

Clause 1 and Schedule 1: Promoters of tax avoidance schemes

Summary

1. This clause and Schedule amends Part 5 of the Finance Act 2014 (FA 2014), the Promoters of Tax Avoidance Schemes regime (POTAS), which provides a graduated series of sanctions in relation to a person who is carrying on a business as a promoter by promoting tax avoidance proposals or arrangements, which are triggered when that person, or a sufficiently closely connected person, meets one or more of twelve objective threshold conditions. These amendments give HM Revenue and Customs (HMRC) the power to issue stop notices to promoters of tax avoidance schemes at an earlier stage, to stop the sale of schemes before the scheme has been defeated. It will also give HMRC the power to issue stop notices in a wider range of circumstances. HMRC will also be able to publish the names of the promoters and details of the scheme where a stop notice has been issued.
2. This clause and Schedule widen the existing legislation to include individuals who control, or significantly influence, entities that carry on promotion activities. The legislation introduces a range of technical amendments including that the time taken for legal challenges will be factored into the length of conduct notices, conduct notices will be extended up to a maximum of 5 years to take into account the promoters' behaviour and further conduct notice threshold conditions have been added.

Details of the clause

3. Subsection 1 introduces Schedule 1 which amends Part 5 of FA 2014.
4. Subsection 2 provides that the amendments made by Schedule 1 have effect from the day on which this Act is passed and the period of three years ending on or when this Act is passed where a POTAS authorised officer determines whether a person meets a threshold condition, including where the defeat notice conditions apply in section 237A of FA2014.

Details of the Schedule

Part 1: Stop Notices

5. Paragraph 1 inserts new sections 236A to 236F into Part 5 of FA 2014. New sections 236A to 236F set out the conditions for when a stop notice can be given, the effects of giving a stop notice, reporting required once a stop notice has been given, when a

stop notice is withdrawn, appeals against decisions not to withdraw the stop notice, and publication by HMRC of the details of a stop notice, including details of the person subject to the stop notice.

6. Subsection 1 of new section 236A describes when an authorised officer can issue a stop notice.
7. Subsection 2 of new section 236A specifies that a stop notice can only be issued where the arrangements meet conditions A and B.
8. Subsection 3 of new section 236A introduces condition A which defines the arrangements or proposals where a stop notice can be issued as those:
 - a. in respect of the promotion of disguised remuneration schemes which either have, or would have, met the conditions of the loan charge;
 - b. in relation to schemes where a Disclosure of Tax Avoidance Schemes (DOTAS) reference number has been issued under Part 7 of Finance Act 2004;
 - c. in relation to schemes where a Disclosure of Tax Avoidance Schemes: VAT and Other Indirect Taxes (DASVOIT) reference number has been issued under Schedule 17 to Finance (No.2) Act 2017 (F(No.2)A 2017);
 - d. in relation to schemes where a follower notice has been issued under Part 4 of Chapter 2 of FA 2014; or
 - e. specified in regulations made by the Commissioners.
9. Subsection 4 of new section 236A introduces condition B which defines that the arrangements or proposals where a stop notice can be issued are:
 - a. those that have been, or are likely to be, marketed as enabling a person to obtain a particular tax advantage; and
 - b. it is more likely than not that they are not capable of enabling the advantage.
10. Subsection 5 of new section 236A defines when a person is considered as promoting arrangements or a proposal for arrangements and to be carrying on a business as a promoter.
11. Subsection 1 of new section 236B prohibits the promotion of schemes which are the subject of the stop notice.
12. Subsection 2 of new section 236B attributes the effect of the stop notice to connected persons.
13. Subsection 3 of new section 236B states what the recipient must do if they control or have significant influence over a person that is a body corporate or partnership.
14. Subsection 4 of new section 236B states what the recipient must do if they are a body corporate or partnership.
15. Subsection 5 of new section 236B defines the information that must be provided according to subsections 3(b) and 4(b).

16. Subsection 1 of new section 236C provides that a person subject to stop notice must provide a return to HMRC for each relevant period (as defined in sub-paragraphs 2 and 3 below).
17. Subsection 2 of new section 236C defines the first relevant period as a 3-month period commencing on the day that the stop notice was given.
18. Subsection 3 of new section 236C further defines a relevant period as each successive 3-month period up to 3 years.
19. Subsection 4 of new section 236C defines the information that must be contained in a return.
20. Subsection 5 of new section 236C states what must be provided if the person does not have the relevant information in respect of a client to whom they provided services in relation to the arrangements or proposed arrangements which the stop notice relates to.
21. Subsection 6 of new section 236C defines when the return must be provided by.
22. Subsection 7 of new section 236C allows for the obligation to provide a return to cease if decided by an authorised officer and they send a notice to the person subject to that obligation.
23. Subsection 1 of new section 236D provides the circumstances when a recipient of a stop notice can request for the notice to cease to have effect, which are where the person has not promoted and will not promote the arrangements or proposals, considers that condition A or condition B in section 236A are not met, or they consider there are other reasons for it to cease to have effect
24. Subsection 2 of new section 236D sets out how such a request must be made in writing to an authorised officer before the end of the 30-day period beginning with the day on which the notice was issued with an explanation of the basis for the request and evidence to support this.
25. Subsection 3 of new section 236D provides that an authorised officer when considering such a request must decide whether the stop notice ceases or not in relation to the person who made the request.
26. Subsection 4 of new section 236D sets out how and by when an authorised officer must give their decision.
27. Subsection 5 of new section 236D provides for the notice to cease to have effect, for the person who requested it to do so, if a decision notice has not been issued.
28. Subsection 6 of new section 236D provides that an authorised officer can choose to withdraw a stop notice even if there has been no request.
29. Subsection 7 of new section 236D provides that a decision notice or withdrawal notice must specify the date on which the stop notice ceases to have effect.
30. Subsection 1 of new section 236E provides that a person may appeal against the

refusal by an authorised officer to grant a request that a stop notice cease to have effect in relation to that person.

