

**2017 No. xxx**

**TAXES**

**The Indirect Taxes (Notifiable Arrangements) Regulations 2017**

*Made* - - - - - \*\*\*  
*Laid before the House of Commons* \*\*\*  
*Coming into force* - - - \*\*\*

**CONTENTS**

**PART 1**

Introduction

- |    |                                |   |
|----|--------------------------------|---|
| 1. | Citation and coming into force | 2 |
| 2. | Interpretation                 | 2 |

**PART 2**

Notifiable arrangements - VAT

- |    |  |   |
|----|--|---|
| 3. | Notifiable arrangements in relation to VAT     | 2 |
| 4. | Retail supplies – splitting and value shifting | 3 |
| 5. | Offshore supplies – insurance and finance      | 4 |
| 6. | Offshore supplies – relevant business persons  | 4 |
| 7. | Options to tax - disapplication                | 5 |

**PART 3**

Notifiable arrangements – general

- |     |   |   |
|-----|---|---|
| 8.  | Notifiable arrangements in relation to any indirect tax | 5 |
| 9.  | Small and medium-sized enterprises                      | 5 |
| 10. | Confidentiality - promoters                             | 6 |
| 11. | Confidentiality – other persons                         | 6 |
| 12. | Premium fees  | 7 |
| 13. | Standardised tax products                               | 7 |
-

The Treasury, in exercise of the powers conferred by paragraphs 3(1)(a), and 57(2) and (4) of Schedule 21 to the Finance Act 2017(a), make the following Regulations:

## PART 1

### Introduction

#### Citation and coming into force

1. These Regulations may be cited as the Indirect Taxes (Notifiable Arrangements) Regulations 2017 and come into force on xx yy 2017.

#### Interpretation

2.—(1) In these Regulations—

“element”, in relation to a notifiable arrangement, includes the way in which the arrangement is structured;

“material date” means the following dates, as applicable—

- (a) where paragraph 11(1) of the Schedule applies to a promoter, the relevant date as defined by paragraph 11(3) of the Schedule;
- (b) where paragraph 12(1) of the Schedule applies to a promoter, the date on which the promoter first becomes aware of any transaction forming part of the arrangements;
- (c) where paragraph 17(1) or 18(1) of the Schedule applies to a person, the date on which the person enters into any transaction forming part of any notifiable arrangements;

“Schedule” means Schedule 21 to the Finance Act 2017;

“small or medium-sized enterprise” has the meaning given by regulation 9;

“VAT advantage” means a tax advantage in relation to VAT(b).

(2) The following have the same meaning in these Regulations as they do in the stated provisions of the Value Added Tax Act 1994(c)—

“belongs”, section 9(d);

“exempt supply”, section 31(e) and Schedule 9;

“reduced rate of VAT”, section 29A(f);

“standard rate of VAT”, the rate in force under section 2(1)(g).

## PART 2

### Notifiable arrangements - VAT

#### Notifiable arrangements in relation to VAT

3. The arrangements described in this Part are prescribed as notifiable arrangements in relation to VAT for the purposes of Schedule 21 to the Finance Act 2017.

---

(a) 2017 c. xx.

(b) See paragraph 6 of the Schedule.

(c) 1994 c. 23.

(d) Section 9 is amended by paragraphs 1 and 6 of Part 1 of Schedule 36 to the Finance Act 2009 (c. 10) and section 104(1) to (4) of the Finance Act 2014 (c. 26).

(e) Section 31 is amended by section 197(3) of the Finance Act 2012 (c. 14).

(f) Section 29A is inserted by section 99(1) and (4) of the Finance Act 2001 (c. 9).

(g) Subsection (1) was amended by section 21(1), (2) and (6) of the Finance Act 1995 (c. 4), section 99(1) and (2) of the Finance Act 2001 and section 3(1) of the Finance (No 2) Act 2010 (c. 31).

