



## INDIRECT TAXES (DISCLOSURE OF AVOIDANCE SCHEMES) REGULATIONS 2021

### Index

Regulation	Page
1 Title .....	3
2 Commencement .....	3
3 Interpretation.....	3
<b>PART 2 – PERSONS NOT TO BE TREATED AS PROMOTERS</b>	
4 Provision of services to members of the same group .....	4
5 Employees.....	4
6 Legal professional privilege .....	5
7 Other circumstances .....	5
<b>PART 3 – PRESCRIBED INFORMATION, PERIODS AND TIMES IN RELATION TO NOTIFIABLE PROPOSALS AND NOTIFIABLE ARRANGEMENTS</b>	
8 Paragraphs 11(1), 12(1), 17(2) and 18(2) of the Schedule – duties on promoters and others .....	6
9 Paragraph 18(2) of the Schedule – notifiable arrangements not involving promoters.....	7
10 Paragraphs 23(2) and 24(3) of the Schedule – duties of promoters and clients.....	7
11 Paragraph 25(2) of the Schedule – duties of clients to provide information to promoter .....	8
12 Paragraph 26(1) and (3) of the Schedule – duty of parties to notifiable arrangements to notify the Treasury of number etc .....	8
13 Paragraph 27(3) of the Schedule – duty of promoter to provide details to clients.....	9
14 Paragraph 27(3) and (4) of the Schedule – duty of promoter to provide details of clients.....	10
15 Paragraph 28(2) of the Schedule – enquiry by the Treasury .....	10
16 Paragraph 31(2) of the Schedule – provision of information to the Treasury by introducers .....	10



Statutory Document No. 2021/0221



*Finance Act (No. 2) Act 2017, as it has effect in the Island*

## INDIRECT TAXES (DISCLOSURE OF AVOIDANCE SCHEMES) REGULATIONS 2021

*Laid before Tynwald:*

*Coming into Operation:*

*xxxx*

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The Treasury makes the following Regulations under paragraphs 8(8), 11(1), 12(1), 17(2), 18(2), 23(2), 24(2) and (3), 25(2), 26(1) and (3), 27(3) and (4), 28(2), 31(2), 56(2) and 57 (definition of “prescribed”) of Schedule 17 to the Finance (No. 2) Act 2017, as it has effect in the Island<sup>1</sup>.

### 1 Title

These Regulations are the Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2021.

### 2 Commencement

These Regulations come into operation on xxxx.

### 3 Interpretation

In these Regulations —

“**element**”, in relation to a notifiable arrangement, includes the way in which the arrangement is structured;

“**officer**” has the meaning given in section 184(1) of the Customs and Excise Management Act 1986;

“**relevant indirect tax**” means an “indirect tax” referred to in paragraph 2(1) of the Schedule, except customs duties, relevant to a notifiable proposal or notifiable arrangement;

“**the Schedule**” means Schedule 17 to the Finance (No. 2) Act 2017<sup>2</sup>, as it has effect in the Island<sup>3</sup>;

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<sup>1</sup> Schedule 17 to the Finance (No. 2) Act 2017 (“the Schedule”) was applied to the Island by SD 2020/0220.

<sup>2</sup> 2017 c.32 (of Parliament).

<sup>3</sup> Schedule 17 to the Finance (No. 2) Act 2017 (“the Schedule”) was applied to the Island by SD 2020/0220.

“**tax advantage**” means a tax advantage with the meaning of paragraph 7 of the Schedule;

“**tax identifier number**” means —

- (a) any registration number provided by the Treasury to a person in respect of each relevant indirect tax; or
- (b) where no such number is provided, any unique taxpayer reference number provided by the Treasury to the person.

