



# VALUE ADDED TAX ACT 1996 (AMENDMENT) (NO. 2) ORDER 2019

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Statutory Document No. 2019/0174



*Value Added Tax Act 1996*

## VALUE ADDED TAX ACT 1996 (AMENDMENT) (NO. 2) ORDER 2019

*Approved by Tynwald: 22<sup>nd</sup> May 2019*  
*Coming into Operation: in accordance with article 2*

The Treasury makes the following Order under sections 95 and 96(1) of the Value Added Tax Act 1996.

### 1 Title

This Order is the Value Added Tax Act 1996 (Amendment) (No. 2) Order 2019.

### 2 Commencement

- (1) If approved by Tynwald<sup>1</sup>, this Order comes into operation on 1 May 2019.
- (2) Once the Order is in operation, the amendments made by article 4 (VAT treatment of vouchers) have effect as provided for in that article with respect to vouchers and postage stamps issued on or after 1 January 2019.

### 3 Interpretation

In this Order, “**the Act**” means the Value Added Tax Act 1996.

### 4 VAT treatment of vouchers

- (1) The Act is amended as follows.
- (2) In section 51B (face-value vouchers) —
  - (a) in the section heading, at the end insert **“**issued before 1 January 2019**”**;
  - (b) the existing text becomes subsection (1); and
  - (c) after subsection (1) insert —

<sup>1</sup> Tynwald procedure - affirmative under section 95(3) of the Act.

(2) Schedule 10A does not have effect with respect to a face value voucher (within the meaning of that Schedule) issued on or after 1 January 2019.

(3) After section 51B insert —

**51C Vouchers issued on or after 1 January 2019**

(1) Schedule 10B makes provision about the VAT treatment of vouchers.

(2) Schedule 10B has effect with respect to a voucher (within the meaning of that Schedule) issued on or after 1 January 2019.

**51D Postage stamps issued on or after 1 January 2019**

(1) The issue of a postage stamp, and any subsequent transfer of it, is a supply of services for the purposes of this Act.

(2) The consideration for the issue or subsequent transfer of a postage stamp is to be disregarded for the purposes of this Act, except to the extent (if any) that it exceeds the face value of the stamp.

(3) The “face value” of the stamp is the amount stated on or recorded in the stamp or the terms and conditions governing its use.

(4) This section has effect with respect to postage stamps issued on or after 1 January 2019.

(4) In the heading to Schedule 10A, at the end insert “issued before 1 January 2019”.

(5) After Schedule 10A insert —

**SCHEDULE 10B**

[Section 51C]

**VAT TREATMENT OF VOUCHERS ISSUED ON OR AFTER 1 JANUARY 2019**

**1. Meaning of “voucher”**

(1) In this Schedule “**voucher**” means an instrument (in physical or electronic form) in relation to which the following conditions are met.

(2) The first condition is that one or more persons are under an obligation to accept the instrument as consideration for the provision of goods or services.

(3) The second condition is that either or both of —

(a) the goods and services for the provision of which the instrument may be accepted as consideration; and

(b) the persons who are under the obligation to accept the instrument as consideration for the provision of goods or services,

are limited and are stated on or recorded in the instrument or the terms and conditions governing the use of the instrument.

(4) The third condition is that the instrument is transferable by gift (whether or not it is transferable for consideration).

(5) The following are not vouchers —

(a) an instrument entitling a person to a reduction in the consideration for the provision of goods or services;

(b) an instrument functioning as a ticket, for example for travel or for admission to a venue or event; and

(c) postage stamps.

## 2. Meaning of related expressions

(1) This paragraph gives the meaning of other expressions used in this Schedule.

(2) “**Relevant goods or services**”, in relation to a voucher, are any goods or services for the provision of which the voucher may be accepted as consideration.

(3) References in this Schedule to the transfer of a voucher do not include the voucher being offered and accepted as consideration for the provision of relevant goods or services.

(4) References in this Schedule to a voucher being offered or accepted as consideration for the provision of relevant goods or services include references to the voucher being offered or accepted as part consideration for the provision of relevant goods or services.

### *VAT treatment of vouchers: general rule*

## 3 VAT treatment of vouchers: general rule

(1) The issue, and any subsequent transfer, of a voucher is to be treated for the purposes of this Act as a supply of relevant goods or services.

(2) References in this Schedule to the “**paragraph 3 supply**”, in relation to the issue or transfer of a voucher, are to the supply of relevant goods or services treated by this paragraph as having been made on the issue or transfer of the voucher.

#### 4. **Single purpose vouchers: special rules**

- (1) A voucher is a single purpose voucher if, at the time it is issued, the following are known –
  - (a) the place of supply of the relevant goods or services; and
  - (b) that any supply of relevant goods or services falls into a single supply category (and what that supply category is).
- (2) The supply categories are –
  - (a) supplies chargeable at the rate in force under section 2(1) (standard rate);
  - (b) supplies chargeable at the rate in force under section 29A (reduced rate);
  - (c) zero-rated supplies; and
  - (d) exempt supplies and other supplies that are not taxable supplies.
- (3) For the purposes of this paragraph, assume that the supply of relevant goods or services is the provision of relevant goods or services for which the voucher may be accepted as consideration (rather than the supply of relevant goods or services treated as made on the issue or transfer of the voucher).

5. (1) This paragraph applies where a single purpose voucher is accepted as consideration for the provision of relevant goods or services.
  - (2) The provision of the relevant goods or services is not a supply of goods or services for the purposes of this Act.
  - (3) But where the person who provides the relevant goods or services (the “**provider**”) is not the person who issued the voucher (the “**issuer**”), for the purposes of this Act the provider is to be treated as having made a supply of those goods or services to the issuer.

#### 6 **Multi-purpose vouchers: special rules**

A voucher is a multi-purpose voucher if it is not a single purpose voucher.

7. (1) Any consideration for the issue or subsequent transfer of a multi-purpose voucher is to be disregarded for the purposes of this Act.
  - (2) The paragraph 3 supply made on the issue or subsequent transfer of a multi-purpose voucher is to be treated as not being a supply within section 26(2).
8. (1) Where a multi-purpose voucher is accepted as consideration for

the provision of relevant goods or services, for the purposes of this Act —

- (a) the provision of the relevant goods or services is to be treated as a supply; and
- (b) the value of the supply treated as having been made by paragraph (a) is determined as follows.

(2) If the consideration for the most recent transfer of the voucher for consideration is known to the supplier, the value of the supply is such amount as, with the addition of the VAT chargeable on the supply, is equal to that consideration.

