[2021] UKFTT 0346 (TC)

TC08280

Preliminary issue – application for penalty under section 98C and 100C Taxes Management Act 1970 – whether penalty application made outside time limit in section 103(4) Taxes Management Act 1970 – whether duty to notify only when promoter first became aware of any transaction forming part of scheme of notifiable arrangements or each time promoter becomes aware of new implementation of that scheme

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/04825

BETWEEN

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Applicants**

-and-

ROOT2 TAX LIMITED **Respondent**

TRIBUNAL: JUDGE GREG SINFIELD

The hearing took place on 2 and 3 June 2021.

Ms Aparna Nathan QC and Ms Anna Greenley, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Applicants

Mr Hartley Foster, counsel, for the Respondent

With the consent of the parties, the form of the hearing was V (video) using the Tribunal video hearing service. It was attended remotely by counsel and representatives of the Applicants and Respondent.

I was provided with a hearing bundle (648 pages) which included two skeleton arguments and an authorities bundle (519 pages) plus one supplementary authority, all in electronic form (PDF).

Prior notice of the video hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

DECISION

INTRODUCTION

1. The Disclosure of Tax Avoidance Schemes ('DOTAS') provisions are contained in Part 7 of the Finance Act 2004 ('FA 2004'). The provisions require those who promote or use tax avoidance schemes to notify the Applicants ('HMRC') and provide certain information about the schemes.

2. In *Root2 Tax Ltd and Root3 Tax Ltd v HMRC* [2017] UKFTT 696 (TC) (the 'DOTAS Decision'), the First-tier Tribunal ('FTT') held that certain arrangements, known as the 'Alchemy scheme', in respect of which the Respondent ('Root2') was a promoter, were 'notifiable arrangements' as defined by section 306(1) FA 2004. As a consequence, Root2 was required by an order under section 314A FA 2004 issued on 11 September 2017 (the 'DOTAS Order') to notify the arrangements to HMRC.

3. Under section 308(3) FA 2004, a promoter in relation to notifiable arrangements must provide HMRC with prescribed information within the prescribed period after the date on which he first becomes aware of any transaction forming part of the notifiable arrangements. Regulation 5(5) of the Tax Avoidance Schemes (Information) Regulations 2012 (the 'Information Regulations') provides that the prescribed period is five days. Sections 98C(1)(a) and (2)(a) FA 2004 provide that a person who fails to comply with section 308(1) and (3) FA 2004 shall be liable to a penalty of £600 per day initially, rising to £5,000 a day (see section 98C(2B) TMA).

4. Between April 2011 and August 2017, Root2 became aware of transactions forming part of Alchemy scheme arrangements that were undertaken by various individuals. The effect of the DOTAS Decision was that Root2 became liable to a penalty if it failed to provide prescribed information within five days of first becoming aware of any transaction forming part of the Alchemy scheme whenever that had occurred.

5. There is no dispute that Root2 made certain disclosures in relation to the Alchemy scheme on three occasions, namely on 21 September 2017, 13 October 2017 and, finally, on 5 April 2019. HMRC considered that none of the notifications satisfied the requirements of section 308(3) FA 2004. On 22 May 2019, HMRC made an application (the 'Penalty Application') to the FTT for a penalty under section 98C of the Taxes Management Act 1970 ('TMA') to be imposed on Root2 for failing to provide prescribed information in relation to the Alchemy scheme within the prescribed period.

6. Root2 appeals against the Penalty Application on three grounds, namely:

   (1) the Penalty Application is time barred, having been made more than two years after the expiry of the relevant time limit in section 103(4) TMA (the 'Limitation Issue');

   (2) if the Penalty Application is in time, Root2 had a reasonable excuse for not notifying the Alchemy scheme (prior to the DOTAS Decision); and

   (3) if Root 2 did not have a reasonable excuse, it provided sufficient notification of the Alchemy scheme to HMRC on 21 September 2017.

7. This decision is not concerned with the second and third grounds of appeal because, in a decision released on 3 February 2021, I made a direction under rule 5(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('FTT Rules') that the Limitation Issue should be dealt with as a preliminary issue in the appeal at a hearing by video. The preliminary issue was defined as follows:

> "Whether the application made by the Applicants, under section 100C of the Taxes Management Act 1970 ('TMA'), for a penalty to be imposed by the

> Tribunal on the Respondent, which application was filed and served by the Applicants on 22 May 2019, was commenced in time, with the parties agreeing that the relevant time limit is that prescribed by section 103(4) TMA, namely 'at any time within six years after the date on which the penalty was incurred or began to be incurred."

8. Root2 first became liable to a penalty (subject to grounds 2 and 3 of its appeal) on the sixth day following the date on which it first became aware of any transaction forming part of the notifiable arrangements. In so far as material, section 103(4) TMA provides that "proceedings for … a penalty may be commenced before the tribunal … at any time within six years after the date on which the penalty was incurred or began to be incurred." The Penalty Application was made by HMRC on 22 May 2019. It follows that if Root 2 first became aware of any transaction forming part of the notifiable arrangements before 16 May 2013, the Penalty Application was out of time. Conversely, if Root2 first became aware of the notifiable arrangements on or after 16 May 2013, the Penalty Application was made in time.

9. In the Penalty Application, HMRC contend that Root2 first became aware of "any transaction forming part of the notifiable arrangements" on or shortly before 20 June 2013 when Ms Rosalynn Scott entered into arrangements to implement the Alchemy scheme. In their response to the Penalty Application, Root2 asserts that it first became aware of a transaction forming part of notifiable arrangements, ie the Alchemy scheme, on 15 April 2011 when another user, Mr Hayward, first entered into arrangements to implement the Alchemy scheme. I do not need to determine when Root2 first became aware of a transaction forming part of the Alchemy scheme because, for the purposes of the preliminary hearing, the parties agree that Root2 became aware of a transaction forming part of the Alchemy scheme both before and after 21 May 2013 (although, as stated above, the relevant date is 16 May 2013).