31. Subsection 2 of new section 236E defines how a notice of appeal must be given.
32. Subsection 3 of new section 236E provides that the appeal must state the grounds of appeal.
33. Subsection 4 of new section 236E defines the possible grounds of appeal.
34. Subsection 5 of new section 236E defines the possible outcomes of an appeal.
35. Subsection 6 of new section 236E provides that the provisions of Part 5 of the Taxes Management Act 1970 have effect in relation to appeals under this section.
36. Subsection 1 of new section 236F allows an authorised officer to publish the fact that a person is subject to a stop notice and details of arrangements that have been specified in a stop notice.
37. Subsection 2 of new section 236F defines which information about a person can be published.
38. Subsection 3 of new section 236F defines a person's name for the purposes of subsection 2(a).
39. Subsection 4 of new section 236F allows publication under subsection 1 only after the end of the appeal period.
40. Subsection 5 of new section 236F defines the appeal period.
41. Subsection 6 of new section 236F defines reference to proceedings on an appeal to tribunal for the purposes of subsection 5(c).
42. Paragraph 2 inserts new sections 261A and 261B into Part 5 of FA 2014.
43. Subsection 1 of new section 261A allows an authorised officer to require a person subject to a stop notice to provide information or documents.
44. Subsection 2 of new section 261A defines the purposes for which information or documents can be required under subsection 1.
45. Subsection 3 of new section 261A allows an officer of HMRC to require the provision of information or documents from any person provided it is reasonably required for the purposes mentioned in subsection 4.
46. Subsection 4 of new section 261A defines the purposes for which a notice under subsection 3 can be issued.
47. Subsection 5 of new section 261A requires the consent of the person information sought relates to or the approval of a tribunal for a notice under subsection 3.
48. Subsection 6 of new section 261A applies penalties in Parts 7 and 8 of Schedule 36 to the Finance Act 2008 for notices under subsection 3.
49. Subsection 7 of new section 261A applies paragraph 53 of Schedule 36 to Finance Act

2008 (Information and Inspection Powers) to notices under subsection 3 so that a person is guilty of an offence if they conceal, destroy, or dispose of documents they are required to produce, or they arrange for this to take place.

50. Subsection 8 of new section 261A defines what references to compliance with a stop notice mean.
51. Subsection 1 of new section 261B allows an authorised officer to ask for tribunal approval to give a notice under section 261A(3).
52. Subsection 2 of new section 261B allows an application to be made without notice.
53. Subsection 3 of new section 261B defines the conditions where a tribunal can approve giving a notice under section 261A(3). These are:
 - a. the authorised officer applies or agrees the application to give a notice,
 - b. the tribunal is satisfied that giving the notice is justified,
 - c. the person the notice is to be given to has been told the information and documents are required and given an opportunity to make representations to HMRC,
 - d. the tribunal has been given a summary of any representations made, and
 - e. the person the notice relates to has a summary of reasons why HMRC require the information and documents.
54. Subsection 4 of new section 261B disapplies sub-paragraph 3(c) to (e) where a tribunal is satisfied that actions specified in them may prejudice achieving the purpose of the notice or the assessment or collection of tax.
55. Subsection 5 of new section 261B requires a notice to be given under section 261A(3) to be given to the person it relates to unless they are not known or the tribunal has disapplied this requirement.
56. Subsection 6 of new section 261B allows a tribunal to disapply the requirement in subsection 5.
57. Paragraph 3 amends section 273 of FA 2014.
58. Sub-paragraph 1 introduces amendments to section 273 of FA 2014.
59. Sub-paragraph 2 adds persons subject to a stop notice to the conditions in section 273(1) and where a person is a promoter of arrangements or proposed arrangements specified in a stop notice so that they are not bound by a duty of confidentiality or other restrictions when providing information or documents to HMRC.
60. Sub-paragraph 3 amends section 273(2), which details what a relevant client is, to include clients in relation to persons mentioned subsection 1.
61. Sub-paragraph 4 amends section 273(3), which details what a relevant intermediary is, to include intermediaries in relation to persons mentioned in subsection 1 in relation to applicable arrangements or proposed arrangements.

- 62. Sub-paragraph 5 substitutes “applicable” for “relevant” in section 273(4).
- 63. Sub-paragraph 6 inserts new subsections 5, 6 and 7 into section 273 of FA 2014. New subsections 5, 6 and 7 ensure that section 273 of FA 2014 does not contravene data protection legislation, define a promoter of arrangements or proposed arrangements as a person meeting the tests in section 235(2) to (6), including regulations under section 235(6), and define applicable arrangements and applicable proposals to include disclosures relevant to the circumstances in subsection 1.
- 64. Paragraph 4 amends subsection 1 of section 283 of FA 2014 to insert definitions of “stop notice” and “subject to a stop notice”.
- 65. Paragraph 5 amends the stop notice threshold condition set out in Schedule 34 to FA 2014 so that a person meets the condition where they receive a stop notice and fail to stop promoting arrangements or proposed arrangements specified in the notice, fail to make a return as required by section 236C(1), or fail to provide information or documents required by section 261A(1).
- 66. Paragraph 6 amends Schedule 35 to FA 2014 to add penalties in relation to sections 236B(1), 236C(1), and 261A(1).
- 67. Sub-paragraph 1 introduces amendments to Schedule 35 to FA 2014
- 68. Sub-paragraph 2 adds penalties for failure to comply with the duty to make a return in section 236C(1) and for failure to provide information required in connection with a stop notice in section 261A(1).
- 69. Sub-paragraph 3 specifies the amount charged for penalties under sections 236B(1) (promotion of arrangements or proposal of a description specified in a stop notice), 236C(1), and 261A(1).
- 70. Sub-paragraph 4 amends paragraph 3(1) of Schedule 35 so that duties under sections 236C(1) or 261A(1), which are not information duties, are subject to daily default penalties.
- 71. Sub-paragraph 5 amends paragraph 4(8)(c) of Schedule 35 to specify the relevant sum as £5,000 for sections 236C(1) and 261A(1) penalties.
- 72. Sub-paragraph 6 amends paragraph 6 of Schedule 35, which concerns concealing, destroying documents following imposition of a duty to provide information, to include s261A(1).
- 73. Sub-paragraph 7 amends paragraph 7 of Schedule 35, which concerns concealing, destroying documents following an informal notification, to include s261A(1).

