

1 Avoidance: power of HMRC to apply for disqualification order

In Schedule 1 –

- (a) Part 1 makes provision for HMRC to apply for disqualification orders under the Company Directors Disqualification Act 1986, and
- (b) Part 2 makes corresponding provision in respect of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)).

SCHEDULE 1

Section 1

AVOIDANCE: POWER OF HMRC TO APPLY FOR DISQUALIFICATION ORDER

PART 1

ENGLAND AND WALES AND SCOTLAND

Disqualification for promoting tax avoidance

- 1 After section 8ZE of the Company Directors Disqualification Act 1986, insert—

“Disqualification for promoting tax avoidance

8ZF Disqualification following winding up under s.85 of Finance Act 2022

- (1) The court must make a disqualification order against a person if, on an application under this section, it is satisfied—
 - (a) that the person was a director or manager of a company at any time at which the company was a relevant body within the meaning of section 85(4) of the Finance Act 2022 (winding up of promoters of tax avoidance schemes), and
 - (b) that the court has made a winding-up order in respect of the company under section 85(3) of that Act (whether while the person was a director or manager or subsequently).
- (2) For the purposes of this section—
 - (a) “director” includes a shadow director;
 - (b) a person is a “manager” of a company if the person is concerned, or takes part, in the management of the company in any way, whether directly or indirectly.
- (3) An officer of Revenue and Customs may make an application to the court for a disqualification order against a person under this section if it appears to the officer that it is expedient in the public interest for such an order to be made.
- (4) Except with the permission of the court, an application under subsection (3) for a disqualification order against a person who is or has previously been a director or manager of a company in respect of which the court has made a winding-up order under section 85(3) of the Finance Act 2022 may not be made after the end of the period of 3 years beginning with the day on which the court made the order.
- (5) Under this section the minimum period of disqualification is 2 years, and the maximum is 15 years.

- (6) An officer of Revenue and Customs may accept a disqualification undertaking if it appears to the officer –
 - (a) that the conditions in subsection (1) are satisfied in relation to the person who has offered to give the undertaking, and
 - (b) that it is expedient in the public interest that the officer should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order).
- (7) In this section –
 - “company” includes overseas company;
 - “the court” has the same meaning as in section 85 of the Finance Act 2022.

8ZG Disqualification on finding of unfitness: promoters of tax avoidance

- (1) The court may make a disqualification order against a person if, on an application under this section, it is satisfied –
 - (a) that the person –
 - (i) is a director or manager of a company that carries on business as a promoter within the meaning of Part 5 of the Finance Act 2014 (promoters of tax avoidance schemes), or
 - (ii) has previously been a director or manager of a company at a time at which it did so, and
 - (b) that the person’s conduct in relation to the company (either taken alone or taken together with the person’s conduct as a director or manager of one or more other companies) makes the person unfit to be concerned in the management of a company.
- (2) For the purposes of subsection (1) –
 - (a) “director” includes a shadow director;
 - (b) a person is a “manager” of a company if the person is concerned, or takes part, in the management of the company in any way, whether directly or indirectly;
 - (c) Part 5 of the Finance Act 2014 has effect as if, in section 234 of that Act –
 - (i) references to “tax” included value added tax and other indirect taxes, and
 - (ii) the definition of “tax advantage” also included a tax advantage as defined for VAT in paragraph 6, and for other indirect taxes in paragraph 7, of Schedule 17 to the Finance (No. 2) Act 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes).
- (3) An officer of Revenue and Customs may make an application to the court for a disqualification order against a person under this

section if it appears to the officer that it is expedient in the public interest for such an order to be made.

- (4) The maximum period of disqualification under this section is 15 years.
- (5) An officer of Revenue and Customs may accept a disqualification undertaking if it appears to the officer –
 - (a) that the conditions in subsection (1) are satisfied in relation to the person who has offered to give the undertaking, and
 - (b) that it is expedient in the public interest that the officer should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order).
- (6) In this section –
 - “company” includes overseas company;
 - “the court” means the High Court or, in Scotland, the Court of Session;
 - “indirect tax” has the same meaning as in Schedule 17 to the Finance (No. 2) Act 2017 (see paragraph 2(1) of that Schedule).”