10. The only issue in preliminary hearing is whether Root2 was required by section 308(3) FA 2004 to provide HMRC with prescribed information within five days of the date of:

(1) the first occasion on which it became aware of any transaction forming part of the Alchemy scheme; or

(2) each occasion on which it became aware of a transaction forming part of any implementation of the Alchemy scheme.

11. HMRC maintain that each time that a person implements the Alchemy scheme is a new instance of notifiable arrangements and that a new duty to notify arose each time that Root2 first became aware of a transaction which was part of that implementation.

12. Root2 maintains that the notifiable arrangements for the purposes of section 308(3) are the Alchemy scheme and not each separate implementation of it and therefore the duty to notify arose only once.

SUMMARY OF LEGISLATION

13. The legislation is set out in full in an appendix to this decision. What follows is a summary with selective extracts relevant to the preliminary issue.

14. Section 306(1) FA 2004 defines 'notifiable arrangements' as any arrangements that:

> "(a) fall within any description prescribed by the Treasury by regulations,
>
> (b) enable, or might be expected to enable, any person to obtain an advantage in relation to any tax 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 advantage."

15. Section 318 FA 2004 provides that the term 'arrangements' includes "any scheme, transaction or series of transactions".

16. Section 308(3) and (5) FA 2004 (as amended by the Finance Act 2008) stipulate the duties of promoters of notifiable arrangements:

> "308 Duties of promoter
>
> …
>
> (3) A person who is a promoter in relation to notifiable arrangements must, within the prescribed period after the date on which he first becomes aware of any transaction forming part of the notifiable arrangements, provide the Board with prescribed information relating to those arrangements …
>
> …
>
> (5) Where a person is a promoter in relation to two or more … sets of notifiable arrangements which are substantially the same (whether they relate to the same parties or different parties), he need not provide information under subsection … (3) if he has already provided information … in relation to any of the other … arrangements.

17. The "prescribed period" for the purposes of section 308(3) is set out in Regulation 5(5) of the Information Regulations:

> "5 Time for providing information under section 308, 308A, 309 or 310
>
> (1) The period or time (as the case may be) within which -
>
> (a) the prescribed information under section 308, 309 or 310, and
>
> (b) the information or documents which will support or explain the prescribed information under section 308A (supplemental information),
>
> must be provided to HMRC is found in accordance with the following paragraphs of this regulation.
>
> …
>
> (5) In any other case of a notification under section 308(3), the prescribed period is the period of 5 days beginning on the day after that on which the promoter first becomes aware of any transaction forming part of arrangements to which that subsection applies."

18. The penalty for failing to provide prescribed information under section 308(3) is contained in section 98C TMA 1970 which provides, so far as relevant:

> "98C Notification under Part 7 of Finance Act 2004
>
> (1) A person who fails to comply with any of the provisions of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) mentioned in subsection (2) below shall be liable—
>
> (a) to a penalty not exceeding
>
> (i) in the case of a provision mentioned in paragraph (a), (b) or (c) of that subsection, £600 for each day during the initial period (but see also subsections (2A), (2B) and (2ZC) below), and
>
> (ii) in any other case, £5,000, and
>
> (b) if the failure continues after a penalty is imposed under paragraph (a) above, 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) section 308(1) and (3) (duty of promoter in relation to notifiable proposals and notifiable arrangements)

…

(2ZA) In this section "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 subsection (1)(a)(i) is determined and the last day before the failure ceases;

and for this purpose 'the relevant day' is the day specified in relation to the failure in the following table.

Failure	Relevant Day
Any other failure to comply with subsection (3) of section 308	The first day after the end of the period prescribed under that subsection

19. The time limit for beginning penalty proceedings under section 100C TMA is contained in section 103(4) TMA which relevantly states:

> "… proceedings for such a penalty may be commenced before the tribunal or a court, at any time within six years after the date on which the penalty was incurred or began to be incurred."

FACTS

20. The facts relevant to the preliminary issue are as set out below.

Statement of agreed facts

21. The parties agreed a statement of facts for the purposes of the preliminary hearing which is as follows. All statutory references below are to the Finance Act 2004, unless indicated otherwise.

> "1. The Respondent, Root2 Tax Limited (company registration number 07525718) ('Root2') and Root3 Tax Limited (company registration number 07022339) ('Root3') were promoters, within the meaning of s.307, of the Alchemy arrangements (SRN 70274540).
>
> 2. Root2 was incorporated on 10 February 2011. Root2 was known as 'Root3 Tax Limited' from 10 February 2011 until 5 January 2012, when its name was changed to 'Root2 Tax Limited'. Root2 concluded that, for the period ended 30 November 2011, it was entitled to the exemption under s.480 Companies Act 2006 relating to dormant companies and it included a statement to that effect in its accounts for that period. Root2 filed dormant company accounts with Companies House for the period ending 30 November 2011.
>
> 3. Root3 was incorporated on 17 September 2009. Root3 was known as 'Root2 Tax Limited' during the period 17 September 2009 to 5 January 2012. It changed its name to 'Root3 Tax Limited' on 6 January 2012.
>
> 4. Mr Blair Forsyth and Ms Shelley Baker were directors of both Root2 and Root3 at all relevant times.

