



# Finance Act 2016

## 2016 CHAPTER 24

### PART 10

#### TAX AVOIDANCE AND EVASION

##### *Tackling frequent avoidance*

#### **160 Promoters of tax avoidance schemes**

- (1) Part 5 of FA 2014 (promoters of tax avoidance schemes) is amended as follows.
- (2) After section 237 insert—

##### **“237A Duty to give conduct notice: defeat of promoted arrangements**

- (1) If an authorised officer becomes aware at any time (“the relevant time”) that a person (“P”) who is carrying on a business as a promoter meets any of the conditions in subsections (11) to (13), the officer must determine whether or not P’s meeting of that condition should be regarded as significant in view of the purposes of this Part.

But see also subsection (14).

- (2) An authorised officer must make the determination set out in subsection (3) if the officer becomes aware at any time (“the section 237A(2) relevant time”) that—
  - (a) a person meets a condition in subsection (11), (12) or (13), and
  - (b) at the section 237A(2) relevant time another person (“P”), who is carrying on a business as a promoter, meets that condition by virtue of Part 4 of Schedule 34A (meeting the section 237A conditions: bodies corporate and partnerships).
- (3) The authorised officer must determine whether or not—

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- (a) the meeting of the condition by the person as mentioned in subsection (2)(a), and
  - (b) P's meeting of the condition as mentioned in subsection (2)(b),

should be regarded as significant in view of the purposes of this Part.
- (4) Subsections (1) and (2) do not apply if a conduct notice or monitoring notice already has effect in relation to P.
- (5) Subsection (1) does not apply if, at the relevant time, an authorised officer is under a duty to make a determination under section 237(5) in relation to P.
- (6) Subsection (2) does not apply if, at the section 237A(2) relevant time, an authorised officer is under a duty to make a determination under section 237(5) in relation to P.
- (7) But in a case where subsection (1) does not apply because of subsection (5), or subsection (2) does not apply because of subsection (6), subsection (5) of section 237 has effect as if—
  - (a) the references in paragraph (a) of that subsection to “subsection (1)”, and “subsection (1)(a)” included subsection (1) of this section, and
  - (b) in paragraph (b) of that subsection the reference to “subsection (1A)(a)” included a reference to subsection (2)(a) of this section and the reference to subsection (1A)(b) included a reference to subsection (2)(b) of this section.
- (8) If the authorised officer determines under subsection (1) that P's meeting of the condition in question should be regarded as significant, the officer must give P a conduct notice, unless subsection (10) applies.
- (9) If the authorised officer determines under subsection (3) that—
  - (a) the meeting of the condition by the person as mentioned in subsection (2)(a), and
  - (b) P's meeting of the condition as mentioned in subsection (2)(b),

should be regarded as significant in view of the purposes of this Part, the officer must give P a conduct notice, unless subsection (10) applies.
- (10) This subsection applies if the authorised officer determines that, having regard to the extent of the impact that P's activities as a promoter are likely to have on the collection of tax, it is inappropriate to give P a conduct notice.
- (11) The condition in this subsection is that in the period of 3 years ending with the relevant time at least 3 relevant defeats have occurred in relation to P.
- (12) The condition in this subsection is that at least two relevant defeats have occurred in relation to P at times when a single defeat notice under section 241A(2) or (6) had effect in relation to P.
- (13) The condition in this subsection is that at least one relevant defeat has occurred in relation to P at a time when a double defeat notice under section 241A(3) had effect in relation to P.
- (14) A determination that the condition in subsection (12) or (13) is met cannot be made unless—
  - (a) the defeat notice in question still has effect when the determination is made, or

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- (b) the determination is made on or before the 90th day after the day on which the defeat notice in question ceased to have effect.
- (15) Schedule 34A sets out the circumstances in which a “relevant defeat” occurs in relation to a person and includes provision limiting what can amount to a further relevant defeat in relation to a person (see paragraph 6).

### **237B Duty to give further conduct notice where provisional notice not complied with**

- (1) An authorised officer must give a conduct notice to a person (“P”) who is carrying on a business as a promoter if—
- (a) a conduct notice given to P under section 237A(8)—
    - (i) has ceased to have effect otherwise than as a result of section 237D(2) or 241(3) or (4), and
    - (ii) was provisional immediately before it ceased to have effect,
  - (b) the officer determines that P had failed to comply with one or more conditions in the conduct notice,
  - (c) the conduct notice relied on a Case 3 relevant defeat,
  - (d) since the time when the conduct notice ceased to have effect, one or more relevant defeats falling within subsection (2) have occurred in relation to—
    - (i) P, and
    - (ii) any arrangements to which the Case 3 relevant defeat also relates, and
  - (e) had that relevant defeat or (as the case may be) those relevant defeats, occurred before the conduct notice ceased to have effect, an authorised officer would have been required to notify the person under section 237C(3) that the notice was no longer provisional.
- (2) A relevant defeat falls within this subsection if it occurs by virtue of Case 1 or Case 2 in Schedule 34A.
- (3) Subsection (1) does not apply if the authorised officer determines that, having regard to the extent of the impact that the person's activities as a promoter are likely to have on the collection of tax, it is inappropriate to give the person a conduct notice.
- (4) Subsection (1) does not apply if a conduct notice or monitoring notice already has effect in relation to the person.
- (5) For the purposes of this Part a conduct notice “relies on a Case 3 relevant defeat” if it could not have been given under the following condition.

The condition is that paragraph 9 of Schedule 34A had effect with the substitution of “ 100% of the tested arrangements ” for “75% of the tested arrangements”.

