8(8);
- (b) 11(1);
- (c) 12(1);
- (d) 17(2);
- (e) 18(2);
- (f) 23(2);
- (g) 24(2) and (3);
- (h) 25(2);
- (i) 26(1) and (3);
- (j) 27(3) and (4);
- (k) 28(2);
- (l) 31(2);
- (m) 56(2);
- (n) 57 (definition of “prescribed”).

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations are made further to the provisions contained in Schedule 17 (“the Schedule”) to the Finance (No. 2) Act 2017 (c. 32). The Schedule makes provision in respect of the disclosure of avoidance schemes, being schemes which enable a person to obtain a tax advantage (defined in paragraphs 6 and 7 of the Schedule), concerning VAT and other indirect taxes (a list of indirect taxes to which the Schedule applies is set out at paragraph 2(1) of the Schedule).

Regulation 2 contains definitions used in the Regulations, including tax identifier number.

Part 2 of the Regulations provides for those persons who are not to be treated as a promoter (see paragraph 8 of the Schedule). Regulation 3 concerns companies which provide services to other members of the same group. Regulation 4 concerns employees of a promoter who are not to be treated as promoters. Regulation 5 provides that persons are not promoters where legal professional privilege applies. Regulation 6 sets out other circumstances in which a person who would otherwise be a promoter is not to be regarded as a promoter.

Part 3 of the Regulations prescribes information, periods and times in relation to notifiable proposals and notifiable arrangements (see paragraph 3 of the Schedule).

Regulation 7 prescribes information which must be provided by promoters and others further to the following paragraphs of the Schedule—

paragraphs 11(1) and 12(1) – duties of promoter in relation to a notifiable proposals or arrangements;

paragraph 17(2) – duty of person dealing with promoter outside the United Kingdom; and

paragraph 18(2) – duty of parties to notifiable arrangements not involving promoter.

The information includes the name and address of the promoter, details of the indirect taxes in question and a summary and explanation of the notifiable proposals or arrangements.

Regulation 8 prescribes times for the purposes of paragraph 18(2) of the Schedule.

Regulation 9 prescribes information which must be provided further to the following paragraphs of the Schedule—

paragraph 23(2) – duty of promoter to notify client of numbers;

paragraph 24(3) – duty of client to provide parties of numbers.

The information includes details of the promoter, a summary of the notifiable proposals or arrangements and the applicable reference numbers (see paragraph 22(4) of the Schedule).

Regulation 10 prescribes information which must be provided further to paragraph 25 of the Schedule (duty of client to provide information to promoter), including each tax identifier number provided to the client.

Regulation 11 prescribes information which must be provided further to paragraph 26(1) of the Schedule (duty of parties to notifiable arrangements to notify HMRC of information). This includes the applicable references numbers, the accounting period in which the tax advantage is expected to arise and any tax identifier numbers. It also provides that HMRC may by notice prescribe the time for giving such information.

Regulation 12 prescribes information which must be provided further to paragraph 27(3) of the Schedule (duty of promoter to provide details of clients to HMRC). This includes applicable reference numbers, details of the clients and whether or not the clients have complied with paragraph 25(2) of the Schedule. Regulation 13 prescribes periods for the purposes of paragraph 27(3) and (4).

Regulation 14 prescribes information which must be provided further to paragraph 28(2) of the Schedule (enquiry following disclosure of client details). This includes details of persons who may sell the notifiable proposal or arrangement or who may receive a tax advantage by its implementation.

Regulation 15 prescribes information which must be provided further to paragraph 31(2) of the Schedule (provision of information to HMRC by introducers). This includes details of persons suspected of being introducers, of those who have provided the suspected introducer with information relating to the notifiable proposal or arrangement and of those with whom a marketing contact (see paragraph 10(2) of the Schedule) has been made.

A Tax Information and Impact Note covering this instrument was published on 5 December 2016 and made available alongside the Finance (No.2) Bill 2017 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.