#### **Retail supplies – splitting and value shifting**

- 4.—(1) An arrangement which meets the following description is a notifiable arrangement.
- (2) A person (“A”) agrees to a supply (“supply 1”) of goods or services to a retail customer (“C”).
- (3) A, or another person (“B”), agrees to a supply (“supply 2”) of other goods or services to C.
- (4) In relation to supply 1 and supply 2—
- (a) condition 1 or 2 is met; and
  - (b) condition 3 is met.
- (5) Condition 1 is met if—
- (a) were supply 1 and supply 2 made as a single supply or part of a single supply to C, that single supply would be taxable at the standard or reduced rate of VAT; and
  - (b) supply 1 or supply 2 is, or both are,—
    - (i) taxable at the reduced rate of VAT;
    - (ii) a zero-rated supply; or
    - (iii) an exempt supply, except a supply which is subject to insurance premium tax at the higher rate.
- (6) Condition 2 is met if—
- (a) were supply 1 and supply 2 made as a single supply or part of a single supply to C, that single supply would be an exempt supply; and
  - (b) supply 1 or supply 2 is, or both are,—
    - (i) taxable at the standard or reduced rate of VAT; or
    - (ii) a zero-rated supply.
- (7) Condition 3 is met if it would be reasonable to conclude that two or more of the following apply—
- (a) C would not agree to receive supply 1 without also agreeing to receive supply 2;
  - (b) where supply 2 is made to C by B, B makes the supply with the agreement of A;
  - (c) supply 1 and supply 2 would be made as a single supply or part of a single supply to C were it not for a VAT advantage which is obtained, or which may be obtained, by making those supplies separately to C;
  - (d) the business model of A or B (or both) assumes that—
    - (i) only A will make supply 1 to C;
    - (ii) only A or B (as the case may be) will make supply 2 to C; and
    - (iii) the agreements to make supply 1 and supply 2 will be entered into with C at or about the same time;
  - (e) of supply 1 and supply 2, at least one is dependent on the other;
  - (f) were supply 1 and supply 2 made as a single supply or part of a single supply to C, that supply would be made at or about the same price as the price of both supply 1 and supply 2 are made to C;
  - (g) a higher profit is generated from whichever of supply 1 or supply 2 is the supply which obtains the greater VAT advantage.
- (8) In this regulation, “zero-rated supply” has the meaning given by section 30(a) of the Value Added Tax Act 1994.

---

(a) Section 30 was amended by section 28 of the Finance Act 1995 and section 29(2) of, and paragraph 7 of Schedule 3 to, the Finance Act 1996 (c. 8).

## Offshore supplies – insurance and finance

5.—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) A person (“D”) who carries on business in the United Kingdom makes a supply of services to a person (“E”)—

- (a) who belongs outside the EU; and
- (b) which consist of the provision of intermediary services within item 4 of Group 2 or item 5 of Group 5 in relation to a supply described in sub-paragraph (a),

provided the supply is an exempt supply, or would be an exempt supply if made in the United Kingdom, by virtue of any item of Group 2 or any of items 1 to 6 and 8 of Group 5.

(3) E makes a supply of services to a person (“F”) who belongs in the EU, where the supply would be an exempt supply if made in the United Kingdom.

(4) The supply which D makes to E enables the supply which E makes to F.

(5) For the purposes of determining whether or not an arrangement meets the description in the preceding paragraphs, a supply of services is made by D to E or E to F notwithstanding that the supply—

- (a) is incorporated within a supply made by another person;
- (b) is split into separate supplies; or
- (c) is effected by means of a chain of supplies involving one or more intermediate suppliers.

(6) In this regulation, “Group 2” and “Group 5” have the meanings given by Schedule 9(a) to the Value Added Tax Act 1994.

## Offshore supplies – relevant business persons

6.—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) A person (“G”) who carries on business in the United Kingdom makes a supply of services to a relevant business person (“H”) who belongs outside the EU.

(3) The supply by G to H would be taxable at the standard or reduced rate of VAT were H a relevant business person who belongs in the United Kingdom.

(4) H makes a supply of services to a person (“I”)—

- (a) who belongs in the EU, where the supply would be an exempt supply if made in the United Kingdom; or
- (b) in the place where H belongs.

(5) The supply which G makes to H enables the supply which H makes to I.

(6) For the purposes of determining whether or not an arrangement meets the description in the preceding paragraphs, a supply of services is made by G to H or H to I notwithstanding that the supply—

- (a) is incorporated within a supply made by another person;
- (b) is split into separate supplies; or
- (c) is effected by means of a chain of supplies involving one or more intermediate suppliers.

(7) In this regulation, “relevant business person” has the meaning given by section 7A(4)(b) of the Value Added Tax Act 1994;

---

(a) Group 2 as described in Part 2 of Schedule 9 is amended by section 38(1) of the Finance Act 1997 (c. 16), paragraph 285(e)(i) of Part 2 of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and S.I. 2001/3649 and 2004/3083. Group 5 as described in Part 2 of Schedule 9 is amended by paragraph 81 of Part 2 of Schedule 18 to the Financial Services Act 2012 (c. 21) and S.I. 1997/510, 1999/594, 2001/3649, 2003/1568, 2003/1569, 2008/2547 and 2013/1773.

(b) Section 7A is inserted by paragraphs 1 and 4 of Part 1 of Schedule 36 to the Finance Act 2009.

## **Options to tax- disapplication**

7.—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) A person (“J”) or a relevant associate of J where J is a body corporate has exercised the option to tax in respect of land which is a relevant capital item, as provided by paragraph 2 of Part 1 of Schedule 10(a) to the Value Added Tax Act 1994, except where that option has been revoked as described in paragraph 23 or 24 of that Schedule.

