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SCHEDULES

SCHEDULE 19

LARGE BUSINESSES: TAX STRATEGIES AND SANCTIONS

PART 3

SANCTIONS FOR PERSISTENTLY UNCO-OPERATIVE LARGE BUSINESSES

Large groups falling within Part 3

- 35 A UK group falls within this Part of this Schedule (“this Part”) if—
- (a) the group has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),
 - (b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the group or members of the group which are unresolved (see paragraph 39), and
 - (c) there is a reasonable likelihood of further instances of the group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the group or members of the group.
- 36 (1) A UK group has “engaged in unco-operative behaviour” if—
- (a) a member of the group has satisfied either or both of the conditions listed in sub-paragraph (2), or
 - (b) two or more of the members of the group, taken together, have satisfied either or both of those conditions.
- (2) Those conditions are—
- (a) the behaviour condition (see paragraph 37);
 - (b) the arrangements condition (see paragraph 38).
- (3) A UK group has engaged in unco-operative behaviour “persistently” if—
- (a) a member of the group has done so persistently, or
 - (b) two or more members of the group, taken together, have done so persistently.
- (4) References in this Part to doing something “persistently” include doing it on a sufficient number of occasions for it to be clear that it represents a pattern of behaviour.
- 37 (1) A member of a UK group has, or two or more members of a UK group (taken together) have, “satisfied the behaviour condition” if it has, or they have, behaved in a manner which has delayed or otherwise hindered HMRC in the exercise of their functions in connection with determining the liability to UK taxation of the group or a member of the group.

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- (2) Factors which may indicate that a member of a UK group has behaved as described in sub-paragraph (1) include—
- (a) the extent to which HMRC have used statutory powers to obtain information relating to the UK group or members of the group;
 - (b) the reasons why those powers have been used;
 - (c) the number and seriousness of inaccuracies in, and omissions from, documents given to HMRC by or on behalf of the UK group or members of the group;
 - (d) the extent to which, in dealings with HMRC, members of the group (or people acting on their behalf) have relied on interpretations of legislation relating to UK taxation which, at the time, are speculative.
- (3) An interpretation of legislation relating to UK taxation is “speculative” if it is likely that a court or tribunal would disagree with it.
- 38 (1) A member of a UK group has “satisfied the arrangements condition” if it is a party to a tax avoidance scheme.
- (2) “Tax avoidance scheme” means—
- (a) arrangements in respect of which a notice of final decision has been given under—
 - (i) paragraph 12 of Schedule 43 to FA 2013,
 - (ii) paragraph 5 or 6 of Schedule 43A to FA 2013, or
 - (iii) paragraph 9 of Schedule 43B to FA 2013,
 stating that a tax advantage arising from the arrangements is to be counteracted;
 - (b) arrangements which are notifiable arrangements for the purposes of Part 7 of FA 2004 (disclosure of tax avoidance schemes), other than arrangements in relation to which HMRC have given notice under section 312(6) of FA 2004 (notice that promoters not under duty to provide clients with prescribed information);
 - (c) a scheme which is a notifiable scheme for the purposes of Schedule 11A to VATA 1994 (disclosure of avoidance schemes).
- 39 (1) There is a significant tax issue in respect of a UK group or a member of a UK group where—
- (a) there is a disagreement between HMRC and a member of the group about an issue affecting the amount of the liability of the group or a member of the group to UK taxation,
 - (b) the issue has been, or could be, referred to a court or tribunal to determine, and
 - (c) as regards the amount of the liability, the difference between HMRC's view and the view of the member is, or is likely to be, not less than £2 million.
- (2) The reference in sub-paragraph (1)(a) to circumstances in which there is a disagreement include circumstances in which there is a reasonable likelihood of a disagreement.
- (3) The Treasury may by regulations substitute a higher amount for the amount for the time being specified in sub-paragraph (1)(c).
- 40 The references in paragraphs 36 to 39 to things done by a member of a UK group (“the group in question”)—

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- (a) include acts and omissions of a relevant body that is not a member of the group in question if they took place at a time when the relevant body was a member of a group headed by the body that is the head of the group in question;
- (b) do not include acts or omissions of a relevant body that is a member of the group in question if they took place at a time when the relevant body was not a member of a group headed by the body that is the head of the group in question.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)