Minor and consequential amendments

- 2 (1) The Company Directors Disqualification Act 1986 is amended as follows.
- (2) In section 1 (disqualification orders: general) –
 - (a) in subsection (1), after “6” insert “, 8ZF”;
 - (b) in subsection (2), for “and 8ZA” substitute “, 8ZA and 8ZF”.
- (3) In section 1A (disqualification undertakings: general) –
 - (a) in subsection (1) –
 - (i) for “and 8ZE” substitute “, 8ZE, 8ZF and 8ZG”, and
 - (ii) for “Secretary of State” substitute “appropriate authority”;
 - (b) in subsection (2), for “or 8ZC” substitute “, 8ZC or 8ZF”;
 - (c) in subsection (4), for “Secretary of State” substitute “appropriate authority”;
 - (d) after subsection (4) insert –
 - “(5) In this section “the appropriate authority” means –
 - (a) in relation to an undertaking under section 8ZF or 8ZG, an officer of Revenue and Customs;
 - (b) in any other case, the Secretary of State.”
- (4) In section 8A (variation etc. of disqualification undertaking) –
 - (a) after subsection (2) insert –
 - “(2ZA) Subsection (2) does not apply to an application in the case of an undertaking given under section 8ZF or 8ZG, and in

- such a case on the hearing of the application an officer of Revenue and Customs –
- (a) must appear and call the attention of the court to any matters which appear to the officer to be relevant;
 - (b) may give evidence or call witnesses.”;
- (b) in subsection (3) –
- (i) in paragraph (zb), after “8ZE” insert “or 8ZG”;
 - (ii) in paragraph (b), for “or 8” substitute “, 8 or 8ZF”.
- (5) In section 12C (determining unfitness etc: matters to be taken into account) –
- (a) in subsection (1) –
 - (i) in paragraph (b), after “8” insert “, 8ZG”, and
 - (ii) in paragraph (c), after “6” insert “or 8ZF”;
 - (b) after subsection (3) insert –
 - “(3A) This section also applies where an officer of Revenue and Customs must determine –
 - (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
 - (b) whether to exercise any discretion the officer has to accept a disqualification undertaking under section 8ZF or 8ZG.”;
 - (c) in subsection (4), after “Secretary of State” insert “or the officer (as the case may be)”.
- (6) In section 16(4) (application for disqualification order: parties), after paragraph (b) insert –
- “(ba) an officer of Revenue and Customs;”.
- (7) In section 17 (application for leave under an order or undertaking) –
- (a) in subsection (3ZB), after “8ZE” insert “or 8ZG”;
 - (b) after subsection (3ZB) insert –
 - “(3ZC) Where a person is subject to a disqualification undertaking accepted at any time under section 8ZF, any application for leave for the purposes of section 1A(1)(a) must be made to any court to which, if an officer of Revenue and Customs had applied for a disqualification order under section 8ZF at that time, that application could have been made.”;
 - (c) after subsection (5) insert –
 - “(5A) Subsection (5) does not apply to any application for leave –
 - (a) for the purposes of section 1(1)(a) if the application for the disqualification order was made by an officer of Revenue and Customs, or

- (b) for the purposes of section 1A(1)(a) if the disqualification undertaking was accepted by an officer of Revenue and Customs.
- (5B) In such a case, on the hearing of the application an officer of Revenue and Customs—
 - (a) must appear and call the attention of the court to any matters which appear to the officer to be relevant;
 - (b) may give evidence or call witnesses.”
- (8) In section 18(2A) (disqualification undertakings to be included in register), after paragraph (a) insert—
 - “(aa) disqualification undertakings accepted by an officer of Revenue and Customs under section 8ZF or 8ZG;”.

PART 2

NORTHERN IRELAND

Disqualification for promoting tax avoidance

- 3 After Article 11E of The Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)), insert—

“Disqualification for promoting tax avoidance

11F Disqualification following winding up under s.85 of Finance Act 2022

- (1) The High Court must make a disqualification order against a person if, on an application under this Article, it is satisfied—
 - (a) that the person was a director or manager of a company at any time at which the company was a relevant body within the meaning of section 85(4) of the Finance Act 2022 (winding up of promoters of tax avoidance schemes), and
 - (b) that the Court has made a winding-up order in respect of the company under section 85(3) of that Act (whether while the person was a director or manager or subsequently).
- (2) For the purposes of this Article—
 - (a) “director” includes a shadow director;
 - (b) a person is a “manager” of a company if the person is concerned, or takes part, in the management of the company in any way, whether directly or indirectly.
- (3) An officer of Revenue and Customs may make an application to the High Court for a disqualification order against a person under this Article if it appears to the officer that it is expedient in the public interest for such an order to be made.

- (4) Except with the permission of the High Court, an application under paragraph (1) for a disqualification order against a person who is or has previously been a director or manager of a company in respect of which the Court has made a winding-up order under section 85(3) of the Finance Act 2022 may not be made after the end of the period of 3 years beginning with the day on which the Court made the order.
- (5) Under this Article the minimum period of disqualification is 2 years, and the maximum is 15 years.
- (6) An officer of Revenue and Customs may accept a disqualification undertaking if it appears to the officer –
 - (a) that the conditions in paragraph (1) are satisfied in relation to the person who has offered to give the undertaking, and
 - (b) that it is expedient in the public interest that the officer should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order).
- (7) In this Article, “company” includes overseas company.