> 5. During the period April 2011 to August 2017, Mr Forsyth and Ms Baker and a number of individuals employed by other companies (unconnected to Root2 or to Root3) (the 'Individuals') undertook Alchemy transactions. The original financial counterparty was Risk Profiles Limited, trading as Heronden ('Heronden'). When transacting with Heronden, the first Alchemy transaction that an Individual would undertake would be to enter into an ISDA Master Agreement with it. An Individual could not undertake the other Alchemy transactions with Heronden, namely entering into a spread bet (the 'Bet') and the sale of an option contract (the 'CSO'), without having first entered into the ISDA Master Agreement.
>
> 6. Root2 became aware of a transaction forming part of the Alchemy arrangements: (a) before 21 May 2013; and (b) on or after 21 May 2013. With regard to the latter, Root2 became aware of a transaction forming part of the Alchemy arrangements that were undertaken by Ms. Scott on or after 21 May 2013.
>
> 7. Root2 and Root3 did not, within the prescribed period after the date on which they first became aware of any transaction forming part of the Alchemy arrangements, notify the Alchemy arrangements to the Applicants, HM Revenue & Customs ('HMRC'), in accordance with s.308 and Regulations 4 and 5, Tax Avoidance Schemes (Information) Regulations 2012, SI 2012/1836 (the 'Information Regulations').
>
> 8. In June 2016, HMRC applied to the First-tier Tribunal, Tax Chamber (the 'Tribunal') for an order against Root2 and Root3 under s.314A (and, in the alternative, under s.306A) that the Alchemy arrangements constituted (or, in the alternative, are to be treated as) notifiable arrangements within the meaning of s.306(1) (the 'DOTAS Application').
>
> 9. The DOTAS Application was heard by the Tribunal on 1 and 2 March 2017.
>
> 10. The Tribunal released its decision on 11 September 2017 (the 'DOTAS Decision'). It granted HMRC's application for an order under s.314A in respect of the Alchemy arrangements. The Tribunal further held that, had it not made that order, it would have issued an alternative order under s.306A that the Alchemy arrangements should be treated as notifiable arrangements for DOTAS purposes."

Background to the DOTAS Application

22. On 13 July 2015, an HMRC Officer, Mr David Hole, wrote a detailed letter to Root2's then advisers containing Mr Hole's current understanding of the Alchemy scheme and 52 questions to which he wanted answers. The letter described ten transactions, identified by Mr Hole as constituting the Alchemy scheme and which he called "the Series of Transactions". None of the Series of Transaction referred to specific implementations of the Alchemy scheme by identified individual users. In paragraphs 154 to 161 of the letter, Mr Hole stated that he had reason to believe that Root2 (or one or more associated companies not relevant to this decision) had a duty to notify the Series of Transactions as a whole under section 308. In paragraph 166, Mr Hole set out (presciently) one possible future scenario:

> "If Root2 and HMRC are unable to agree that the Series of Transactions has been notifiable under DOTAS from the outset, HMRC will apply to the tribunal for an order under section 314A (or, in the alternative, section 306A) that the Series of Transactions is (or, in the alternative, is to be treated as) notifiable."

DOTAS Application

23. In the DOTAS Application, HMRC asked the FTT to make an order under section 314A FA 2004 that "the arrangements entered into by [Root2] constitute notifiable arrangements as defined by section 306(1)". Section 314A(2) requires HMRC to specify the proposal or arrangements in respect of which any order under that section is sought. In paragraph 2, HMRC stated that the application concerned:

> "… an employment income scheme that was currently being marketed ('the Scheme'). The Scheme has not been notified under the Disclosure of Tax Avoidance ('DOTAS') provisions."

24. The application described the Scheme in outline in paragraphs 4 to 11. The application bundle contained "four examples of the implementation of the Scheme" to give the FTT a "fuller understanding of the slight variations in the factual matrix". The DOTAS Application only set out the transactions of one of the examples briefly in paragraphs 16 to 19. HMRC stated, in paragraph 21, that they considered that "the Scheme is notifiable under the DOTAS provisions" and sought an order from the FTT under section 314A FA 2004.

25. Having set out the legislation and case law at paragraphs 22 to 39, HMRC identified the relevant arrangements for the purposes of section 306 FA 2004 in paragraph 40:

> "**Identifying the 'arrangements' for the purposes of s306 FA 2004**
>
> 40. The Applicants submit that the "arrangements" encompass the totality of the steps having a commercial unity. That term is apt to cover informal understandings as well as formal agreements. This is supported not only by the wide and inclusive definition of "arrangements" in s318 FA 2004 but is also consistent with the wide meaning given to that term by the courts …"

26. In paragraphs 43 and 44 of the DOTAS Application, HMRC contended that the Alchemy scheme was a "standardised tax product" for the purposes of regulation 10 of the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (SI 2006/1543) and stated that:

> "… the Scheme documentation is substantially similar in relation to each of the Scheme Users whose papers they have seen … [and] … the form of documentation appears to be determined by the promoter and there appears to be no or negligible alteration to the documentation to reflect the circumstances of each Scheme User."

27. In support of the DOTAS Application, HMRC relied on a witness statement made by Mr Hole. He explained in paragraph 21 of his witness statement that the "Series of Transactions" set out in paragraphs 4 to 33 of his letter of 13 July 2015 was "an instance of notifiable arrangements as defined in section 306(1) of FA 2004".

DOTAS Decision

28. In the DOTAS Decision, Judge Bishopp set out the essential structure of the Alchemy scheme, a term he used as convenient shorthand, while intending (as do I) it to be neutral, in [3] – [6] in general terms. He described it as "straightforward". In [7], he said:

> "I was provided with several examples of actual implementations of the scheme illustrating the differences of detail between them, but I do not think it necessary in this decision to deal with those differences except at a fairly high level of generality. Neither party suggested that differences of detail might dictate whether one variant was, and another was not, notifiable, or that they might have any other significance for present purposes. The one variant I should mention, though only for completeness, is that in some cases the employer took out a loan which was guaranteed by the user, and ultimately

> repaid by him from his winnings on the spread bet; in this variant the user did not receive, or at least retain, an immediate cash sum, but received an increase in the balance of his director's loan account. Although the mechanics of this variant were more complicated it did not seem to me, and the parties did not argue, that it should be distinguished in some way."

29. At [18], Judge Bishopp recorded that "By this stage HMRC had reached the view that the Alchemy scheme, or more precisely the arrangements of which it consisted, were notifiable". That remained HMRC's position at the hearing, as is clear from [25] where, having referred to the evidence of Mr Blair Forsyth describing various iterations of the Alchemy scheme with a view to demonstrating the differences in implementations by users, Judge Bishopp stated:

> "Since, as I have said, nothing turns on differences of implementation and HMRC do not disagree that the terms of the contracts with Heronden or, later, the other counterparties, were commercial I do not need to deal with this aspect of Mr Forsyth's evidence, save to say that I have no reason to doubt what he said in both respects. However, it is not accepted by HMRC that the differences of implementation are material, such as to indicate that each iteration was not simply an implementation of a standard scheme."