(3) If the consideration for the most recent transfer of the voucher for consideration is not known to the supplier, the value of the supply is such amount as, with the addition of the VAT chargeable on the supply, is equal to the face value of the voucher.

(4) The “**face value**” of a voucher is the monetary value stated on or recorded in —

- (a) the voucher; or
- (b) the terms and conditions governing the use of the voucher.

## 9 Intermediaries

(1) This paragraph applies where —

- (a) a voucher is issued or transferred by an agent who acts in their own name; and
- (b) the paragraph 3 supply is a supply of services to which section 47(3) would apply (apart from this paragraph).

(2) Section 47(3) does not apply.

(3) The paragraph 3 supply is treated as both a supply to the agent and a supply by the agent.

10. Nothing in this Schedule affects the application of this Act to any services provided, by a person who issues or transfers a voucher, in addition to the issue or transfer of the voucher.

## 11 Composite transactions

(1) This paragraph applies where, as part of a composite transaction —

- (a) goods or services are supplied to a person; and
- (b) a voucher is issued or transferred to that person.

(2) If the total consideration for the transaction is not different, or not significantly different, from what it would be if the voucher were

not issued or transferred, the paragraph 3 supply is to be treated as being made for no consideration. **22**.

- (6) In regulation 38ZA(2) of the Value Added Tax Regulations 1996<sup>2</sup>, in the definition of “cash refund”, after “Act”, insert **23** or a voucher falling within Schedule 10B to the Act **22**.

## 5 Duty of customers to account for tax on supplies

In section 55A of the Act (customers to account for tax on supplies of goods or services of a kind used in missing trader intra-EU fraud)<sup>3</sup>, after subsection (9) insert —

- 23**(9A) An order made under subsection (9) may modify the application of subsection (3) in relation to any description of goods or services specified in the order. **22**.

## 6 Disclosure of Avoidance Schemes

- (1) The Act is amended as follows.

- (2) For section 58A (disclosure of avoidance schemes)<sup>4</sup>, substitute —

### **23**58A Disclosure of avoidance schemes

- (1) Schedule 11A (which imposes disclosure requirements relating to the use of schemes for avoiding VAT) shall have effect, subject to subsection (3).
- (2) Schedule 11B (which imposes disclosure requirements relating to the use of schemes for avoiding VAT) shall have effect with effect from 1 May 2019.
- (3) In consequence of subsection (2), Schedule 11A ceases to have effect to require a person to disclose any scheme which —
- (a) is first entered into by that person on or after 1 May 2019;
  - (b) constitutes notifiable arrangements under Schedule 11B; or
  - (c) implements proposals which are notifiable proposals under Schedule 11B.
- (4) No scheme or proposed scheme may be notified to the Treasury under paragraph 9 of Schedule 11A (voluntary notification of schemes) on or after 1 May 2019. **22**.

<sup>3</sup> Section 55A of the Act was inserted by SD 441/07, and amended by SD 806/10, SD 0606/12 and SD 2019/0082.

<sup>4</sup> Section 58A was inserted by SD 568/04.



- (3) Schedule 11A (disclosure of avoidance schemes)<sup>5</sup> is amended as follows –
- (a) for the heading to Schedule 11A substitute **“DISCLOSURE OF AVOIDANCE SCHEMES BEFORE 1 MAY 2019”**;
  - (b) in paragraph 2 –
    - (i) at the end of sub-paragraph (3)(a), insert **“and”**;
    - (ii) omit sub-paragraph (3)(b); and
    - (iii) in sub-paragraph (3)(c), omit “from a place outside the member States”;
  - (c) in paragraph 2A –
    - (i) at the end of sub-paragraph (2)(a), insert **“and”**;
    - (ii) omit sub-paragraph (2)(b) (; and
    - (ii) in sub-paragraph (2)(c), omit “from a place outside the member States”.
- (4) After Schedule 11A insert as Schedule 11B the schedule contained in the Schedule to this Order.

**MADE 03/04/2019**

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

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<sup>5</sup> Schedule 11A was inserted by SD 568/04.

## SCHEDULE

[Article 6(4)]

## Schedule 11B

*Section 58A(2)*

## DISCLOSURE OF AVOIDANCE SCHEMES AFTER 1 MAY 2019

## Part 1 – Duty to disclose avoidance schemes etc.

## 1 Interpretation

In this Schedule –

“**introducer**” has the meaning given in paragraph 7;“**makes a firm approach**” has the meaning given in paragraph 8;“**marketing contact**” has the meaning given in paragraph 8;“**notifiable arrangements**” has the meaning given in paragraph 2(1);“**notifiable proposal**” has the meaning given in paragraph 2(3);“**officer**” has the same meaning as in section 184(1) of the *Customs and Excise Management Act 1986*;“**promoter**” has the meaning given in paragraph 6;“**tax advantage**” has the meaning given in paragraph 5.*“Notifiable arrangements” and “notifiable proposal”*

## 2 “Notifiable arrangements” and “notifiable proposal”

(1) “**Notifiable arrangements**” means any arrangements not excluded by sub-paragraph (2) which –

- (a) fall within any description prescribed by the Treasury by regulations;
- (b) enable, or might be expected to enable, any person to obtain a tax advantage in relation to VAT that is so prescribed in relation to arrangements of that description; and
- (c) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that tax advantage.

(2) Arrangements that meet the requirements in sub-paragraph (1)(a) to (c) are not notifiable arrangements if they implement a

- proposal which is excluded from being a notifiable proposal by sub-paragraph (4).
- (3) “Notifiable proposal” means a proposal for arrangements which, if entered into, would be notifiable arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it).
- (4) A proposal is not a notifiable proposal if any of the following occur before 1 May 2019—
- (a) a promoter first makes a firm approach to another person in relation to the proposal;
  - (b) a promoter makes the proposal available for implementation by any other person; or
  - (c) a promoter first becomes aware of any transaction forming part of arrangements implementing the proposal.
- 3 (1) The Treasury may apply to the tribunal for an order that —
- (a) a proposal is notifiable; or
  - (b) arrangements are notifiable.
- (2) An application must specify —
- (a) the proposal or arrangements in respect of which the order is sought; and
  - (b) the promoter.
- (3) On an application the tribunal may make the order only if satisfied that paragraph 2(1)(a) to (c) applies to the relevant arrangements and that they are not excluded from being notifiable by paragraph 2(2).
- 4 (1) The Treasury may apply to the tribunal for an order that —
- (a) a proposal is to be treated as notifiable; or
  - (b) arrangements are to be treated as notifiable.
- (2) An application must specify —
- (a) the proposal or arrangements in respect of which the order is sought; and
  - (b) the promoter.
- (3) On an application the tribunal may make the order only if satisfied that the Treasury —
- (a) has taken all reasonable steps to establish whether the proposal or arrangements are notifiable; and
  - (b) has reasonable grounds for suspecting that the proposal or arrangements may be notifiable.

