

Statutory Document No. 2021/0222

*Finance Act 2017*

INDIRECT TAXES (NOTIFIABLE ARRANGEMENTS) REGULATIONS 2021

*Laid before Tynwald:**Coming into Operation: 1 November 2021*

The Treasury makes the following Regulations under paragraphs 3(1)(a) and 56(2) of Schedule 17 to the Finance (No. 2) Act 2017, as it has effect in the Island¹.

1 Title

These Regulations are the Indirect Taxes (Notifiable Arrangements) Regulations 2021.

2 Commencement

These Regulations come into operation on 1 November 2021².

3 Interpretation

In these Regulations —

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

“**indirect taxes**” has the meaning given in paragraph 2(1) of the Schedule;

“**material date**” means the following dates, as applicable —

- (a) where paragraph 11(1) of the Schedule applies to a promoter, the relevant date as defined by paragraph 11(3) of the Schedule;
- (b) where paragraph 12(1) of the Schedule applies to a promoter, the date on which the promoter first becomes aware of any transaction forming part of the arrangements;
- (c) where paragraph 17(1) or 18(1) of the Schedule applies to a person, the date on which the person enters into any transaction forming part of any notifiable arrangements;

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

² Tynwald procedure – negative under paragraph 56(1) of the Schedule.

“**the Schedule**” means Schedule 17 to the Finance (No. 2) Act 2017³, as it has effect in the Island⁴;

“**tax advantage**” has the meaning given in paragraph 7 of the Schedule.

PART 2 – NOTIFIABLE ARRANGEMENTS – INDIRECT TAXES

4 Notifiable arrangements – Indirect Taxes

The arrangements described in this Part are prescribed as notifiable arrangements in relation to any indirect taxes.

5 Confidentiality – promoters

- (1) An arrangement which has the following characteristics is a notifiable arrangement.
- (2) It might reasonably be expected, were it not for this regulation, that a promoter of the arrangement would wish that after the material date –
 - (a) the arrangement; or
 - (b) any element of the arrangement which obtains, or which may obtain, a tax advantage,be kept confidential from the Treasury or another promoter.
- (3) Such a wish may reasonably be expected where –
 - (a) it is reasonable to conclude that the promoter intends to continue or to repeat the use after the material date of –
 - (i) the arrangement; or
 - (ii) any element of the arrangement which obtains, or which may obtain, a tax advantage or substantially the same as such an element; or
 - (b) the promoter –
 - (i) does not provide supplementary material to a client or to a person who is to be a party to the arrangement; or
 - (ii) does provide supplementary material to such a person but discourages the person from retaining it.
- (4) For the purposes of paragraph (2), regulation 6 (persons who are not to be treated as promoters by virtue of legal professional privilege) of the Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2020⁵ is to be ignored.

³ 2017 c.32 (of Parliament).

⁴ Schedule 17 to the Finance (No. 2) Act 2017 (“the Schedule”) was applied to the Island by SD 2021/0220.

⁵ SD 2020/0221.

- (5) In paragraph (3)(b), “**supplementary material**” means any promotional material, data or written professional advice concerning the arrangement.

6 Small and medium-sized enterprises

- (1) In regulation 7, “**small or medium-sized enterprise**” means a small or medium-sized enterprise as defined in this regulation.
- (2) A small or medium-sized enterprise means a business carried on by a person where in respect of the relevant period —
- (a) fewer than 250 persons were employed in the business; and
 - (b) the turnover of the business was less than £50 million.
- (3) But, where the relevant period is an accounting period of more or less than 12 months, the amount of the turnover for that period must be increased or decreased proportionately on a time basis, or, if it appears that that method would work unreasonably or unjustly, on a just and reasonable basis.
- (4) Where the person who carries on the business —
- (a) is a body corporate and that body and one or more other bodies corporate are eligible to be treated as members of a group; or
 - (b) is associated with another person,
- for the purposes of paragraph (2)(a) and (b), “**the business**” includes the business of each body corporate eligible to be treated as a member of the group or of each associated person, as appropriate.
- (5) In this regulation —
- (a) “**eligible to be treated as members of a group**” has the meaning given by section 43A of the Value Added Tax Act 1996; and
 - (b) “**relevant period**” means —
 - (i) the accounting period of the business which applies to the indirect tax in question; or
 - (ii) where there is no such accounting period, the period of 12 months,
which ended immediately before the date on which it is reasonable to conclude that the arrangement to which regulation 7 applies commenced.
- (6) For the purposes of this regulation —
- (a) two persons are associated with one another if —
 - (i) one of them is a body corporate which is controlled by the other; or
 - (ii) they are bodies corporate under common control;
 - (b) two bodies corporate are under common control if both are controlled —

- (i) by one person;
 - (ii) by two or more, but fewer than 6, individuals; or
 - (iii) by any number of individuals carrying on a business in partnership;
- (c) a body corporate (“**H**”) is taken to control another body corporate (“**B**”) if –
- (i) H is empowered by statute to control B’s activities; or
 - (ii) H is B’s holding company within the meaning of section 1 of the Companies Act 1974; and
- (d) 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 sub-paragraph (c).