30. Judge Bishopp found in [27] that Root2 prepared all of the documentation for the users (but not for the counterparty which used its own standard documentation) and that:

> "Each of the documents was, as reg 10 [Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006] puts it, in 'standardised, or substantially standardised' form, 'determined by the promoter, and not tailored, to any material extent, to reflect the circumstances of the client'."

31. Judge Bishopp stated in [35]:

> "Even a cursory perusal of the documents shows a recurring pattern with little variation, apart from dates, names, amounts and similar details, from one iteration to another. It is also apparent that the documentation required minimal tailoring to each user. [Counsel for Root2] Mr Way's response, as it is put in his skeleton argument, is that '[e]ach individual would discuss and negotiate specified tailor-made documentation for himself'. In my judgment that statement significantly overstates the position; as I have said, the dates, names, amounts and similar details differed from one iteration to another but neither Mr Forsyth nor Mr Way was able to identify any shaping beyond that to fit the needs of an individual user."

32. Judge Bishopp set out his conclusions and disposition at [47] and [48] which were:

> "47. I am satisfied that:
>
> (a) the Alchemy scheme amounts to 'arrangements' in the statutory sense;
>
> (b) the scheme enables, or might be expected to enable, a person to obtain a tax advantage;
>
> (c) the main benefit, or one of the main benefits, of the scheme (if it works) is the obtaining of that advantage;
>
> (d) the arrangements are in a standardised form and have substantially standardised documentation, in a form determined by the respondents, requiring minimal tailoring for each user;
>
> (e) the arrangements have been made available for use by more than one person; and
>
> (f) the respondents are the 'promoters' of the scheme in the statutory sense.

> 48. It follows that the arrangements are notifiable and I therefore make the preferred order sought by HMRC."

SUBMISSIONS

33. Root2 maintains that the notifiable arrangements for the purposes of section 308(3) FA 2004 are the Alchemy scheme and not each separate implementation of it. It follows that the duty to provide prescribed information arose only once, namely when Root2 first became aware of any transaction that formed part of the Alchemy scheme.

34. Mr Foster, who appeared for Root2, contended that this interpretation was consistent with the purpose and structure of the legislation. He submitted that the purpose of section 308 is to provide HMRC with an early warning of tax avoidance schemes, either when they are first proposed or as soon as they are implemented. Where a person notifies or purports to notify arrangements then HMRC may allocate a scheme reference number (SRN) which the promoter is obliged to notify to its clients. In turn, the taxpayers are required to include the SRN in their tax return so that HMRC know which taxpayers have implemented the arrangements. Section 308(5) provides that, where there has been a notification, any later substantially similar arrangements do not have to be notified. That is consistent with the early warning system as HMRC would already know of the tax avoidance scheme and have issued a SRN. Mr Foster contended that the early warning system required the promoter to notify HMRC at the earliest opportunity and that Root2's interpretation of section 308(3) was consistent with that purpose.

35. HMRC do not accept that the Alchemy scheme is a single instance of notifiable arrangements. HMRC's case is that a new duty to notify arises under section 308(3) FA 2004 each time a promoter of notifiable arrangements first becomes aware of a transaction forming part of a particular user's implementation of a set of notifiable arrangements.

36. Ms Nathan QC, who appeared for HMRC, submitted that the use of the definite article in "the notifiable arrangements" in the last part of section 308(3) does not imply that there can only be one set of notifiable arrangements giving rise to the obligation to notify.

37. Ms Nathan said that the use of the phrase "sets of notifiable arrangements" in section 308(5) FA 2004 supported HMRC's interpretation. She submitted that it referred to a case where there were many implementations of a standardised product and thus a number of instances of notifiable arrangements. HMRC's view is that each time that a promoter first becomes aware of a transaction forming part of a taxpayer's implementation of a notifiable arrangement, he has an obligation to notify because that notification relates to that implementation and that implementation is particular and specific to that particular taxpayer.

38. In response to Root2's case, Ms Nathan submitted that Parliament had not limited the obligation to notify to the first transaction of the first implementation of the notifiable arrangements. She said that Root2's interpretation was inconsistent with the language and purpose of the legislation. She contended that Root2 ignored section 308(5) which forms part of statutory context and was key to understanding the legislation.

39. Ms Nathan relied on *R (on the application of Graham and others) v HMRC* [2016] EWHC 1197 (Admin) [2017] STC 1 ('*Graham*') and two other cases discussed below which she said showed that the obligation to notify arose each time that Root2 first became aware of any transaction forming part of the arrangements entered into by a taxpayer implementing the Alchemy scheme because each implementation was specific to that taxpayer. She suggested that if Root2 had notified any implementation of the Alchemy transactions by a taxpayer, which it had not, then Root2 could have relied on section 308(5) to relieve it from its obligation to notify in relation to any subsequent implementation of substantially similar arrangements by another taxpayer.

40. Ms Nathan contended that the DOTAS Decision was not relevant to how section 308(3) applies. It was concerned only with whether the Alchemy scheme was a standardised product for the purposes of section 306(1) and regulation 10(2) of the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006.

DISCUSSION

41. In order to determine whether HMRC made the application for a penalty in this case within the relevant time limit, it is necessary construe section 308(3) FA 2004 and identify the specific notifiable arrangements in respect of which Root2 was required to provide prescribed information.

42. The issue of statutory interpretation is whether section 308(3) FA 2004 created separate obligations to provide prescribed information each time Root2 became aware that one of its clients had entered into a set of transactions forming part of the Alchemy scheme or only once, namely the first time that Root2 became aware that a client had implemented the scheme.