- (4) Reasonable steps under sub-paragraph (3)(a) may (but need not) include taking action under paragraph 27 or 28.
- (5) Grounds for suspicion under sub-paragraph (3)(b) may include —
  - (a) the fact that the relevant arrangements fall within a description prescribed under paragraph 2(1)(a);
  - (b) an attempt by the promoter to avoid or delay providing information or documents about the proposal or arrangements under or by virtue of paragraph 27 or 28;
  - (c) the promoter's failure to comply with a requirement under or by virtue of paragraph 27 or 28 in relation to another proposal or other arrangements.
- (6) Where an order is made under this paragraph in respect of a proposal or arrangements, the relevant period for the purposes of sub-paragraph (1) of paragraph 9 or 10 in so far as it applies by virtue of the order is the period of 11 days beginning with the day on which the order is made.
- (7) An order under this paragraph in relation to a proposal or arrangements is without prejudice to the possible application of any of paragraphs 9 to 13, other than by virtue of this paragraph, to the proposal or arrangements.

## 5 "Tax advantage"

- (1) A person (P) obtains a tax advantage in relation to VAT if —
  - (a) in any prescribed accounting period, the amount by which the output tax accounted for by P exceeds the input tax deducted by P is less than it would otherwise be;
  - (b) P obtains a VAT credit when P would otherwise not do so, or obtains a larger credit or obtains a credit earlier than would otherwise be the case;
  - (c) in a case where P recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case;
  - (d) in any prescribed accounting period, the amount of P's non-deductible tax is less than it otherwise would be;
  - (e) P avoids an obligation to account for tax.
- (2) In sub-paragraph (1)(d) "**non-deductible tax**", in relation to a taxable person, means —
  - (a) input tax for which that person is not entitled to credit under section 25 of this Act; and

- (b) any VAT incurred by that person which is not input tax and in respect of which that person is not entitled to a refund from the Treasury by virtue of any provision of this Act.
- (3) For the purposes of sub-paragraph (2)(b), the VAT “**incurred**” by a taxable person is —
- (a) VAT on the supply to that person of any goods or services;
- (b) VAT on the acquisition by that person from another member State of any goods; or
- (c) VAT paid or payable by that person on the importation of any goods from a place outside the member States.
- (4) A person who is not a taxable person obtains a tax advantage in relation to VAT if that person’s non-refundable tax is less than it otherwise would be.
- (5) In sub-paragraph (4) “**non-refundable tax**” means —
- (a) VAT on the supply to that person of any goods or services;
- (b) VAT on the acquisition by that person from another member State of goods;
- (c) VAT paid or payable by that person on the importation of any goods from a place outside the member States,
- but excluding (in each case) any VAT in respect of which the person is entitled to a refund from the Treasury by virtue of any provision of this Act.
- (6) Terms used in this paragraph which are defined in section 94 of this Act have the meanings given by that section.

## 6 “Promoter”

- (1) This paragraph describes when a person (P) is a promoter in relation to a notifiable proposal or notifiable arrangements.
- (2) P is a promoter in relation to a notifiable proposal if, in the course of a relevant business, P —
- (a) is to any extent responsible for the design of the proposed arrangements;
- (b) makes a firm approach to another person (C) in relation to the proposal with a view to P making the proposal available for implementation by C or any other person; or
- (c) makes the proposal available for implementation by other persons.
- (3) P is a promoter in relation to notifiable arrangements if —

- (a) P is by virtue of sub-paragraph (2)(b) or (c) a promoter in relation to a notifiable proposal which is implemented by the arrangements; or
  - (b) if in the course of a relevant business, P is to any extent responsible for —
    - (i) the design of the arrangements; or
    - (ii) the organisation or management of the arrangements.
- (4) In this paragraph “**relevant business**” means any trade, profession or business which involves the provision to other persons of services relating to VAT.
- (5) A person is not to be treated as a promoter by reason of anything done in prescribed circumstances.
- (6) In the application of this Schedule to a proposal or arrangements which are not notifiable, a reference to a promoter is a reference to a person who would be a promoter under this paragraph if the proposal or arrangements were notifiable.

#### 7 “Introducer”

- (1) A person is an introducer in relation to a notifiable proposal if the person makes a marketing contact with another person in relation to the proposal.
- (2) A person is not to be treated as an introducer by reason of anything done in prescribed circumstances.
- (3) In the application of this Schedule to a proposal or arrangements which are not notifiable, a reference to an introducer is a reference to a person who would be an introducer under this paragraph if the proposal or arrangements were notifiable.

#### 8 “Makes a firm approach” and “marketing contact”

- (1) A person makes a firm approach to another person in relation to a notifiable proposal if the person makes a marketing contact with the other person in relation to the proposal at a time when the proposed arrangements have been substantially designed.
- (2) A person makes a marketing contact with another person in relation to a notifiable proposal if —
  - (a) the person communicates information about the proposal to the other person;
  - (b) the communication is made with a view to that other person, or any other person, entering into transactions forming part of the proposed arrangements; and

(c) the information communicated includes an explanation of the tax advantage that might be expected to be obtained from the proposed arrangements.

(3) For the purposes of sub-paragraph (1) proposed arrangements have been substantially designed at any time if by that time the nature of the transactions to form part of them has been sufficiently developed for it to be reasonable to believe that a person who wished to obtain the tax advantage mentioned in sub-paragraph (2)(c) might enter into —

(a) transactions of the nature developed; or

(b) transactions not substantially different from transactions of that nature.

## 9 Duties of promoter in relation to notifiable proposals or notifiable arrangements

(1) A person who is a promoter in relation to a notifiable proposal must, within the relevant period, provide the Treasury with prescribed information relating to the proposal.

(2) In sub-paragraph (1) “**the relevant period**” is the period of 31 days beginning with the relevant date.

(3) In sub-paragraph (2) “**the relevant date**” is the earliest of the following —

(a) the date on which the promoter first makes a firm approach to another person in relation to the proposal;

(b) the date on which the promoter makes the proposal available for implementation by any other person; or

(c) the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements implementing the proposal.

10. (1) A person who is a promoter in relation to notifiable arrangements must, within the relevant period after the date on which the person first becomes aware of any transaction forming part of the arrangements, provide the Treasury with prescribed information relating to the arrangements.