### **237C When a conduct notice given under section 237A(8) is “provisional”**

- (1) This section applies to a conduct notice which—
- (a) is given to a person under section 237A(8), and

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- (b) relies on a Case 3 relevant defeat.
- (2) The notice is “provisional” at all times when it has effect, unless an authorised officer notifies the person that the notice is no longer provisional.
- (3) An authorised officer must notify the person that the notice is no longer provisional if subsection (4) or (5) applies.
- (4) This subsection applies if—
  - (a) the condition in subsection (5)(a) is not met, and
  - (b) a full relevant defeat occurs in relation to P.
- (5) This subsection applies if—
  - (a) two, or all three, of the relevant defeats by reference to which the conduct notice is given would not have been relevant defeats if paragraph 9 of Schedule 34A had effect with the substitution of “ 100% of the tested arrangements ” for “75% of the tested arrangements”, and
  - (b) the same number of full relevant defeats occur in relation to P.
- (6) A “full relevant defeat” occurs in relation to P if—
  - (a) a relevant defeat occurs in relation to P otherwise than by virtue of Case 3 in paragraph 9 of Schedule 34A, or
  - (b) circumstances arise which would be a relevant defeat in relation to P by virtue of paragraph 9 of Schedule 34A if that paragraph had effect with the substitution of “ 100% of the tested arrangements ” for “75% of the tested arrangements”.
- (7) In determining under subsection (6) whether a full relevant defeat has occurred in relation to P, assume that in paragraph 6 of Schedule 34A (provision limiting what can amount to a further relevant defeat in relation to a person) the first reference to a “relevant defeat” does not include a relevant defeat by virtue of Case 3 in paragraph 9 of Schedule 34A.

**237D Judicial ruling upholding asserted tax advantage: effect on conduct notice which is provisional**

- (1) Subsection (2) applies if at any time—
  - (a) a conduct notice which relies on a Case 3 relevant defeat (see section 237B(5)) is provisional, and
  - (b) a court or tribunal upholds a corresponding tax advantage which has been asserted in connection with any of the related arrangements to which that relevant defeat relates (see paragraph 5(2) of Schedule 34A).
- (2) The conduct notice ceases to have effect when that judicial ruling becomes final.
- (3) An authorised officer must give the person to whom the conduct notice was given a written notice stating that the conduct notice has ceased to have effect.
- (4) For the purposes of this section, a tax advantage is “asserted” in connection with any arrangements if a person makes a return, claim or election on the basis that the tax advantage arises from those arrangements.

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In relation to the arrangements mentioned in paragraph (b) of subsection (1) “corresponding tax advantage” means a tax advantage corresponding to any tax advantage the counteraction of which contributed to the relevant defeat mentioned in that paragraph.

- (5) For the purposes of this section a court or tribunal “upholds” a tax advantage if—
- (a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and
  - (b) that judicial ruling is final.
- (6) For the purposes of this Part a judicial ruling is “final” if it is—
- (a) a ruling of the Supreme Court, or
  - (b) a ruling of any other court or tribunal in circumstances where—
    - (i) no appeal may be made against the ruling,
    - (ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,
    - (iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or
    - (iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.
- (7) In this section references to “counteraction” include anything referred to as a counteraction in any of Conditions A to F in paragraphs 11 to 16 of Schedule 34A.”

- (3) After section 241 insert—

*“Defeat notices*

**241A Defeat notices**

- (1) This section applies in relation to a person (“P”) only if P is carrying on a business as a promoter.
- (2) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give P a notice if the officer concerned has become aware of one (and only one) relevant defeat which has occurred in relation to P in the period of 3 years ending with the day on which the notice is given.
- (3) An authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, may give P a notice if the officer concerned has become aware of two (but not more than two) relevant defeats which have occurred in relation to P in the period of 3 years ending with the day on which the notice is given.

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- (4) A notice under this section must be given by the end of the 90 days beginning with the day on which the matters mentioned in subsection (2) or (as the case may be) (3) come to the attention of HMRC.
- (5) Subsection (6) applies if—
  - (a) a single defeat notice which had been given to P (under subsection (2) or (6)) ceases to have effect as a result of section 241B(1), and
  - (b) in the period when the defeat notice had effect a relevant defeat (“the further relevant defeat”) occurred in relation to P.
- (6) An authorised officer or an officer of Revenue and Customs with the approval of an authorised officer may give P a notice in respect of the further relevant defeat (regardless of whether or not it occurred in the period of 3 years ending with the day on which the notice is given).
- (7) In this Part—
  - (a) “single defeat notice” means a notice under subsection (2) or (6);
  - (b) “double defeat notice” means a notice under subsection (3);
  - (c) “defeat notice” means a single defeat notice or a double defeat notice.
- (8) A defeat notice must—
  - (a) set out the dates on which the look-forward period for the notice begins and ends;
  - (b) in the case of a single defeat notice, explain the effect of section 237A(12);
  - (c) in the case of a double defeat notice, explain the effect of section 237A(13).
- (9) HMRC may specify what further information must be included in a defeat notice.
- (10) “Look-forward period”—
  - (a) in relation to a defeat notice under subsection (2) or (3), means the period of 5 years beginning with the day after the day on which the notice is given;
  - (b) in relation to a defeat notice under subsection (6), means the period beginning with the day after the day on which the notice is given and ending at the end of the period of 5 years beginning with the day on which the further relevant defeat mentioned in subsection (6) occurred in relation to P.
- (11) A defeat notice has effect throughout its look-forward period unless it ceases to have effect earlier in accordance with section 241B(1) or (4).

#### **241B Judicial ruling upholding asserted tax advantage: effect on defeat notice**

- (1) If the relevant defeat to which a single defeat notice relates is overturned (see subsection (5)), the notice has no further effect on and after the day on which it is overturned.
- (2) Subsection (3) applies if one (and only one) of the relevant defeats in respect of which a double defeat notice was given is overturned.

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- (3) The notice is to be treated for the purposes of this Part (including this section) as if it had always been a single defeat notice given (in respect of the other of the two relevant defeats) on the date on which the notice was in fact given.

The look-forward period for the notice is accordingly unchanged.

- (4) If both the relevant defeats to which a double defeat notice relates are overturned (on the same date), that notice has no further effect on and after that date.