11G Disqualification on finding of unfitness: promoters of tax avoidance

- (1) The High Court may make a disqualification order against a person if, on an application under this Article, it is satisfied –
 - (a) that the person –
 - (i) is a director or manager of a company that carries on business as a promoter within the meaning of Part 5 of the Finance Act 2014 (promoters of tax avoidance schemes), or
 - (ii) has previously been a director or manager of a company at a time at which it did so, and
 - (b) that the person’s conduct in relation to the company (either taken alone or taken together with the person’s conduct as a director or manager of one or more other companies) makes the person unfit to be concerned in the management of a company.
- (2) For the purposes of paragraph (1) –
 - (a) “director” includes a shadow director;
 - (b) a person is a “manager” of a company if the person is concerned, or takes part, in the management of the company in any way, whether directly or indirectly;
 - (c) Part 5 of the Finance Act 2014 has effect as if, in section 234 of that Act –
 - (i) references to “tax” included value added tax and other indirect taxes, and

- (ii) the definition of “tax advantage” also included a tax advantage as defined for VAT in paragraph 6, and for other indirect taxes in paragraph 7, of Schedule 17 to the Finance (No. 2) Act 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes).
- (3) An officer of Revenue and Customs may make an application to the High Court for a disqualification order against a person under this Article if it appears to the officer that it is expedient in the public interest for such an order to be made.
- (4) The maximum period of disqualification under this Article is 15 years.
- (5) An officer of Revenue and Customs may accept a disqualification undertaking if it appears to the officer –
 - (a) that the conditions in paragraph (1) are satisfied in relation to the person who has offered to give the undertaking, and
 - (b) that it is expedient in the public interest that the officer should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order).
- (6) In this Article –
 - “company” includes overseas company;
 - “indirect tax” has the same meaning as in Schedule 17 to the Finance (No. 2) Act 2017 (see paragraph 2(1) of that Schedule).”

Minor and consequential amendments

- 4 (1) The Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)) is amended as follows.
- (2) In Article 3 (disqualification orders: general) –
 - (a) in paragraph (1), after “9” insert “, 11F”;
 - (b) in paragraph (2), for “and 11A” substitute “, 11A and 11F”.
- (3) In Article 4 (disqualification undertakings: general)
 - (a) in paragraph (1) –
 - (i) for “and 11E” substitute “, 11E, 11F and 11G”, and
 - (ii) for “Department” substitute “appropriate authority”;
 - (b) in paragraph (2), for “or 11C” substitute “, 11C or 11F”;
 - (c) in paragraph (4), for “Department” substitute “appropriate authority”;
 - (d) after paragraph (4) insert –
 - “(5) In this Article “the appropriate authority” means –
 - (a) in relation to an undertaking under Article 11F or 11G, an officer of Revenue and Customs, and
 - (b) in any other case, the Department.”

- (4) In Article 12 (variation etc. of disqualification undertaking), after paragraph (2) insert—
- “(2A) Paragraph (2) does not apply to an application in the case of an undertaking given under Article 11F or 11G, and in such a case on the hearing of the application an officer of Revenue and Customs—
- (a) must appear and call the attention of the Court to any matters which appear to the officer to be relevant;
 - (b) may give evidence or call witnesses.”
- (5) In Article 17A (determining unfit etc: matters to be taken into account)—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (b), after “11” insert “, 11G”, and
 - (ii) in sub-paragraph (c), after “9” insert “or 11F”;
 - (b) after paragraph (2) insert—

“(2A) This Article also applies where an officer of Revenue and Customs must determine—

 - (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
 - (b) whether to exercise any discretion the officer has to accept a disqualification undertaking under Article 11F or 11G.”;
 - (c) in paragraph (3), after “Department” insert “or the officer (as the case may be)”.
- (6) In Article 20(4) (application for disqualification order: parties), after sub-paragraph (b) insert—
- “(ba) an officer of Revenue and Customs;”.
- (7) In Article 21 (application for leave under an order or undertaking), after paragraph (1) insert—
- “(1A) Paragraph (1) does not apply to any application for leave—
- (a) for the purposes of Article 3(1)(a) if the application for the disqualification order was made by an officer of Revenue and Customs, or
 - (b) for the purposes of Article 4(1)(a) if the disqualification undertaking was accepted by an officer of Revenue and Customs.
- (1B) In such a case, on the hearing of the application an officer of Revenue and Customs—
- (a) must appear and call the attention of the Court to any matters which appear to the officer to be relevant;
 - (b) may give evidence or call witnesses.”

- (8) In Article 22(3) (disqualification undertakings to be included in register), after sub-paragraph (a) insert—
- “(aa) disqualification undertakings accepted by an officer of Revenue and Customs under Article 11F or 11G;”.