Foreword

This notice cancels and replaces Notice 700/8 (August 2004). It also cancels Business Brief 34/04, part 3 (VAT Avoidance Disclosures Unit – change of address). Details of any changes to the previous version can be found in paragraph 1.2 of this notice.

Paragraphs 5.2, 5.4, 8.2 and 8.7 of this notice, which explain how to make a notification and where to send it, have the force of law under the VAT (Disclosure of Avoidance Schemes) Regulations 2004, regulation 3. These paragraphs are indicated by being placed in a box.

EXAMPLE:

The following rule has the force of law
You must send your notification to HMRC, 22 Kingsway, London.

Further help and advice

If you need general advice or more copies of HM Revenue & Customs notices, please ring the **National Advice Service on 0845 010 9000. You can call between 8.00 am and 8.00 pm, Monday to Friday.**

If you have **hearing difficulties**, please ring the **Textphone** service on **0845 000 0200.**

If you would like to speak to someone in **Welsh**, please ring **0845 010 0300, between 8.00 am and 6.00 pm, Monday to Friday.**

All calls are charged at the local rate within the UK. Charges may differ for mobile phones.

Other notices on this or related subjects

VAT Notices: 700/6, 700/42 and 708

Code of Practice 9

1. Introduction

1.1 What is this notice about?

This notice is about what to do when you enter into arrangements or transactions that are intended to give **you** or **any other person** a VAT advantage when compared to adopting a different course of action.

This notice does not cover the rules for notifying arrangements relating to Income Tax, Corporation Tax, Capital Gains Tax or Stamp Duty Land Tax. The rules for these taxes are explained in guidance available on the Anti Avoidance Group's page on HM Revenue & Customs' Internet website.

1.2 What's changed?

This notice has been revised to include legislative changes made since the last version to the meaning of 'tax advantage', the 'duty to notify' rules, and the range of 'listed schemes' and 'hallmarks'. It also corrects some minor errors and expands on the guidance to help you identify the schemes that must be notified.

Following restructuring within HM Revenue & Customs, the address for disclosing a notifiable arrangement has also been changed – see paragraphs 5.4 and 8.7.

You can access details of any changes since February 2006 on our Internet website at www.hmrc.gov.uk or by telephoning the National Advice Service on 0845 010 9000.

This notice and others mentioned are available both on paper and on our website.

1.3 Who should read this notice?

You should read this notice if you are, or are liable to be, registered for VAT in the UK, and either:

(a) enter into one of 10 specific arrangements (known in this notice as 'listed schemes') that the Treasury have designated as having been, or might be, entered into for the purpose of enabling any person to obtain a VAT advantage; or

(b) enter into, or knowingly become a party to, any other arrangements or transactions that are intended to give **you** or **any other person** a VAT advantage and which include, or are associated with, one of 8 'hallmarks' of tax avoidance.

More detailed criteria on whether the rules for 'listed schemes' or 'hallmarked' schemes affect you can be found from paragraphs 4.1 and 7.1 respectively.

In general, you will not need to read this notice if you, or where you are a member of a corporate group, the whole group, make taxable and exempt supplies totalling below £150,000 per quarterly VAT accounting period or £50,000 if you submit monthly returns.

It is suggested you also read this notice if you devise or sell VAT avoidance, planning or mitigation schemes, arrangements or devices.

1.4 What law covers this notice?

The main relevant law is as follows:

- The meaning of ‘tax advantage’ and ‘notifiable scheme’, and the duty to notify and penalty provisions, are prescribed in: Schedule 11A to the VAT Act 1994 (as inserted by section 19 and Schedule 2 to the Finance Act 2004 with effect from 1 August 2004; and amended by section 6 and Schedule 1 to the Finance (No. 2) Act 2005 with effect from 1 August 2005);

- Transitional provisions relating to changes in 2005 to the meaning of ‘tax advantage’ and the duty to notify provisions are found in: The Finance (No. 2) Act 2005, section 6, (Appointed Day and Savings Provisions) Order 2005 (SI 2005/2010).

- The ‘listed schemes’ and ‘hallmarks’ are described in: The VAT (Disclosure of Avoidance Schemes) (Designations) Order 2004 (SI 2004/1933) (as amended by The VAT (Disclosure of Avoidance Schemes) (Designations) (Amendment) Order 2005 (SI 2005/1724) with effect from 1 August 2005).

- The time of notification, and information to be notified, is prescribed in: The VAT (Disclosure of Avoidance Schemes) Regulations 2004 (SI 2004/1929) (as amended by The VAT (Disclosure of Avoidance Schemes) (Amendment) Regulations 2005 (SI 2005/2009) with effect from 1 August 2005).

2. Obtaining a VAT advantage

2.1 Can I structure my affairs so as to obtain a VAT advantage?

Yes, provided what you do is not dishonest. However, under the rules explained in this notice, you may need to formally tell us about what you are doing; and we might decide to challenge whether the structure achieves the intended advantage (see also paragraph 3.10).

Note: If you are required to tell us what you are doing, you may be liable to a **penalty** if you do not provide us on time with the information explained in this notice.

2.2 Can I get a ruling on the arrangements and transactions I’m planning to do?

Notice 700/6 VAT rulings explains how you can normally obtain our view on how transactions should be treated for VAT. However, we will not ‘approve’ tax planning arrangements and will refuse to give rulings where we suspect that the transactions are part of a tax avoidance scheme.

2.3 What happens if I obtain a VAT advantage dishonestly?

The matter could be investigated as either a criminal investigation or under the civil investigation of fraud procedures. Civil investigations are undertaken in accordance with Code of Practice 9.

3. About notifying HM Revenue & Customs

3.1 What must I tell HM Revenue and Customs about?

You must tell us about:

- certain arrangements that are named and described in the relevant law (referred to in this notice as **'listed schemes'**) – see paragraph 3.4 below and sections 4 to 6; and
- arrangements and transactions that include or are associated with at least one of a range of designated provisions that are often linked with avoidance (referred to in this notice as 'hallmarks' and **'hallmarked schemes'**) – see paragraph 3.6 below and sections 7, 8 and 10.

3.2 Does everyone have to notify?

No. Only taxable persons (i.e. those who are, or are liable to be, registered for VAT in the UK) have to notify.

Even then, various filters, or tests, may mean you do not have to notify. For example, your turnover may be below the relevant threshold. The detailed rules are explained in sections 4 and 7 for listed schemes and hallmarked schemes respectively.

