

SCHEDULES

SCHEDULE 18

SERIAL TAX AVOIDANCE

PART 6

CORPORATE GROUPS, ASSOCIATED PERSONS AND PARTNERSHIPS

Representative member of a VAT group

- 45 (1) Where a body corporate (“R”) is the representative member of a group (and accordingly is treated for the purposes of this Schedule as mentioned in section 43(1) of VATA 1994), anything which has been done by or in relation to another body corporate (“B”) in B’s capacity as representative member of that group is treated for the purposes of this Schedule as having been done by or in relation to R in R’s capacity as representative member of the group.

Accordingly paragraph 3 (warning period) operates as if the successive representative members of a group were a single person.

- (2) This Schedule has effect as if the representative member of a group, so far as acting in its capacity as such, were a different person from that body corporate so far as acting in any other capacity.
- (3) In this paragraph the reference to a “group” is to be interpreted in accordance with sections 43A to 43D of VATA 1994.

Corporate groups

- 46 (1) Sub-paragraphs (2) and (3) apply if HMRC has a duty under paragraph 2 to give a warning notice to a company (“C”) which is a member of a group.
- (2) That duty has effect as a duty to give a warning notice to each current group member (see sub-paragraph (8)).
- (3) Any warning notice which has been given (or is treated as having been given) previously to any current group member is treated as having been given to each current group member (and any provision in this Schedule which refers to a “warning period” in relation to a person is to be interpreted accordingly).
- (4) In relation to a company which incurs a relevant defeat, paragraph 19(1) (duty to give relief restriction notice) does not have effect unless the warning period mentioned in that sub-paragraph would be a warning period in relation to the company regardless of sub-paragraph (3).
- (5) A company which incurs a relevant defeat is not liable to pay a penalty under paragraph 30 unless the warning period mentioned in sub-paragraph (1) of that

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paragraph would be a warning period in relation to the company regardless of sub-paragraph (3).

- (6) HMRC may discharge any duty to give a warning notice to a current group member in accordance with sub-paragraph (2) by delivering the notice to C (and if it does so may combine one or more warning notices in a single notice).
- (7) If a company ceases to be a member of a group, and—
- (a) immediately before it ceases to be a member of the group, a warning period has effect in relation to the company, but
 - (b) no warning period would have effect in relation to the company at that time but for sub-paragraph (2) or (3),
- that warning period ceases to have effect in relation to the company when it ceases to be a member of that group.
- (8) In this paragraph “current group member” means a company which is a member of the group concerned at the time when the warning notice mentioned in sub-paragraph (1) is given.
- (9) For the purposes of this paragraph two companies are members of the same group of companies if—
- (a) one is a 75% subsidiary of the other, or
 - (b) both are 75% subsidiaries of a third company.
- (10) In this paragraph “75% subsidiary” has the meaning given by section 1154 of CTA 2010.
- (11) In this paragraph “company” has the same meaning as in the Corporation Tax Acts (see section 1121 of CTA 2010).

Associated persons treated as incurring relevant defeats

- 47 (1) Sub-paragraph (2) applies if a person (“P”) incurs a relevant defeat in relation to any arrangements (otherwise than by virtue of this paragraph).
- (2) Any person (“S”) who is associated with P at the relevant time is also treated for the purposes of paragraphs 2 (duty to give warning notice) and 3(2) (warning period) as having incurred that relevant defeat in relation to those arrangements (but see sub-paragraph (3)).
- For the meaning of “associated” see paragraph 48.
- (3) Sub-paragraph (2) does not apply if P and S are members of the same group of companies (as defined in paragraph 46(9)).
- (4) In relation to a warning notice given to S by virtue of sub-paragraph (2), paragraph 2(4)(c) (certain information to be included in warning notice) is to be read as referring only to paragraphs 3, 17 and 18.
- (5) A warning notice which is given to a person by virtue of sub-paragraph (2) is treated for the purposes of paragraphs 19(1) (duty to give relief restriction notice) and 30 (penalty) as not having been given to that person.
- (6) In sub-paragraph (2) “the relevant time” means the time when P is given a warning notice in respect of the relevant defeat.