## PART 2 – PERSONS NOT TO BE TREATED AS PROMOTERS

### 4 Provision of services to members of the same group

- (1) A person (“**A**”) who carries on a relevant business is not to be treated as a promoter in relation to a notifiable proposal or a notifiable arrangement<sup>4</sup> where —
  - (a) A is a company;
  - (b) A provides services to a company (“**B**”) in connection with —
    - (i) the notifiable proposal on the relevant date; or
    - (ii) the notifiable arrangement; and
  - (c) B is a member of the same group as A.
- (2) In paragraph (1) —

“**relevant business**” has the same meaning as in paragraph 8(4) of the Schedule;

“**the relevant date**” has the same meaning as in paragraph 11(3) of the Schedule.
- (3) In paragraph (1)(c), whether B is a member of the same group as A is to be determined in accordance with Schedule 2 to the Income Tax Act 1980, but references in paragraphs 5, 6, 7 and 19 of that Schedule to “75 per cent. subsidiary” should be read as **51 per cent. subsidiary**.

### 5 Employees

- (1) Subject to paragraph (4), a person (“**C**”) is not to be treated as a promoter<sup>5</sup> in relation to a notifiable proposal or a notifiable arrangement where C is an employee of an employer (“**D**”) and —
  - (a) D is a promoter in relation to the notifiable proposal or notifiable arrangement; or

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<sup>4</sup> See paragraph 3 of the Schedule for the definitions of “notifiable proposal” and “notifiable arrangements”.

<sup>5</sup> See paragraph 8 of the Schedule for the definition of “promoter”.

- (b) D enters into any transaction forming part of the notifiable proposal or notifiable arrangement.
- (2) In this regulation “**employee**” and “**employer**” have the same meanings as they have in sections 2F to 2K of the Income Tax Act 1970 (see section 2KA of that Act)<sup>6</sup>.
- (3) For the purposes of this regulation, where D is connected with another person (“E”), C is to be treated as an employee of E as well as being an employee of D.
- (4) C is to be treated as a promoter where, but for this paragraph, a person would be under a duty under paragraph 17 of the Schedule (duty of person dealing with promoter outside the Island and United Kingdom).
- (5) In this regulation, D is connected with E where D is closely linked to E by financial, economic or organisational links.

## 6 Legal professional privilege

A person (“F”) is not, by virtue of paragraph 30 of the Schedule (legal professional privilege), required to provide all of the prescribed information under paragraph 9(1) or 10(1) of the Schedule.

## 7 Other circumstances

- (1) This regulation applies to a person (“G”) who, but for the following paragraphs, would be a promoter in relation to a notifiable proposal or a notifiable arrangement by virtue of paragraph 8(2)(a) or (3)(a) of the Schedule (“promoter”).
- (2) G is not a promoter in relation to the notifiable proposal or notifiable arrangement where paragraph (3), (4) or (5) applies.
- (3) This paragraph applies where G, in the course of providing tax advice, is not responsible for the design of any element of the notifiable proposal or notifiable arrangement from which a tax advantage is expected to arise.
- (4) This paragraph applies where G —
  - (a) in the course of a relevant business within the meaning given in paragraph 8(4) of the Schedule, is to any extent responsible for the design of the notifiable proposal or notifiable arrangement; but
  - (b) does not provide tax advice in the course of carrying out G’s responsibilities in relation to the notifiable proposal or notifiable arrangement.
- (5) This paragraph applies where G —

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<sup>6</sup> Sections 2F to 2K of the Income Tax Act 1970 were inserted by the Income Tax Act 1989. Section 2KA was inserted by the Income Tax Act 2000.

- (a) is not responsible for the design of all the elements of the notifiable proposal or notifiable arrangement from which a tax advantage is expected to arise; and
- (b) could not reasonably be expected to have sufficient information as would enable G —
  - (i) to know whether or not the proposal or the arrangement is a notifiable proposal or a notifiable arrangement; or
  - (ii) to comply with paragraph 11(1) or 12(1) of the Schedule.