There is also a voluntary facility that allows any person to register a hallmarked scheme with us. Businesses using one of these registered schemes may be exempt from having to separately notify (see paragraph 7.8 and section 9).

3.2.1 VAT Groups

The representative member of a VAT group is responsible for notifying schemes involving group members – see also paragraph 3.3.2.

3.3 Does only the beneficiary of the VAT advantage have to notify?

No. Any taxable person (see paragraph 3.2 above) who is a party to a notifiable scheme may have to tell us about the scheme.

3.3.1 'A party to a scheme'

You are a party to a scheme if you knowingly take part in it.

You are not a party to a scheme if you:

(a) are unwittingly involved in any of the steps of the scheme (i.e. you have no knowledge of either the existence of the scheme or the role you play in it); or

(b) act purely in an advisory capacity.

3.3.2 VAT Groups

Where a member of a VAT group is a contractual party in a notifiable scheme, the duty to disclose falls on the representative member of the group.

The notification should provide the name of the group member who is involved in the scheme as well as the name and registration number of the representative member – see paragraphs 5.2 and 8.2.

3.3.3 What if another party to the scheme has already made a notification?

You must still notify us.

3.3.4 Joint notifications

Where more than one party is obliged to notify us, the parties concerned can make a joint notification. The notification should make it clear that it is a joint notification, who all the parties are that are making the notification, and provide the information set out in paragraph 5.3 or 8.3 as appropriate.

3.4 What are the listed schemes?

The schemes are:

- Scheme 1 – The first grant of a major interest in a building (see paragraphs 6.1 and 6.2);
- Scheme 2 – Payment handling services (see paragraphs 6.1 and 6.3);
- Scheme 3 – Value shifting (see paragraphs 6.1 and 6.4);

- Scheme 4 – Leaseback agreements (see paragraphs 6.1 and 6.5);
- Scheme 5 – Extended approval periods (see paragraphs 6.1 and 6.6);
- Scheme 6 – Groups: third party suppliers (see paragraphs 6.1 and 6.7);
- Scheme 7 – Education and training by a non-profit making body (see paragraphs 6.1 and 6.8);
- Scheme 8 – Education and training by a non-eligible body (see paragraphs 6.1 and 6.9); and
- Scheme 9 – Cross-border face-value vouchers (see paragraphs 6.1 and 6.10); and
- Scheme 10 – Surrender of a relevant lease (see paragraphs 6.1 and 6.11).

3.5 New listed schemes

The range of listed schemes may be updated periodically by the making of a new Treasury Statutory Instrument. We will give one month's notice of the intention to list a new scheme, so that interested parties can let us have their views on the proposals. Notice of such proposed changes will be given on our Internet site at www.hmrc.gov.uk.

3.6 What are the hallmarks?

The hallmarks are:

- Confidentiality condition agreements (see paragraphs 10.1 and 10.2);
- Agreements to share a tax advantage (see paragraphs 10.1 and 10.3);
- Contingent fee agreements (see paragraphs 10.1 and 10.4);
- Prepayments between connected parties (see paragraphs 10.1 and 10.5);
- Funding by loans, share subscriptions or subscriptions in securities (see paragraphs 10.1 and 10.6;
- Off-shore loops (see paragraphs 10.1 and 10.7);

- Property transactions between connected persons (see paragraphs 10.1 and 10.8); and

- The issue of face-value vouchers (see paragraphs 10.1 and 10.9).

3.7 What if HM Revenue & Customs already know I am using a notifiable scheme?

You must still notify us under the rules set out in this notice.

3.8 What don't I have to notify?

There is no 'white list' of schemes that do not require notification. If you have a liability to notify us about a scheme, you should do so even if you believe we already know about the type of scheme you are using.

Section 11 explains our view on some frequently encountered issues to do with hallmarked schemes.

3.9 Will my notification be made public?

Notifications are subject to the normal rules of taxpayer confidentiality found in the Commissioners for Revenue & Customs Act 2005 and, other than in the exceptional circumstances allowed for, are not made public. However, if we challenge what you are doing and the matter progresses to the Courts the hearing is likely to be held in public.

3.10 Are all notified arrangements regarded as avoidance and challenged?

No. Whilst we have tried to keep the burden to a minimum, you may have to tell us about arrangements that we do not consider to be avoidance.

We will examine all notifications sent to us and might decide to investigate further, challenging the arrangements where appropriate. This may mean that you are issued with an assessment for an amount of tax that we believe has been incorrectly declared. Should the arrangements give rise to a tax liability over and above what would have been due if the arrangements had not been entered into, an assessment may also be issued for this additional amount.

As well as the notified arrangements, an investigation may include an examination of other arrangements that you use in your business.

4. Listed schemes – Deciding whether you must notify

4.1 Decision chart

You must notify use of a listed scheme when all of the following tests are met:

Test	Description	Further information
1	You are a **taxable person**	Paragraph 3.2
2	You are a **party** to a **listed scheme**	Paragraph 3.3 and section 6
3	A **relevant event** occurs	Paragraph 4.2
4	Your **turnover** exceeds either of the minimum thresholds	Paragraphs 4.3
5	You have **not already notified** HM Revenue & Customs, as required under the rules set out in this notice, that you are using the scheme	Paragraph 4.4

Section 5 explains by when you must make your notification, the information it should contain and where to send it.

4.2 Relevant events that trigger notification

The requirement for you to notify is triggered when one of the following events occurs to you:

- You show in a VAT return, in respect of any VAT accounting period starting on or after 1 August 2004, a higher or lower net amount of VAT than would be the case but for the listed scheme.
- You make a claim (such as by submitting a voluntary disclosure), in respect of any VAT accounting period starting on or after 1 August 2004 for which a VAT return has been submitted, for the repayment of output tax over-declared or input tax credit under-claimed that is greater than would be the case but for the listed scheme.
- The amount of non-deductible VAT (see paragraph 4.2.1 below) you incur, in respect of any VAT accounting period starting on or after 1 August 2005, would have been higher but for the listed scheme.

4.2.1 Non-deductible VAT incurred

VAT is, or would have been, incurred by you when it is, or would have been:

- VAT on the supply to you of any goods or services (including VAT on reverse charges);
- VAT on the acquisition by you from another member State of any goods; or
- VAT paid or payable by you on the importation of any goods from a place outside the EU.