Meaning of “associated”

- 48 (1) For the purposes of paragraph 47 two persons are associated with one another if—
- (a) one of them is a body corporate which is controlled by the other, or
 - (b) they are bodies corporate under common control.
- (2) Two bodies corporate are under common control if both are controlled—
- (a) by one person,
 - (b) by two or more, but fewer than six, individuals, or
 - (c) by any number of individuals carrying on business in partnership.
- (3) For the purposes of this section a body corporate (“H”) is taken to control another body corporate (“B”) if—
- (a) H is empowered by statute to control B’s activities, or
 - (b) H is B’s holding company within the meaning of section 1159 of and Schedule 6 to the Companies Act 2006.
- (4) For the purposes of this section an individual or individuals are taken to control a body corporate (“B”) if the individual or individuals, were they a body corporate, would be B’s holding company within the meaning of those provisions.

Partners treated as incurring relevant defeats

- 49 (1) Where paragraph 50 applies in relation to a partnership return, each relevant partner is treated for the purposes of this Schedule as having incurred the relevant defeat mentioned in paragraph 50(1)(b), (2) or (3)(b) (as the case may be).
- (2) In this paragraph “relevant partner” means any person who was a partner in the partnership at any time during the relevant reporting period (but see sub-paragraph (3)).
- (3) The “relevant partners” do not include—
- (a) the person mentioned in sub-paragraph (1)(b), (2) or (3)(b) (as the case may be) of paragraph 50, or
 - (b) any other person who would, apart from this paragraph, incur a relevant defeat in connection with the subject matter of the partnership return mentioned in sub-paragraph (1).
- (4) In this paragraph the “relevant reporting period” means the period in respect of which the partnership return mentioned in sub-paragraph (1), (2) or (3) of paragraph 50 was required.

Partnership returns to which this paragraph applies

- 50 (1) This paragraph applies in relation to a partnership return if—
- (a) that return has been made on the basis that a tax advantage arises to a partner from any arrangements, and
 - (b) that person has incurred, in relation to that tax advantage and those arrangements, a relevant defeat by virtue of Condition A (final counteraction of tax advantage under general anti-abuse rule).
- (2) Where a person has incurred a relevant defeat by virtue of sub-paragraph (2) of paragraph 13 (Condition B: case involving partnership follower notice) this

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paragraph applies in relation to the partnership return mentioned in that sub-paragraph.

- (3) This paragraph applies in relation to a partnership return if—
- (a) that return has been made on the basis that a tax advantage arises to a partner from any arrangements, and
 - (b) that person has incurred, in relation to that tax advantage and those arrangements, a relevant defeat by virtue of Condition C (return, claim or election made in reliance on DOTAS arrangements).
- (4) The references in this paragraph to a relevant defeat do not include a relevant defeat incurred by virtue of paragraph 47(2).

Partnerships: information

- 51 (1) If paragraph 50 applies in relation to a partnership return, the appropriate partner must give HMRC a written notice (a “partnership information notice”) in respect of each sub-period in the information period.
- (2) The “information period” is the period of 5 years beginning with the day after the day of the relevant defeat mentioned in paragraph 50.
- (3) If, in the case of a partnership, a new information period (relating to another partnership return) begins during an existing information period, those periods are treated for the purposes of this paragraph as a single period (which includes all times that would otherwise fall within either period).
- (4) An information period under this paragraph ends if the partnership ceases.
- (5) A partnership information notice must be given not later than the 30th day after the end of the sub-period to which it relates.
- (6) A partnership information notice must state—
- (a) whether or not any relevant partnership return which was, or was required to be, delivered in the sub-period has been made on the basis that a relevant tax advantage arises, and
 - (b) whether or not there has been a failure to deliver a relevant partnership return in the sub-period.
- (7) In this paragraph—
- (a) “relevant partnership return” means a partnership return in respect of the partnership’s trade, profession or business;
 - (b) “relevant tax advantage” means a tax advantage which particular DOTAS arrangements enable, or might be expected to enable, a person who is or has been a partner in the partnership to obtain.
- (8) If a partnership information notice states that a relevant partnership return has been made on the basis mentioned in sub-paragraph (6)(a) the notice must—
- (a) explain (on the assumptions made for the purposes of the return) how the DOTAS arrangements enable the tax advantage concerned to be obtained, and
 - (b) describe any variation in the amounts required to be stated in the return under section 12AB(1) of TMA 1970 which results from those arrangements.