- (5) A relevant defeat specified in a defeat notice is “overturned” if—

- (a) the notice could not have specified that relevant defeat if paragraph 9 of Schedule 34A had effect with the substitution of “ 100% of the tested arrangements ” for “75% of the tested arrangements”, and
- (b) at a time when the notice has effect a court or tribunal upholds a corresponding tax advantage which has been asserted in connection with any of the related arrangements to which the relevant defeat relates (see paragraph 5(2) of Schedule 34A).

Accordingly the relevant defeat is overturned on the day on which the judicial ruling mentioned in paragraph (b) becomes final.

- (6) If a defeat notice ceases to have effect as a result of subsection (1) or (4) an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, must notify the person to whom the notice was given that it has ceased to have effect.

- (7) If subsection (3) has effect in relation to a defeat notice, an authorised officer, or an officer of Revenue and Customs with the approval of an authorised officer, must notify the person of the effect of that subsection.

- (8) For the purposes of this section, a tax advantage is “asserted” in connection with any arrangements if a person makes a return, claim or election on the basis that the tax advantage arises from those arrangements.

- (9) In relation to the arrangements mentioned in paragraph (b) of subsection (5) “corresponding tax advantage” means a tax advantage corresponding to any tax advantage the counteraction of which contributed to the relevant defeat mentioned in that paragraph.

- (10) For the purposes of this section a court or tribunal “upholds” a tax advantage if—

- (a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and
- (b) that judicial ruling is final.

- (11) In this section references to “counteraction” include anything referred to as a counteraction in any of Conditions A to F in paragraphs 11 to 16 of Schedule 34A.”

- (4) In section 242 (monitoring notices: duty to apply to tribunal), after subsection (5) insert—

- “(6) At a time when a notice given under section 237A is provisional, no determination is to be made under subsection (1) in respect of the notice.

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- (7) If a promoter fails to comply with conditions in a conduct notice at a time when the conduct notice is provisional, nothing in subsection (6) prevents those failures from being taken into account under subsection (1) at any subsequent time when the conduct notice is not provisional.”

- (5) After Schedule 34 insert—

“SCHEDULE  
34A

PROMOTERS OF TAX AVOIDANCE SCHEMES: DEFEATED ARRANGEMENTS

**PART 1**

INTRODUCTION

- 1 In this Schedule—
- (a) Part 2 is about the meaning of “relevant defeat”;
  - (b) Part 3 contains provision about when a relevant defeat is treated as occurring in relation to a person;
  - (c) Part 4 contains provision about when a person is treated as meeting a condition in subsection (11), (12) or (13) of section 237A;
  - (d) Part 5 contains definitions and other supplementary provisions.

**PART 2**

MEANING OF “RELEVANT DEFEAT”

*“Related” arrangements*

- 2 (1) For the purposes of this Part of this Act, separate arrangements which persons have entered into are “related” to one another if (and only if) they are substantially the same.
- (2) Sub-paragraphs (3) to (6) set out cases in which arrangements are to be treated as being “substantially the same” (if they would not otherwise be so treated under sub-paragraph (1)).
- (3) Arrangements to which the same reference number has been allocated under Part 7 of FA 2004 (disclosure of tax avoidance schemes) are treated as being substantially the same.

For this purpose arrangements in relation to which information relating to a reference number has been provided in compliance with section 312 of FA 2004 are treated as arrangements to which that reference number has been allocated under Part 7 of that Act.

- (4) Arrangements to which the same reference number has been allocated under paragraph 9 of Schedule 11A to VATA 1994 (disclosure of avoidance schemes) are treated as being substantially the same.



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- (5) Any two or more sets of arrangements which are the subject of follower notices given by reference to the same judicial ruling are treated as being substantially the same.
- (6) Where a notice of binding has been given in relation to any arrangements (“the bound arrangements”) on the basis that they are, for the purposes of Schedule 43A to FA 2013, equivalent arrangements in relation to another set of arrangements (the “lead arrangements”)—
  - (a) the bound arrangements and the lead arrangements are treated as being substantially the same, and
  - (b) the bound arrangements are treated as being substantially the same as any other arrangements which, as a result of this sub-paragraph, are treated as substantially the same as the lead arrangements.

*“Promoted arrangements”*

- 3 (1) For the purposes of this Schedule arrangements are “promoted arrangements” in relation to a person if—
  - (a) they are relevant arrangements or would be relevant arrangements under the condition stated in sub-paragraph (2), and
  - (b) the person is carrying on a business as a promoter and—
    - (i) the person is or has been a promoter in relation to the arrangements, or
    - (ii) that would be the case if the condition in sub-paragraph (2) were met.
- (2) That condition is that the definition of “tax” in section 283 includes, and has always included, value added tax.

*Relevant defeat of single arrangements*

- 4 (1) A defeat of arrangements (entered into by any person) which are promoted arrangements in relation to a person (“the promoter”) is a “relevant defeat” in relation to the promoter if the condition in sub-paragraph (2) is met.
- (2) The condition is that the arrangements are not related to any other arrangements which are promoted arrangements in relation to the promoter.
- (3) For the meaning of “defeat” see paragraphs 10 to 16.

*Relevant defeat of related arrangements*

- 5 (1) This paragraph applies if arrangements (entered into by any person) (“Set A”) —
  - (a) are promoted arrangements in relation to a person (“P”), and
  - (b) are related to other arrangements which are promoted arrangements in relation to P.
- (2) If Case 1, 2 or 3 applies (see paragraphs 7 to 9) a relevant defeat occurs in relation to P and each of the related arrangements.
- (3) “The related arrangements” means Set A and the arrangements mentioned in sub-paragraph (1)(b).

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*Limit on number of separate relevant defeats in relation to the same, or related, arrangements*

- 6 In relation to a person, if there has been a relevant defeat of arrangements (whether under paragraph 4 or 5) there cannot be a further relevant defeat of—
- (a) those particular arrangements, or
  - (b) arrangements which are related to those arrangements.