(3) Fewer than 20 years have expired since the option had effect.

(4) J makes a supply in respect of the relevant capital item such that the supply—

(a) is not a taxable supply, by virtue of paragraph 12(1) of Part 1 of Schedule 10 to the Value Added Tax Act 1994; or

(b) is not treated as a supply, by virtue of article 5 of the Value Added Tax (Special Provisions) Order 1995(b).

(5) In this regulation—

(a) “relevant associate” has the meaning given by paragraph 3 of Part 1 of Schedule 10 to the Value Added Tax Act 1994;

(b) “relevant capital item” has the meaning given by paragraph 13(3) of Part 1 of Schedule 10 to the Value Added Tax Act 1994.

## **PART 3**

### **Notifiable arrangements – general**

#### **Notifiable arrangements in relation to any indirect tax**

8. The arrangements described in this Part are prescribed as notifiable arrangements in relation to any indirect tax for the purposes of Schedule 21 to the Finance Act 2017.

#### **Small and medium-sized enterprises**

9.—(1) In regulation 11, “small or medium-sized enterprise” means, subject to the application of paragraph (3), a micro, small or medium-sized enterprise as defined in the Recommendation.

(2) Paragraph (3) applies where—

(a) a person carries on a business in an accounting period and in that period in respect of the business—

(i) the employee limit is exceeded; or

(ii) the financial limits are exceeded; but

(b) conditions 1 to 4 apply to the business.

(3) Where this paragraph applies, Article 4(2) of the Annex is to be disregarded in determining whether or not the business is a small or medium-sized enterprise in that period.

(4) Condition 1 applies if, disregarding any partner enterprise or linked enterprise of the business, the business (“the remaining business”) is a micro, small or medium-sized enterprise as defined in the Recommendation.

(5) Condition 2 applies if a partner enterprise or linked enterprise, disregarding the remaining business, exceeds the employee limit or both of the financial limits.

---

(a) Schedule 10 was substituted by article 2 of S.I. 2008/1146.

(b) S.I. 1995/1268. Article 5 is amended by S.I. 1998/760, 2004/779 and 2008/1146.

(6) Condition 3 applies if the number of employees, annual turnover or annual balance sheet total (as the case may be) of the partner enterprise or linked enterprise has been taken into account in determining whether the business exceeds the employee limit or the financial limits.

(7) Condition 4 applies if, taken alone, the remaining business satisfies the employee limit and at least one of the financial limits.

(8) In this regulation—

- (a) “the Annex” means the Annex to the Recommendation;
- (b) “employee limit” means the limit of fewer than 250 persons employed by the business, as provided by Article 2(1) of the Annex;
- (c) “financial limits” means the limits of—
  - (i) an annual turnover of the business not exceeding 50 million euros; or
  - (ii) an annual balance sheet total of the business not exceeding 43 million euros, as provided by Article 2(1) of the Annex;
- (d) “linked enterprise” has the meaning given by Article 3(3) of the Annex;
- (e) “partner enterprise” has the meaning given by Article 3(2) of the Annex; and
- (f) “the Recommendation” means Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises(a).

### **Confidentiality - promoters**

**10.**—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) It might reasonably be expected, were it not for this regulation, that a promoter of the arrangement would wish after the material date that—

- (a) the arrangement; or
- (b) any element of the arrangement which obtains, or which may obtain, a tax advantage,

be kept confidential from HMRC or another promoter.

(3) A reason for that wish may include an intention by the promoter after the material date to continue or to repeat the use of—

- (a) the arrangement;
- (b) any element of the arrangement which obtains, or which may obtain, a tax advantage; or
- (c) substantially the same as such an element.

(4) That wish may be indicated where the promoter—

- (a) does not provide supplementary material to a client or to a person who is to be a party to the arrangement; or
- (b) does provide supplementary material to such a person but discourages the person from retaining it.

(5) For the purposes of paragraph (2), regulation 5 (persons who are not to be treated as promoters by virtue of legal professional privilege) of the Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2017(b) is to be ignored.

(6) In paragraph (4), “supplementary material” means any promotional material, data or written professional advice concerning the arrangement.

### **Confidentiality – other persons**

**11.**—(1) An arrangement which meets the following description is a notifiable arrangement.

---

(a) OJ L124, 20.5.2003, p.36.

(b) S.I. 2017/xxx.

(2) In respect of the arrangement there is no promoter but a person (“P”)—

- (a) is, or is likely to be, a party to the arrangement; or
- (b) uses, or is likely to use, the arrangement,

for the purposes of a business carried on by P.

(3) Paragraph (2) does not apply where the business carried on by P is a small or medium-sized enterprise.

(4) It might reasonably be expected, were it not for this regulation, that P would wish after the material date that—

- (a) the arrangement; or
- (b) any element of the arrangement which obtains, or which may obtain, a tax advantage,

be kept confidential from HMRC.