### **PART 3 – PRESCRIBED INFORMATION, PERIODS AND TIMES IN RELATION TO NOTIFIABLE PROPOSALS AND NOTIFIABLE ARRANGEMENTS**

#### **8 Paragraphs 11(1), 12(1), 17(2) and 18(2) of the Schedule – duties on promoters and others**

- (1) For the purposes of paragraphs 11(1), 12(1), 17(2) and 18(2) of the Schedule, the prescribed information is —
  - (a) the particular information in paragraph (2);
  - (b) the additional information in paragraph (3), if applicable; and
  - (c) other information as might reasonably be expected to enable an officer to comprehend the manner in which the notifiable proposal of notifiable arrangement is intended to operate.
- (2) The particular information referred to in paragraph (1) is —
  - (a) the name and address of the promoter but, in the case of paragraph 18(2) of the Schedule (duty of parties to notifiable arrangements not involving promoter), only if that information is known to the person;
  - (b) details of each provision of the Indirect Taxes (Notifiable Arrangements) Regulations 2020<sup>7</sup> by virtue of which the proposal for arrangements or the arrangement is a notifiable proposal or a notifiable arrangement;
  - (c) a summary of the notifiable proposal or notifiable arrangement and any name by which it is known;
  - (d) information which explains each element of the notifiable proposal or notifiable arrangement from which a tax advantage is expected to arise; and
  - (e) details of the statutory provisions on which that expected tax advantage is based.

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<sup>7</sup> SD 2020/0222.

- (3) The additional information referred to in paragraph (1) is —
  - (a) for the purposes of paragraph 17(2) of the Schedule, the name and address of the person described in paragraph 17(1) of the Schedule;  
or
  - (b) for the purposes of paragraph 18(2) of the Schedule, the name and address of the person described in paragraph 18(1) of the Schedule.
- (4) Where —
  - (a) paragraph 17(2) or 18(2) of the Schedule applies;
  - (b) but for this paragraph, a person would be required to provide prescribed information in relation to two or more notifiable proposals or notifiable arrangements;
  - (c) those notifiable proposals or notifiable arrangements are substantially the same (whether or not they relate to the same parties); and
  - (d) the person provides the prescribed information in relation to at least one of the notifiable proposals or notifiable arrangements,

the person is not required to provide that information in relation to the other notifiable proposals or notifiable arrangements.

**9 Paragraph 18(2) of the Schedule – notifiable arrangements not involving promoters**

- (1) This regulation prescribes times for the purposes of paragraph 18(2) of the Schedule.
- (2) Except as provided by paragraph (3), the prescribed time is any time during the period of 30 days beginning with the relevant day.
- (3) Where paragraph 18(1) of the Schedule applies by virtue of the application of regulation 6, the prescribed time is any time during the period of 5 days beginning with the relevant day.
- (4) In this regulation, “**relevant day**” means the day after the day on which the person enters into the first transaction forming part of the notifiable arrangements.

**10 Paragraphs 23(2) and 24(3) of the Schedule – duties of promoters and clients**

- (1) For the purposes of paragraphs 23(2) (duty of promoter to notify client of number) and 24(3) (duty of client to notify parties of number) of the Schedule, the prescribed information is —
  - (a) the name and address of the promoter;
  - (b) a summary of the notifiable proposal or notifiable arrangement and any name by which it is known;

- (c) each reference number<sup>8</sup>; and
  - (d) the date that each reference number was sent to the client.
- (2) In paragraph (1) –
- (a) where paragraph 23(2) of the Schedule applies, “**the client**” has the same meaning as in paragraph 23(1) of the Schedule; or
  - (b) where paragraph 24(3) of the Schedule applies, “**the client**” has the same meaning as in paragraph 24(1) of the Schedule.

## **11 Paragraph 25(2) of the Schedule – duties of clients to provide information to promoter**

- (1) For the purposes of paragraph 25(2) of the Schedule (duty of client to provide information to promoter), the prescribed information is that described in paragraph (2) or (3).
- (2) The information referred to in paragraph (1) is each tax identifier number provided to the client.
- (3) Where the information described in paragraph (2) is not provided to the client, the information referred to in paragraph (1) is a written statement to that effect.
- (4) In this regulation, “**the client**” has the same meaning as in paragraph 25(1) of the Schedule.