It is, or would have been, non-deductible VAT when it is, or would have been:

- VAT that is input tax, but for which you are not entitled to credit; or
- VAT that is not input tax, and for which you are not entitled to a refund under any provision of the VAT Act 1994.

4.3 The minimum turnover thresholds

The turnover threshold is measured by reference to the **total** amount of **taxable and exempt** supplies made by:

- you; or
- where you are a member of a corporate group, **the whole group**, made up of the ultimate holding company (or entity) and all its subsidiaries, including you. For this purpose UK company law definitions used for preparing group accounts apply (section 259 of the Companies Act 1985). As a result the group will normally be made up of all the companies shown as subsidiaries in the ultimate parent's consolidated group accounts, plus any companies that are excluded from the consolidation but are subsidiaries for UK company law purposes.

For the purpose of calculating turnover, intra-corporate group transactions are included. However, intra-VAT group transactions are ignored.

4.3.1 The threshold

Your turnover exceeds the minimum threshold when the total amount of **taxable and exempt** supplies made by you (or the wider corporate group as explained above) is, or is greater than:

(a) £600,000 in the year immediately prior to the VAT accounting period that triggers notification (see paragraph 4.2); or

(b) the appropriate proportion of £600,000 in the VAT accounting period immediately prior to the VAT accounting period that triggers notification. (For example, the 'appropriate proportion' is one twelfth of £600,000 (i.e. £50,000) where the VAT accounting period is one month; and one quarter of £600,000 (i.e. £150,000) where the VAT accounting period is three months.)

4.3.2 Disaggregation

Should we find that a taxable person's business has been split in an attempt to avoid the requirement to make a notification, we will use our powers to direct that the separate entities be treated as one. If it is found later that other entities should have been included in that direction, a supplementary direction can be made to include them. The effect a supplementary direction has on the timing of a notification is explained in paragraph 5.1.5.

4.4 Exemption for previously notified schemes

4.4.1 General

The use of some schemes will only trigger one relevant event (see paragraph 4.2). Others, such as a payment handling service, are designed to give an ongoing VAT benefit over time. Consequently, more than one relevant event may occur. The use of such a scheme only has to be notified once.

However, a listed scheme may be used more than once. For example, listed scheme 1 (first grant of a major interest) may be used to remove the VAT cost of refurbishing more than one property. Where this happens, each adoption of the scheme must be notified, but you only need tell us once about each case.

Paragraph 5.3 explains what information to provide.

4.4.2 Listed schemes notified under the rules for hallmarked schemes

The range of listed schemes may change (see paragraph 3.5). If you have previously notified your use of a listed scheme under the rules for hallmarked schemes, you are not required to make a new notification when the scheme becomes 'listed'.

If the scheme is used again, you must notify the new arrangements – see paragraph 4.4.1.

5. Listed schemes – How to notify HM Revenue & Customs

5.1 By what date must I notify HM Revenue & Customs?

Your notification must be made to HM Revenue & Customs within 30 days of:

- in the case of the net amount of VAT shown in a VAT return being different to what would otherwise be the case (see the first bullet at paragraph 4.2), the due date for making the return;

- in the case of a claim being made that is greater than would otherwise be the case (see the second bullet at paragraph 4.2), the making of the claim; or

- in the case of the amount of your non-deductible VAT in respect of a VAT accounting period being less than would otherwise be the case (see the third bullet at paragraph 4.2), the due date for making a return in respect of that accounting period.

For examples of when a notification is due see paragraphs 5.1.3 to 5.1.4.

5.1.1 Early notifications

HM Revenue & Customs will accept early notifications, such as before the relevant event has taken place, provided the scheme has been implemented.

5.1.2 Transitional rules for newly listed schemes

Use of listed schemes 1 to 8 need only be notified when a relevant event takes place in relation to an accounting period starting on or after 1 August 2004.

Use of listed schemes 9 and 10 need only be notified when a relevant event takes place in relation to an accounting period starting on or after 1 August 2005.

5.1.3 Examples of due date for notifying when a return is affected (for listed schemes 1 to 8)

Examples of the notification due date, when the net amount of VAT shown on a return is affected by the scheme, include:

Period of affected VAT return	Due date for submitting return	Notification due
1 June 2004 to31 August 2004	30 September 2004	No notification required (return starts before 1 August 2004)
1 August 2004 to 31 August 2004	30 September 2004	30 October 2004
1 August 2004 to 31 October 2004	30 November 2004	30 December 2004
1 September 2004 to 30 November 2004	31 December 2004	30 January 2005
1 October 2004 to 31	31 January 2005	2 March 2005

December 2004		

If you pay VAT due on a return by an approved electronic method you may be entitled to an extension to the due date for submitting your return. If this is the case, the due date for notifying a scheme is 30 days after the extended due date for submitting the return.

5.1.4 Examples of due date for notifying when a claim is affected (for listed schemes 1 to 8)

Examples of the notification due date, when the amount of VAT being claimed is affected by use of the scheme, include:

VAT return period covered by affected claim	Date claim is made	Notification due
1 August 2004 to 31 August 2004	27 November 2004	27 December 2004
1 July 2004 to30 September 2004	14 January 2005	No notification required (return starts before 1 August 2004)
1 October 2004 to 31 December 2004	29 August 2005	28 September 2005

5.1.5 Directions that taxpayers are treated as one

Where HM Revenue & Customs issue a direction that a number of taxpayers should be treated as one (see paragraph 4.3.2), the due date is determined by reference to the first relevant event (see paragraph 4.2) that takes place following the issue of the direction.

5.2 How do I notify HM Revenue & Customs?

The following rule has the force of law

You must notify us either in writing or by email to the relevant address given at paragraph 5.4. The notification should be prominently headed:

- **Disclosure of use of listed scheme – Notification under paragraph 6(2) of Schedule 11A to the VAT Act 1994.**

and give your:

- business name (if you are the representative member of a VAT group, notifying as a result of a group member being involved in a notifiable scheme, also tell us the name of the member);
- address; and
- VAT registration number.

5.3 What information must I provide?

The only information you must provide is the number of the scheme, which can be found in section 6. Your obligation to notify is fulfilled on receipt of the required information at one of the addresses given in paragraph 5.4.

On some occasions you may use more than one scheme at the same time (see paragraph 4.4). Where this happens you must tell us about all of the schemes of each type that are being used and haven't previously been reported.