(2) In sub-paragraph (1) “**the relevant period**” is the period of 31 days beginning with that date.

(3) The duty under sub-paragraph (1) does not apply if the notifiable arrangements implement a proposal in respect of which notice has been given to the Treasury under paragraph 9(1).

11. (1) This paragraph applies where a person complies with paragraph

- 9(1) in relation to a notifiable proposal for arrangements and another person is –
- (a) also a promoter in relation to the proposal or a promoter in relation to a notifiable proposal for arrangements which are substantially the same as the proposed arrangements (whether they relate to the same or different parties); or
  - (b) a promoter in relation to notifiable arrangements implementing the proposal or notifiable arrangements which are substantially the same as notifiable arrangements implementing the proposal (whether they relate to the same or different parties).
- (2) Any duty of the other person under paragraph 9(1) or 10(1) in relation to the notifiable proposal or notifiable arrangements is discharged if –
- (a) the person who complied with paragraph 9(1) has notified the identity and address of the other person to the Treasury or the other person holds the reference number allocated to the proposed notifiable arrangements under paragraph 20(1); and
  - (b) the other person holds the information provided to the Treasury in compliance with paragraph 9(1).
12. (1) This paragraph applies where a person complies with paragraph 10(1) in relation to notifiable arrangements and another person is –
- (a) a promoter in relation to a notifiable proposal for arrangements which are substantially the same as the notifiable arrangements (whether they relate to the same or different parties); or
  - (b) also a promoter in relation to the notifiable arrangements or notifiable arrangements which are substantially the same (whether they relate to the same or different parties).
- (2) Any duty of the other person under paragraph 9(1) or 10(1) in relation to the notifiable proposal or notifiable arrangements is discharged if –
- (a) the person who complied with paragraph 10(1) has notified the identity and address of the other person to the Treasury or the other person holds the reference number allocated to the notifiable arrangements under paragraph 20(1); and
  - (b) the other person holds the information provided to the Treasury in compliance with paragraph 10(1).
- 13 Where a person is a promoter in relation to two or more notifiable



proposals or sets of notifiable arrangements which are substantially the same (whether they relate to the same parties or different parties) the person need not provide information under paragraph 9(1) or 10(1) if the person has already provided information under either of those paragraphs in relation to any of the other proposals or arrangements.

#### **14 Duty of promoter: supplemental information**

- (1) This paragraph applies where —
  - (a) a promoter (P) has provided information in purported compliance with paragraph 9(1) or 10(1), but
  - (b) the Treasury believes that P has not provided all the prescribed information.
- (2) The Treasury may apply to the tribunal for an order requiring P to provide specified information about, or documents relating to, the notifiable proposal or arrangements.
- (3) The tribunal may make an order under sub-paragraph (2) in respect of information or documents only if satisfied that the Treasury has reasonable grounds for suspecting that the information or documents —
  - (a) form part of the prescribed information; or
  - (b) will support or explain the prescribed information.
- (4) A requirement by virtue of sub-paragraph (2) is to be treated as part of P's duty under paragraph 9(1) or 10(1).
- (5) In so far as P's duty under sub-paragraph (1) of paragraph 9 or 10 arises out of an order made by virtue of sub-paragraph (2) above the relevant period for the purposes of that sub-paragraph (1) is —
  - (a) the period of 11 days beginning with the date of the order; or
  - (b) such longer period as the Treasury may direct.

#### **15 Duty of person dealing with promoter outside the Island or United Kingdom**

- (1) This paragraph applies where a person enters into any transaction forming part of any notifiable arrangements in relation to which —
  - (a) a promoter is resident outside the Island or United Kingdom; and
  - (b) no promoter is resident in the Island or United Kingdom.

- (2) The person must, within the relevant period, provide the Treasury with prescribed information relating to the arrangements.
- (3) In sub-paragraph (2) “**the relevant period**” is the period of 6 days beginning with the day on which the person enters into the first transaction forming part of the arrangements.
- (4) Compliance with paragraph 9(1) or 10(1) by any promoter in relation to the arrangements discharges the person’s duty under sub-paragraph (1).

**16 Duty of parties to notifiable arrangements not involving promoter**

- (1) This paragraph applies to any person who enters into any transaction forming part of notifiable arrangements as respects which neither that person nor any other person in the Island or United Kingdom is liable to comply with paragraph 9(1), 10(1) or 15(2).
- (2) The person must at the prescribed time provide the Treasury with prescribed information relating to the arrangements.

**17 Duty to provide further information requested by the Treasury**

- (1) This paragraph applies where —
  - (a) a person has provided the prescribed information about notifiable proposals or arrangements in compliance with paragraph 9(1), 10(1), 15(2) or 16(2); or
  - (b) a person has provided information in purported compliance with paragraph 15(2) or 16(2) but the Treasury believes that the person has not provided all the prescribed information.
- (2) The Treasury may require the person to provide —
  - (a) further specified information about the notifiable proposals or arrangements (in addition to the prescribed information under paragraph 9(1), 10(1), 15(2) or 16(2));
  - (b) documents relating to the notifiable proposals or arrangements.
- (3) Where the Treasury imposes a requirement on a person under this paragraph, the person must comply with the requirement within —
  - (a) the period of 10 working days beginning with the day on which the Treasury imposed the requirement; or
  - (b) such longer period as the Treasury may direct.

- 18 (1) This paragraph applies where the Treasury —
- (a) has required a person to provide information or documents under paragraph 17; but
  - (b) believes that the person has failed to provide the information or documents required.
- (2) The Treasury may apply to the tribunal for an order requiring the person to provide the information or documents required.
- (3) The tribunal may make an order imposing such a requirement only if satisfied that the Treasury has reasonable grounds for suspecting that the information or documents will assist the Treasury in considering the notifiable proposals or arrangements.
- (4) Where the tribunal makes an order imposing such a requirement, the person must comply with the requirement within —
- (a) the period of 10 working days beginning with the day on which the tribunal made the order; or
  - (b) such longer period as the Treasury may direct.

19 **Duty of promoters to provide updated information**

- (1) This paragraph applies where —
- (a) information has been provided under paragraph 9(1), or 10(1) about any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under paragraph 20; and
  - (b) after the provision of the information, there is a change in relation to the arrangements of a kind mentioned in sub-paragraph (2).
- (2) The changes referred to in sub-paragraph (1)(b) are —
- (a) a change in the name by which the notifiable arrangements, or proposed notifiable arrangements, are known; or
  - (b) a change in the name or address of any person who is a promoter in relation to the arrangements or, in the case of proposed arrangements, the notifiable proposal.
- (3) A person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal must inform the Treasury of the change mentioned in sub-paragraph (1)(b) within 30 days after it is made.
- (4) Sub-paragraphs (5) and (6) apply for the purposes of sub-paragraph (3) where there is more than one person who is a promoter in relation to the notifiable arrangements or proposal.