## **12 Paragraph 26(1) and (3) of the Schedule – duty of parties to notifiable arrangements to notify the Treasury of number etc**

- (1) For the purposes of paragraph 26(1) of the Schedule (duty of parties to notifiable arrangements to notify the Treasury of number, etc), the prescribed information is –
  - (a) the name and address of the person (“**P**”) providing the information;
  - (b) each reference number;
  - (c) the accounting period in which, or the date on which, P expects a tax advantage to arise in relation to a relevant indirect tax;
  - (d) each tax identifier number provided to P;
  - (e) a declaration made by P which confirms the accuracy and completeness of the information provided and which states whether P is also –
    - (i) a client;
    - (ii) another party to the notifiable proposal or notifiable arrangement; or

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<sup>8</sup> See paragraph 22(4) of the Schedule for the definition of “reference number”.



- (iii) an introducer<sup>9</sup> or a promoter in relation to the notifiable proposal or notifiable arrangement.
- (2) In paragraph (1), “**client**” has the same meaning as in paragraph 23(1) or 24(1) of the Schedule, as the case may be.
- (3) The Treasury may by notice prescribe the time for the giving of the prescribed information described in paragraph (1) in such cases as are prescribed in the notice, how that information must be provided to the Treasury and the address to which it must be sent.

**13 Paragraph 27(3) of the Schedule – duty of promoter to provide details to clients**

- (1) For the purposes of paragraph 27(3) of the Schedule (duty of promoter to provide details of client), the following information is prescribed in relation to each notifiable arrangement to which paragraph 27(1) of the Schedule applies –
  - (a) each reference number;
  - (b) the name and address of each client;
  - (c) the prescribed information (if any) provided by the client to the promoter as described in regulation 11;
  - (d) the name and address of the promoter; and
  - (e) the date of the end of the relevant period in relation to which the information is provided.
- (2) In paragraph (1)(b), the address of a client is –
  - (a) the address to which the promoter has sent, or would have sent, the prescribed information described in regulation 12(1) in compliance with paragraph 23(2) of the Schedule; or
  - (b) the address of the client shown on any register held by the Treasury for the indirect tax to which the notifiable arrangement relates or most closely relates.
- (3) Paragraph (4) applies on the expiry of the prescribed period of 30 days referred to in regulation 14(2), where the prescribed period is extended to 60 days under regulation 14(3).
- (4) Where this paragraph applies, the prescribed information is a written statement that the client has not complied with paragraph 25(2) of the Schedule and that the period to do so has not expired.
- (5) Paragraph (6) applies –
  - (a) on the expiry of the prescribed period of 60 days under regulation 14(3); and

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<sup>9</sup> See paragraph 9 of the Schedule for the definition of “introducer”.

(b) where the client has not complied with paragraph 25(2) of the Schedule.

(6) Where this paragraph applies, the prescribed information is a written statement that the client has not complied with paragraph 25(2) of the Schedule.

#### **14 Paragraph 27(3) and (4) of the Schedule – duty of promoter to provide details of clients**

(1) For the purposes of paragraph 27(4) of the Schedule, the “relevant period” is a calendar quarter.

(2) Subject to paragraph (3), the “prescribed period” for the purposes of paragraph 27(3) of the Schedule is 30 days.

(3) Where on the sixteenth day after the end of the relevant period the client has not complied with paragraph 25(2) of the Schedule (duty of client to provide information to promoter), but the period to do so (as defined by paragraph 25(3) of the Schedule) has not expired, the prescribed period in respect of the prescribed information described in regulation 13(1)(c) is 60 days.

#### **15 Paragraph 28(2) of the Schedule – enquiry by the Treasury**

For the purposes of paragraph 28(2) of the Schedule (enquiry following disclosure of client details), where the Treasury has given a written notice further to that paragraph, the prescribed information is –

- (a) the name and address of any person (“P”) other than the client who –
- (i) sells, or is likely to sell, the notifiable proposal or notifiable arrangement; or
  - (ii) has achieved, or is likely to achieve, a tax advantage by implementing the notifiable proposal or notifiable arrangement;
- (b) each tax identifier number provided to P; and
- (c) sufficient information as might reasonably be expected to enable an officer to comprehend the manner in which P is involved in the notifiable proposal or notifiable arrangement.