*Case 1: counteraction upheld by judicial ruling*

- 7 (1) Case 1 applies if—
- (a) any of Conditions A to E is met in relation to any of the related arrangements, and
  - (b) in the case of those arrangements the decision to make the relevant counteraction has been upheld by a judicial ruling (which is final).
- (2) In sub-paragraph (1) “the relevant counteraction” means the counteraction mentioned in paragraph 11(d), 12(1)(b), 13(1)(d), 14(1)(d) or 15(1)(d) (as the case requires).

*Case 2: judicial ruling that avoidance-related rule applies*

- 8 Case 2 applies if Condition F is met in relation to any of the related arrangements.

*Case 3: proportion-based relevant defeat*

- 9 (1) Case 3 applies if—
- (a) at least 75% of the tested arrangements have been defeated, and
  - (b) no final judicial ruling in relation to any of the related arrangements has upheld a corresponding tax advantage which has been asserted in connection with any of the related arrangements.
- (2) In this paragraph “the tested arrangements” means so many of the related arrangements (as defined in paragraph 5(3)) as meet the condition in sub-paragraph (3) or (4).
- (3) Particular arrangements meet this condition if a person has made a return, claim or election on the basis that a tax advantage results from those arrangements and—
- (a) there has been an enquiry or investigation by HMRC into the return, claim or election, or
  - (b) HMRC assesses the person to tax on the basis that the tax advantage (or any part of it) does not arise, or
  - (c) a GAAR counteraction notice has been given in relation to the tax advantage or part of it and the arrangements.
- (4) Particular arrangements meet this condition if HMRC takes other action on the basis that a tax advantage which might be expected to arise from those arrangements, or is asserted in connection with them, does not arise.

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- (5) For the purposes of this paragraph a tax advantage has been “asserted” in connection with particular arrangements if a person has made a return, claim or election on the basis that the tax advantage arises from those arrangements.
- (6) In sub-paragraph (1)(b) “corresponding tax advantage” means a tax advantage corresponding to any tax advantage the counteraction of which is taken into account by HMRC for the purposes of sub-paragraph (1)(a).
- (7) For the purposes of this paragraph a court or tribunal “upholds” a tax advantage if—
  - (a) the court or tribunal makes a ruling to the effect that no part of the tax advantage is to be counteracted, and
  - (b) that judicial ruling is final.
- (8) In this paragraph references to “counteraction” include anything referred to as a counteraction in any of Conditions A to F in paragraphs 11 to 16.
- (9) In this paragraph “GAAR counteraction notice” means—
  - (a) a notice such as is mentioned in sub-paragraph (2) of paragraph 12 of Schedule 43 to FA 2013 (notice of final decision to counteract),
  - (b) a notice under paragraph 8(2) or 9(2) of Schedule 43A to that Act (pooling or binding of arrangements) stating that the tax advantage is to be counteracted under the general anti-abuse rule, or
  - (c) a notice under paragraph 8(2) of Schedule 43B to that Act (generic referrals) stating that the tax advantage is to be counteracted under the general anti-abuse rule.

*“Defeat” of arrangements*

- 10 For the purposes of this Part of this Act a “defeat” of arrangements occurs if any of Conditions A to F (in paragraphs 11 to 16) is met in relation to the arrangements.
- 11 Condition A is that—
  - (a) a person has made a return, claim or election on the basis that a tax advantage arises from the arrangements,
  - (b) a notice given to the person under paragraph 12 of Schedule 43 to, paragraph 8(2) or 9(2) of Schedule 43A to or paragraph 8(2) of Schedule 43B to FA 2013 stated that the tax advantage was to be counteracted under the general anti-abuse rule,
  - (c) the tax advantage has been counteracted (in whole or in part) under the general anti-abuse rule, and
  - (d) the counteraction is final.
- 12 (1) Condition B is that a follower notice has been given to a person by reference to the arrangements (and not withdrawn) and—
  - (a) the person has complied with subsection (2) of section 208 of FA 2014 by taking the action specified in subsections (4) to (6) of that section in respect of the denied tax advantage (or part of it), or
  - (b) the denied tax advantage has been counteracted (in whole or in part) otherwise than as mentioned in paragraph (a) and the counteraction is final.

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- (2) In this paragraph “the denied tax advantage” is to be interpreted in accordance with section 208(3) of FA 2014.
  - (3) In this Schedule “follower notice” means a follower notice under Chapter 2 of Part 4 of FA 2014.
- 13 (1) Condition C is that—
- (a) the arrangements are DOTAS arrangements,
  - (b) a person (“the taxpayer”) has made a return, claim or election on the basis that a relevant tax advantage arises,
  - (c) the relevant tax advantage has been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of sub-paragraph (1) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable the taxpayer to obtain.
- (3) For the purposes of this paragraph the relevant tax advantage is “counteracted” if adjustments are made in respect of the taxpayer's tax position on the basis that the whole or part of that tax advantage does not arise.
- 14 (1) Condition D is that—
- (a) the arrangements are disclosable VAT arrangements to which a taxable person is a party,
  - (b) the taxable person has made a return or claim on the basis that a relevant tax advantage arises,
  - (c) the relevant tax advantage has been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of sub-paragraph (1) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable the taxable person to obtain.
- (3) For the purposes of this paragraph the relevant tax advantage is “counteracted” if adjustments are made in respect of the taxable person's tax position on the basis that the whole or part of that tax advantage does not arise.
- 15 (1) Condition E is that the arrangements are disclosable VAT arrangements to which a taxable person (“T”) is a party and—
- (a) the arrangements relate to the position with respect to VAT of a person other than T (“S”) who has made supplies of goods or services to T,
  - (b) the arrangements might be expected to enable T to obtain a tax advantage in connection with those supplies of goods or services,
  - (c) the arrangements have been counteracted, and
  - (d) the counteraction is final.
- (2) For the purposes of this paragraph the arrangements are “counteracted” if—
- (a) HMRC assess S to tax or take any other action on a basis which prevents T from obtaining (or obtaining the whole of) the tax advantage in question, or
  - (b) adjustments are made on a basis such as is mentioned in paragraph (a).
- 16 (1) Condition F is that—

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- (a) a person has made a return, claim or election on the basis that a relevant tax advantage arises,
  - (b) the tax advantage, or part of the tax advantage would not arise if a particular avoidance-related rule (see paragraph 25) applies in relation to the person's tax affairs,
  - (c) it is held in a judicial ruling that the relevant avoidance-related rule applies in relation to the person's tax affairs, and
  - (d) the judicial ruling is final.
- (2) For the purposes of sub-paragraph (1) “relevant tax advantage” means a tax advantage which the arrangements might be expected to enable the person to obtain.

