

2004 No.

TAXES

The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004

<i>Made</i> - - - -	<i>July 2004</i>
<i>Laid before the House of Commons</i>	<i>July 2004</i>
<i>Coming into force</i> - -	<i>1st August 2004</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by sections 307(5) and 318(1) of the Finance Act 2004(a), make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 and shall come into force on 1st August 2004.

(2) In these Regulations—

“notifiable arrangements” has the meaning given by section 306(1);

“notifiable proposal” has the meaning given by section 306(2); and

except where the context otherwise requires a reference to a numbered section (without more) is a reference to the section of the Finance Act 2004 which is so numbered.

(3) For the purposes of these Regulations section 839 of the Income and Corporation Taxes Act 1988(b) applies to determine whether persons are connected.

Persons not to be treated as promoters - groups

2.—(1) A person is not to be treated as a promoter where—

(a) the person carrying on the relevant business referred to in section 307(1) is a company (“company A”); and

(b) on the date specified in paragraph (2) the other person (or each of the other persons) to whom company A provides services in connection with a notifiable proposal or notifiable arrangements is a company which is a member of the same group as company A.

(2) The date specified by this paragraph is—

(a) in relation to a notifiable proposal, the relevant date within the meaning given by section 308(2);

(b) in relation to notifiable arrangements, the date mentioned in section 308(3).

(a) 2004 c. 12; section 318(1) is cited for the meaning of “prescribed”.

(b) 1988 c. 1; section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4).

(3) For the purposes of this regulation two companies are members of the same group if they would, by virtue of the provisions of section 170 of the Taxation of Chargeable Gains Act 1992(a), be members of the same group for the purposes of sections 171 to 181 of that Act if section 170 were modified as follows—

- (a) for each of the references to a 75 per cent. subsidiary there were substituted a reference to a 51 per cent. subsidiary;
- (b) subsection (3)(b) and subsections (6) to (8) were omitted.

Persons not to be treated as promoters - employees

3.—(1) A person is not to be treated as a promoter in relation to a notifiable proposal or notifiable arrangements where he is an employee of an employer who is—

- (a) a promoter in relation to the proposal or the arrangements; or
- (b) a person who—
 - (i) is to enter into any transaction forming part of the proposed arrangements; or
 - (ii) enters into any transaction forming part of the arrangements.

(2) In this regulation “employee” and “employer” have the same meanings as they have for the purposes of the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003(b) (see section 4 of that Act) and—

- (a) “employee” includes an office holder to whom the provisions of those Parts that are expressed to apply to employments apply equally (see section 5 of that Act); and
- (b) “employer” includes a person under whom an office holder holds office and to whom those provisions similarly apply.

(3) For the purposes of this regulation an employee of a person who is connected with another person (“A”) shall be treated as an employee of A.

Persons not to be treated as promoters under section 307(1)(a)(i) or (b)(i)

4.—(1) A person is not to be treated as a promoter under section 307(1)(a)(i) or (b)(i) where paragraph (2), (3) or (4) applies.

(2) This paragraph applies where, in the course of providing tax advice, a person is not responsible for the design of any element of the proposed arrangements or arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained arises.

(3) This paragraph applies where—

- (a) a person, in the course of a business that is a relevant business for the purposes of section 307 by virtue of subsection (2)(a) of that section, is to any extent responsible for the design of the proposed arrangements or arrangements; but
- (b) does not provide tax advice in the course of carrying out his responsibilities in relation to the proposed arrangements or arrangements.

(4) This paragraph applies where a person—

- (a) is not responsible for the design of all the elements of the proposed arrangements or arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained arises; and
- (b) could not reasonably be expected to have—

(a) 1992 c. 12; section 170 was amended by paragraph 5 of Schedule 6 to the Finance (No. 2) Act 1992 (c. 48), section 136(1) of the Finance Act 1998 (c. 36), paragraph 1(1) of Schedule 29, and Part 2(11) and (12) of Schedule 40, to the Finance Act 2000 and section 75 of the Finance Act 2001 (c. 9).

(b) 2003 c. 1.

- (i) sufficient information as would enable him to know whether or not the proposal is a notifiable proposal or the arrangements are notifiable arrangements; or
- (ii) sufficient information as would enable him to comply with section 308(1) or (3).

Persons not to be treated as promoters under section 307(1)(b)(ii)

5. A person is not to be treated as a promoter under section 307(1)(b)(ii) where he is not connected with another person who is a promoter under section 307(1)(a) or (b)(i) in relation to—

- (a) the arrangements; or
- (b) arrangements which are substantially the same as those arrangements.

Name

Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe circumstances in which a person is not to be treated as a promoter in relation to tax avoidance schemes for the purposes of Part 7 of the Finance Act 2004 (“the 2004 Act”).

Regulation 1 provides for the citation, commencement and interpretation of the Regulations.

Regulation 2 prescribes circumstances in which a company is not to be treated as a promoter. The circumstances prescribed are those in which the promoter and the company to whom services relating to taxation are provided are members of the same group.

Regulation 3 prescribes circumstances in which a person is not to be treated as a promoter. The circumstances prescribed are those in which the person is an employee of an employer who is either a promoter of, or a person entering into any transaction forming part of, proposed arrangements or arrangements.

Regulation 4 prescribes various circumstances in which a person to some extent responsible for the design of proposed arrangements or arrangements is not to be treated as a promoter under section 307(1)(a)(i) or (b)(i) of the 2004 Act.

Regulation 5 prescribes circumstances in which a person is not to be treated as a promoter under section 307(1)(b)(ii) of the 2004 Act. The circumstances prescribed are those in which the person is not connected with another person who is a promoter under section 307(1)(a)(i) or (b)(i) of that Act in relation to arrangements or substantially similar arrangements.

These Regulations do not impose any new costs on business.