#### **16 Paragraph 31(2) of the Schedule – provision of information to the Treasury by introducers**

For the purposes of paragraph 31(2) of the Schedule (provision of information to the Treasury by introducers), the prescribed information is the name and address of –

- (a) P as described in paragraph 31(1)(a) of the Schedule;

- (b) each person who has provided P with information relating to the notifiable proposal or notifiable arrangement; and
- (c) each person with whom P has made a marketing contact.

**MADE 15 JULY 2021**

**A L CANNAN**  
*Minister for the Treasury*

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations are made further to the provisions contained in Schedule 17 (“the Schedule”) to the Finance (No. 2) Act 2017, as applied to the Island<sup>10</sup>. The Schedule makes provision in respect of the disclosure of avoidance schemes, being schemes which enable a person to obtain a tax advantage concerning indirect taxes.

Part 2 of the Regulations provides for those persons who are not to be treated as a promoter. Regulation 4 concerns companies which provide services to other members of the same group. Regulation 5 concerns employees of a promoter who are not to be treated as promoters. Regulation 6 provides that persons are not promoters where legal professional privilege applies. Regulation 7 sets out other circumstances in which a person who would otherwise be a promoter is not to be regarded as a promoter.

Part 3 of the Regulations prescribes information, periods and times in relation to notifiable proposals and notifiable arrangements.

Regulation 8 prescribes information which must be provided by promoters and others further to the following paragraphs of the Schedule —

paragraphs 11(1) and 12(1) – duties of promoter in relation to notifiable proposals or arrangements;

paragraph 17(2) – duty of person dealing with promoter outside the Island or the United Kingdom; and

paragraph 18(2) – duty of parties to notifiable arrangements not involving promoter.

The information includes the name and address of the promoter, details of the indirect taxes in question and a summary and explanation of the notifiable proposals or arrangements.

Regulation 9 prescribes times for the purposes of paragraph 18(2) of the Schedule.

Regulation 10 prescribes information which must be provided further to the following paragraphs of the Schedule —

paragraph 23(2) – duty of promoter to notify client of numbers;

paragraph 24(3) – duty of client to provide parties of numbers.

The information includes details of the promoter, a summary of the notifiable proposals or arrangements and the applicable reference numbers.

Regulation 11 prescribes information which must be provided further to paragraph 25 of the Schedule (duty of client to provide information to promoter), including each tax identifier number provided to the client.

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<sup>10</sup> Schedule 17 to the Finance (No. 2) Act 2017 (“the Schedule”) was applied to the Island by SD 2020/0220.

Regulation 12 prescribes information which must be provided further to paragraph 26(1) of the Schedule (duty of parties to notifiable arrangements to notify the Treasury of information). This includes the applicable reference numbers, the accounting period in which the tax advantage is expected to arise and any tax identifier numbers. It also provides that the Treasury may by notice prescribe the time for giving such information.

Regulation 13 prescribes information which must be provided further to paragraph 27(3) of the Schedule (duty of promoter to provide details of clients to the Treasury). This includes applicable reference numbers, details of the clients and whether or not the clients have complied with paragraph 25(2) of the Schedule. Regulation 14 prescribes periods for the purposes of paragraph 27(3) and (4).

Regulation 15 prescribes information which must be provided further to paragraph 28(2) of the Schedule (enquiry following disclosure of client details). This includes details of persons who may sell the notifiable proposal or arrangement or who may receive a tax advantage by its implementation.

Regulation 16 prescribes information which must be provided further to paragraph 31(2) of the Schedule (provision of information to the Treasury by introducers). This includes details of person suspected of being introducers, of those who have provided the suspected introducer with information relating to the notifiable proposal or arrangement and of those with whom a marketing contract has been made.