### PART 3

#### RELEVANT DEFEATS: ASSOCIATED PERSONS

##### *Attribution of relevant defeats*

- 17 (1) Sub-paragraph (2) applies if—
- (a) there is (or has been) a person (“Q”),
  - (b) arrangements (“the defeated arrangements”) have been entered into,
  - (c) an event occurs such that either—
    - (i) there is a relevant defeat in relation to Q and the defeated arrangements, or
    - (ii) the condition in sub-paragraph (i) would be met if Q had not ceased to exist,
  - (d) at the time of that event a person (“P”) is carrying on a business as a promoter (or is carrying on what would be such a business under the condition in paragraph 3(2)), and
  - (e) Condition 1 or 2 is met in relation to Q and P.
- (2) The event is treated for all purposes of this Part of this Act as a relevant defeat in relation to P and the defeated arrangements (whether or not it is also a relevant defeat in relation to Q, and regardless of whether or not P existed at any time when those arrangements were promoted arrangements in relation to Q).
- (3) Condition 1 is that—
- (a) P is not an individual,
  - (b) at a time when the defeated arrangements were promoted arrangements in relation to Q—
    - (i) P was a relevant body controlled by Q, or
    - (ii) Q was a relevant body controlled by P, and
  - (c) at the time of the event mentioned in sub-paragraph (1)(c)—
    - (i) Q is a relevant body controlled by P,
    - (ii) P is a relevant body controlled by Q, or
    - (iii) P and Q are relevant bodies controlled by a third person.
- (4) Condition 2 is that—

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- (a) P and Q are relevant bodies,
  - (b) at a time when the defeated arrangements were promoted arrangements in relation to Q, a third person (“C”) controlled Q, and
  - (c) C controls P at the time of the event mentioned in sub-paragraph (1)(c).
- (5) For the purposes of sub-paragraphs (3)(b) and (4)(b), the question whether arrangements are promoted arrangements in relation to Q at any time is to be determined on the assumption that the reference to “design” in paragraph (b) of section 235(3) (definition of “promoter” in relation to relevant arrangements) is omitted.

#### *Deemed defeat notices*

- 18 (1) This paragraph applies if—
- (a) an authorised officer becomes aware at any time (“the relevant time”) that a relevant defeat has occurred in relation to a person (“P”) who is carrying on a business as a promoter,
  - (b) there have occurred, more than 3 years before the relevant time—
    - (i) one third party defeat, or
    - (ii) two third party defeats, and
  - (c) conditions A1 and B1 (in a case within paragraph (b)(i)), or conditions A2 and B2 (in a case within paragraph (b)(ii)), are met.
- (2) Where this paragraph applies by virtue of sub-paragraph (1)(b)(i), this Part of this Act has effect as if an authorised officer had (with due authority), at the time of the time of the third party defeat, given P a single defeat notice under section 241A(2) in respect of it.
- (3) Where this paragraph applies by virtue of sub-paragraph (1)(b)(ii), this Part of this Act has effect as if an authorised officer had (with due authority), at the time of the second of the two third party defeats, given P a double defeat notice under section 241A(3) in respect of the two third party defeats.
- (4) Section 241A(8) has no effect in relation to a notice treated as given as mentioned in sub-paragraph (2) or (3).
- (5) Condition A1 is that—
- (a) a conduct notice or a single or double defeat notice has been given to the other person (see sub-paragraph (9)) in respect of the third party defeat,
  - (b) at the time of the third party defeat an authorised officer would have had power by virtue of paragraph 17 to give P a defeat notice in respect of the third party defeat, had the officer been aware that it was a relevant defeat in relation to P, and
  - (c) so far as the authorised officer mentioned in sub-paragraph (1)(a) is aware, the conditions for giving P a defeat notice in respect of the third party defeat have never been met (ignoring this paragraph).
- (6) Condition A2 is that—
- (a) a conduct notice or a single or double defeat notice has been given to the other person (see sub-paragraph (9)) in respect of each, or both, of the third party defeats,

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- (b) at the time of the second third party defeat an authorised officer would have had power by virtue of paragraph 17 to give P a double defeat notice in respect of the third party defeats, had the officer been aware that either of the third party defeats was a relevant defeat in relation to P, and
  - (c) so far as the authorised officer mentioned in sub-paragraph (1)(a) is aware, the conditions for giving P a defeat notice in respect of those third party defeats (or either of them) have never been met (ignoring this paragraph).
- (7) Condition B1 is that, had an authorised officer given P a defeat notice in respect of the third party defeat at the time of that relevant defeat, that defeat notice would still have effect at the relevant time (see sub-paragraph (1)).
- (8) Condition B2 is that, had an authorised officer given P a defeat notice in respect of the two third party defeats at the time of the second of those relevant defeats, that defeat notice would still have effect at the relevant time.
- (9) In this paragraph “third party defeat” means a relevant defeat which has occurred in relation to a person other than P.