- (5) If the change in question is a change in the name or address of a person who is a promoter in relation to the notifiable arrangements or proposal, it is the duty of that person to comply with sub-paragraph (3).
- (6) If a person provides information in compliance with sub-paragraph (3), the duty imposed by that sub-paragraph on any other person, so far as relating to the provision of that information, is discharged.

## 20 Arrangements to be given reference number

- (1) Where a person (P) complies or purports to comply with paragraph 9(1), 10(1), 15(2) or 16(2) in relation to any notifiable proposal or notifiable arrangements, the Treasury may within 90 days allocate a reference number to the notifiable arrangements or, in the case of a notifiable proposal, to the proposed notifiable arrangements.
- (2) If Treasury does so it must notify the number to P and (where the person is one who has complied or purported to comply with paragraph 9(1) or 10(1)), to any other person —
  - (a) who is a promoter in relation to —
    - (i) the notifiable proposal (or arrangements implementing the notifiable proposal); or
    - (ii) the notifiable arrangements (or proposal implemented by the notifiable arrangements); and
  - (b) whose identity and address has been notified to the Treasury by P.
- (3) The allocation of a reference number to any notifiable arrangements (or proposed notifiable arrangements) is not to be regarded as constituting any indication by the Treasury that the arrangements would or could as a matter of law result in the obtaining by any person of a tax advantage.
- (4) In this Part of this Schedule “**reference number**”, in relation to any notifiable arrangements, means the reference number allocated under this paragraph.

## 21 Duty of promoter to notify client of number

- (1) This paragraph applies where a person who is a promoter in relation to notifiable arrangements is providing (or has provided) services to any person (“the client”) in connection with the arrangements.
- (2) The promoter must, within 30 days after the relevant date, provide the client with prescribed information relating to any

reference number (or, if more than one, any one reference number) that has been notified to the promoter (whether by the Treasury or any other person) in relation to —

- (a) the notifiable arrangements; or
- (b) any arrangements substantially the same as the notifiable arrangements (whether involving the same or different parties).

(3) In sub-paragraph (2) “the relevant date” means the later of —

- (a) the date on which the promoter becomes aware of any transaction which forms part of the notifiable arrangements; and
- (b) the date on which the reference number is notified to the promoter.

(4) But where the conditions in sub-paragraph (5) are met the duty imposed on the promoter under sub-paragraph (2) to provide the client with information in relation to notifiable arrangements is discharged.

(5) Those conditions are —

- (a) that the promoter is also a promoter in relation to a notifiable proposal and provides services to the client in connection with them both;
- (b) the notifiable proposal and the notifiable arrangements are substantially the same; and
- (c) the promoter has provided to the client, in a form and manner specified by the Treasury, prescribed information relating to the reference number that has been notified to the promoter in relation to the proposed notifiable arrangements.

(6) The Treasury may give notice that, in relation to notifiable arrangements specified in the notice, promoters are not under the duty under sub-paragraph (2) after the date specified in the notice.

## 22 Duty of client to notify parties of number

- (1) In this paragraph “**client**” means a person to whom a person who is a promoter in relation to notifiable arrangements or a notifiable proposal is providing (or has provided) services in connection with the arrangements or proposal.
- (2) Sub-paragraph (3) applies where the client receives prescribed information relating to the reference number allocated to the arrangements or proposed arrangements.

- (3) The client must, within the relevant period, provide prescribed information relating to the reference number to any other person —
- (a) who the client might reasonably be expected to know is or is likely to be a party to the arrangements or proposed arrangements; and
  - (b) who might reasonably be expected to gain a tax advantage in relation to VAT by reason of the arrangements or proposed arrangements.
- (4) In sub-paragraph (3) “**the relevant period**” is the period of 30 days beginning with the later of —
- (a) the day on which the client first becomes aware of any transaction forming part of the notifiable arrangements or proposed notifiable arrangements; and
  - (b) the day on which the prescribed information is notified to the client by the promoter under paragraph 21.
- (5) The Treasury may give notice that, in relation to notifiable arrangements or a notifiable proposal specified in the notice, persons are not under the duty under sub-paragraph (3) after the date specified in the notice.
- (6) The duty under sub-paragraph (3) does not apply in prescribed circumstances.

### 23 **Duty of client to provide information to promoter**

- (1) This paragraph applies where a person who is a promoter in relation to notifiable arrangements has provided a person (“the client”) with the information prescribed under paragraph 23(2).
- (2) The client must, within the relevant period, provide the promoter with prescribed information relating to the client.
- (3) In sub-paragraph (2) “the relevant period” is the period of 11 days beginning with the later of —
- (a) the date the client receives the reference number for the arrangements; and
  - (b) the date the client first enters into a transaction which forms part of the arrangements.
- (4) The duty under sub-paragraph (2) is subject to any exceptions that may be prescribed.

**24 Duty of parties of notifiable arrangements to notify the Treasury of number, etc.**

- (1) Any person (P) who is a party to any notifiable arrangements must provide the Treasury with prescribed information relating to —
  - (a) any reference number notified to P under paragraph 21 or 22; and
  - (b) the time when P obtains or expects to obtain by virtue of the arrangements a tax advantage in relation to VAT.
- (2) Regulations made by the Treasury may —
  - (a) in prescribed cases, require information prescribed under sub-paragraph (1) to be given to the Treasury —
    - (i) in the prescribed manner;
    - (ii) in the prescribed form;
    - (iii) at the prescribed time; and
  - (b) in prescribed cases, require the information prescribed under sub-paragraph (1) and such other information as is prescribed to be provided separately to the Treasury at the prescribed time or times.
- (3) In sub-paragraph (3) “**prescribed**” includes being prescribed in a document made under a power conferred by regulations made by the Treasury.
- (4) The Treasury may give notice that, in relation to notifiable arrangements specified in the notice, persons are not under the duty under sub-paragraph (1) after the date specified in the notice.
- (5) The duty under sub-paragraph (1) does not apply in prescribed circumstances.

**25 Duty of promoter to provide details of client**

- (1) This paragraph applies where a person who is a promoter in relation to notifiable arrangements is providing (or has provided) services to any person (“the client”) in connection with the arrangements and either —
  - (a) the promoter is subject to the reference number information requirement; or
  - (b) the promoter has failed to comply with paragraph 9(1) or 10(1) in relation to the arrangements (or the notifiable proposal for them) but would be subject to the reference number information requirement if a reference number had been allocated to the arrangements.