For joint notifications, see paragraph 3.3.4.

5.4 Where do I send my notification?

The following rule has the force of law
You must send your notification to either of the addresses given below. **Post to:** VAT Avoidance Disclosures Unit Anti-Avoidance Group (Intelligence) HM Revenue & Customs 1st Floor, 22 Kingsway London WC2B 6NR **Or e-mail to:** vat.avoidance.disclosures.bst@hmrc.gsi.gov.uk

5.5 What if I send my notification to another address?

If you send your notification to an address other than those given in paragraph 5.4 (for example your local office or the National Advice Service), you will not have made a proper notification. Failure to make a proper notification will make you liable to a penalty as explained in section 12.

5.6 How will HM Revenue & Customs deal with my notification?

We will acknowledge receipt of all notifications received at the addresses given in paragraph 5.4, and consider whether we wish to investigate – see paragraph 3.10. If we do not contact you, this does not mean the arrangements are acceptable to us.

If we are already investigating your use of the notified scheme, that investigation will continue as appropriate.

6. The listed schemes

6.1 Descriptions of the listed schemes

The listed schemes are described in paragraphs 6.2 to 6.9 below. (**Note:** Arrangements that are not covered by a listed scheme may need to be notified as a hallmarked scheme – see section 7.)

The descriptions are intended only as a guide and are not a substitute for the descriptions contained in the relevant law (see paragraph 1.4). For each scheme there is:

- a list of the identifying features of the scheme;
- an example of arrangements that are covered by the listed scheme; and
- in some cases, examples of ones that are not.

6.1.1 Whether the features of a scheme are present

A feature of a scheme is regarded as being present when it is either:

- present as a matter of fact; or
- a taxable person treats it as being present for the purpose of making a VAT return or voluntary disclosure, even if it is not actually present (whether as a matter of law or for any other reason). For example, a feature of a scheme may rely on a transaction being a supply for VAT purposes. If, for the purpose of making a return, a taxable person treats the transaction as being such a supply, then the feature is regarded as being present (for the purposes of deciding whether disclosure is required), even if it is subsequently found, say by the Courts, that there has been no supply as a matter of law.

6.1.2 Connected persons

For the purposes of the scheme descriptions a person is connected with another where:

- one of them is an undertaking in relation to which the other is a group undertaking as defined by section 259 of the Companies Act 1985 (essentially, one is the parent or subsidiary undertaking of the other, or both are subsidiaries of a common parent undertaking); or
- both of them are connected to the same trust.

A person is connected to a trust where he:

- is the settlor of the trust, or a trustee or beneficiary of it; or
- holds any shares in a company in accordance with the terms of the trust, or is a person on whose behalf such shares are held.

6.2 Scheme 1 – The first grant of a major interest in a building

This scheme aims to remove the VAT cost of extending, enlarging, repairing, refurbishing or servicing buildings that are zero-rated when sold by developers.

Examples of the buildings concerned are houses, student halls of residence and buildings used by charities for non-business activities.

6.2.1 The scheme's features

The scheme comprises or includes the following features:

(a) a zero-rated major interest grant is made in the building (see Notice 708 Buildings and construction) to a connected person (see paragraph 6.1.2); and

(b) the following input tax is attributed to the grant:

- input tax in respect of a service charge relating to the building; or
- input tax in connection with any extension, enlargement, repair, maintenance or refurbishment of the building (other than for remedying defects in the original construction).

6.2.2 Examples of arrangements included in the listed scheme

A housing landlord may seek to use this scheme to recover input tax on the renovation of houses that he had constructed several years earlier. Having decided that some of the houses require major refurbishment, the landlord leases or sells them to a subsidiary in such a way that he attributes to that zero-rated disposal the VAT on the refurbishment, which may be undertaken either before or after the grant. The subsidiary may then simply lease the houses back to the landlord so that he can then let them on again to tenants.

By way of another example, the builder of new halls of residence may try to recover future input tax on repairs and maintenance of the buildings, even though his income from the property at that time will be exempt, by building into the initial zero-rated lease or sale a payment for, and agreement to provide, repairs and maintenance in the future.

6.2.3 Examples of arrangements not included in the listed scheme

This listed scheme does not include arrangements where:

(a) the zero-rated grant is made under the VAT Act 1994, Schedule 8, Group 5, Item 1(b) (person converting a non-residential building);

(b) the zero-rated grant is made under the VAT Act 1994, Schedule 8, Group 6, Item 1 (substantial reconstruction of a protected building); or

(c) there is no zero-rated grant made to a connected person.

6.3 Scheme 2 – Payment handling services

This scheme aims to reduce the VAT due on the advertised price of retail goods or services by transforming an element of the price into an exempt payment handling service (such as credit/debit card or cash handling).

6.3.1 The scheme's features

The scheme comprises or includes the following features:

- a retail supply of goods or services;
- a linked supply to the same customer, by the retailer or any person, that relates to the means of payment used for the retail supply and is a supply of a description falling within the VAT Act 1994, Schedule 9, Group 5 (finance); and
- the total consideration due for the retail supply and linked supply is no different, or not significantly different, from what it would be for the retail supply alone.

6.3.2 Example of arrangements included in the listed scheme

When a customer presents his goods at the till, and decides to pay by credit or debit card rather than cash, he may be informed that part of the ticket price is being paid to a separate company and is in consideration for processing or accepting his credit card as the means of payment. Agreements signed or agreed by the customer at the point of sale may be alleged to support this.

The total amount paid by the customer remains the same whether or not the handling service is actually used or needed by the customer but is separated into a reduced value for the taxable goods and an exempt amount paid to the separate company. There is no comparable reduction in the value for the goods if he chooses to pay by cash.

6.4 Scheme 3 – Value shifting

This scheme aims to transfer value from standard-rated retail supplies into linked zero-rated or exempt supplies.

6.4.1 The schemes features

The scheme comprises or includes the following features:

(a) a standard-rated retail supply of goods or services;

(b) a linked zero-rated or exempt supply by any person to the same customer;

(c) the linked supply is treated as a separate supply under the terms of an agreement made by the customer;

(d) the terms of the agreement attribute part of the consideration for the retail supply and linked supply to the linked supply; and

(e) the total consideration due for the retail supply and linked supply is no different, or not significantly different, from what it would be for the retail supply alone.

