

2015 No. ****

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2015

<i>Made</i> - - - -	XXXX
<i>Laid before the House of Commons</i>	XXXX
<i>Coming into force</i> - -	XXXX

The Treasury make the following Regulations in exercise of the powers conferred by sections 306(1)(a) and (b) and 317(2) of the Finance Act 2004(a).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2015 and come into force on [XXXX 2015].

(2) These Regulations do not have effect—

- (a) for the purposes of section 308(1) of the Finance Act 2004 (duties of promoter relating to any notifiable proposal), if the relevant date falls before [*];
- (b) for the purposes of section 308(3) of the Finance Act 2004 (duties of promoter relating to any notifiable arrangements), if the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements falls before [*];
- (c) for the purposes of section 309(1) of the Finance Act 2004 (duty of person dealing with promoter outside United Kingdom), and of section 310 of that Act (duty of parties to notifiable arrangements not involving promoter), if the date on which any transaction forming part of notifiable arrangements is entered into falls before [*].

Amendment of the Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006

2. The Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006(b) are amended as provided for in regulations 3 to 8.

(a) 2004 c.12. Section 56 of, and paragraphs 1 and 8 of Schedule 17 to, the Finance Act 2010 (c.13) amended section 317(2).
(b) 2006/1543.

3. In regulation 2(1) (interpretation: general) after the definition of “CAA 2001” insert—
““CTA 2009” means the Corporation Tax Act 2009(a);”.

4.—(1) Regulation 5 (prescribed descriptions of arrangements) is amended as follows.

(2) For paragraph (1) substitute—

“(1) The following arrangements are prescribed for the purposes of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes)—

- (a) in relation to income tax, corporation tax and capital gains tax, any arrangements which fall within any description specified in a provision of these Regulations listed in paragraph (2);
- (b) in relation to inheritance tax, any arrangements which fall within any description specified in a provision of these Regulations listed in paragraph (2)(a) or (c).”

(3) In paragraph (2)—

(a) omit the “and” after sub-paragraph (g);

(b) after sub-paragraph (h) insert—

“and

(i) regulation 19 (description 9: financial products).”

5. For regulation 10 (Description 5: standardised tax products) substitute—

“Description 5: standardised tax products

10.—(1) Subject to regulation 11, arrangements are prescribed if a promoter makes the arrangements available for implementation by more than one person and the conditions in paragraph (2) are met.

(2) The conditions are that an informed observer (having studied the arrangements and having regard to all relevant circumstances) could reasonably be expected to conclude that—

- (a) the arrangements have standardised, or substantially standardised, documentation—
 - (i) the purpose of which is to enable a person to implement the arrangements;
 - (ii) the form of which is determined by the promoter; and
 - (iii) the substance of which does not need to be tailored, to any material extent, to enable a person to implement the arrangements;
- (b) a person implementing the arrangements must enter into a specific transaction or series of specific transactions;
- (c) the transaction or series of transactions are standardised, or substantially standardised, in form; and
- (d) either the main purpose of the arrangements is to enable a person to obtain a tax advantage or the arrangements would be unlikely to be entered into but for the expectation of obtaining of a tax advantage.”

6. In regulation 11 (arrangements excepted from Description 5)—

(a) omit paragraph (1);

(b) in paragraph (2) for “The arrangements referred to in paragraph (1)(a) are” substitute “The following arrangements are excepted from being prescribed under regulation 10”.

7. In regulation 12 (Description 6: Loss schemes) for paragraph (b) substitute—

(a) 2009 c.4.

“(b) an informed observer (having studied the arrangements and having regard to all relevant circumstances) could reasonably be expected to conclude that—

- (i) the main benefit or one of the main benefits which could be expected to accrue to some or all of the individuals participating in the arrangements is the provision of losses, and
- (ii) the arrangements (including the way they are structured) contain an element, or elements, which are unlikely to have been entered into by the individuals concerned were it not for the provision of those losses, and
- (iii) those individuals would be expected to use those losses to reduce their liability to income tax or capital gains tax.”

8. After regulation 18 (Description 8: Employment income provided through third parties) insert—

“Description 9: Financial products

19.—(1) Subject to paragraph (6), arrangements are prescribed if—

- (a) condition 1 is met, and
- (b) it would be reasonable to expect an informed observer (having studied the arrangements and having regard to all relevant circumstances) to conclude that—
 - (i) condition 2 is met, and
 - (ii) either condition 3 or condition 4 is met.