7 Confidentiality – other persons

- (1) An arrangement which has the following characteristics is a notifiable arrangement.
- (2) In respect of the arrangement there is no promoter but a person (“**P**”) –
- (a) is, or is likely to be, a party to the arrangement; or
 - (b) uses, or is likely to use, the arrangement,
- for the purposes of a business carried on by P.
- (3) Paragraph (2) does not apply where the business carried on by P is a small or medium-sized enterprise.
- (4) It might reasonably be expected, were it not for this regulation, that P would wish that after the material date –
- (a) the arrangement; or
 - (b) any element of the arrangement which obtains, or which may obtain, a tax advantage,
- be kept confidential from the Treasury.
- (5) Such a wish may reasonably be expected where it is reasonable to conclude that P intends –
- (a) to continue or to repeat the use after the material date of –
 - (i) the arrangement; or
 - (ii) any element of the arrangement which obtains, or which may obtain, a tax advantage or substantially the same as such an element; or
 - (b) to reduce the risk that, were the Treasury to have the information which may be required to be provided to it by virtue of the arrangement being a notifiable arrangement, the Treasury may –

- (i) investigate or examine any return, claim or declaration made by P or another person to the Treasury; or
- (ii) withhold payment of any or all of an amount claimed from the Treasury by P or another person.

8 Premium fees

- (1) An arrangement which has the following characteristics is a notifiable arrangement.
- (2) It might reasonably be expected, were it not for this regulation, that a promoter (“P”) of the arrangement or another person (“Q”) would be able to obtain a premium fee in relation to —
 - (a) the arrangement; or
 - (b) any element of the arrangement which obtains, or which may obtain, a tax advantage.
- (3) In paragraph (2), “**premium fee**” means a fee which is —
 - (a) obtained from a person experienced in receiving services of the type provided by P or Q;
 - (b) to a significant extent attributable to the tax advantage obtained, or which may be obtained, by the arrangement or any element of the arrangement; and
 - (c) to any extent contingent upon that tax advantage being obtained as a matter of law.

9 Standardised tax products

- (1) An arrangement which has the following characteristics is a notifiable arrangement.
- (2) A promoter of the arrangement makes it available for implementation by more than one other person.
- (3) It might reasonably be concluded, having regard to all the relevant circumstances that conditions 1 to 3 are met.
- (4) Condition 1 is that the arrangement has standardised or substantially standardised documentation —
 - (a) the purpose of which is to enable a person other than the promoter to implement the arrangement;
 - (b) the form of which is determined by the promoter; and
 - (c) the substance of which does not need to be tailored to any material extent to enable a person to implement the arrangement.
- (5) Condition 2 is that —
 - (a) a person who intends to implement the arrangement must enter into a specific transaction or series of specific transactions; and

- (b) the transaction or series of transactions is standardised or substantially standardised in form.
- (6) Condition 3 is that —
- (a) the main purpose of the arrangement is to enable a person to obtain a tax advantage; or
 - (b) it is unlikely that a person would enter into the arrangement were it not that the person or another person may obtain a tax advantage.

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 (c.32), as applied to the Island⁶. 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. Regulations may be made under the Schedule to prescribe notifiable arrangements. Information in relation to such arrangements must be notified to the Treasury. The Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2020⁷ provide for the information to be notified.

Part 2 of the Regulations prescribes notifiable arrangements in relation to any indirect tax.

Regulation 5 prescribes arrangements which a promoter might reasonably be expected to keep confidential from the Treasury or another promoter.

Regulation 6 provides a definition of small or medium-sized enterprise which is used in regulation 7.

Regulation 7 prescribes arrangements to which a person, who is not a promoter, is to be a party or which the person is to use for business purposes and which the person might reasonably be expected to keep confidential from the Treasury. An arrangement is not prescribed where the business is a small or medium-sized enterprise.

Regulation 8 prescribes arrangements where a person might reasonably be expected to obtain a premium fee in relation to the arrangements.

Regulation 9 prescribes arrangements which have standardised or substantially standardised documentation, there are specific or standardised transactions to implement the arrangements and the main purpose of the arrangements is to obtain a tax advantage or they would not be entered into were it not for that advantage.

⁶ Schedule 17 to the Finance (No. 2) Act 2017 was applied to the Island by SD 2020/0220.

⁷ SD 2020/0221