Part 2: Promotion Structures

- 74. Paragraph 7 inserts new subsection 1A into section 235 of FA 2014 to confirm that a person who falls within the definition of a promotion structure in the new Schedule 33A is treated as carrying on business as a promoter.
- 75. Paragraph 8 inserts new Schedule 33A into FA 2014 which sets out the definitions of

the various circumstances in which a person will be considered to be part of a promotion structure.

76. Paragraph 1 of new Schedule 33A lists the four cases in which a person will be considered to be a member of a promotion structure.
77. Paragraph 2 of new Schedule 33A sets out case 1 'Multiple entity promoter' and introduces the concept of a multiple entity promoter, so that if a promotion business is split across multiple entities, providing the entities are sufficiently connected, the activities of the individual entities can be considered as a whole to determine whether those activities would fall within the definition of promoter.
- The remainder of the paragraph sets out the basis on which entities will be considered to be sufficiently closely linked for their activities to be considered in the round.
78. Paragraph 3 of new Schedule 33A sets out case 2 'Acting for a non-resident promoter'. A person falls within this case if they carry out certain activities for a non-resident promoter either under their instruction or guidance, or are rewarded by the non-resident promoter in respect of the promotion business.
79. Paragraph 4 of new Schedule 33A sets out case 3 'Control of another promoter'. An individual fall within this case if they operate effective control over an entity which carries on a business as a promoter and they meet either of the two conditions detailed. These are the 'personal condition' and the 'corporate condition'.
80. Paragraph 5 of new Schedule 33A sets out case 4 'transfer of promotion business'. A person comes within the case if they have had the whole or a part of a promoter's business transferred to them, or they have control or significant influence over a body to which such a transfer has been made.
81. Paragraph 9 inserts new subsection 8A into section 237 of FA 2014 which makes any meeting of a threshold condition, or conditions, by an entity that falls within case 1 (multiple entity promoter) automatically significant where an authorised officer has to consider the significance in deciding whether to issue a conduct notice to that entity or to another linked entity under the rules in section 237(5) FA14.
82. Paragraph 10 inserts new subsection 3C into section 237A of FA 2014 which makes the meeting of a threshold condition by virtue of the defeated arrangements provisions at section 237A automatically significant for any entity that falls within case 1 (multiple entity promoter) where the authorised officer has to consider that question in relation to the giving of a conduct notice.
83. Paragraph 11 amends section 250 of FA 2014 to include within the class of people to whom HMRC has to provide the monitored promoter reference number under a monitoring notice any person who falls within case 2 (acting for a non-resident promoter).
84. Paragraph 12 amends section 251 of FA 2014 to bring any person who falls within case 2 (acting for non-resident promoter) within the list of persons to whom a

monitored promoter must provide the promoter reference number.

85. Paragraph 13 inserts new subsection 4A into section 252 of FA 2014. New subsection 4A places an obligation on a person within case 2 (acting for non-resident promoter) to notify certain groups of the promoter reference number.
86. Paragraph 14 amends section 258 of FA 2014 to ensure persons within case 2 (acting for non-resident promoter) can also be required by HMRC to provide information about monitored proposals or arrangements where the monitored promoter has failed to comply with a duty under the information provisions at sections 255 to 257 of FA 2014.
87. Paragraph 15 amends section 260 of FA 2014 ensuring that persons falling within case 2 (acting for non-resident promoter) are brought within the requirements of section 260 such that they can be required to provide details of their clients in respect of a monitored proposal.
88. Paragraph 16 amends section 283 of FA 2014 to add persons falling within the various cases of this Schedule to ensure that activities carried out by those persons which brought them within the case are included in any reference to a person's activities as a promoter.
89. Paragraph 17 amends paragraph 13B of Schedule 34 to FA 2014 removing the relevant threshold requirement for an individual, if that individual falls within either case 3 (control of another promoter) or 4 (transfer of a promotion business) in respect of the attribution of a threshold condition from that person to another entity they control.

Part 3: Conduct and Monitoring Notices: Transferees

90. Paragraph 18 inserts new section 239A into FA 2014 which allows an authorised officer to issue a conduct notice to a person who is controlled or significantly influenced by the person who received a conduct notice where that person has made a relevant transfer to them within the meaning of paragraph 5 of Schedule 33A. The opportunity to comment on this new conduct notice only applies for any changes to the conduct notice from that originally given to the person of control or significant influence.
91. Paragraph 19 inserts new section 244A into FA 2014 and amends sections 247 and 248 of FA 2014.
92. Sub-paragraph 1 inserts new section 244A into FA 2014 which allows an authorised officer to issue a monitoring notice to a person who is controlled or significantly influenced by the person who received a monitoring notice where that that person has made a relevant transfer to them within the meaning of paragraph 5 of Schedule 33A.
93. Paragraph 19, sub-paragraph 2 inserts a new paragraph 3A into section 247 of FA 2014 for appeals against a refusal to withdraw a monitoring notice if it was issued under section 244A. The grounds for appeal are that the person who initially received

the monitoring notice does not have control or significant influence over the person the monitoring notice was issued to under section 244A or they have not made a relevant transfer within the meaning of paragraph 5 of Schedule 33A to that person.

94. Paragraph 19, sub-paragraph 3 amends section 248(2)(c) of FA 2014 so that the nature of the business as a promoter is that which the monitored promoter is carrying on.