43. The terms of section 308 have been considered by the High Court and the FTT before, although none of the cases are on all fours with this one. The first case is *R (on the application of Walapu) v HMRC* [2016] EWHC 658 (Admin), [2016] STC 1682 *('Walapu')*. One of the issues in *Walapu* was whether section 308(5), which provides that a promoter was not required to notify notifiable proposals or arrangements that were substantially the same as arrangements that had already been notified, meant that the tax avoidance scheme in that case did not need to be notified because it was based on a similar earlier scheme which had been notified to HMRC. The issue turned on whether the later scheme was substantially the same as the earlier scheme. There was, however, no dispute in *Walapu* that there were separate schemes, namely the Liberty Partnership Schemes and the Liberty Syndicate Schemes.

44. At [11] and [12] of *Walapu*, Green J described the purposes of the DOTAS regime as follows:

> "[11] The central mechanism used by the Revenue to alert it to tax avoidance schemes is the 'DOTAS' regime. The Disclosure of Tax Avoidance Schemes ('DOTAS') regime was introduced by Pt 7 of the Finance Act 2004 entitled 'Disclosure of Tax Avoidance Schemes'. Pursuant to these provisions certain persons, normally the promoters of tax avoidance schemes, were required to provide HMRC with information about 'arrangements' and 'proposals for arrangements' (ie the tax avoidance schemes): where that arrangement or proposal might be expected to provide a person with a tax advantage in relation to a specified tax; where the tax advantage might be expected to be the main benefit, or one of the main benefits, of using the scheme; and, where the scheme fell within certain descriptions contained within the Regulations. There have been changes to the Regulations since 2004 and the scheme now in force was introduced in 2006.
>
> [12] In circumstances where a scheme is notifiable the promoter is required to provide specified information to HMRC. The obligation to notify normally accrues within five days of the marketing of the scheme or the making of the scheme available to clients for implementation. HMRC may issue a Scheme Reference Number ('SRN'). If so the promoter is required to pass the SRN on to the scheme users who, in turn, are obliged to notify HMRC of their use of the scheme. They do this normally by including the SRN upon their tax return. This enables HMRC to identify the users of a particular scheme."

45. In [12] of *Walapu*, Green J held that the "obligation to notify normally accrues within five days of the marketing of the scheme or the making of the scheme available to clients for implementation". Further, Green J held at [144] "… there was no duty in this case imposed by

s 308(3) for the specific Syndicate Scheme entered into by the claimant to be notified". By contrast, in [147], Green J made clear that "the Promoter was under a duty imposed by s 308(3) to notify to HMRC the *subsequent* Partnerships Schemes that it entered" (emphasis in original). At [148] and [149], Green J held that, once a scheme had been properly notified, any subsequent iterations did not need to be notified. At [167], Green J observed that:

> "… there is simply no point in the repetitive notification of proposals and arrangements in order to bring to the attention of HMRC insubstantial changes which do not matter. Viewed thus a scheme or proposal is substantially the same if the differences that exist are immaterial to the analysis of whether it is tax avoidance. But, a fortiori, a change or difference in a scheme which is considered to be material, for instance because it renders an ineffective scheme into an effective scheme, must be substantially different to its notified predecessors."

46. It is clear from *Walapu* that the effect of the legislation, particularly section 308(3) and (5), is that the obligation to notify arises in respect of the scheme and not the individual implementations of its arrangements. Further, variations in a scheme which do not change the analysis for tax purposes are immaterial and do not create a new obligation to notify. It seems to me that *Walapu* is authority, which is binding on me, for the proposition that a tax avoidance scheme which is implemented on several occasions with only immaterial changes need only be notified once.

47. The matter was considered again by Sir Kenneth Parker in *Graham*. The case concerned the same Liberty Partnerships tax avoidance schemes that had been considered in *Walapu* and was argued by the same counsel for the taxpayer and HMRC. The only issue in the case was whether, in reality, there was just one set of 'arrangements', namely, the arrangements for the Liberty Partnerships, constituted by an information memorandum in relation to the scheme which pre-dated the relevant date. HMRC submitted that, for the purposes of section 308(3), the relevant notifiable arrangements were the particular arrangements for each specific partnership. On that footing, the promoter had a duty to notify when he became aware of any transaction forming part of the particular arrangements for each specific partnership, several of which occurred after the relevant date.

48. It is clear from *Graham* (see [31], [32] and [37]) that the relevant notifiable arrangements were those relating to the specific partnership. The promoter had a duty to notify when he first became aware of any transaction forming part of the particular arrangements for each specific partnership but not on each occasion that an individual joined the specific partnership. The 'notifiable arrangements' were the specific partnership structure and not each individual's use of it and, in *Graham*, HMRC did not contend to the contrary.

49. The FTT (Judge Beare) considered the DOTAS provisions in *HMRC v Premiere Picture Ltd* [2021] UKFTT 58 (TC) ('*Premiere Picture*'). In that case, HMRC had applied for an order that "the arrangements which arose when an individual became a participant in the [Sovereign Individual Scheme or Sovereign Corporate Scheme]" were notifiable arrangements under section 314A or, in the alternative, section 306A. At [46], Judge Beare stated:

> "… each implementation of either scheme gave rise to arrangements which were separate and distinct from the arrangements which arose when the same scheme was implemented on another occasion or, for that matter, when the other scheme or the Trader Scheme were implemented. This conclusion is in accordance with the decision of Green J in *R (on the application of Walapu) v The Commissioners for Her Majesty's Revenue and Customs* [2016] EWHC 658 (Admin) ('*Walapu*') at paragraph [147] and the decision of Sir Kenneth Parker in *R (on the application of Graham and others) v The Commissioners*

> *for Her Majesty's Revenue and Customs* [2016] EWHC 1197 (Admin) ('*Graham*') at paragraphs [33] to [41]."