6.4.2 Example of arrangements included in the listed scheme

A retail customer making a large purchase may find that, at the point of sale, he is offered an insurance product with the goods. Rather than paying an additional amount for this cover, the customer will be informed that the ticket price has now been apportioned to cover both the goods and the insurance. If the customer then says he does not want the insurance, there is no reduction of the ticket price to reflect this. The overall price paid by the customer remains the same whether he takes the insurance or not.

6.4.3 Examples of arrangements not included in the listed scheme

Notification is not required when the linked goods or services are supplied free, with no part of the price being attributed to that supply.

Additionally notification is not required for normal business promotion arrangements. For example: a retailer offers a ‘meal deal’ where customers can buy a sandwich, a soft drink and packet of crisps for a single price that is lower than the normal combined price of the three items. When apportioning the cost between the zero-rated and standard-rated items the retailer spreads the discount across all the goods supplied. These arrangements are unlikely to be notifiable as each linked supply would not normally be subject to a separate agreement with the customer; and the total amount payable is likely to be significantly different from what it would be for the standard rated element alone.

6.5 Scheme 4 – Leaseback agreements

This scheme aims to defer or reduce the VAT cost of acquiring goods by a business that cannot recover all of the input tax on those goods were it to directly buy them itself.

6.5.1 The scheme’s features

The scheme comprises or includes the following features:

(a) a person (the ‘relevant person’) receives a supply of goods, or the leasing or letting on hire of goods;

(b) he uses the goods in his business, but is not entitled to full input tax credit for the VAT on the supply to him;

(c) the supply to him is made by a person connected with him (see paragraph 6.1.2);

(d) the supplier, or a person connected with him, is entitled to full input tax credit on the purchase of the goods; and

(e) the relevant person (or a person connected with him) funds (directly or indirectly) more than 90% of the cost of the goods.

For the purposes of this scheme, goods do not include land transactions.

6.5.2 Examples of arrangements included in the listed scheme

A partly exempt trader, such as a bank, requires new computer equipment. The decision is taken that the bank's corporate group will purchase the equipment outright. However, in order to reduce or remove the VAT effect of the irrecoverable input tax, the group acquires the computers in a subsidiary, which then leases them to the bank. Depending on the values and length of the lease, the intention is to spread the irrecoverable VAT cost, or to avoid a proportion of it altogether.

6.5.3 Example of arrangements not included in the listed scheme

Notification is not required for leasing arrangements that are between unconnected parties. For example: Company 'A', an insurance business, requires a new computerised telephone system for its call centres. Rather than buy the equipment outright it decides to lease it. It contracts with Company 'B', an unconnected commercial leasing business, to lease the equipment for a five-year period. As Company 'B' has no expertise in sourcing the equipment required, it is agreed that Company 'A' will purchase the equipment from its usual supplier. Company 'A' then sells the equipment to Company 'B' who leases it back to Company 'A'.

6.6 Scheme 5 – Extended approval periods

This scheme aims to defer accounting for output tax on retail (including mail order) supplies of goods.

6.6.1 The scheme's features

The scheme comprises or includes the following features:

(a) a retail supply of goods where the goods are sent or taken on approval, sale or return, or similar terms;

(b) a requirement that the customer pays in full before any approval, return or similar period expires; and

(c) for the purposes of accounting for VAT, the supplier treats the goods as supplied on a date after the date on which payment is received in full.

6.6.2 Example of arrangements included in the listed scheme

A customer orders goods from an Internet retailer. The retailer is paid on-line when the customer places the order and delivery follows shortly thereafter. The retailer, either due to various guarantees, or specific terms and conditions, seeks to account for VAT on the transaction at a later date, claiming the supply was on ‘approval’ or ‘sale or return’. This is despite the fact that payment has been received, delivery has taken place and, in some cases, the goods have been consumed or used by the customer before the retailer regards the customer as having accepted the goods.

6.7 Scheme 6 – Groups: third party suppliers

These are schemes that aim to reduce or remove the VAT incurred on bought in taxable services (including outsourced services) by a user that cannot recover all of the input tax charged to it for those services.

6.7.1 The scheme’s features

The scheme description is linked to legislation that took effect from 1 August 2004 and which only applies to business that are in VAT groups or intend to join a VAT group where the VAT group concerned has a turnover exceeding £10 million a year. Notification of this scheme only applies to bodies affected by that legislation. VAT Information Sheet 07/04 Eligibility Rules for VAT Grouping gives guidance on the linked legislation.

The scheme comprises or includes the following features:

(a) supplies made to one or more VAT group members by a body that is a specified body for the purposes of the VAT (Groups: eligibility) Order 2004 (SI 2004/1931); and

(b) the benefits condition of the VAT (Groups: eligibility) Order 2004 (SI 2004/1931) is not satisfied.

6.7.2 Example of arrangements included in the listed scheme

A partly exempt business, say company A an insurance company, wants to buy in computer services from third party company B, but wants to reduce the irrecoverable VAT cost of doing this. Companies A and B establish company C, in which A owns 51% of C’s shares. Company A includes C in its VAT group. Company B owns the remaining shares in C, but these shares confer rights to 99% of the dividends declared by C and 99% of the assets on winding up.

Company C holds the contract to provide the computer services required by company A from company B and employs the staff to provide the service. Besides the dividends, B also receives benefits from C in the form of a management charge for managing C's activity of providing computer services. As a result almost all of the benefits of company C's activity accrue to company B. Thus company B has access to the profits and benefits of the computer service activity, and company A hopes to avoid a large VAT cost as there will be no VAT charged within the VAT group.

6.8 Scheme 7 – Education and training by a non-profit making body

This scheme aims to allow a business providing education or training to avoid charging VAT on supplies to customers by arranging for those supplies to be made through a non-profit making body.

6.8.1 The scheme's features

The scheme comprises or includes the following features:

(a) a non-profit making body conducts a business whose activities consist wholly or mainly of the supply of VAT exempt education or vocational training to persons who are not taxable persons;

(b) it receives any of the following 'key supplies', for use in that business, from a connected taxable person (see paragraph 6.1.2) who is not eligible for the exemption (see the VAT Act 1994, Schedule 9, Group 6, note 1)–

- a capital item (including leasing or letting on hire of a capital item),
- staff,
- management services,
- administration services, or
- accountancy services; and

(c) in any one VAT return accounting period the value of those key supplies comprise 20% or more of the non-profit making body's costs.

