

## Explanatory Note

# Clause 66 and Schedule: Sanctions for persistently unco-operative large businesses

## Summary

1. This clause introduces a special measures regime to tackle the small number of large businesses who engage in aggressive tax planning, or refuse to engage with HMRC in an open and collaborative manner.

## Details of the clause

2. This clause introduces the Schedule and provides for its commencement.

## Schedule 1: Part 1: Large groups falling within this Schedule

3. Paragraph 1(1) sets out which UK Groups are UK qualifying groups falling within this Schedule.
4. The UK qualifying groups concerned are those fulfilling three conditions - relating to persistent unco-operative behaviour, significant unresolved tax issues and there being a reasonable likelihood of further such behaviour causing or contributing to further such issues.
5. Paragraph 1(2) provides some definitions used in the Schedule.
6. Paragraph 2 sets out the criteria for a group having "engaged in persistent unco-operative behaviour" by reference to members of the group having satisfied either or both of the behaviour and arrangements conditions set out in paragraphs 3 and 4. Paragraph 2(4) expands on the meaning of "persistently" in this Schedule.
7. Paragraph 3(1) sets out the behaviour condition, which is concerned with behaviour which has delayed or hindered HMRC in the exercise of its functions in relation to the group as regards UK taxation.
8. Paragraph 3(2) gives examples of factors which may indicate that the behaviour condition is satisfied, relating to the use of information powers, inaccuracies and omissions in documents submitted to HMRC and reliance on speculative interpretations of legislation.
9. Paragraph 3(3) and 3(4) provide definitions.
10. Paragraph 4 sets out the arrangements condition, which is concerned with being party to tax avoidance schemes as defined in paragraph 4(2).

11. Paragraph 5 sets out the definition of a "significant tax issue", in terms of there being a disagreement between the group or a member of the group and HMRC whose value exceeds or is likely to exceed £2m.
12. Paragraphs 5(3)-(5) allow for the substitution of a higher figure by regulations.
13. Paragraph 6 makes provision in relation to changes in the composition of a group.

## Schedule 1: Part 2: Notices

14. Paragraph 7 provides the definition of "designated HMRC officer" as it relates to this Schedule.
15. Paragraph 8 sets out the circumstances in which a "warning notice" may be given to the head of a qualifying UK group by HMRC, and what it must contain.
16. Paragraph 9 sets out the ways in which a warning notice may be withdrawn by HMRC.
17. Paragraph 10 sets out the circumstances in which a "special measures notice" may be given to the head of a UK qualifying group by HMRC, and what it must contain. 10(3) provides for HMRC to take account of the representations of the UK qualifying group in deciding whether to do so.
18. Paragraph 11 sets out the ways in which a special measures notice may be withdrawn by HMRC.
19. Paragraph 12 sets out in what circumstances a "confirmation of special measures notice" may be given to the head of a UK qualifying group by HMRC.
20. Paragraph 13 sets out the additional circumstances in which a special measures notice may be given to the head of a UK qualifying group by HMRC within a 7 month period after the withdrawal of a warning notice. 13(2) provides for HMRC to take account of the representations of the UK qualifying group in deciding whether to do so.
21. Paragraph 14 sets out the circumstances in which notices are treated as being given where a member of a group becomes a member of another group during the special measures process.

## Schedule 1: Part 3: Sanctions

22. Paragraph 15 provides for an inaccuracy in a document given to HMRC to be treated as being due to a failure to take reasonable care for the purposes of Schedule 24 FA 2007 (penalties for errors) if the inaccuracy relates to a tax avoidance scheme or is attributable to a speculative interpretation of the law relating to UK taxation.
23. Paragraph 16 makes an amendment to Schedule 24 of the Finance Act 2007.
24. Paragraph 17 sets out the circumstances in which HMRC may publish information about a UK qualifying group, what information HMRC may publish about the group, what HMRC must do before it publishes this information, and what HMRC must do when the group ceases to be subject to a confirmed special measures notice.

## Schedule 1: Part 4: Application of this Schedule to other large businesses

25. Paragraph 18 sets out the circumstances in which a UK sub-group of a group falls within this Schedule and a UK sub-group of an MNE group and how the Schedule is applied to such sub-groups.
26. Paragraph 18(8) sets out the meaning for "UK sub-group" and "head" in relation to a UK sub-group with reference to the Schedule to clause 65.
27. Paragraph 19 sets out in what circumstances a qualifying company or MNE company falls within this Schedule and how the Schedule is applied to a qualifying company or MNE company. Paragraph 19(8) sets out the definition of "company", "MNE company", "qualifying company", and "qualifying MNE group" in this Schedule.
28. Paragraph 20 sets out in what circumstances a qualifying partnership falls within this Schedule and how the Schedule is applied to a qualifying partnership. Paragraph 20(11) sets out the meaning of "partnership", "qualifying partnership" and "representative partner" in this Schedule.

## Schedule 1: Part 5: Defined terms

29. This Part provides a table that sets out the location of terms defined within this Schedule.

## Background note

30. HM Revenue and Customs (HMRC) is committed to dealing with all customers fairly and efficiently while making sure that the correct tax is paid to the Exchequer. HMRC's Large Business Directorate manages the largest 2,000 or so businesses using a risk based approach. This is due to their size and complexity, the tax at stake, and the consequent risk they present to the Exchequer.
31. This measure seeks to provide a tool with which to tackle the small number of large businesses with an ongoing history of aggressive tax planning and/or who refuse to engage with HMRC.
32. To achieve this, we are introducing a special measures regime for the aforementioned large businesses.
33. If you have any questions about this change, or comments on the legislation, please contact Mary Purcell on 03000 579867 or at [largebusinessconsultation.mailbox@hmrc.gsi.gov.uk](mailto:largebusinessconsultation.mailbox@hmrc.gsi.gov.uk).