Part 4: Miscellaneous Amendments

95. Paragraph 20 amends sections 237 and 237A of FA 2014 so that the authorised officer only considers the significance of meeting a threshold condition that is being attributed, as a consequence of conditions in Part 2 of Schedule 34 being met, with regard to the person that met the threshold condition.
96. Paragraph 21 inserts new paragraph (h) into section 238(3) of FA 2014 so that the contents of a conduct notice can include requirements for information or documents for the purpose of monitoring whether the recipient of the conduct notice is complying with any of the conditions in that notice.
97. Paragraph 22 inserts new subsections 4A to 4I into section 241 of FA 2014.
98. New subsections 4A to 4D amend the duration of a conduct notice so that the number of threshold conditions met and the significance of them are taken into account. The maximum period for a conduct notice is increased to 5 years in certain circumstances. The authorised officer will send a notice to the person for whom the conduct notice has effect of the period of the conduct notice. There will be further notices where the period is amended if the authorised officer becomes aware of further threshold conditions which have been met. A significant condition is one listed in section 237(9) or one listed in section 237A(11), (12) or (13) where an authorised officer makes a determination that it should be regarded as significant.
99. New subsections 4E to 4I extend the duration of a conduct notice where its effect has been suspended by an authorised officer or where a person has not complied with a section 262 of the FA 2014 information notice. For the former, the duration is extended by the number of days during which the effect of the conduct notice is suspended. For the latter, the duration is from the last day a person could have complied with a section 262 notice and ends on the day before the day which they provide the information or produce the documents required. An authorised officer will send a notice to the person on whom the conduct notice has effect of any amendment to the duration as soon as is reasonably practical after final day which counts towards the extension of the duration of the notice.
100. Paragraph 23 amends section 241A(4) of FA 2014 so that the starting point for the 90 day period during which notice must be given is when the defeat first comes to the attention of an authorised officer.
101. Paragraph 24 amends Schedule 34A to FA 2014 to include International Tax Enforcement (Disclosure Arrangements) Regulations 2020 (DAC6) defeated arrangements. Under DAC6, persons are required to disclose certain cross-border tax arrangements.

102. Paragraph 25 amends section 242 of FA 2014 so that an application to tribunal by the authorised officer for a monitoring notice must take place within 12 months of them making the determination. This period can be extended to within 6 years of the conduct notice ceasing where the person who the conduct notice had effect fails to comply with one of more conditions of the notice or provides false or misleading information or documents and the officer could not reasonably have been expected to make the determination when the conduct notice had effect.
103. Paragraph 26 introduces amendments to the threshold conditions in Schedule 34 to FA 2014.
104. Paragraph 27 amends Schedule 34 to FA 2014.
105. Sub-paragraphs 1 to 3 retitle paragraph 5 of Schedule 34 to FA 2014 so that it covers non-compliance with avoidance disclosure requirements. The element of the condition relating to Part 7 of FA 2004 is updated and failure to comply with the provisions of Schedule 17 to Finance (No. 2) Act 2017 and DAC6 is added.
106. Sub-paragraph 4 amends Schedule 34 to FA 2014, updating the sections of Part 7 of FA 2004 where failure to comply results in the meeting of a POTAS threshold condition so that DOTAS failures to provide updated information, promoter failures to notify clients of reference numbers, client failures to notify parties of reference number, failures to comply with section 313 of FA 2014 and failures to provide additional information are included.
107. Sub-paragraph 5 amends Schedule 34 to FA 2014 to add Schedule 17 to F(No.2)A 2017 and DAC6 where failure to comply with them result in the meeting of a POTAS threshold condition. The Schedule 17 paragraphs mirror the requirements for DOTAS but are for indirect taxes whilst the DAC6 requirements are the reporting obligations for UK intermediaries and taxpayers in regulation 3(1) and (4) and regulation 4(1).
108. Sub-paragraph 6 amends paragraph 5(2) of Schedule 34 to FA 2014 so that sub-paragraphs cover DOTAS, DASVOIT, and DAC6
109. Paragraph 28 amends paragraph 7 of Schedule 34 to FA 2014 to include General Anti-Abuse Rule (GAAR) pooled and bound arrangements, where opinion notices have been issued under paragraph 6(2) or 6(4) of Schedule 43A to the Finance Act 2013, and arrangements that are equivalent under paragraph 24(3) of Schedule 16 to F(No.2)A 2017, and for cases where a penalty is payable by each person that enabled abusive tax arrangements as a condition for meeting the GAAR threshold condition. For the GAAR a person needs to have been given the pooled or bound opinion notice which sets out the opinion of the GAAR advisory panel and states that it is the joint opinion of all members of the sub-panel or the opinion of two or more members of the sub-panel.
110. Paragraph 29 amends paragraph 10 of Schedule 34 to FA 2014 to include failure to comply with DOTAS, DASVOIT, and DAC6 information powers so that failure to comply with them will result in the meeting of this threshold condition.

Background note

111. This measure was first announced in December 2019 as part of the government's response to Sir Amyas Morse's Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes. In Budget 2020 the Chancellor announced that these measures would be legislated in Finance Bill 2020-21. It proposed changes that would (i) ensure HMRC could more effectively issue stop notices to promoters, under the Promoters of Tax Avoidance Schemes (POTAS) rules, to make it harder to promote schemes that do not work; (ii) prevent promoters from abusing corporate entity structures to avoid their obligations under the POTAS rules; as well as (iii) further technical amendments to the POTAS regime so that it continues to operate effectively.
112. Many tax advisers adhere to high professional standards and are a very useful source of advice and support to taxpayers. The measures are not aimed at such professionals. The aim of this clause and Schedule is to change the behaviour of tax avoidance promoters and to deter the development and availability of tax avoidance schemes. The legislation gives promoters a chance to change their behaviour voluntarily or to face an escalating series of sanctions.
113. This clause and Schedule will allow HMRC to issue stop notices where HMRC consider both that there is a scheme being promoted which has been marketed as capable of enabling a person to obtain a particular tax advantage and that it is more likely than not that the scheme would not be capable of achieving that advantage. The legislation introduces amendments to the existing power to issue stop notices so that HMRC are able to issue them earlier to stop the sale of tax avoidance schemes, as well as in a wider range of circumstances. Safeguards are provided in the form of a right of appeal against the stop notice and stop notices can only be issued by an officer authorised for the purpose.
114. This clause and Schedule have also been introduced in order to see the responsibility for the obligations within POTAS, and for any failure to comply with them to be placed on the people and entities behind the schemes. The scope of the existing legislation will be widened to include individuals who control, or significantly influence, entities that carry on promotion activities, as well as the people they work through in the UK and other entities that have been set up in a fragmented way, which result in HMRC being unable to tackle them. The new legislation enables HMRC to more effectively challenge persons who use separate entities to avoid their legal obligations.
115. The clause and Schedule also strengthen the effectiveness of existing POTAS powers. This includes the application of the two-year period for conduct notices, which will allow legal challenges to be factored into the length of conduct notices. HMRC will be able to go to the tribunal to apply for a monitoring notice after a conduct notice has ended where it is discovered that a breach was during the period where the notice was live. Where a promoter breached the most serious, or multiple, POTAS threshold

conditions the length of conduct notices can be extended up to a maximum of 5 years. HMRC will be able to transfer the requirements of a conduct or monitoring notice to any entities used by the promoter in the promotion of schemes.