50. As stated above, I consider that, in *Graham*, Sir Kenneth Parker concluded that each new partnership comprised arrangements, which were distinct and separate from earlier partnerships/arrangements. In my view, Sir Kenneth did not decide that there were new notifiable arrangements each time a person became a partner. If, when he referred to "each implementation of either scheme", Judge Beare meant each time an individual participated in one of the iterations of the Sovereign Individual Scheme or Sovereign Corporate Scheme then I must respectfully disagree. However, notwithstanding the terms of the order sought by HMRC, I do not think that was what Judge Beare meant in [46]. I believe that he was referring to the implementation of the Sovereign Individual Scheme or the Sovereign Corporate Scheme by the creation, respectively, of a general partnership or a limited liability partnership. Each partnership under one of the schemes gave rise to separate notifiable arrangements but there were no further notifiable arrangements each time an individual became a partner subsequently. The orders made by Judge Beare at [136] that "the arrangements arising pursuant to the implementation of the [Sovereign Individual Scheme or Sovereign Corporate Scheme] are notifiable arrangements" are consistent with my view of *Graham*.

51. As to the notifiable arrangements in respect of which Root2 was required to provide prescribed information, section 314A(2) provides that an application must specify the arrangements in respect of which any order under that section is sought. In the DOTAS Application, HMRC asked the FTT to make an order that the Alchemy scheme constituted notifiable arrangements. In the first paragraph of his witness statement, Mr Hole stated that he made it:

> "… in support of the Application for the Tribunal to make an order under section 314A (or, in the alternative, 306A) of the Finance Act 2004 ('FA 2004') that the Alchemy scheme constitutes (or, in the alternative, is to be treated as) a 'notifiable arrangement' within the meaning of section 306(1) of FA 2004 …"

52. Mr Hole's use of the singular "notifiable arrangement" shows that he considered that the Alchemy scheme, which he referred to in his letter of 13 July 2015 as the Series of Transactions, was the subject of the application rather than each implementation of it. That view is reflected in paragraph 2 of the DOTAS Application (see [23] above) which states that the subject of the application was a marketed employment income scheme, ie the Alchemy scheme. As is clear from paragraph 18 of the DOTAS Decision, set out at [29] above, HMRC's position at the hearing was that each use of the Alchemy scheme was simply an implementation of a standard scheme and the differences between each implementation were immaterial.

53. In [47] of the DOTAS Decision, Judge Bishopp held that "the Alchemy scheme amounts to arrangements in the statutory sense" and in [48] he made the order sought by HMRC. That order was that "an employment income scheme that was currently being marketed ('the [Alchemy] Scheme')" constituted 'notifiable arrangements' within the meaning of section 306(1) FA 2004 for the purposes of section 314A of that Act. It seems to me that the DOTAS Application and the DOTAS Decision show that the notifiable arrangements for the purposes of section 308(3) are the Alchemy scheme and not each separate implementation of it. It follows that the duty to notify arose only once. This is consistent with the view of Green J in *Walapu* at [12] (see [44] above) that the "obligation to notify normally accrues within five days of the marketing of the scheme or the making of the scheme available to clients for implementation".

54. I should mention that Mr Foster prayed in aid the principle against doubtful penalisation which he submitted required me to construe the legislation in favour of Root2 if I had

considered it to be ambiguous or any doubt about its interpretation. As I do not consider that there is ambiguity in the legislation, I do not need to deal with that submission.

55. For the reasons set out above, I have decided that Root2 was required by section 308(3) FA 2004 to provide HMRC with prescribed information on the first occasion on which it became aware of any transaction forming part of the Alchemy scheme. As that was before 16 May 2013, the Penalty Application was made out of time.

56. I am grateful to counsel for their extremely clear and helpful presentations, both written and oral, of the issues to be determined at the preliminary hearing.

DISPOSITION

57. Root2's appeal is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

58. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JUDGE GREG SINFIELD
CHAMBER PRESIDENT

RELEASE DATE: 22 SEPTEMBER 2021

APPENDIX
LEGISLATION

TAXES MANAGEMENT ACT 1970

Part X Penalties, etc

98C Notification under Part 7 of Finance Act 2004

(1) A person who fails to comply with any of the provisions of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) mentioned in subsection (2) below shall be liable

(a) to a penalty not exceeding

(i) in the case of a provision mentioned in paragraph (a) … of that subsection, £600 for each day during the initial period (but see also subsections (2A), (2B) and (2ZC) below), and

(ii) in any other case, £5,000, and

(b) if the failure continues after a penalty is imposed under paragraph (a) above, 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) section 308(1) and (3) (duty of promoter in relation to notifiable proposals and notifiable arrangements),

…

(2ZA) In this section 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 subsection (1)(a)(i) is determined and the last day before the failure ceases;

and for this purpose 'the relevant day' is the day specified in relation to the failure in the following table.

Failure	*Relevant day*
Any other failure to comply with subsection (1) of section 308	The first day after the end of the period prescribed under that subsection
Any other failure to comply with subsection (3) of section 308	The first day after the end of the period prescribed under that subsection

(2ZB) The amount of a penalty under subsection (1)(a)(i) is to be arrived at after taking account of all relevant considerations, including the desirability of its 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 section 308(1) or (3) or section 310A, 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,

…

(2ZBA) In subsection (2ZB)

(a) 'promoter' has the same meaning as in Part 7 of the Finance Act 2004, and

(b) …

…

(2B) Where a failure to comply with a provision mentioned in subsection (2) concerns a proposal or arrangements in respect of which an order has been made under section 314A of the Finance Act 2004 (order to disclose), the amounts specified in subsection (1)(a)(i) and (b) above shall be increased to the prescribed sum in relation to days falling after the prescribed period.

(2C) In subsection (2A) and (2B)

(a) 'the prescribed sum' means a sum prescribed by the Treasury by regulations, and

(b) 'the prescribed period' means a period beginning with the date of the order under section 306A or 314A and prescribed by the Commissioners by regulations.

(2D) The making of an order under section 306A or 314A of that Act does not of itself mean that, for the purposes of section 118(2) of this Act, a person either did or did not have a reasonable excuse for non- compliance before the order was made.