(2) Condition 1 is that the arrangements include at least one financial product specified in regulation 20(1) (a “specified financial product”)

(3) Condition 2 is that the main benefit, or one of the main benefits, of including a specified financial product in the arrangements is to give rise to a tax advantage.

(4) Condition 3 is that a specified financial product included in the arrangements contains at least one term which is unlikely to have been entered into by the persons concerned were it not for the tax advantage.

(5) Condition 4 is that the arrangements involve one or more contrived or abnormal steps without which the tax advantage could not be obtained.

(6) Arrangements are not prescribed where—

- (a) a promoter is a participating entity, or is part of a participating group, within the meaning of section 279 of the Finance Act 2014(a), and
- (b) HMRC has confirmed, or could reasonably be expected to confirm, to the promoter that the arrangements are acceptable transactions under the Code of Practice on Taxation for Banks (as published by the Commissioners for Her Majesty’s Revenue and Customs on 31 May 2013)(b).

20.—(1) The financial products specified in this paragraph are—

- (a) a loan,
- (b) a share,
- (c) a derivative contract within the meaning given by section 576 of CTA 2009,
- (d) a repo in respect of securities within the meaning given by section 263A(A1) of TCGA 1992(c),
- (e) a creditor repo, creditor quasi-repo, debtor repo or a debtor quasi-repo (within the meanings given by sections 543, 544, 548 and 549 of CTA 2009 respectively),

(a) 2014 c.26.
(b)
(c) 1992 c.12.

- (f) a stock lending arrangement within the meaning given by section 263B(1) of TCGA 1992,
- (g) an alternative finance arrangement within Chapter 6 of Part 6 of CTA 2009 or Part 10A of the Income Tax Act 2007,
- (h) a contract which, whether alone or in combination with one or more other contracts, in substance represents the making of a loan, or the advancing or depositing of money, and falls to be accounted for on that basis.

(2) Paragraph (1) does not specify a financial product held within an account which satisfies the conditions in regulation 4 of the Individual Savings Account Regulations 1998(a).

(3) In this regulation, a contract or combination of contracts (“the product”) falls to be accounted for as a loan, or as the advancing or depositing of money, if the person entering into the arrangements—

- (a) is, in accordance with generally accepted accounting practice, required to treat the product as a loan, deposit or other financial asset or obligation, or
- (b) would be required to treat the product in a way described in sub-paragraph (a) if the person were a company to which the Companies Act 2006(b) applied.

(4) In this regulation “generally accepted accounting practice” has the meaning given by 1127 of the Corporation Tax Act 2010(c).”

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

Name 1
Name 2

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543) (“the 2006 Regulations”). They extend the scope of the confidentiality and premium fee hallmarks to include inheritance tax; make changes to aspects of the standardised tax products and losses hallmarks; and introduce a new hallmark relating to financial products.

Regulation 1 provides for citation, commencement and effect.

Regulation 2 introduces the amendments to the 2006 Regulations.

Regulation 3 amends regulation 2 of the 2006 Regulations.

Regulation 4 amends regulation 5 of the 2006 Regulations to extend the scope of the confidentiality and premium fee hallmarks to arrangements involving inheritance tax.

Regulation 5 substitutes a new description of standardised tax products hallmark in the 2006 Regulations. The amendment changes how the hallmark works by requiring the informed observer to consider all aspects of the test, rather than the previous position where the observer was required only to consider the purpose of the arrangements.

(a) S.I. 1998/1870, to which there are amendments not relevant to these Regulations.
 (b) 2006 c.46, to which there are amendments not relevant to these Regulations.
 (c) 2010 c. 4.

Regulation 6 removes the grandfathering provision from regulation 11 of the 2006 Regulations.

Regulation 7 substitutes a new description of the Loss Scheme hallmark in the 2006 Regulations. The amendment refines the targeting of the hallmark by requiring the informed observer to consider whether the provision of losses is a main benefit, rather than the main benefit, and to consider whether the arrangements or their structure contain elements which are unlikely to have been entered were it not for the provision of those losses.

Regulation 8 inserts new regulations 19 and 20 into the 2006 Regulations. New regulation 19 prescribes arrangements, for the purposes of section 306 of the Finance Act 2004, where certain conditions are met. Condition 1 is that one or more of the financial products specified by new regulation 20 has been used as part of the arrangements. Condition 2 to 4 relate to particular circumstances which may exist in respect of such arrangements.

A Tax Information and Impact Note covering this instrument was published on the 10th December 2014 alongside the Autumn Statement 2014 and is available on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

Withdrawn - do not use