116.If you have any questions about this change, or comments on the legislation, please email: ca.consultation@hmrc.gov.uk.

Clause 2 and Schedule 2: Disclosure of Tax Avoidance Schemes

Summary

1. This clause and Schedule amends Chapter 8 of Part 7 of the Finance Act 2004 (FA 2004) and Schedule 17 to the Finance (No.2) Act 2017 (F(No.2)A 2017), which provide for promoters of tax avoidance proposals or arrangements to notify them to HM Revenue and Customs (HMRC). The provisions in FA 2004 refer to the regime for Disclosure of Tax Avoidance Schemes (DOTAS); those in F(No.2)A 2017 to the regime for Disclosure of Avoidance Schemes, VAT and Other Indirect Taxes (DASVOIT). The clause and Schedule provide that when HMRC reasonably suspect that a person has failed to disclose proposals or arrangements which should have been notified to them, and the main purpose or one of the main purposes of arrangements is the obtaining of a tax advantage, HMRC may issue a notice to anyone they suspect of being involved in the supply of the arrangements. This notice requires the person to satisfy HMRC within 30 days, or any longer period HMRC agree, that the proposal or arrangements are not disclosable. If those receiving such notices do not satisfy HMRC of these things, HMRC may issue a Scheme Reference Number (SRN) in respect of the proposal or arrangements. The measure will come into effect on the day the Act is passed.

Details of the clause

2. Clause 2 introduces Schedule 2.

Details of the Schedule

Part 1: Amendments of Part 7 of FA 2004

3. Paragraph 1 introduces amendments to Part 7 of FA 2004.
4. Paragraph 2 inserts new section 305A into FA 2004 which provides an overview of Part 7.
5. Paragraph 3 amends section 307(4A) of FA 2004 to omit the word “notifiable” in both places.
6. Paragraph 4 inserts new section 310D to Part 7 of FA 2004.
7. New section 310D provides that when HMRC become aware that a transaction has

been entered into which is part of arrangements, a firm approach has been made in relation to proposals for arrangements, or a proposal is made available for implementation; and HMRC have reasonable grounds for believing the proposals or arrangements should be notified to them, they may within 15 days issue a notice to any person they believe to be involved in the supply or promotion of those arrangements or proposals. They must issue a notice to anyone they reasonably suspect to be a promoter of the arrangements or proposals. This notice advises the person receiving it that unless they satisfy HMRC within the notice period that the arrangements or proposals are not notifiable, HMRC may issue a Scheme Reference Number (SRN) in respect of those arrangements or proposals.

8. Paragraph 5 substitutes new section 2 311, 311A, 311B and 311C for existing section 311 of FA 2004.
9. New section 311 sets out two routes to the issue of an SRN, termed 'subsection (2)' cases and 'subsection (3)' cases.
10. Subsection 2 of new section 311 applies to cases where proposals or arrangements have been notified to HMRC.
11. Subsections 3 to 7 of new section 311 provide that when HMRC have issued a notice or notices under new section 310D, they may issue an SRN in respect of the arrangements or proposals if the recipients of notices are unable to satisfy HMRC within 30 days of the notice (or any longer period they may allow) that the arrangements or proposals are not notifiable.
12. Subsection 8 of new section 311 allows HMRC to withdraw an SRN issued under subsection (3).
13. Subsection 9 of new section 311 provides that the allocation of an SRN is not to be regarded as HMRC approving the proposal or arrangements or in any way agreeing to their effectiveness.
14. New section 311A provides that where HMRC allocate an SRN in a subsection (2) case, they must notify that number to the person who disclosed the proposal or arrangements and to any other promoter notified by that person to HMRC. When HMRC allocate an SRN in a subsection (3) case, new section 311A provides that they must notify the number to anyone they reasonably believe to be involved in the supply of the arrangements or proposals.
15. New section 311B provides a right of appeal in a subsection (3) case. This appeal right extends to anyone who has been notified of an SRN in a subsection (3) case and may be made on the basis that HMRC have not acted in accordance with the requirements of the legislation in new section 310D and section 311, or that the arrangements or proposals are not notifiable. Any appeal must be given to the tribunal within 30 days of the person being notified of the SRN.
16. New section 311C provides that HMRC may require anyone they reasonably suspect of being involved in the supply of arrangements or proposals in a subsection (3) case to provide further information or documents relating to those arrangements or

proposals. They may only do this if they reasonably suspect that the information or documents will help them in considering the arrangements or proposals. The information must be provided within 10 working days, unless HMRC allow a longer period.

17. Paragraph 6 amends section 312 of FA 2004 so that it applies for subsection (2) cases.
18. Paragraph 7 inserts new section 312ZA into Part 7 of FA 2004. New section 312ZA provides that, in a subsection (3) case, any person who provides services to a client in respect of the arrangements or proposals must forward to that client certain information prescribed in regulations within 30 days of being advised of the SRN. HMRC may relieve a person of this obligation by issuing them with a notice to that effect.
19. Paragraph 8 amends section 312A of FA 2004 so that the duty of a client to notify other parties of an SRN is extended to cases where the client receives the prescribed information noted in new section 312ZA.
20. Paragraph 9 amends section 312B of FA 2004 to include references to new section 312ZA.
21. Paragraphs 10, 11, 12 and 13 amend sections 313, 313ZA, 313ZB and 313ZC of FA 2004 to include subsection (3) cases. These sections deal with the requirements on users of arrangements and those involved in the promotion or supply of arrangements or proposals to provide information about them to others, including HMRC.
22. Paragraphs 14 and 15 amend sections 316 and 316A of FA 2004 to include subsection (3) cases.
23. Paragraph 16 amends section 316C of FA 2004 to allow HMRC to publish details of arrangements or proposals and of anyone involved in their supply, where an SRN is allocated in a subsection (3) case and inserts new subsections 6A and 6B into section 316C of FA 2004.
24. New subsections 6A and 6B provide that HMRC may not publish for the first time information about the promoter of proposals or arrangements, or others involved in the supply of arrangements or proposals in subsection (3) cases, once a period of 12 months has passed from the day the SRN is allocated. Once these details have been published, no information which identifies a person under these sections may continue to be published once a period of 12 months has passed from the date the details were first published. If at any time during these periods HMRC is unable to publish such information because of tribunal or court proceedings, this is not included in calculating the 12-month periods.
25. Paragraph 17 amends section 316D of FA 2004 to include subsection (3) cases.
26. Paragraph 18 amends section 318(1) of FA 2004 to include subsection (3) cases.