- (9) HMRC may require the appropriate partner to give HMRC a notice (a “supplementary information notice”) setting out further information in relation to a partnership information notice.

In relation to a partnership information notice “further information” means information which would have been required to be set out in the notice by virtue of sub-paragraph (6)(a) or (8) had there not been a failure to deliver a relevant partnership return.

- (10) A requirement under sub-paragraph (9) must be made by a written notice and the notice must state the period within which the notice must be complied with.
- (11) If a person fails to comply with a requirement of (or imposed under) this paragraph, HMRC may by written notice extend the information period concerned to the end of the period of 5 years beginning with—
- (a) the day by which the partnership information notice or supplementary information notice was required to be given to HMRC or, as the case requires,
 - (b) the day on which the person gave the defective notice to HMRC,
- or, if earlier, the time when the information period would have expired but for the extension.
- (12) For the purposes of this paragraph—
- (a) the first sub-period in an information period begins with the first day of the information period and ends with a day specified by HMRC,
 - (b) the remainder of the information period is divided into further sub-periods each of which begins immediately after the end of the preceding sub-period and is twelve months long or (if that would be shorter) ends at the end of the information period.
- (13) In this paragraph “the appropriate partner” means the partner in the partnership who is for the time being nominated by HMRC for the purposes of this paragraph.

Partnerships: special provision about taxpayer emendations

- 52 (1) Sub-paragraph (2) applies if a partnership return is amended at any time under section 12ABA of TMA 1970 (amendment of partnership return by representative partner etc) on a basis that—
- (a) results in an increase or decrease in, or
 - (b) otherwise affects the calculation of,
- any amount stated under subsection (1)(b) of section 12AB of that Act (partnership statement) as a partner’s share of any income, loss, consideration, tax or credit for any period.
- (2) For the purposes of paragraph 14 (Condition C: counteraction of DOTAS arrangements), the partner is treated as having at that time amended—
- (a) the partner’s return under section 8 or 8A of TMA 1970, or
 - (b) the partner’s company tax return,
- so as to give effect to the amendments of the partnership return.

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- (3) Sub-paragraph (4) applies if a partnership return is amended at any time by HMRC as a result of a disclosure made by the representative partner or that person's successor on a basis that—
- (a) results in an increase or decrease in, or
 - (b) otherwise affects the calculation of,
- any amount stated under subsection (1)(b) of section 12AB of TMA 1970 (partnership statement) as the share of a particular partner (P) of any income, loss, consideration, tax or credit for any period.
- (4) If the conditions in sub-paragraph (5) are met, P is treated for the purposes of paragraph 14 as having at that time amended—
- (a) P's return under section 8 or 8A of TMA 1970, or
 - (b) P's company tax return,
- so as to give effect to the amendments of the partnership return.
- (5) The conditions are that the disclosure—
- (a) is a full and explicit disclosure of an inaccuracy in the partnership return, and
 - (b) was made at a time when neither the person making the disclosure nor P had reason to believe that HMRC was about to begin enquiries into the partnership return.

Supplementary provision relating to partnerships

- 53 (1) In paragraphs 49 to 52 and this paragraph—
- “partnership” is to be interpreted in accordance with section 12AA of TMA 1970 (and includes a limited liability partnership);
 - “the representative partner”, in relation to a partnership return, means the person who was required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver the return;
 - “successor”, in relation to a person who is the representative partner in the case of a partnership return, has the same meaning as in TMA 1970 (see section 118(1) of that Act).
- (2) For the purposes of this Part of this Schedule a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change.