(5) A reason for that wish may include an intention by P after the material date—

- (a) to continue or to repeat the use of—
  - (i) the arrangement;
  - (ii) any element of the arrangement which obtains, or which may obtain, a tax advantage; or
  - (iii) substantially the same as such an element; or
- (b) to reduce the risk that, were HMRC to have the information which may be required to be provided to it by virtue of the arrangement being a notifiable arrangement, HMRC may—
  - (i) investigate or examine any return, claim or declaration made by P or another person to HMRC; or
  - (ii) withhold payment of any or all of an amount claimed from HMRC by P or another person.

### **Premium fees**

**12.**—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) It might reasonably be expected, were it not for this regulation, that a promoter (“P”) of the arrangement or another person (“Q”) would be able to obtain a premium fee in relation to—

- (a) the arrangement; or
- (b) any element of the arrangement which obtains, or which may obtain, a tax advantage.

(3) In paragraph (2), “premium fee” means a fee which is—

- (a) obtained from a person experienced in receiving services of the type provided by P or Q;
- (b) to a significant extent attributable to the tax advantage obtained, or which may be obtained, by the arrangement or any element of the arrangement; and
- (c) to any extent contingent upon that tax advantage being obtained as a matter of law.

### **Standardised tax products**

**13.**—(1) An arrangement which meets the following description is a notifiable arrangement.

(2) A promoter of the arrangement makes it available for implementation by more than one other person.

(3) It might reasonably be concluded by a person who has studied the arrangement and who has had regard to all relevant circumstances that conditions 1 to 3 are met.

(4) Condition 1 is that the arrangement has standardised or substantially standardised documentation—

- (a) the purpose of which is to enable a person other than the promoter to implement the arrangement;

- (b) the form of which is determined by the promoter; and
  - (c) the substance of which does not need to be tailored to any material extent to enable a person to implement the arrangement.
- (5) Condition 2 is that—
- (a) a person who intends to implement the arrangement must enter into a specific transaction or series of specific transactions; and
  - (b) the transaction or series of transactions is standardised or substantially standardised in form.
- (6) Condition 3 is that—
- (a) the main purpose of the arrangement is to enable a person to obtain a tax advantage; or
  - (b) it is unlikely that a person would enter into the arrangement were it not that the person or another person may obtain a tax advantage.

*Name*  
*Name*

Two of the Commissioners for Her Majesty's Revenue and Customs

Date

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Regulations are made further to the provisions contained in Schedule 21 (“the Schedule”) to the Finance Act 2017 (c. XX). The Schedule makes provision in respect of the disclosure of avoidance schemes, being schemes which enable a person to obtain a tax advantage (defined in paragraphs 6 and 7 of the Schedule), concerning VAT and other indirect taxes (a list of indirect taxes to which the Schedule applies is set out at paragraph 2(1) of the Schedule). Regulations may be made under the Schedule to prescribe notifiable arrangements. Information in relation to such arrangements must be notified to HMRC. The Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2017 provides for the information to be notified.

Regulation 2 contains definitions used in the Regulations.

Part 2 of the Regulations prescribes notifiable arrangements in relation to VAT for the purposes of the Schedule.

Regulation 4 prescribes arrangements in respect of supplies to a retail customer, where a supply is split into separate supplies and value is shifted to one of the supplies.

Regulation 5 prescribes arrangements concerning certain intermediary supplies made by a person in the United Kingdom to a person who belongs outside the EU and that person makes an exempt supply to a person in the EU. Indirect supplies between these persons are included within the prescribed arrangements.

Regulation 6 prescribes arrangements concerning a supply of services made by a person in the United Kingdom to a relevant business person who belongs outside the EU and that person makes a further supply of services. The first supply enables the second. Indirect supplies between these persons are included within the prescribed arrangements.

Regulation 7 prescribes arrangements concerning supplies and the disapplication of an option to tax land.



Part 3 of the Regulations prescribes notifiable arrangements in relation to any indirect tax.

Regulation 9 provides a definition of small or medium-sized enterprise which is used in regulation 11.

Regulation 10 prescribes arrangements which a promoter might reasonably be expected to keep confidential from HMRC or another promoter.

Regulation 11 prescribes arrangements to which a person, who is not a promoter, is to be a party or which the person is to use for business purposes and which the person might reasonably be expected to keep confidential from HMRC. An arrangement is not prescribed where the business is a small or medium-sized enterprise.

Regulation 12 prescribes arrangements where a person might reasonably be expected to obtain a premium fee in relation to the arrangements.

Regulation 13 prescribes arrangements which have standardised or substantially standardised documentation, there are specific or standardised transactions to implement the arrangements and the main purpose of the arrangements is to obtain a tax advantage or they would not be entered into were it not for that advantage.

[TIIN]