Part 2: Amendments of Schedule 17 to F(No.2)A 2017

27. Paragraph 19 introduces amendments to Schedule 17 to F(No.2)A 2017.
28. Paragraph 20 inserts new Part A1 into Schedule 17 which provides an introduction to the Schedule.
29. Paragraph 21 amends paragraph 10(1) of Schedule 17 to include sub-paragraph (3) cases.
30. Paragraph 22 introduces new paragraph 21A into Schedule 17 which provides that when HMRC become aware that a transaction has been entered into which is part of arrangements, a firm approach has been made in relation to proposals for arrangements, or a proposal is made available for implementation; and HMRC have reasonable grounds for believing the proposals or arrangements should be notified to them, they may within 15 days issue a notice to any person they believe to be involved in the supply or promotion of those arrangements or proposals. They must issue a notice to anyone they reasonably suspect to be a promoter of the arrangements or proposals. This notice advises the person receiving it that unless they satisfy HMRC within the notice period that the arrangements or proposals are not notifiable, HMRC may issue an SRN in respect of those arrangements or proposals.
31. Paragraph 23 substitutes new paragraphs 22, 22A, 22B and 22C for existing paragraph 22 of Schedule 17.
32. New Paragraph 22 sets out two routes to the issue of an SRN, termed 'sub-paragraph (2)' cases and 'sub-paragraph (3)' cases.
33. New Paragraph 22A provides that where HMRC allocate an SRN in a sub-paragraph (2) case, they must notify that number to the person who disclosed the proposal or arrangements and to any other promoter notified by that person to HMRC. When HMRC allocate an SRN in a sub-paragraph (3) case, new paragraph 22A provides that they must notify the number to anyone they reasonably believe to be involved in the supply of the arrangements or proposals.
34. New Paragraph 22B provides a right of appeal in a sub-paragraph (3) case. This appeal right extends to anyone who has been notified of an SRN in a sub-paragraph (3) case and may be made on the basis that HMRC have not acted in accordance with the requirements of the legislation in new paragraphs 21A and 22, or that the arrangements or proposals are not notifiable. Any appeal must be given to the tribunal within 30 days of the person being notified of the SRN.
35. New Paragraph 22C provides that HMRC may require anyone they reasonably suspect of being involved in the supply of arrangements or proposals in a sub-paragraph (3) case to provide further information or documents relating to those arrangements or proposals. They may only do this if they reasonably suspect that the information or documents will help them in considering the arrangements or proposals. The information must be provided within 10 working days, unless HMRC

allow a longer period.

36. Paragraphs 24 and 25 amend paragraph 23 of Schedule 17 to include sub-paragraph (2) cases.
37. Paragraph 26 inserts new paragraph 23A into Schedule 17 which provides that, in a sub-paragraph (3) case, any person who provides services to a client in respect of the arrangements or proposals must forward to that client certain information prescribed in regulations within 30 days of being advised of the SRN. HMRC may relieve a person of this obligation by issuing them with a notice to that effect.
38. Paragraphs 27 to 35 make amendments to paragraphs 24 to 28, 33 and 34 of Schedule 17 to include sub-paragraph (3) cases. These paragraphs deal with the requirements on users of arrangements and those involved in the promotion or supply or proposals or arrangements to provide information about them to others, including HMRC.
39. Paragraph 36 amends paragraph 36 of Schedule 17 to include sub-paragraph (3) cases. In respect of these cases, HMRC may not publish for the first time information about the promoter of proposals or arrangements, or others involved in the supply of arrangements or proposals in sub-paragraph (3) cases, once a period of 12 months has passed from the day the SRN is allocated. Once these details have been published, no information which identifies a person under these paragraphs may continue to be published once a period of 12 months has passed from the date the details were first published. If at any time during these periods HMRC is unable to publish such information because of tribunal or court proceedings, this is not included in calculating the 12-month periods.
40. Paragraph 37 amends paragraph 37 of Schedule 17 to include sub-paragraph (3) cases.
41. Paragraph 38 amends paragraph 39 of Schedule 17. In a sub-paragraph (3) case, a failure to provide further information required by HMRC under new paragraph 22C of Schedule 17 or for failing to pass on relevant information to others as required under new paragraph 23A(2) of Schedule 17 can result in a penalty not exceeding £600 per day.
42. Paragraph 39 amends paragraph 40 of Schedule 17 to include penalties incurred for failures under new paragraph 22C of Schedule 17.
43. Paragraph 40 substitutes a new definition of “reference number” into paragraph 57(1) of Schedule 17.

Part 3: Other Amendments

44. Paragraph 41 amends section 98C(2) of Taxes Management Act 1970. In a subsection (3) case, a failure to provide information required by HMRC under new section 311C of FA 2004 or for failing to pass on relevant information to other as required by new section 313ZB of FA 2004 can result in a penalty not exceeding £600 per day.
45. Paragraph 42 amends Chapter 3 of Part 4 of Finance Act 2014 so that arrangements in respect of which an SRN has been allocated in a subsection (3) case are included as

“DOTAS arrangements” for the purposes of accelerated payments. This means that HMRC may issue accelerated payment notices and partner payment notices to users of such arrangements when the relevant criteria in Chapter 3 are met.

