STATUTORY INSTRUMENTS

2017 No. 1216

TAXES

The Indirect Taxes (Notifiable Arrangements) Regulations 2017

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

The Treasury, in exercise of the powers conferred by paragraphs 3(1)(a) and 56(2) of Schedule 17 to the Finance (No. 2) Act 2017(**1**), make the following Regulations:

PART 1

Introduction

Citation and coming into force

1. These Regulations may be cited as the Indirect Taxes (Notifiable Arrangements) Regulations 2017 and come into force on 1st January 2018.

Interpretation

2.—(1) In these Regulations—

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

"material date" means the following dates, as applicable—

(a) where paragraph 11(1) of the Schedule applies to a promoter, the relevant date as defined by paragraph 11(3) of the Schedule;

(b) where paragraph 12(1) of the Schedule applies to a promoter, the date on which the promoter first becomes aware of any transaction forming part of the arrangements;

(c) where paragraph 17(1) or 18(1) of the Schedule applies to a person, the date on which the person enters into any transaction forming part of any notifiable arrangements;

"the Schedule" means Schedule 17 to the Finance (No. 2) Act 2017;

(**1**) 2017 c. 32.

"VAT advantage" means a tax advantage in relation to VAT(**2**).

(2) The following have the same meaning in these Regulations as they do in the stated provisions of the Value Added Tax Act 1994(**3**)—

"belongs", section 9(**4**);

"exempt supply", section 31(**5**) and Schedule 9;

"reduced rate of VAT", section 29A(**6**);

"standard rate of VAT", the rate in force under section 2(1)(**7**).

PART 2

Notifiable arrangements - VAT

Notifiable arrangements in relation to VAT

3. The arrangements described in this Part are prescribed as notifiable arrangements in relation to VAT.

Retail supplies – splitting and value shifting

4.—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) A person ("A") makes a supply ("supply 1") of goods or services to a retail customer ("C").

(3) A, or another person ("B"), makes a supply ("supply 2") of other goods or services to C.

(4) In relation to supply 1 and supply 2—

(a) condition 1 or 2 is met; and

(b) condition 3 is met.

(5) Condition 1 is met if—

(a) were supply 1 and supply 2 made as a single supply or part of a single supply to C, that single supply would be taxable at the standard or reduced rate of VAT; and

(b) supply 1 or supply 2 is, or both are,—

(i) taxable at the reduced rate of VAT;

(ii) a zero-rated supply; or

(iii) an exempt supply, except a supply which is subject to insurance premium tax at the higher rate.

(6) Condition 2 is met if—

(a) were supply 1 and supply 2 made as a single supply or part of a single supply to C, that single supply would be an exempt supply; and

(b) supply 1 or supply 2 is, or both are,—

(i) taxable at the standard or reduced rate of VAT; or

(**2**) See paragraph 6 of the Schedule.
(**3**) 1994 c. 23.
(**4**) Section 9 is amended by paragraphs 1 and 6 of Part 1 of Schedule 36 to the Finance Act 2009 (c. 10) and section 104 of the Finance Act 2014 (c. 26).
(**5**) Section 31 is amended by section 197(3) of the Finance Act 2012 (c. 14).
(**6**) Section 29A is inserted by section 99(1) and (4) of the Finance Act 2001 (c. 9).
(**7**) Subsection (1) was amended by section 21(1), (2) and (6) of the Finance Act 1995 (c. 4), section 99(1) and (2) of the Finance Act 2001 and section 3(1) of the Finance (No. 2) Act 2010 (c. 31).

(ii) a zero-rated supply.

(7) Condition 3 is met if it would be reasonable to conclude that two or more of the following apply—

(a) C would not agree to receive supply 1 without also agreeing to receive supply 2;

(b) where supply 2 is made to C by B, B makes the supply with the agreement of A;

(c) supply 1 and supply 2 would be made as a single supply or part of a single supply to C were it not for a VAT advantage which is obtained, or which may be obtained, by making those supplies separately to C;

(d) the business model of A or B (or both) assumes that—

(i) only A will make supply 1 to C;

(ii) only A or B (as the case may be) will make supply 2 to C; and

(iii) the agreements to make supply 1 and supply 2 will be entered into with C at or about the same time;

(e) of supply 1 and supply 2, at least one is dependent on the other;

(f) were supply 1 and supply 2 made as a single supply or part of a single supply to C, that supply would be made at or about the same price as the price of both supply 1 and supply 2 are made to C;

(g) a higher profit is generated from whichever of supply 1 or supply 2 is the supply which obtains the greater VAT advantage.