(2E) Where an order is made under section 306A or 314A of that Act then for the purposes of section 118(2) of this Act

(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 period mentioned in subsection (2B), rely on doubt as to notifiability as an excuse for failure to comply with section 308 of that Act, and

(b) any delay in compliance with that section after the end of that period is unreasonable unless attributable to something other than doubt as to notifiability.

100 Determination of penalties by officer of Board]

(1) Subject to subsection (2) below and except where proceedings for a penalty have been instituted under section 100D below … an officer of the Board authorised by the Board for the purposes of this section may make a determination imposing a penalty under any provision of the Taxes Acts and setting it at such amount as, in his opinion, is correct or appropriate.

(2) Subsection (1) above does not apply where the penalty is a penalty under

…

(f) section 98C(1)(a) above

…

100C Penalty proceedings against First-tier Tribunal

(1) An officer of the Board authorised by the Board for the purposes of this section may commence proceedings before the First-tier Tribunal for any penalty to which subsection (1) of section 100 above does not apply by virtue of subsection (2) of that section.

(2) The person liable to the penalty shall be a party to the proceedings.

(3) Any penalty determined by the First-tier Tribunal in proceedings under this section shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

…

103 Time limits for penalties]

…

(4) A penalty to which subsection (1) does not apply may be so determined, or proceedings for such a penalty may be commenced before the [tribunal] or a court, at any time within six years after the date on which the penalty was incurred or began to be incurred.

FINANCE ACT 2004

Part 7 Disclosure of Tax Avoidance Schemes

306 Meaning of 'notifiable arrangements' and 'notifiable proposal'

(1) In this Part 'notifiable arrangements' means any arrangements which

(a) fall within any description prescribed by the Treasury by regulations,

(b) enable, or might be expected to enable, any person to obtain an advantage in relation to any tax 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 advantage.

(2) In this Part '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).

306A Doubt as to notifiability

(1) HMRC 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 HMRC

(a) have taken all reasonable steps to establish whether the proposal or arrangements are notifiable, and

(b) have reasonable grounds for suspecting that the proposal or arrangements may be notifiable.

(4) Reasonable steps under subsection (3)(a) may (but need not) include taking action under section 313A or 313B.

(5) Grounds for suspicion under subsection (3)(b) may include

(a) the fact that the relevant arrangements fall within a description prescribed under section 306(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 section 313A or 313B;

(c) the promoter's failure to comply with a requirement under or by virtue of section 313A or 313B in relation to another proposal or other arrangements.

(6) Where an order is made under this section in respect of a proposal or arrangements, the prescribed period for the purposes of section 308(1) or (3) in so far as it applies by virtue of the order

(a) shall begin after a date prescribed for the purpose, and

(b) may be of a different length than the prescribed period for the purpose of other applications of section 308(1) or (3).

(7) An order under this section in relation to a proposal or arrangements is without prejudice to the possible application of section 308, other than by virtue of this section, to the proposal or arrangements.

307 Meaning of promoter

(1) For the purposes of this Part a person is a promoter

(a) in relation to a notifiable proposal, if, in the course of a relevant business, the person (P)

(i) is to any extent responsible for the design of the proposed arrangements,

(ii) makes a firm approach to another person (C) in relation to the notifiable proposal with a view to P making the notifiable proposal available for implementation by C or any other person, or

(iii) makes the notifiable proposal available for implementation by other persons, and

(b) in relation to notifiable arrangements, if he is by virtue of paragraph (a)(ii) or (iii) a promoter in relation to a notifiable proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for

(i) the design of the arrangements, or

(ii) the organisation or management of the arrangements.

(1A) For the purposes of this Part 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 notifiable proposal.

(2) In this section relevant business means any trade, profession or business which

(a) involves the provision to other persons of services relating to taxation, or

(b) is carried on by a bank, as defined by section 1120 of the Corporation Tax Act 2010, or by a securities house, as defined by section 1009(3) of that Act.

(3) For the purposes of this section anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business falling within subsection (2)(b) carried on by another company which is a member of the same group.

(4) Section 170 of the Taxation of Chargeable Gains Act 1992 (c 12) has effect for determining for the purposes of subsection (3) whether two companies are members of the same group, but as if in that section

(a) for each of the references to a 75 per cent subsidiary there were substituted a reference to a 51 per cent subsidiary, and

(b) subsection (3)(b) and subsections (6) to (8) were omitted.

(4A) For the purposes of this Part 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 notifiable proposal at a time when the proposed arrangements have been substantially designed.

(4B) For the purposes of this Part a person makes a marketing contact with another person in relation to a notifiable proposal if

(a) the person communicates information about the notifiable 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 advantage in relation to any tax that might be expected to be obtained from the proposed arrangements.

(4C) For the purposes of subsection (4A) 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 advantage mentioned in subsection (4B)(c) might enter into

(a) transactions of the nature developed, or

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

(5) A person is not to be treated as a promoter [or introducer] for the purposes of this Part by reason of anything done in prescribed circumstances.

(6) In the application of this Part to a proposal or arrangements which are not notifiable, a reference to a promoter or introducer is a reference to a person who would be a promoter or introducer under subsections (1) to (5) if the proposal or arrangements were notifiable.

308 Duties of promoter

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

(2) In subsection (1) the relevant date means the earliest of the following

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

(a) the date on which the promoter makes the notifiable proposal available for implementation by any other person, or

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

(3) A person who is a promoter in relation to notifiable arrangements must, within the prescribed period after the date on which he first becomes aware of any transaction forming part of the notifiable arrangements, provide the Board with prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under subsection (1).

(4) Subsection (4A) applies where a person complies with subsection (1) in relation to a notifiable proposal for arrangements and another person is

(a) also a promoter in relation to the notifiable proposal or is 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 notifiable proposal or notifiable arrangements which are substantially the same as notifiable arrangements implementing the notifiable proposal (whether they relate to the same or different parties).