Background note

46. DOTAS was introduced in 2004 and seeks to provide HMRC with early information about new tax avoidance schemes, how they work and those who use them. Prompt disclosure to HMRC of proposals and arrangements which bear the hallmarks of tax avoidance is important so that they can make informed decisions about whether and how such schemes should be challenged, or legislation considered to closing loopholes.
47. This measure was first announced in December 2019 as part of the government’s response to Sir Amyas Morse’s Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes. In Budget 2020 the Chancellor announced that these measures would be legislated in Finance Bill 2020-21. It proposed changes that would ensure that HMRC could act quickly and decisively where promoters fail to provide information on their avoidance schemes.
48. Many tax advisers adhere to high professional standards and are a very useful source of advice and support to taxpayers. The measures are not aimed at such professionals. The aim of the measure is to allow HMRC to take prompt action when they suspect tax avoidance proposals or arrangements should have been disclosed to them but were not. The changes would enable HMRC to obtain information and documents about arrangements that it suspected were notifiable at a much earlier stage.
49. The measure will come into effect on the day the Act is passed.
50. If you have any questions about this change, or comments on the legislation, please email: ca.consultation@hmrc.gov.uk.

Clause 3 and Schedule 3: The GAAR and partnerships

Summary

1. This clause and Schedule make provision about the operation of the general anti-abuse rule (GAAR) in relation to partnerships. The amendments make provision for the GAAR procedure to work consistently with how HM Revenue and Customs (HMRC) conducts tax enquiries in respect of partnerships. They allow for the giving of a notice to relevant partners via the representative partner, making amendments to the partnership return, feeding counteraction through to the relevant partners' tax returns and for the representative partner to appeal. These changes will apply from Royal Assent.

Details of the clause

2. Clause 3 introduces Schedule 3 which makes provision about the operation of the GAAR in relation to partnerships.

Details of the Schedule

3. Paragraph 1 provides for the new schedule to operate within the rest of the GAAR legislation.
4. Paragraph 2 inserts new Schedule 43D into Finance Act 2013 (FA 2013).
5. Paragraph 1 of new Schedule 43D introduces the Schedule which makes provision about the operation of the GAAR in relation to partnerships and provides that it applies in relation to partnerships where a return is required under section 12AA, or paragraph 10 of Schedule A1, to the Taxes Management Act 1970.
6. Paragraph 2 of new Schedule 43D provides the definition of responsible partner.
7. Paragraph 3 of new Schedule 43D explains in what circumstances a partnership return is regarded as being made on the basis that tax advantage arises.
8. Paragraph 4 of new Schedule 43D enables a HMRC officer to give a protective GAAR notice to the responsible partner on the basis that a tax advantage might have arisen through abusive tax arrangements reflected in the partnership return.
9. Paragraph 5 of new Schedule 43D explains that Part 5 of FA 2013 takes effect with the following modifications where a protective GAAR notice has been issued in respect of a partnership under paragraph 4 of new Schedule 43D.
10. Paragraph 6 of new Schedule 43D allows for the responsible partner to make

adjustments following receipt of a protective GAAR notice.

11. Paragraph 7 of new Schedule 43D allows for consequential relieving adjustments where HMRC has been notified of a counteraction by the responsible partner.
12. Paragraph 8 of new Schedule 43D provides for notices of proposed counteraction and pooling notices and notices of binding in respect of protective GAAR notices.
13. Paragraph 9 of new Schedule 43D enables a “designated HMRC officer” to notify the responsible partner in writing where the officer considers that on the basis of a partnership return one or more partners has obtained a tax advantage which should be counteracted under the GAAR and lists the information which must be contained in the notice. A designated HMRC officer means an officer of HMRC who has been designated by the Commissioners for the purposes of the GAAR.
14. Paragraph 10 of new Schedule 43D provides that Part 5 of FA 2013 has effect in relation to the tax advantage with the modifications provided for in paragraphs 13 to 15, if the responsible partner has received a protective GAAR notice, under paragraph 4 of new Schedule 43D, or in any other case, with the modifications in paragraphs 11 to 15.
15. Paragraph 11 of new Schedule 43D makes amendments to section 209 of FA 2013 (counteracting the tax advantages). Section 209 provides that tax advantages arising from abusive tax arrangements are to be counteracted by the making of just and reasonable adjustments, whether in respect of the tax in question or any other tax to which the GAAR applies. Paragraph 11 makes provision for the responsible partner to make adjustments by amending the partnership return.
16. Paragraph 12 of new Schedule 43D provides for modifications to section 210 of FA 2013 (consequential relieving adjustments) to refer to the responsible partner notifying HMRC of the counteraction.
17. Paragraph 13 of new Schedule 43D provides for modifications to section 212A of FA 2013 (penalty) so each relevant partner is liable to pay a penalty calculated by reference to their counteracted tax advantage. The penalty for each relevant partner, 60% of the counteracted tax advantage, is calculated on the same basis as the GAAR penalty for an individual taxpayer. The penalty is calculated for each partner separately to take account of their own individual tax position.
18. Paragraph 14 of new Schedule 43D provides for modifications to Schedule 43 to FA 2013 (procedural requirements) to enable the responsible partner to receive notices, take various steps under the GAAR procedure and take corrective action.
19. Paragraph 15 of new Schedule 43D provides for modifications to Schedule 43C to FA 2013 (penalty under section 212A: supplementary provision) for the GAAR penalty to be calculated by reference to the relevant partner’s tax liability. Paragraph 15 also makes provision for the responsible partner to be notified of the penalty alongside the person liable for the penalty and for the appeal rights to sit with the responsible partner.
20. Paragraph 16 of new Schedule 43D sets out that an officer may give a notice under

this Part 3 of Schedule 43D (notices of proposed counteraction) on the assumption a tax advantage arises without agreeing that it does.

