

## Clause X: Promoters of tax avoidance schemes: threshold conditions etc

### Summary

1. This clause amends the Promoters of Tax Avoidance Schemes (POTAS) legislation in Schedule 34 and Schedule 34A of the Finance Act (FA) 2014. It ensures HM Revenue and Customs (HMRC) can issue conduct notices as intended by the POTAS regime in specified situations where a person has, or persons together have, control or significant influence over a relevant body.
2. These amendments will have effect from the 8 March 2017 for the purpose of determining whether a person should be treated as meeting a threshold condition.

### Details of the clause

3. Subsection (1) replaces existing sub-paragraphs (6) to (8) of paragraph 13A to Part 2 of Schedule 34 to the FA 2014 with new sub-paragraphs (6) to (12).
4. New sub-paragraph (6) sets out when two or more persons together have control over a body corporate.
5. New sub-paragraphs (7) to (9) sets out when a person has, or two or more persons together have, control over a partnership.
6. New sub-paragraphs (10) and (11) sets out when a person has, or two or more persons together have, significant influence over a body corporate or partnership.
7. New sub-paragraph (12) defines promoter for the purpose of paragraph 13A.
8. Subsection (2) replaces existing paragraphs 13B to 13D with new paragraphs 13B to 13D to accommodate the amendments made in new sub-paragraphs (6) to (11). This subsection makes no additional changes to how paragraphs 13B to 13D operate.
9. New paragraph 13B sets out the circumstances in which a relevant body can be treated as meeting a threshold condition by virtue of a person who has, or persons together who have, control or significant influence over the relevant body meeting that threshold condition. This includes where either the relevant body in question or the person who has, or persons together who have, control or significant influence over it, were carrying on a business as a promoter at that earlier time. This also includes circumstances in which the relevant body to which the meeting of a threshold condition is being attributed did not exist at the earlier time.
10. New paragraph 13C sets out the circumstances in which a person (other than an individual) can be treated as meeting a threshold condition by virtue of a relevant

body, which that person had control or significant influence over at that time, meeting a threshold condition. This includes circumstances where a threshold condition is met by a relevant body but a different relevant body was carrying on the business of a promoter - provided both were controlled or significantly influenced by the person in question at the earlier time. This also includes circumstances where the relevant bodies have ceased to exist.

11. New paragraph 13D sets out the circumstances in which a relevant body can be treated as meeting a threshold condition by virtue of another relevant body meeting a threshold condition- provided the latter was controlled or significantly influenced at the earlier time by the same person or persons together who now control or significantly influence the former. This includes circumstances where a threshold condition is met by a relevant body but a different relevant body was carrying on the business of a promoter, provided both were controlled or significantly influenced by the person, or persons together, in question at the earlier time. This also includes circumstances where a relevant body other than the relevant body which is to be treated as meeting the threshold condition have ceased to exist.
12. Subsection (3) replaces existing paragraphs 20 to 22 in Part 4 of Schedule 34A to FA 2014 with new paragraphs 20 to 22 to accommodate the amendments made in new sub-paragraph (6) to (11). This subsection makes no additional changes to how paragraphs 20 to 22 operate.
13. New paragraph 20 sets out the circumstances in which a relevant body can be treated as meeting any of the conditions in sub-sections 11, 12 or 13 of section 237A to FA 2014 by virtue of a person who has, or persons together who have, control or significant influence over the relevant body meeting that condition. This includes where either the relevant body in question, or the person who has, or persons together who have, control or relevant influence over it, were carrying on a business as a promoter at that earlier time. This also includes circumstances in which the relevant body to which the meeting of a condition is being attributed did not exist at the earlier time.
14. New paragraph 21 sets out the circumstances in which a person (other than an individual) can be treated as meeting any of the conditions in sub-sections 11, 12 or 13 of section 237A to FA 2014 by virtue of a relevant body, which that person had control or significant influence over at that time, meeting a condition. This includes circumstances where a condition is met by a relevant body but a different relevant body was carrying on the business of a promoter - provided both were controlled or significantly influenced by the person in question at the earlier time. This also includes circumstances where the relevant bodies have ceased to exist.
15. New paragraph 22 sets out the circumstances in which a relevant body can be treated as meeting any of the conditions in sub-sections 11, 12 or 13 of section 237A to the FA 2014 by virtue of another relevant body meeting a condition- provided the latter was controlled or significantly influenced at the earlier time by the same person or persons together who now control or significantly influence the former. This includes circumstances where a condition is met by a relevant body but a different relevant

body was carrying on the business of a promoter, provided both were controlled or significantly influenced by the person, or persons together, in question at the earlier time. This also includes circumstances where a relevant body other than the relevant body which is to be treated as meeting the threshold condition have ceased to exist.

16. Subsection (4) sets out consequential amendments to paragraph 23 of Schedule 34A to the FA 2014.
17. Subsections (5) and (6) set out from when the amendments made in subsections (1) to (4) will have effect.

## Background note

18. The POTAS legislation was introduced in FA 2014 and aims to change the behaviour of a small and persistent minority of promoters of tax avoidance schemes who display certain behaviours.
19. Where any one of a number of conditions are met, HMRC must consider whether to give the promoter a conduct notice lasting for up to two years. A conduct notice imposes conditions on how that promoter must behave. If the promoter breaches the conditions of the conduct notice, HMRC may apply to the Tribunal for approval to give the promoter a monitoring notice. Monitored promoters are subject to additional information requirements and penalties for non-compliance with those requirements.
20. These changes ensure that the POTAS legislation functions as intended and are part of the government's strategic response to tax avoidance to deter the development and use of avoidance schemes through influencing the behaviour of promoters, their intermediaries and clients.