'Non-profit making body' means a body within the VAT Act 1994, Schedule 9, Group 6, Note (1)(e), which is not otherwise within Note 1.

'Vocational training' has the meaning given by the VAT Act 1994, Schedule 9, Group 6, Note (3) but does not include vocational training of a description falling within item 5 or 5A of that Group.

6.8.2 Example of arrangements included in the listed scheme

A training company such as a driving instruction business, which normally trains private individuals and accounts for VAT out of its income, decides to set up a new non-profit making body to provide the training in the future, exempt from VAT. However, being a non-profit making body it is unable to distribute its profits, and the shareholders of the existing business will lose out. Various agreements may therefore be put in place to act as a mechanism to return those profits to the original training company. For example, the business premises may be leased, the rent for which may be set at a rate directly related to the turnover or profit of the non-profit making body.

6.9 Scheme 8 – Education and training by a non-eligible body

This scheme aims to enable ‘eligible bodies’ that would otherwise make exempt supplies to make taxable supplies and so avoid incurring irrecoverable input tax. The typical customers involved would be bodies such as NHS Trusts and Local Authorities, but can also include normal commercial bodies.

6.9.1 The scheme’s features

This scheme comprises or includes the following features:

(a) a body that is not an eligible body for the purposes of the exemption (see the VAT Act 1994, Schedule 9, Group 6, note 1) is connected (see paragraph 6.1.2) to a body that is an eligible body; and

(b) the non-eligible body conducts a business whose activities consist wholly or mainly of the taxable supply of education or vocational training.

In addition, either:

(a) the non-eligible body benefits or intends to benefit the eligible body by way of gift, dividend or otherwise;

or both:

(b) the eligible body makes to the non-eligible body, for use in the non-eligible body’s business, any supply (including the leasing or letting on hire) of any of the following ‘key supplies’–

- a capital item (including the leasing or letting on hire of a capital item),
- staff,
- management services,
- administration services, or
- accountancy services; and

(c) in any one VAT return accounting period the value of those key supplies comprise 20% or more of the non-eligible body's costs.

6.9.2 Example of arrangements included in the listed scheme

An institution, such as a university, has a contract to provide training to employees of a NHS Trust. Normally, the training would be exempt from VAT and thus the VAT on costs involved in providing it would not be recoverable. In order to provide this training, the university needs to build a new facility, but would like to reduce the cost of the irrecoverable VAT on the building.

The university may establish a subsidiary that is expressly allowed to distribute its profits, claiming exemption for its training supplies. The subsidiary may have few or no resources, so will need to be provided with those resources by the university under various contracts and agreements. It is also likely that the university would want to access any profits from this activity and may choose to do this by having the subsidiary gift those profits to it under the Gift Aid relief. Thus the university may hope to transform the training into a fully taxable activity and recover the input tax on the new facility in the subsidiary, together with other taxable costs.

6.10 Scheme 9 – Cross-border face-value vouchers

This scheme aims to avoid paying VAT anywhere in the EU on 'relevant services' originating from UK suppliers and provided to UK residents who use face-value vouchers (such as phone cards) to pay for them.

'Relevant services' are telecommunication services, radio and television broadcasting services, and electronically supplied services (such as software, images, music and games supplied over the internet).

6.10.1 The scheme's features

This scheme comprises or includes the following features:

(a) the supply of a 'relevant service' from a UK supplier (S) to someone (A) in another EU member State;

(b) a person (B) in another member State B, who may be the same person as A or a different person, uses S's service to supply a 'relevant service' to a customer in the UK (the 'retail supply');

(c) S (the UK supplier) and B (the person making the retail supply) are connected persons (see paragraph 6.1.2);

(d) the customer is not a taxable person and uses a face-value voucher issued by a non-UK person (C), who may be the same person as B or a different person, to obtain the supply;

(e) B (the person making the retail supply) does not account for VAT on that supply in the UK or any other EU member State.

6.10.2 Example of arrangements included in the listed scheme

A company, UK Supplier Ltd, contracts to supply telecommunication services to a related company, Redeemer Ltd, in another EU member State, such as Ireland.

A second related Irish company, Issuer Ltd, issues phone cards and sells them to UK retailers. The retailers sell the cards to UK customers, who use them to obtain telecommunication services from Redeemer Ltd. The cards say that, when they are used, Redeemer Ltd will provide the telecommunication services. Redeemer Ltd does this by buying in the services under its contract with UK Supplier Ltd.

Redeemer Ltd and Issuer Ltd argue that no VAT is due in Ireland or the UK.

NB Only taxable persons in the UK who are party to the scheme, such as UK Supplier Ltd, are required to notify. UK retailers who are not party to the scheme (because they have no knowledge of their involvement in it), and parties who are not taxable persons in the UK, are not required to notify – see paragraphs 3.2 and 3.3.

6.10.3 Examples of arrangements not included in the listed scheme

Not included are any arrangements where the person that makes the retail supplies to the final consumer belongs outside the EU; or where no UK supplier of a relevant service is involved in the scheme.

6.11 Scheme 10 – Surrender of a relevant lease

This scheme aims to allow a person to escape, or substantially reduce, the VAT incurred on opted lease rentals whilst remaining in occupation of the building.

6.11.1 The scheme's features

This scheme comprises or includes the following features:

(a) an occupier of a building (or part of a building) agrees with the landlord to the surrender or other early termination of his lease, tenancy or licence to occupy a building;

(b) the building is a capital item within the meaning of the Capital Goods Scheme (whether or not the adjustment period has expired);

(c) the occupier, or any person connected with him, is a person who:

- is a landlord of the building,
- owns it for the purposes of the Capital Goods Scheme, and
- has elected to waive exemption (also known as 'opting to tax') in relation to it;

(d) before the surrender:

- the occupier paid VAT on the rent of the building (or part of the building), and
- was unable to recover this VAT in full; and

(e) following the surrender:

- the occupier continues to occupy at least 80% of the area previously occupied, and
- pays no VAT on the rent, or pays less than 50% of the amount of VAT previously paid (comparing similar rental periods).

6.11.2 Examples of arrangements included in the listed scheme

Included are arrangements whereby:

- the occupier surrenders or terminates a taxable lease early and, despite the existence of an option to tax, the connected landlord makes a grant of a new lease that is exempt from VAT by reason of the option to tax disapplication rules;
- the occupier surrenders or terminates a taxable lease early and, despite the existence of an option to tax, the connected landlord sells the building to the occupier as an exempt from VAT by reason of the option to tax disapplication rules;
- the occupier, who is also a landlord further back in a chain of leases, arranges for all of the leases to be surrendered, leaving the occupier with the building (possibly paying a small amount of taxable ground rent to the ultimate freeholder).

