STATUTORY INSTRUMENTS

2017 No. 1215

TAXES

The Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2017

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

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

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

(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;

(**5**) S.I. 2017/1216.