*Meaning of “relevant body” and “control”*

- 19 (1) In this Part of this Schedule “relevant body” means—
- (a) a body corporate, or
  - (b) a partnership.
- (2) For the purposes of this Part of this Schedule a person controls a body corporate if the person has power to secure that the affairs of the body corporate are conducted in accordance with the person's wishes—
- (a) by means of the holding of shares or the possession of voting power in relation to the body corporate or any other relevant body,
  - (b) as a result of any powers conferred by the articles of association or other document regulating the body corporate or any other relevant body, or
  - (c) by means of controlling a partnership.
- (3) For the purposes of this Part of this Schedule a person controls a partnership if the person is a controlling member or the managing partner of the partnership.
- (4) In this paragraph “controlling member” has the same meaning as in Schedule 36 (partnerships).
- (5) In this paragraph “managing partner”, in relation to a partnership, means the member of the partnership who directs, or is on a day-to-day level in control of, the management of the business of the partnership.

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## PART 4

### MEETING SECTION 237A CONDITIONS: BODIES CORPORATE AND PARTNERSHIPS

#### *Treating persons under another's control as meeting section 237A condition*

- 20 (1) A relevant body (“RB”) is treated as meeting a section 237A condition at the section 237A(2) relevant time if—
- (a) that condition was met by a person (“C”) at a time when—
    - (i) C was carrying on a business as a promoter, or
    - (ii) RB was carrying on a business as a promoter and C controlled RB, and
  - (b) RB is controlled by C at the section 237A(2) relevant time.
- (2) Sub-paragraph (1) does not apply if C is an individual.
- (3) For the purposes of determining whether the requirements of sub-paragraph (1) are met by reason of meeting the requirement in sub-paragraph (1)(a)(i), it does not matter whether RB existed at the time when C met the section 237A condition.

#### *Treating persons in control of others as meeting section 237A condition*

- 21 (1) A person other than an individual is treated as meeting a section 237A condition at the section 237A(2) relevant time if—
- (a) a relevant body (“A”) met the condition at a time when A was controlled by the person, and
  - (b) at the time mentioned in paragraph (a) A, or another relevant body (“B”) which was also at that time controlled by the person, carried on a business as a promoter.
- (2) For the purposes of determining whether the requirements of sub-paragraph (1) are met it does not matter whether A or B (or neither) exists at the section 237A(2) relevant time.

#### *Treating persons controlled by the same person as meeting section 237A condition*

- 22 (1) A relevant body (“RB”) is treated as meeting a section 237A condition at the section 237A(2) relevant time if—
- (a) another relevant body met that condition at a time (“time T”) when it was controlled by a person (“C”),
  - (b) at time T, there was a relevant body controlled by C which carried on a business as a promoter, and
  - (c) RB is controlled by C at the section 237A(2) relevant time.
- (2) For the purposes of determining whether the requirements of sub-paragraph (1) are met it does not matter whether—
- (a) RB existed at time T, or



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- (b) any relevant body (other than RB) by reason of which the requirements of sub-paragraph (1) are met exists at the section 237A(2) relevant time.

#### *Interpretation*

- 23 (1) In this Part of this Schedule—
- “control” has the same meaning as in Part 3 of this Schedule;
  - “relevant body” has the same meaning as in Part 3 of this Schedule;
  - “section 237A(2) relevant time” means the time referred to in section 237A(2);
  - “section 237A condition” means any of the conditions in section 237A(11), (12) and (13).
- (2) For the purposes of paragraphs 20(1)(a), 21(1)(a) and 22(1)(a), the condition in section 237A(11) (occurrence of 3 relevant defeats in the 3 years ending with the relevant time) is taken to have been met by a person at any time if at least 3 relevant defeats have occurred in relation to the person in the period of 3 years ending with that time.

### **PART 5**

#### **SUPPLEMENTARY**

#### *“Adjustments”*

- 24 In this Schedule “adjustments” means any adjustments, whether by way of an assessment, the modification of an assessment or return, the amendment or disallowance of a claim, the entering into of a contract settlement or otherwise (and references to “making” adjustments accordingly include securing that adjustments are made by entering into a contract settlement).

#### *Meaning of “avoidance-related rule”*

- 25 (1) In this Schedule “avoidance-related rule” means a rule in Category 1 or 2.
- (2) A rule is in Category 1 if—
- (a) it refers (in whatever terms) to the purpose or main purpose or purposes of a transaction, arrangements or any other action or matter, and
  - (b) to whether or not the purpose in question is or involves the avoidance of tax or the obtaining of any advantage in relation to tax (however described).
- (3) A rule is also in Category 1 if it refers (in whatever terms) to—
- (a) expectations as to what are, or may be, the expected benefits of a transaction, arrangements or any other action or matter, and
  - (b) whether or not the avoidance of tax or the obtaining of any advantage in relation to tax (however described) is such a benefit.

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For the purposes of paragraph (b) it does not matter whether the reference is (for instance) to the “sole or main benefit” or “one of the main benefits” or any other reference to a benefit.

(4) A rule falls within Category 2 if as a result of the rule a person may be treated differently for tax purposes depending on whether or not purposes referred to in the rule (for instance the purposes of an actual or contemplated action or enterprise) are (or are shown to be) commercial purposes.

(5) For example, a rule in the following form would fall within Category 1 and within Category 2—

**Example rule**

Section X does not apply to a company in respect of a transaction if the company shows that the transaction meets Condition A or B.

Condition A is that the transaction is effected—

- (a) for genuine commercial reasons, or
- (b) in the ordinary course of managing investments.

Condition B is that the avoidance of tax is not the main object or one of the main objects of the transaction.”

*“DOTAS arrangements”*

26 (1) For the purposes of this Schedule arrangements are “DOTAS arrangements” at any time if at that time a person—

- (a) has provided, information in relation to the arrangements under section 308(3), 309 or 310 of FA 2004, or
- (b) has failed to comply with any of those provisions in relation to the arrangements.

(2) But for the purposes of this Schedule “DOTAS arrangements” does not include arrangements in respect of which HMRC has given notice under section 312(6) of FA 2004 (notice that promoters not under duty to notify client of reference number).

(3) For the purposes of sub-paragraph (1) a person who would be required to provide information under subsection (3) of section 308 of FA 2004—

- (a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under subsection (1) of that section, or
- (b) but for subsection (4A), (4C) or (5) of that section,

is treated as providing the information at the end of the period referred to in subsection (3) of that section.