7. Hallmarked schemes – Deciding whether you must notify

7.1 Decision chart

You are liable to notify use of a hallmarked scheme when all of the following tests are met:

Test	Description	Further information
1	You are a **taxable person**	Paragraph 3.2
2	You are a **party to a scheme**	Paragraphs 3.3 and 7.3
3	That scheme is **not a listed scheme**	Paragraph 3.4 and section 6
4	The **main purpose**, or **one of the main purposes**, of the scheme is for **any person** to obtain a **tax advantage**	Paragraph 7.4
5	A **relevant event** occurs	Paragraph 7.5

6	Your **turnover** exceeds either of the minimum thresholds	Paragraphs 7.6
7	Your scheme contains one or more **hallmarks** of avoidance	Paragraph 3.6 and section 10
8	You have **not already notified** HM Revenue & Customs, under the rules set out in this notice, that you are using the scheme	Paragraph 7.7
9	You have **not been provided with a scheme number** by someone who has **registered the scheme** with HM Revenue & Customs	Paragraph 7.8

Section 8 explains by when you must make your notification, the information it should contain and where to send it.

7.2 Protective notifications

If you are unsure whether you meet all of the relevant tests for notification, you may make a protective notification. In doing so you should explain which test, or tests, is causing you difficulty and why.

7.3 What is a scheme?

A scheme is any planned action entered into and includes any arrangements, transaction or series of transactions.

Engaging someone to ensure you claim all the input tax to which you are entitled, utilising an extra-statutory concession or trade facilitation measure open to all, using the grouping provisions, 'opting to tax' a property, or negotiating a new partial exemption method are not in themselves schemes. This is the case even if they involve a hallmark of avoidance (see paragraph 3.6 and section 10). However, these features may form part of a scheme. You can find more on this and further examples in Section 11.

7.4 Schemes used for the purpose of obtaining a tax advantage

A scheme is potentially notifiable if the main purpose, or one of the main purposes, of it is for any person, who might not be you, to obtain a tax advantage. You may be liable to notify before that advantage is obtained (see paragraph 7.5 below for information on the events that trigger notification), or if you are not the person obtaining the advantage.

You are only required to notify if you are a party to the scheme. If the advantage accrues to another person and you are unaware that this will happen or your role in the scheme, then you are not required to notify – see paragraph 3.3.

7.4.1 What is a 'tax advantage'?

A tax advantage happens when, as a result of the scheme:

(a) any taxable person accounts, or will account, for a lower net amount of VAT than would otherwise be the case in respect of a VAT return for any VAT accounting period starting on or after 1 August 2004;

(b) any taxable person obtains, or will obtain, in respect of any VAT accounting period starting on or after 1 August 2004, a VAT repayment that:

- he would not otherwise obtain,
- is larger than would otherwise be the case, or
- is earlier than would otherwise be the case;

(c) any taxable person recovers, or will recover, in respect of any VAT accounting period starting on or after 1 August 2004, input tax before the supplier has to account for the corresponding output tax, and the period between the two events is longer than would otherwise be the case;

(d) the amount of any taxable person's non-deductible VAT (see paragraph 7.4.2), in respect of any VAT accounting period starting on or after 1 August 2005, is less than would otherwise be the case; or

(e) in relation to any person who is not a taxable person, the amount of his non-refundable VAT (see paragraph 7.4.3), at any time on or after 1 August 2005, is less than would otherwise be the case.

7.4.2 Non-deductible VAT

VAT is non-deductible VAT when, in relation to a taxable person, it is:

- VAT that is input tax, but for which he is not entitled to credit; or
- VAT incurred by him that is not input tax and for which he is not entitled to a refund under any provision of the VAT Act 1994.

VAT is incurred by a taxable person when it is:

- VAT on the supply to him of any goods or services (including VAT on reverse charges);
- VAT on the acquisition by him from another member State of any goods; or

- VAT paid or payable by him on the importation of any goods from a place outside the member States.

7.4.3 Non-refundable VAT

VAT is non-refundable VAT when, in relation to a person who is not a taxable person:

(a) it is:

- VAT on the supply to him of any goods or services;
- VAT on the acquisition by him from another member State of any goods; or
- VAT paid or payable by him on the importation of any goods from a place outside the member States; and

(b) it is not VAT that he is entitled to be refunded under any provision of the VAT Act 1994.

7.4.4 Is the obtaining of a tax advantage a main purpose of the scheme?

There is no one factor that determines whether the obtaining of a tax advantage is the main, or one of the main, purposes of a scheme. All surrounding circumstances need to be taken into consideration. They include:

- the overall objectives of the arrangements and transactions (including the objectives of any wider corporate or VAT group to which the parties to the scheme belong; and the objectives of any persons or businesses who control the parties); and
- whether the introduction of any unnecessary, complex or costly steps would have taken place were it not for the tax advantage that can be obtained.

In general, it is likely the main purpose test would be met where, more likely than not, were it not for any VAT advantage arising, the arrangements would either have not been implemented or would have been implemented in a different manner.

Similarly, where there are two or more ways of carrying out a genuine commercial objective and the choice is determined on grounds other than the potential VAT saving but a VAT advantage (when compared to adopting one or more of the alternatives) nevertheless arises, it is unlikely the main purpose test would be met.

7.5 Relevant events that trigger notification

The requirement for you to notify is triggered when one of the following events occurs **to you**:

- You show in a VAT return, in respect of any VAT accounting period starting on or after 1 August 2004 (or 1 August 2005 when the scheme involves only hallmark 8 (face-value vouchers) and no other hallmark), a higher or lower net amount of VAT than would be the case but for the scheme.

- You make a claim (such as by submitting a voluntary disclosure), in respect of any VAT accounting period starting on or after 1 August 2004 for which a VAT return has been submitted (or 1 August 2005 when the scheme involves only hallmark 8 (face-value vouchers) and no other hallmark), for the repayment of output tax over declared or input tax credit under claimed that is greater than would be the case but for the scheme.

- The amount of non-deductible VAT (see paragraph 7.5.1 below) you incur, in respect of any VAT accounting period starting on or after 1 August 2005, would have been higher but for the scheme.