- (2) For the purposes of this paragraph “**the reference number information requirement**” is the requirement under paragraph 21(2) to provide to the client prescribed information relating to the reference number allocated to the notifiable arrangements.
- (3) The promoter must, within the prescribed period after the end of the relevant period, provide the Treasury with prescribed information in relation to the client.
- (4) In sub-paragraph (3) “**the relevant period**” means such period (during which the promoter is or would be subject to the reference number information requirement) as is prescribed.
- (5) The promoter need not comply with sub-paragraph (3) in relation to any notifiable arrangements at any time after the Treasury has given notice under paragraph 21(6) in relation to the arrangements.

## 26 Enquiry following disclosure of client details

- (1) This paragraph applies where —
  - (a) a person who is a promoter in relation to notifiable arrangements has provided the Treasury with information in relation to a person (“the client”) under paragraph 25(3) (duty to provide client details); and
  - (b) the Treasury suspects that a person other than the client is or is likely to be a party to the arrangements.
- (2) The Treasury may by written notice require the promoter to provide prescribed information in relation to any person other than the client who the promoter might reasonably be expected to know is or is likely to be a party to the arrangements.
- (3) The promoter must comply with a requirement under or by virtue of sub-paragraph (2) within —
  - (a) the relevant period; or
  - (b) such longer period as the Treasury may direct.
- (4) In sub-paragraph (3) “**the relevant period**” is the period of 11 days beginning with the day on which the promoter receives the notice under sub-paragraph (2).

## 27 Pre-disclosure enquiry

- (1) Where the Treasury suspects that a person (P) is the promoter or introducer of a proposal, or the promoter of arrangements, which may be notifiable, they may by written notice require P to state —
  - (a) whether in P’s opinion the proposal or arrangements are notifiable by P; and



- (b) if not, the reasons for P’s opinion.
- (2) The notice must specify the proposal or arrangements to which it relates.
- (3) For the purposes of sub-paragraph (1)(b) –
  - (a) it is not sufficient to refer to the fact that a lawyer or other professional has given an opinion;
  - (b) the reasons must show, by reference to this Part of this Schedule and regulations under it, why P thinks the proposal or arrangements are not notifiable by P; and
  - (c) in particular, if P asserts that the arrangements do not fall within any description prescribed under paragraph 2(1)(a), the reasons must provide sufficient information to enable the Treasury to confirm the assertion.
- (4) P must comply with a requirement under or by virtue of sub-paragraph (1) within –
  - (a) the relevant period; or
  - (b) such longer period as the Treasury may direct.
- (5) In sub-paragraph (4) “**the relevant period**” is the period of 11 days beginning with the day on which the notice under sub-paragraph (1) is issued.

## 28 Reasons for non-disclosure: supporting information

- (1) Where the Treasury receives from a person (P) a statement of reasons why a proposal or arrangements are not notifiable by P, the Treasury may apply to the tribunal for an order requiring P to provide specified information or documents in support of the reasons.
- (2) Must comply with a requirement under or by virtue of sub-paragraph (1) within –
  - (a) the relevant period; or
  - (b) such longer period as the Treasury may direct.
- (3) In sub-paragraph (2) “**the relevant period**” is the period of 15 days beginning with the day on which the order concerned is made.
- (4) The power under sub-paragraph (1) –
  - (a) may be exercised more than once; and
  - (b) applies whether or not the statement of reasons was received under paragraph 27(1)(b).

**29 Provision of information to the Treasury by introducers**

- (1) This paragraph applies where the Treasury suspects —
  - (a) that a person (P) is an introducer in relation to a proposal;  
and
  - (b) that the proposal may be notifiable.
- (2) The Treasury may by written notice require P to provide the Treasury with one or both of the following —
  - (a) prescribed information in relation to each person who has provided P with any information relating to the proposal;
  - (b) prescribed information in relation to each person with whom P has made a marketing contact in relation to the proposal.
- (3) A notice must specify the proposal to which it relates.
- (4) P must comply with a requirement under sub-paragraph (2) within —
  - (a) the relevant period; or
  - (b) such longer period as the Treasury may direct.
- (5) In sub-paragraph (4) “**the relevant period**” is the period of 11 days beginning with the day on which the notice under sub-paragraph (2) is given.

**30 Legal professional privilege**

- (1) Nothing in this Part of this Schedule requires any person to disclose to the Treasury any privileged information.
- (2) In this Part of this Schedule “**privileged information**” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

**31 Information**

- (1) This paragraph applies where a person is required to provide information under paragraph 21(2) or 22(3).
- (2) The Treasury may specify additional information which must be provided by that person to the recipients under paragraph 21(2) or 22(3) at the same time as the information referred to in sub-paragraph (1).
- (3) The Treasury may specify the form and manner in which the additional information is to be provided.
- (4) For the purposes of this paragraph “**additional information**” means information supplied by the Treasury which relates to notifiable proposals or notifiable arrangements in general.

- 32 (1) The Treasury may specify the form and manner in which information required to be provided by or under any of the information provisions must be provided if the provision is to be complied with.
- (2) The “information provisions” are paragraphs 9(1), 10(1), 15(2), 16(2), 17(2), 19(3), 21(2), 22(3), 24(1) and (3), 25(3), 26(2), 27(1), 29(2) and 31(2).
- 33 No duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by any person to the Treasury of information or documents which the person has reasonable grounds for suspecting will assist the Treasury in determining whether there has been a breach of any requirement imposed by or under this Part of this Schedule.
- 34 (1) The Treasury may publish information about —
- (a) any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under paragraph 20; and
- (b) any person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal.
- (2) The information that may be published is (subject to sub-paragraph (4)) —
- (a) any information relating to arrangements within sub-paragraph (1)(a), or a person within sub-paragraph (1)(b), that is prescribed information for the purposes of paragraph 9, 10, 15 or 16;
- (b) any ruling of a court or tribunal relating to any such arrangements or person (in that person’s capacity as a promoter in relation to a notifiable proposal or arrangements);
- (c) the number of persons in any period who enter into transactions forming part of notifiable arrangements within sub-paragraph (1)(a); and
- (d) any other information that the Treasury considers it appropriate to publish for the purpose of identifying arrangements within sub-paragraph (1)(a) or a person within sub-paragraph (1)(b).
- (3) The information may be published in any manner that the Treasury considers appropriate.