*“Disclosable VAT arrangements”*

27 For the purposes of this Schedule arrangements are “disclosable VAT arrangements” at any time if at that time—

- (a) a person has complied with paragraph 6 of Schedule 11A to VATA 1994 in relation to the arrangements (duty to notify Commissioners),
- (b) a person under a duty to comply with that paragraph in relation to the arrangements has failed to do so, or

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- (c) a reference number has been allocated to the scheme under paragraph 9 of that Schedule (voluntary notification of avoidance scheme which is not a designated scheme).

*Paragraphs 26 and 27: supplementary*

- 28 (1) A person “fails to comply” with any provision mentioned in paragraph 26(1) (a) or 27(b) if and only if any of the conditions in sub-paragraphs (2) to (4) is met.
- (2) The condition in this sub-paragraph is that—
- (a) the tribunal has determined that the person has failed to comply with the provision concerned,
  - (b) the appeal period has ended, and
  - (c) the determination has not been overturned on appeal.
- (3) The condition in this sub-paragraph is that—
- (a) the tribunal has determined for the purposes of section 118(2) of TMA 1970 that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done,
  - (b) the appeal period has ended, and
  - (c) the determination has not been overturned on appeal.
- (4) The condition in this sub-paragraph is that the person admitted in writing to HMRC that the person has failed to comply with the provision concerned.
- (5) In this paragraph “the appeal period” means—
- (a) the period during which an appeal could be brought against the determination of the tribunal, or
  - (b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.

*“Final” counteraction*

- 29 For the purposes of this Schedule the counteraction of a tax advantage or of arrangements is “final” when the assessment or adjustments made to effect the counteraction, and any amounts arising as a result of the assessment or adjustments, can no longer be varied, on appeal or otherwise.

*Inheritance tax, stamp duty reserve tax, VAT and petroleum revenue tax*

- 30 (1) In this Schedule, in relation to inheritance tax, each of the following is treated as a return—
- (a) an account delivered by a person under section 216 or 217 of IHTA 1984 (including an account delivered in accordance with regulations under section 256 of that Act);
  - (b) a statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account;

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(c) information or a document provided by a person in accordance with regulations under section 256 of that Act;

and such a return is treated as made by the person in question.

(2) In this Schedule references to an assessment to tax, in relation to inheritance tax, stamp duty reserve tax and petroleum revenue tax, include a determination.

(3) In this Schedule an expression used in relation to VAT has the same meaning as in VATA 1994.

#### *Power to amend*

31 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).

(2) An amendment by virtue of sub-paragraph (1) may, in particular, add, vary or remove conditions or categories (or otherwise vary the meaning of “avoidance-related rule”).

(3) Regulations under sub-paragraph (1) may include any amendment of this Part of this Act that is appropriate in consequence of an amendment made by virtue of sub-paragraph (1).”

(6) In section 241 (duration of conduct notice), after subsection (4) insert—

“(5) See also section 237D(2) (provisional conduct notice affected by judicial ruling).”

(7) After section 281 insert—

#### **“281A VAT**

(1) In the provisions mentioned in subsection (2)—

- (a) “tax” includes value added tax, and
- (b) “tax advantage” has the meaning given by section 234(3) and also includes a tax advantage as defined in paragraph 1 of Schedule 11A to VATA 1994.

(2) Those provisions are—

- (a) section 237D;
- (b) section 241B;
- (c) Schedule 34A.

(3) Other references in this Part to “tax” are to be read as including value added tax so far as that is necessary for the purposes of sections 237A to 237D, 241A and 241B and Schedule 34A; but “tax” does not include value added tax in section 237A(10) or 237B(3).”

(8) In section 282 (regulations), in subsection (3), after paragraph (b) insert—

“(ba) paragraph 31 of Schedule 34A.”.

(9) In section 283(1) (interpretation of Part 5)—

- (a) in the definition of “conduct notice”, after paragraph (a) insert—

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“(aa) section 237A(8),

(ab) section 237B(1),”;

- (b) in the definition of “tax”, after “ “tax”” insert “ (except in provisions to which section 281A applies) ”;
- (c) in the definition of “ “tax advantage””, after “234(3)” insert “ (but see also section 281A) ”;
- (d) at the appropriate places insert—

““contract settlement” means an agreement in connection with a person's liability to make a payment to the Commissioners under or by virtue of an enactment;”

““defeat”, in relation to arrangements, has the meaning given by paragraph 10 of Schedule 34A;”

““defeat notice” has the meaning given by section 241A(7);”

““double defeat notice” has the meaning given by section 241A(7);”

““final”, in relation to a judicial ruling, is to be interpreted in accordance with section 237D(6);”

““judicial ruling” means a ruling of a court or tribunal on one or more issues;”

““look-forward period, in relation to a defeat notice, has the meaning given by section 241A(10);”

““provisional”, in relation to a conduct notice given under section 237A(8), is to be interpreted in accordance with section 237C;”

““relevant defeat”, in relation to a person, is to be interpreted in accordance with Schedule 34A;”

““related”, in relation to arrangements, is to be interpreted in accordance with paragraph 2 of Schedule 34A;”

““relies on a Case 3 relevant defeat” is to be interpreted in accordance section 237B(5);”

““single defeat notice” has the meaning given by section 241A(7).”

- (10) Schedule 36 (promoters of tax avoidance schemes: partnerships) is amended in accordance with subsections (11) to (16).

- (11) In Part 2, before paragraph 5 insert—

#### 4A “Defeat notices

A defeat notice that is given to a partnership must state that it is a partnership defeat notice.”.

- (12) In paragraph 7(1)(b) after “a” insert “ defeat notice, ”.

- (13) In paragraph 7(2) after “the” insert “ defeat notice, ”.