21. Paragraph 17 of new Schedule 43D enables a designated HMRC officer to give pooling notices or notices of binding in respect of partnership tax arrangements to the responsible partner.
22. Paragraph 18 of new Schedule 43D provides that where a pooling notice or notice of binding is given under paragraph 17 the modifications in paragraphs 21 to 23 have effect in relation to the tax advantage if a protective GAAR notice has been issued under paragraph 4, or in any other case, with the modifications set out in paragraphs 19 to 23.
23. Paragraph 19 of new Schedule 43D provides for counteracting the tax advantage stemming from a notice of pooling notice or notice of binding.
24. Paragraph 20 of new Schedule 43D provides for consequential relieving adjustments in respect of a pooling notice or notice of binding given to a responsible partner.
25. Paragraph 21 of new Schedule 43D allows for a penalty to be calculated and charged under paragraph 13 of new Schedule 43D, in relation to a notice of pooling or binding.
26. Paragraph 22 of new Schedule 43D provides for modifications to Schedule 43A to FA 2013 (procedural requirements: pooling notices and notices of binding) so that pooling notices and notices of binding may be given to the responsible partner in respect of partnership tax arrangements. The provisions allow for equivalent arrangements used by partnerships and non-partnership entities to be pooled and bound behind the same lead arrangement.
27. Paragraph 23 of new Schedule 43D contains the modifications to the penalty provisions in Schedule 43C to FA 2013 for the purposes of pooling and binding in respect of partnerships.
28. Paragraph 24 of new Schedule 43D provides that a designated HMRC officer may give a pooling notice or notice of binding on the assumption a tax advantage arises without agreeing that it does.
29. Paragraphs 3, 4 and 5 set out minor and consequential amendments following from the insertion of new Schedule 43D.

Background note

30. The GAAR was introduced in 2013. It provides HMRC with the ability to challenge “abusive” tax arrangements where those arrangements are designed to achieve a tax outcome clearly outside the intention of the relevant legislation.
31. The GAAR is aimed only at abusive forms of tax avoidance, to deter taxpayers from entering into such abusive arrangements, and to deter would-be promoters from promoting such arrangements. Where such arrangements are entered into the GAAR provides that the tax effect of those arrangements can, if specified procedures are

followed, be counteracted to arrive at the tax outcome originally intended by the legislation.

32. HMRC cannot counteract under the GAAR unless an independent panel has given an opinion or opinions on whether the arrangements constituted a reasonable course of action. The panel opinion(s) must be taken into account by the court or tribunal in any proceedings in connection with the GAAR.
33. This measure was first announced in December 2019 as part of the government's response to Sir Amyas Morse's Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes. In Budget 2020 the Chancellor announced that these measures would be legislated in Finance Bill 2020-21. It proposed changes that would amend the GAAR procedure so that it worked consistently with how HMRC conducts enquiries in respect of partnerships.
34. These changes will ensure the GAAR applies equally to partnerships, as always intended, as it does to other entities and individual taxpayers.
35. If you have any questions about this change, or comments on the legislation, please email ca.consultation@hmrc.gov.uk.

Clause 4: Penalties for enablers of defeated tax avoidance

Summary

1. This clause amends the penalties for enablers of defeated tax avoidance legislation set out in Schedule 16 to the Finance (No.2) Act 2017 (F(No.2)A 2017). Once amended, HM Revenue and Customs (HMRC) will be able to use information powers (under Schedule 36 to Finance Act 2008) to check a person's position regarding liability for a penalty before the relevant arrangements are defeated; and to request information from one enabler about other enablers involved in the same arrangements. This clause amends the special provisions for multi-user schemes allowing HMRC to assess enabler penalties following a judicial ruling and alters the threshold percentages before a penalty can be issued. This clause also amends the requirements for publishing information about enablers who have received penalties removing the requirement for all related arrangements to have been defeated.

Details of the clause

2. Subsection 1 introduces the amendments to Schedule 16 to F(No.2)A 2017.
3. Subsection 2 amends paragraph 21 of Schedule 16 to provide for two new conditions to the special provision about assessment of penalties for multi-user schemes, and when these conditions apply. New condition 1 makes provision for HMRC to assess penalties on enablers of all relevant arrangements that have been defeated if one of the defeats results from a judicial ruling. When there is no judicial ruling, condition 2 provides for a new tiered percentage threshold dependent on the number of related cases.
4. Subsection 3 makes consequential amendments to paragraph 22 of Schedule 16 to reflect the two new conditions.
5. Subsections 4 to 7 amend paragraphs 40 to 43 of Schedule 16. These amendments make provision for HMRC to exercise its information and inspection powers (under Schedule 36 to the Finance Act 2008) to check a person's position regarding liability for a penalty before the relevant arrangements are defeated, and to help identify any other person who may have enabled those arrangements. The amendments also omit, from the restrictions on powers (under Schedule 36 to the Finance Act 2008), the exclusions for tax advisers in connection with relevant communications, so that they can be required to provide information to check a person's position regarding liability for a penalty.
6. Subsection 8 amends the requirements for publishing information of persons who have received penalties set out in paragraph 48 of Schedule 16. The amendment omits the requirement for all 'related arrangements' to be defeated.

Background note

7. Schedule 16 to F(No.2)A 2017 introduced penalties for enablers of defeated tax avoidance whereby anyone enabling abusive tax avoidance arrangements that are later defeated by HMRC will be subject to a penalty of 100% of the fee earned.
8. This measure was first announced in December 2019 as part of the government's response to Sir Amyas Morse's Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes. In Budget 2020 the Chancellor announced that these measures would be legislated in Finance Bill 2020-21. It proposed changes that would ensure HMRC could obtain information about the enabling of abusive schemes (for the purposes of the Enablers Penalty Regime) as soon as they are identified and ensure that enabler penalties are felt without delay.
9. This clause amends the provisions for HMRC to issue penalties for multi-use abusive tax arrangements. HMRC will be able to assess enablers penalties following a judicial ruling in relation to any taxpayer who has used that scheme (where it is final and not subject to appeal). The clause also introduces a tiered approach to determining when HMRC can issue penalties to an enabler for multi-use tax arrangements.
10. The clause amends the provisions for HMRC to exercise its information and inspection powers (under Schedule 36 to Finance Act 2008). HMRC will only use information powers to request information to enable them to check whether a person is, or may become, liable to enablers penalties and, if so, how much those penalties would be. The clause removes the exclusions for tax advisers in connection with relevant communications: a tax adviser may continue to withhold any material they think is not required for the purpose of checking the penalty position.
11. The clause amends the requirements for publishing details of enablers who have received penalties: it removes the restriction for HMRC to defeat all related uses of a multi-user scheme before publishing details. HMRC are now able to publish information about an enabler once they have received either 50 penalties or penalties exceeding £25,000 over a period of 12 months.
12. If you have any questions about this change, or comments on the legislation, please email ca.consultation@hmrc.gov.uk.