- (4) No information may be published under this paragraph that identifies a person who enters into a transaction forming part of notifiable arrangements within sub-paragraph (1)(a).
- (5) But where a person who is a promoter within sub-paragraph (1)(b) is also a person mentioned in sub-paragraph (4), nothing in sub-paragraph (4) is to be taken as preventing the publication under this paragraph of information so far as relating to the person's activities as a promoter.
- (6) Before publishing any information under this paragraph that identifies a person as a promoter within sub-paragraph (1)(b), the Treasury must —
- (a) inform the person that it is considering doing so; and
  - (b) give the person reasonable opportunity to make representations about whether it should be published.
- 35 (1) This paragraph applies if —
- (a) information about notifiable arrangements, or proposed notifiable arrangements, is published under paragraph 34;
  - (b) at any time after the information is published, a ruling of a court or tribunal is made in relation to tax arrangements; and
  - (c) the Treasury is of the opinion that the ruling is relevant to the arrangements mentioned in paragraph (a).
- (2) A ruling is “**relevant**” to the arrangements if —
- (a) the principles laid down, or reasoning given, in the ruling would, if applied to the arrangements, allow the purported advantage arising from the arrangements in relation to VAT; and
  - (b) the ruling is final.
- (3) The Treasury must publish information about the ruling.
- (4) The information must be published in the same manner as the Treasury published the information mentioned in sub-paragraph (1)(a) (and may also be published in any other manner that the Treasury considers appropriate).
- (5) A ruling is “**final**” if it is —
- (a) a ruling of the High 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.

- (6) Where a ruling is final by virtue of sub-paragraph (ii), (iii) or (iv) of sub-paragraph (5)(b), the ruling is to be treated as made at the time when the sub-paragraph in question is first satisfied.
- (7) In this paragraph “tax arrangements” means arrangements in respect of which it would be reasonable to conclude (having regard to all the circumstances) that the main purpose, or one of the main purposes, was the obtaining of a tax advantage.

### **36 Power to vary certain relevant periods**

The Treasury may by regulations amend this Part of this Schedule with a view to altering the definition of “the relevant period” for the purposes of —

- paragraph 4(6);  
 paragraph 9(1);  
 paragraph 10(1);  
 paragraph 14(5);  
 paragraph 15(2);  
 paragraph 22(3);  
 paragraph 23(2);  
 paragraph 25(3);  
 paragraph 26(3);  
 paragraph 27(4);  
 paragraph 28(2); or  
 paragraph 29(4).

**Part 2 – Penalties****37 Penalty for failure to comply with duties under Part 1 (apart from paragraph 24)**

(1) A person who fails to comply with any of the provisions of Part 1 of this Schedule mentioned in sub-paragraph (2) is liable –

(a) to a penalty not exceeding –

(i) in the case of a failure to comply with paragraph 9(1), 10(1), 15(2), 16(2) or 17, £600 for each day during the initial period for which the failure continues (but see also paragraphs 40(4) and 41); and

(ii) in any other case, £5,000; and

(b) if the failure continues after a penalty is imposed under paragraph (a), to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under paragraph (a) was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).

(2) Those provisions are –

(a) paragraph 9(1) (duty of promoter in relation to notifiable proposal);

(b) paragraph 10(1) (duty of promoter in relation to notifiable arrangements);

(c) paragraph 15(2) (duty of person dealing with promoter outside the Island or United Kingdom);

(d) paragraph 16(2) (duty of parties to notifiable arrangements not involving promoter);

(e) paragraph 17 (duty to provide further information requested by the Treasury);

(f) paragraph 19 (duty of promoters to provide updated information);

(g) paragraph 21(2) (duty of promoter to notify client of reference number);

(h) paragraph 22(3) (duty of client to notify parties of reference number);

(i) paragraph 23(2) (duty of client to provide information to promoter);

(j) paragraph 25(3) (duty of promoter to provide details of clients);

- (k) paragraph 26(3) (enquiry following disclosure of client details);
  - (l) paragraphs 27(4) and 28(2) (duty of promoter to respond to inquiry);
  - (m) paragraph 29(4) (duty of introducer to give details of persons who have provided information or have been provided with information; and
  - (n) paragraph 31 (duty to provide additional information.
- (3) In this paragraph “**the initial period**” means the period –
- (a) beginning with the relevant day; and
  - (b) ending with the earlier of the day on which the penalty under sub-paragraph (1)(a)(i) is determined and the last day before the failure ceases.

- (4) For the purposes of sub-paragraph (3)(a) “**the relevant day**” is the day specified in relation to the failure in the following table –

Failure	Relevant day
A failure to comply with paragraph 9(1) or 10(1) in so far as it applies by virtue of an order under paragraph 4	The first day after the end of the relevant period described in paragraph 4(6)
A failure to comply with paragraph 9(1) or 10(1) in so far as it applies by virtue of an order under paragraph 14(2)	The first day after the end of the relevant period (whether that is the period described in sub-paragraph 14(5)(a) or that period as extended by a direction under paragraph 14(5)(b)
Any other failure to comply with sub-paragraph (1) of paragraph 9	The first day after the end of the relevant period described in paragraph 9(2)
Any other failure to comply with sub-paragraph (1) of paragraph 10	The first day after the end of the relevant period described in paragraph 10(2)
A failure to comply with paragraph 15(2)	The first day after the end of the relevant period described in paragraph 15(3)
A failure to comply with paragraph 16(2)	The first day after the latest time by which paragraph 16(2) should have been complied with in the case concerned
A failure to comply with paragraph 17	The first day after the end of the period within which the person must comply with paragraph 17

- 38 (1) In the case of a failure to comply with paragraph 9(1), 10(1), 15(2), 16(2) or 17, the amount of the penalty under paragraph 37(1)(a)(i) is to be arrived at after taking account of all relevant considerations.
- (2) Those considerations include the desirability of the penalty being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions having regard (in particular) —
- (a) in the case of a penalty for a promoter's failure to comply with paragraph 9(1), 10(1) or 17, to the amount of any fees received, or likely to have been received, by the promoter in connection with the notifiable proposal (or arrangements implementing the notifiable proposal), or with the notifiable arrangements; and
- (b) in the case of a penalty for a relevant person's failure to comply with paragraph 15(2), 16(2) or 17, to the amount of any advantage gained, or sought to be gained, by the person in relation to any tax prescribed under paragraph 2(1)(b) in relation to the notifiable arrangements.
- (3) In sub-paragraph (2)(b) "relevant person" means a person who enters into any transaction forming part of notifiable arrangements.
- (4) If the maximum penalty under paragraph 37(1)(a)(i) appears inappropriately low after taking account of all relevant considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.
- 39 (1) This paragraph applies where a failure to comply with a provision mentioned in paragraph 37(2) concerns a proposal or arrangements in respect of which an order has been made under paragraph 3 or 4.
- (2) The amounts specified in paragraph 37(1)(a)(i) and (b) are increased to £5,000 in relation to days falling after the end of the period of 11 days beginning with the day on which the order is made.
- 40 (1) The Treasury may by regulations vary —
- (a) any of the sums for the time being specified in paragraph 37(1);
- (b) the sum for the time being specified in paragraph 38(4);
- (c) the period for the time being specified in paragraph 39(2); and



(d) the sum for the time being specified in paragraph 39(2).

