

EXPLANATORY NOTE

AMENDMENTS 39-51 TO CLAUSES 242, 244, 251, 266, 270 AND 272 AND SCHEDULES 31 TO 32

SUMMARY

1. These amendments clarify the wording of the clauses and Schedules. The clauses and related schedules introduce new legislation applying to certain promoters of avoidance schemes. In broad outline, the provisions define promoters of avoidance schemes, identify when they have triggered “threshold” conditions targeting specified behaviours, and provide for a “conduct” notice to be applied to these promoters. Those who fail to comply with a conduct notice may be issued with a “monitoring” notice, which requires pre-approval by a Tribunal. Names of promoters subject to a monitoring notice will be published by HMRC, including details of how the conduct notice was breached, and the promoter will be required to publish its monitored status to clients. Information requirements will apply to monitored promoters, and intermediaries and clients of monitored promoters.

DETAILS OF THE AMENDMENTS

Monitoring notices: procedure and publication

2. Amendment 39 is a minor amendment to clause 242 to include in subsection (4) the duty under subsection (10).

Allocation and distribution of promoter reference number

3. Clause 244 imposes on the monitored promoter a duty to notify clients of its promoter reference number. Amendments 40-43 all apply to clause 244. The amendments make two sets of changes. The first includes relevant intermediaries as another category of persons to whom the monitored promoter has to notify its promoter reference number. The duty applies to persons who the monitored promoter could reasonably be expected to know are relevant intermediaries. The monitored promoter has to provide its promoter reference number to the relevant intermediary within 30 days of the later of two dates, the first being the day that the monitored promoter is notified by HMRC of its promoter reference number and the second being that day that the promoter could reasonably have become aware that the person is a relevant intermediary. The second changes when a monitored promoter must notify the promoter reference number to persons falling within 244 (4). This change addresses the fact that a monitored promoter might become aware of such a person some time after they are first notified of the promoter reference number.

Obtaining information and documents

4. Amendments 44-46 are three identical amendments to clause 251 to subsections (2) (b), 4 (b) and 5 (b) respectively. The amendments make clear that the person is required to provide the information and is not merely requested to provide the information.

Obtaining information and documents appeals

5. Amendment 47 ensures that clause 266 enables the relevant client or relevant intermediary to provide documents as well as information to HM Revenue and Customs.

Penalties

6. Amendment 48 amends clause 270 to include Inheritance Tax within the taxes that are subject to the 20 year time limit which applies where tax is lost due to the client's failure to notify HMRC of the monitored promoter's reference number.

Offences

7. Clause 272 introduces the offence of concealing, destroying or disposing of a document once a person has been notified in writing that the documents is or is likely to be subject to an information notice under clause 248. Amendment 49 makes it clear that the offence only applies where HMRC intends to seek the approval of the Tribunal for giving that notice.

Schedule 31- Penalties

8. The Table in paragraph 2 of Schedule 31 is amended by Amendment 50 so that it reflects the inclusion of intermediaries within the duty under clause 244.

Schedule 32 - Partnerships

9. Paragraph 1 is amended by Amendment 51 to make it clear that partnerships that are separate legal entities are not caught by the special provisions of the Schedule (and elsewhere in Part 5 of the Bill) which apply to a "partnership".

BACKGROUND NOTE

10. This legislation is designed to tackle the particular behaviours which have been identified amongst certain promoters of tax avoidance schemes (e.g. failure to comply with DOTAS or respond to HMRC information notices) and in doing so improve the transparency of certain promoters with HMRC with appropriate sanctions if the promoter does not want to comply voluntarily.

11. The "Raising the Stakes on Tax Avoidance" consultation in summer 2013, made proposals to tackle the behaviour of high-risk promoters. This was followed in January 2014

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with a responses document and draft legislation. These clauses and Schedules are the outcome of the consultation on the draft legislation. The clauses are supplemented by three Schedules. The first describes the threshold conditions that trigger the issuing of a conduct notice. The second has the penalty provisions for failure to comply with the duties imposed by the clauses on promoters, intermediaries and clients. The third schedule describes how the clauses apply to partnerships.

If you have any questions about this change, or comments on the legislation, please contact Lesley Hamilton on 03000 585670 (email: lesley.hamilton@hmrc.gsi.gov.uk).

Thursday 5 June 2014

PUBLIC BILL COMMITTEE

- Mr David Gauke **39**
- Clause 242, page 163, line 19, after “subsection (3)” insert “or (10)”
- Mr David Gauke **40**
- Clause 244, page 165, line 17, at end insert “, and
(d) any person who the monitored promoter could reasonably be expected to know is a relevant intermediary in relation to a relevant proposal of the monitored promoter.”
- Mr David Gauke **41**
- Clause 244, page 165, line 34, at end insert—
“() A person is a relevant intermediary in relation to a relevant proposal of a monitored promoter if the person meets the conditions in section 229(a) to (c) (meaning of “intermediary”) at any time while the monitoring notice in relation to the monitored promoter has effect.”
- Mr David Gauke **42**
- Clause 244, page 165, line 36, leave out “or (2)(c)”
- Mr David Gauke **43**
- Clause 244, page 165, line 41, at end insert—
“() in the case of a person falling within subsection (2)(c), the period of 30 days beginning with the later of the day of the notification mentioned in subsection (1) and the first day on which the monitored promoter could reasonably be expected to know that the person fell within subsection (4), and
() in the case of a person falling within subsection (2)(d), the period of 30 days beginning with the later of the day of the notification mentioned in subsection (1) and the first day on which the monitored promoter could reasonably be expected to know that the person was a relevant intermediary in relation to a relevant proposal of the monitored promoter.”
- Mr David Gauke **44**
- Clause 251, page 170, line 39, leave out paragraph (b) and insert—
“() requires the person to provide the information.”

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- Mr David Gauke 45
- Clause 251, page 171, line 11, leave out paragraph (b) and insert—
 “() requires the person to provide the information.”
- Mr David Gauke 46
- Clause 251, page 171, line 19, leave out paragraph (b) and insert—
 “() requires the person to provide the information.”
- Mr David Gauke 47
- Clause 266, page 179, line 4, after “information” insert “or documents”
- Mr David Gauke 48
- Clause 270, page 180, line 45, at end insert—
 “() In section 240 of IHTA 1984 (underpayments)—
 (a) in subsection (3) for “and (5)” substitute “to (5A)”,
 (b) in subsection (5), for “those dates” substitute “the dates in subsection (2)(a) and (b)”,
 (c) after subsection (5) insert—
 “(5A) Proceedings in a case involving a loss of tax attributable to arrangements which were expected to give rise to a tax advantage in respect of which a person liable for the tax was under an obligation to make a report under section 246 of the Finance Act 2014 (duty to notify Commissioners of promoter reference number) but failed to do so, may be brought at any time not more than 20 years after the later of the dates in subsection (2)(a) and (b).”, and
 (d) in subsection (8), for “, (5) and (6)” substitute “to (6).”
- Mr David Gauke 49
- Clause 272, page 182, line 13, leave out paragraph (b) and insert—
 “() the officer of Revenue and Customs intends to seek the approval of the tribunal to the giving of the notice.”
- Mr David Gauke 50
- Schedule 31, page 546, line 34, leave out “client” and insert “clients and intermediaries”
- Mr David Gauke 51
- Schedule 32, page 552, line 9, leave out sub-paragraph (2) and insert—
 “() But in this Part of this Act “partnership” does not include a body of persons forming a legal person that is distinct from themselves (and paragraphs 2 to 21 may accordingly be disregarded in applying this Part of this Act to such a body of persons).”