(4A) Any duty of the other person under subsection (1) or (3) in relation to the notifiable proposal or notifiable arrangements is discharged if

(a) the person who complied with subsection (1) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the proposed notifiable arrangements under section 311, and

(b) the other person holds the information provided to HMRC in compliance with subsection (1).

(4B) Subsection (4C) applies where a person complies with subsection (3) 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).

(4C) Any duty of the other person under subsection (1) or (3) in relation to the notifiable proposal or notifiable arrangements is discharged if

(a) the person who complied with subsection (3) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the notifiable arrangements under section 311, and

(b) the other person holds the information provided to HMRC in compliance with subsection (3).

(5) 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), he need not provide information under subsection (1) or (3) if he has already provided information under either of those subsections in relation to any of the other proposals or arrangements.

(6) The Treasury may by regulations provide for this section to apply with modifications in relation to proposals or arrangements that

(a) enable, or might be expected to enable, a person to obtain an advantage in relation to stamp duty land tax, and

(b) are of a description specified in the regulations.

…

310 Duty of parties to notifiable arrangements not involving promoter

Any person who enters into any transaction forming part of notifiable arrangements as respects which neither he nor any other person in the United Kingdom is liable to comply with section 308 (duties of promoter) or section 309 (duty of person dealing with promoter outside the United Kingdom) must at the prescribed time provide the Board with prescribed information relating to the notifiable arrangements.

…

310C Duty of promoters to provide updated information

(1) This section applies where

(a) information has been provided under section 308 about any notifiable arrangements, or proposed

notifiable arrangements, to which a reference number is allocated under section 311, and

(b) after the provision of the information, there is a change in relation to the arrangements of a kind mentioned in subsection (2).

(2) The changes referred to in subsection (1)(b) are

(a) a change in the name by which the notifiable arrangements, or proposed notifiable arrangements, are known;

(b) a change in the name or address of any person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable 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 HMRC of the change mentioned in subsection (1)(b) within 30 days after it is made.

…

311 Arrangements to be given reference number

(1) Where a person complies or purports to comply with section 308(1) or (3), 309(1) or 310 in relation to any notifiable proposal or notifiable arrangements, the Board

(a) 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, and

(b) if it does so, must notify that number to the person and (where the person is one who has complied or purported to comply with section 308(1) or (3)) to any other person

(i) who is a promoter in relation to the notifiable proposal (or arrangements implementing the notifiable proposal) or the notifiable arrangements (or proposal implemented by the notifiable arrangements), and

(ii) whose identity and address has been notified to HMRC by the person].

(2) 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 Board that the arrangements could as a matter of law result in the obtaining by any person of a tax advantage.

(3) In this Part 'reference number', in relation to any notifiable arrangements, means the reference number allocated under this section.

312 Duty of promoter to notify client of number]

(1) This section 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 notifiable 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 HMRC 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 subsection (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 subsection (5) are met the duty imposed on the promoter under subsection (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 HMRC, prescribed information relating to the reference number that has been notified to the promoter in relation to the proposed notifiable arrangements.

(6) HMRC may give notice that, in relation to notifiable arrangements specified in the notice, promoters are not under the duty under subsection (2) after the date specified in the notice.

…

314A Order to disclose]

(1) HMRC 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 section 306(1)(a) to (c) applies to the relevant arrangements.

…

318 Interpretation of Part 7

(1) In this Part

…

'arrangements' includes any scheme, transaction or series of transactions;

…

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

…"

TAX AVOIDANCE SCHEMES (PRESCRIBED DESCRIPTIONS OF ARRANGEMENTS) REGULATIONS 2006 (SI 2006/1543)

Regulation 10 Description 5: standardised tax products]

"(1) Subject to regulation 11, arrangements are prescribed if a promoter makes the arrangements available for implementation by more than one person and the conditions in paragraph (2) are met.

(2) The conditions are that an informed observer (having studied the arrangements and having regard to all relevant circumstances) could reasonably be expected to conclude that

(a) the arrangements have standardised, or substantially standardised, documentation

(i) the purpose of which is to enable a person to implement the arrangements;

(ii) the form of which is determined by the promoter; and

(iii) the substance of which does not need to be tailored, to any material extent, to enable a person to implement the arrangements;

(b) a person implementing the arrangements must enter into a specific transaction or series of specific transactions;

(c) the transaction or series of transactions is standardised, or substantially standardised, in form; and

(d) either the main purpose of the arrangements is to enable a person to obtain a tax advantage or the arrangements would be unlikely to be entered into but for the expectation of obtaining a tax advantage."

TAX AVOIDANCE SCHEMES (INFORMATION) REGULATIONS 2012 (SI 2012/1836)

Regulation 4 Prescribed information in respect of notifiable proposals and arrangements

"(1) The information which must be provided to HMRC by a promoter under section 308(1) or (3) (duties of promoter) in respect of a notifiable proposal or notifiable arrangements is sufficient information as might reasonably be expected to enable an officer of HMRC to comprehend the manner in which the proposal or arrangements are intended to operate, including

(a) the promoter's name and address;

(b) details of the provision of the [the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006] … by virtue of which the arrangements or the proposed arrangements are notifiable;

(c) a summary of the arrangements or proposed arrangements and the name (if any) by which they are known;

(d) information explaining each element of the arrangements or proposed arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained under those arrangements arises; and

(e) the statutory provisions, relating to any of the prescribed taxes, on which that tax advantage is based."

Regulation 5 Time for providing information under section 308, 308A, 309 or 310

"(1) The period or time (as the case may be) within which

(a) the prescribed information under section 308, 309 or 310, and

(b) the information or documents which will support or explain the prescribed information under section 308A (supplemental information),

must be provided to HMRC is found in accordance with the following paragraphs of this regulation.

(2) Where a proposal or arrangements (not being otherwise notifiable) is or are treated as notifiable by virtue of an order under section 306A(1) (doubt as to notifiability) the prescribed period is the period of 10 days beginning on the day after that on which the order is made.

…

(4) In any other case of a notification under section 308(1), the prescribed period is the period of 5 days beginning on the day after the relevant date."