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(14) After paragraph 7 insert—

**7A “Persons leaving partnership: defeat notices**

- (1) Sub-paragraphs (2) and (3) apply where—
  - (a) a person (“P”) who was a controlling member of a partnership at the time when a defeat notice (“the original notice”) was given to the partnership has ceased to be a member of the partnership,
  - (b) the defeat notice had effect in relation to the partnership at the time of that cessation, and
  - (c) P is carrying on a business as a promoter.
- (2) An authorised officer may give P a defeat notice.
- (3) If P is carrying on a business as a promoter in partnership with one or more other persons and is a controlling member of that partnership (“the new partnership”), an authorised officer may give a defeat notice to the new partnership.
- (4) A defeat notice given under sub-paragraph (3) ceases to have effect if P ceases to be a member of the new partnership.
- (5) A notice under sub-paragraph (2) or (3) may not be given after the original notice has ceased to have effect.
- (6) A defeat notice given under sub-paragraph (2) or (3) is given in respect of the relevant defeat or relevant defeats to which the original notice relates.”

(15) In paragraph 10—

- (a) in sub-paragraph (1)(b) for “conduct notice or a” substitute “, defeat notice, conduct notice or”;
- (b) in sub-paragraph (3), after “partner—” insert—
 

“(za) a defeat notice (if the original notice is a defeat notice);”.
- (c) in sub-paragraph (4), after “(“the new partnership”)—” insert—
 

“(za) a defeat notice (if the original notice is a defeat notice);”
- (d) after sub-paragraph (5) insert—
 

“(5A) A notice under sub-paragraph (3)(za) or (4)(za) may not be given after the end of the look-forward period of the original notice.”

(16) After paragraph 11 insert—

- “11A The look-forward period for a notice under paragraph 7A(2) or (3) or 10(3) (za) or (4)(za)—
- (a) begins on the day after the day on which the notice is given, and
  - (b) continues to the end of the look-forward period for the original notice (as defined in paragraph 7A(1)(a) or 10(2), as the case may be).”

(17) Part 2 of Schedule 2 to the National Insurance Contributions Act 2015 (application of Part 5 of FA 2014 to national insurance contributions) is amended in accordance with subsections (18) and (19).

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(18) After paragraph 30 insert—

**30A “Threshold conditions**

- (1) In paragraph 5 of Schedule 34 (non-compliance with Part 7 of FA 2004), in sub-paragraph (4)—
  - (a) paragraph (a) includes a reference to a decision having been made for corresponding NICs purposes that P is to be deemed not to have failed to comply with the provision concerned as P had a reasonable excuse for not doing the thing required to be done, and
  - (b) the reference in paragraph (c) to a determination is to be read accordingly.
- (2) In this paragraph “corresponding NICs purposes” means the purposes of any provision of regulations under section 132A of SSAA 1992.

**30B Relevant defeats**

- (1) Schedule 34A (promoters of tax avoidance schemes: defeated arrangements) has effect with the following modifications.
- (2) References to an assessment (or an assessment to tax) include a NICs decision relating to a person's liability for relevant contributions.
- (3) References to adjustments include a payment in respect of a liability to pay relevant contributions (and the definition of “adjustments” in paragraph 24 accordingly has effect as if such payments were included in it).
- (4) In paragraph 9(3) the reference to an enquiry into a return includes a relevant contributions dispute (as defined in paragraph 6 of this Schedule).
- (5) In paragraph 28(3)—
  - (a) paragraph (a) includes a reference to a decision having been made for corresponding NICs purposes that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done, and
  - (b) the reference in paragraph (c) to a determination is to be read accordingly.

“Corresponding NICs purposes” means the purposes of any provision of regulations under section 132A of SSAA 1992.”

(19) In paragraph 31 (interpretation)—

- (a) before paragraph (a) insert—
  - “(za) NICs decision” means a decision under section 8 of SSC(TF)A 1999 or Article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (SI 1999/671);”
- (b) in paragraph (b), for “are to sections of” substitute “ or Schedules are to sections of, or Schedules to ”.

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- (20) For the purposes of sections 237A and 241A of FA 2014, a defeat (by virtue of any of Conditions A to F in Schedule 34A to that Act) of arrangements is treated as not having occurred if—
- (a) there has been a final judicial ruling on or before the day on which this Act is passed as a result of which the counteraction referred to in paragraph 11(d), 12(1)(b), 13(1)(d), 14(1)(d) or 15(1)(d) (as the case may be) is final for the purposes of Schedule 34A of that Act, or
  - (b) (in the case of a defeat by virtue of Condition F in Schedule 34A) the judicial ruling mentioned in paragraph 16(1)(d) of that Schedule becomes final on or before the day on which this Act is passed.
- (21) Subsection (20) does not apply in relation to a person (who is carrying on a business as a promoter) if at any time after 17 July 2014 that person or an associated person takes action as a result of which the person taking the action—
- (a) becomes a promoter in relation to the arrangements, or arrangements related to those arrangements, or
  - (b) would have become a promoter in relation to arrangements mentioned in paragraph (a) had the person not already been a promoter in relation to those arrangements.
- (22) For the purposes of sections 237A and 241A of FA 2014, a defeat of arrangements is treated as not having occurred if it would (ignoring this sub-paragraph) have occurred—
- (a) on or before the first anniversary of the day on which this Act is passed, and
  - (b) by virtue of any of Conditions A to E in Schedule 34A to FA 2014, but otherwise than as a result of a final judicial ruling.
- (23) For the purposes of subsection (21) a person (“Q”) is an “associated person” in relation to another person (“P”) at any time when any of the following conditions is met—
- (a) P is a relevant body which is controlled by Q;
  - (b) Q is a relevant body, P is not an individual and Q is controlled by P;
  - (c) P and Q are relevant bodies and a third person controls P and Q.
- (24) In subsection (23) “relevant body” and “control” are to be interpreted in accordance with paragraph 19 of Schedule 34A to FA 2014.
- (25) In subsections (20) to (22) expressions used in Part 5 of FA 2014 (as amended by this section) have the same meaning as in that Part.



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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\(3\)](#)