(8) In this regulation, "zero-rated supply" has the meaning given by section 30 of the Value Added Tax Act 1994(**8**), excluding a supply of goods or services within items 2(d) and (g) and 8 to 13 of Group 12 in Part 2 of Schedule 8 to that Act.

Offshore supplies – insurance and finance

5.—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) A person ("D") who carries on business in the United Kingdom makes a supply of services to a person ("E") who belongs outside the EU and the supply is an exempt supply, or would be an exempt supply if made in the United Kingdom, by virtue of any item of Group 2 or any of items 1 to 6 and 8 of Group 5.

(3) E makes a supply of services to a person ("F") who belongs in the EU, where the supply would be an exempt supply if made in the United Kingdom.

(4) The supply which D makes to E is used to make the supply by E to F.

(5) For the purposes of determining whether or not an arrangement meets the description in the preceding paragraphs, a supply of services is made by D to E or E to F notwithstanding that the supply—

(a) is incorporated within a supply made by another person;

(b) is split into separate supplies; or

(c) is effected by means of a chain of supplies involving one or more intermediate suppliers.

(6) In this regulation, "Group 2" and "Group 5" have the meanings given by Schedule 9 to the Value Added Tax Act 1994(**9**).

(**8**) Section 30 was amended by section 28 of the Finance Act 1995 and section 29(2) of, and paragraph 7 of Schedule 3 to, the Finance Act 1996 (c. 8).

(**9**) Group 2 as described in Part 2 of Schedule 9 is amended by section 38(1) of the Finance Act 1997 (c. 16), paragraph 285(e)(i) of Part 2 of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and S.I. 2001/3649 and 2004/3083. Group 5 as described in

Offshore supplies – relevant business persons

6.—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) A person ("G") who carries on business in the United Kingdom makes a supply of services to a relevant business person ("H") who belongs outside the EU.

(3) The supply by G to H would be taxable at the standard or reduced rate of VAT were H a relevant business person who belongs in the United Kingdom.

(4) H makes a supply of services to a person ("I") who belongs in the EU and the supply—

(a) would be an exempt supply if made in the United Kingdom; or

(b) is made in the place where H belongs.

(5) The supply which G makes to H is used to make the supply by H to I.

(6) For the purposes of determining whether or not an arrangement meets the description in the preceding paragraphs, a supply of services is made by G to H or H to I notwithstanding that the supply—

(a) is incorporated within a supply made by another person;

(b) is split into separate supplies; or

(c) is effected by means of a chain of supplies involving one or more intermediate suppliers.

(7) In this regulation, "relevant business person" has the meaning given by section 7A(4) of the Value Added Tax Act 1994(**10**);

Options to tax- land

7.—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) A person ("J") has exercised the option to tax in respect of land, as provided by paragraph 2 of Part 1 of Schedule 10 to the Value Added Tax Act 1994(**11**), and that option has not been revoked as described in paragraph 23 or 24 of that Schedule.

(3) Fewer than 20 years have expired since the date on which the option had effect.

(4) A supply is made in respect of the land by—

(a) J; or

(b) a relevant associate of J,

such that the supply is not a taxable supply, by virtue of paragraph 12(1) of Part 1 of Schedule 10 to the Value Added Tax Act 1994.

(5) In this regulation, "relevant associate" has the meaning given by paragraph 3 of Part 1 of Schedule 10 to the Value Added Tax Act 1994.

Part 2 of Schedule 9 is amended by paragraph 81 of Part 2 of Schedule 18 to the Financial Services Act 2012 (c. 21) and S.I. 1997/510, 1999/594, 2001/3649, 2003/1568, 2003/1569, 2008/2547, 2013/1402 and 2013/1773.

(**10**) Section 7A is inserted by paragraphs 1 and 4 of Part 1 of Schedule 36 to the Finance Act 2009.

(**11**) Schedule 10 was substituted by article 2 of S.I. 2008/1146.