(2) Regulations under this paragraph may include incidental or transitional provision.

**41** Where it appears to an officer that —

(a) a penalty under paragraph 37(1)(a) has been imposed in a case where the maximum penalty is set by paragraph 37(1)(a)(i); and

(b) the maximum penalty was calculated on the basis that the initial period began with a day later than that which the officer considers to be the relevant day,

an officer may commence proceedings for a re-determination of the penalty.

**42** **Penalty for failure to comply with duties under paragraph 24**

(1) A person who fails to comply with —

(a) paragraph 24(1); or

(b) regulations under paragraph 24(3),

is liable to a penalty not exceeding the relevant sum.

(2) The relevant sum is £5,000 in respect of each scheme to which the failure relates unless the person falls within sub-paragraph (3) or (4).

(3) If the person has previously failed to comply with paragraph 24(1) or regulations under paragraph 24(3) on one (and only one) occasion during the period of 36 months ending with the date on which the current failure began, the relevant sum is £7,500 in respect of each scheme to which the current failure relates (whether or not the same as any scheme to which the previous failure relates).

(4) If the person has previously failed to comply with paragraph 24(1) or regulations under paragraph 24(3) on two or more occasions during the period of 36 months ending with the date on which the current failure began, the relevant sum is £10,000 in respect of each scheme to which the current failure relates (whether or not the same as any scheme to which any of the previous failures relates).

(5) In this paragraph “**scheme**” means any notifiable arrangements.

**43** **Penalty proceedings before the Tribunal**

(1) An officer may commence proceedings before the Tribunal for any penalty under paragraph 37(1)(a).


- (2) Proceedings for a penalty may not be commenced more than 12 months after evidence of facts sufficient to justify the bringing of proceedings comes to the knowledge of the Treasury.
- (3) If the Tribunal decides that the penalty is payable by the person the penalty is for all purposes to be treated as if it were tax charged in an assessment and due and payable.

#### **44 Assessment of penalties under paragraph 37(1)(b) or 42**

- (1) Where a person is liable to a penalty under paragraph 37(1)(b) or 42 an officer may assess the amount due by way of a penalty.
- (2) An assessment may not be made more than 12 months after evidence of facts sufficient to justify the making of the assessment first comes to the knowledge of the Treasury.
- (3) A notice of an assessment under sub-paragraph (1) stating —
  - (a) the date on which it is issued; and
  - (b) the time within which an appeal against the assessment may be made,must be served on the person liable to the penalty.
- (4) After the notice has been served the assessment may not be altered except in accordance with this paragraph or on appeal.
- (5) If it is discovered by an officer that the amount of a penalty assessed under this paragraph is or has become insufficient the officer may make an assessment in a further amount so that the penalty is set at the amount which, in the officer's opinion, is correct or appropriate.
- (6) A penalty imposed by a decision under this paragraph —
  - (a) is due and payable at the end of the period of 30 days beginning with the date of the issue of the notice of the decision; and
  - (b) is to be treated for all purposes as if it were tax charged in an assessment and due and payable.

#### **45 Reasonable excuse**

- (1) Liability to a penalty under this Part of this Schedule does not arise in relation to a particular failure to comply if the person concerned (P) satisfies the Treasury or the relevant tribunal (as the case may be) that there is a reasonable excuse for the failure.
- (2) For this purpose —
  - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control;

- (b) where P relied on any other person to do anything that cannot be a reasonable excuse unless P took reasonable care to avoid the failure;
  - (c) where P had a reasonable excuse but the excuse has ceased, P is to be treated as continuing to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased; and
  - (d) reliance on advice is to be taken automatically not to be a reasonable excuse if the advice was addressed to, or was given to, a person other than P or takes no account of P's individual circumstances.
- 46 (1) The making of an order under paragraph 3 or 4 against P does not in itself mean that P either did or did not have a reasonable excuse for non-compliance before the order was made.
- (2) Where an order is made under paragraph 3 or 4 then for the purposes of paragraph 45 —
- (a) the person identified in the order as the promoter of the proposal or arrangements cannot, in respect of any time after the end of the prescribed period mentioned in paragraph 39, rely on doubt as to notifiability as a reasonable excuse for failure to comply with paragraph 9(1) or 10(1); and
  - (b) any delay in compliance with that provision after the end of that period is not capable of being a reasonable excuse unless attributable to something other than doubt as to notifiability. .

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

This Order makes various amendments to the Value Added Tax Act 1996 (“the Act”).

Article 4 amends the Act to provide for the VAT treatment of vouchers. Specifically, it amends section 51B of, and Schedule 10A to the Act and inserts sections 51C and 51D and Schedule 10B. This will make the rules for the tax treatments of vouchers consistent, especially where they can be used either in the Island or more widely in the EU, preventing either non-taxation or double taxation of the goods or services relating to the vouchers. It affects only vouchers, such as gift cards, for which payment has been made and which will be used to buy something. Schedule 10B will have effect for vouchers issued on or after 1 January 2019. Vouchers issued before 1 January 2019 will be subject to the existing rules.

Article 5 amends section 55A of the Act so that an order made under subsection (9) of that section can modify the application of subsection (3). Under the amended provision, when making an order specifying goods and services that are to be subject to the reverse charge, the Treasury may also modify the rule in subsection (3) which requires that the value of reverse-charged supplies received must be included in a person’s taxable turnover for VAT registration purposes.

Article 6 substitutes section 58A of, and amends Schedule 11A and inserts Schedule 11B to, the Act. The amendments reform the way VAT avoidance is notified to the Treasury and places the primary responsibility for disclosing schemes to the Treasury on scheme promoters. It defines the arrangements and proposals which must be disclosed to the Treasury and makes provision for the imposition of penalties. This forms an important part of the government’s fight against tax avoidance by giving the Treasury earlier and more comprehensive details about VAT avoidance schemes as they emerge.