7.5.1 Non-deductible VAT incurred

VAT is, or would have been, incurred by you when it is, or would have been:

- VAT on the supply to you of any goods or services (including VAT on reverse charges);

- VAT on the acquisition by you from another member State of any goods; or

- VAT paid or payable by you on the importation of any goods from a place outside the EU.

It is, or would have been, non-deductible VAT when it is, or would have been:

- VAT that is input tax, but for which you are not entitled to credit; or

- VAT that is not input tax, and for which you are not entitled to a refund under any provision of the VAT Act 1994.

7.6 The minimum turnover thresholds

The turnover threshold is measured by reference to the **total** amount of **taxable and exempt** supplies made by:

- you; or

- where you are a member of a corporate group, **the whole group**, made up of the ultimate holding company (or entity) and all its subsidiaries, including you. For this purpose UK company law definitions used for preparing group accounts apply (section 259 of the Companies Act 1985). As a result the group will normally be made up of all the companies shown as subsidiaries in the ultimate parent's consolidated group accounts, plus any companies that are excluded from the consolidation but are subsidiaries for UK company law purposes.

For the purpose of calculating turnover, intra-corporate group transactions are included. However, intra-VAT group transactions are ignored.

7.6.1 The threshold

Your turnover exceeds the minimum threshold when the total amount of **taxable and exempt** supplies made by you (or the wider corporate group as explained above) is, or is greater than:

(a) £10 million in the year immediately prior to the VAT return period that triggers notification (see paragraph 7.5); or

(b) the appropriate proportion of £10 million in the VAT return period immediately prior to the VAT return period that triggers notification. (For example, the 'appropriate proportion' is one twelfth of £10 million (i.e. £833,334) where the VAT return period is one month; and one quarter of £10 million (i.e. £2.5 million) where the VAT return period is three months.)

7.6.2 Disaggregation

Should we find that a taxable person's business has been split in an attempt to avoid the requirement to make a notification, we will use our powers to direct that the separate entities be treated as one. If it is found later that other entities should have been included in that direction, a supplementary direction can be made to include them. The effect a supplementary direction has on the timing of a notification is explained in paragraph 8.1.2.

7.7 What if I have already notified HM Revenue & Customs?

You need only notify a scheme once.

If you enter into new arrangements that are structured in the same way as a previously notified scheme you need not notify these new arrangements. (By 'structured in the same way', we mean that the details of the scheme required to be notified under paragraph 8.4 and 8.6 are the same. The parties to the scheme and the hallmarks may be different.)

However, if you enter into new arrangements that are structured in a materially different way to a previously notified scheme, you will, subject to the necessary conditions being met (such as the turnover threshold, etc.), have to notify use of that scheme irrespective of whether the hallmarks are the same.

For hallmarked schemes that become listed schemes, see paragraph 4.4.2.

7.8 Hallmarked schemes already registered with HM Revenue & Customs

You are not required to notify us about your use of a hallmarked scheme if someone has registered it with us under the Voluntary Registration Scheme (see section 9), and they have advised you of the scheme reference number we have allocated to it (prefixed by the letters VRS).

In addition, there is no requirement to enter the reference number on a VAT return or to tell us in advance of any enquiries we wish to make that you hold the number. You should, however, keep a record of when you were advised of it.

We do not publish details of the schemes that have been registered with us, or who have registered them.

8. Hallmarked schemes – How to notify HM Revenue & Customs

8.1 By what date must I notify HM Revenue & Customs?

Your notification must be made to HM Revenue & Customs within 30 days of:

- in the case of the net amount of VAT shown in a VAT return being different to what would otherwise be the case (see the first bullet at paragraph 7.5), the due date for making the return;
- in the case of a claim being made that is greater than would otherwise be the case (see the second bullet at paragraph 7.5), the making of the claim; or
- in the case of the amount of your non-deductible VAT in respect of a VAT accounting period being less than would otherwise be the case (see the third bullet at paragraph 7.5), the due date for making a return in respect of that accounting period.

For examples of when a notification is due see paragraphs 5.1.3 to 5.1.4.

8.1.1 Early notifications

HM Revenue & Customs will accept early notifications, such as before the relevant event has taken place, provided the scheme has been implemented.

8.1.2 Directions that taxpayers are treated as one

Where HM Revenue & Customs issue a direction that a number of taxpayers should be treated as one (see paragraph 7.6.2), the due date is determined by reference to the first relevant event (see paragraph 7.5) that takes place following the issue of the direction.

8.2 How do I notify HM Revenue & Customs?

The following rule has the force of law
You must notify us either in writing or by email to the relevant address given at paragraph 8.7. The notification should be prominently headed: • **Disclosure of use of hallmarked scheme – Notification under paragraph 6(3) of Schedule 11A to the VAT Act 1994.** and give your: • business name (if you are the representative member of a VAT group, notifying as a result of a group member being involved in a notifiable scheme, also tell us the name of the member); • address; and • VAT registration number.

8.3 What information must I provide?

When notifying a hallmarked scheme you must provide all the following information, to the extent that it is known to you, and explain what information you are unable to provide and why:

- information demonstrating how the scheme works – see paragraph 8.4;
- a statement as to which hallmark or hallmarks are included in or associated with the scheme you are notifying to us – see paragraph 8.5; and
- a statement as to which specific legislation you rely upon for the tax advantage – see paragraph 8.6.

For joint notifications, see paragraph 3.3.4.

8.4 The workings of the scheme

To make a valid notification you must provide sufficient information to show:

- how the scheme works; and
- how the involvement of any party to the scheme contributes to the obtaining of the tax advantage,

including, to the extent that it is material to the obtaining of the tax advantage:

- a description of each arrangement, transaction or series of transactions – see paragraph 8.4.1;
- their sequence – see paragraph 8.4.2;
- their timing, or the intervals between them – see paragraph 8.4.3; and
- the goods or services involved – see paragraph 8.4.1.

You are **not required** to quantify the amount or expected amount of the tax advantage.

8.4.1 Describing the scheme

You must provide sufficient information so that HM Revenue & Customs can understand how the tax advantage is obtained. The degree of information to be provided will vary from scheme to scheme and the extent to which you have knowledge of other parties' intentions and circumstances.

For most notifications we recommend you include, along with the description of how the beneficiary obtains the tax advantage:

- a summary of the scheme (i.e. what the beneficiaries' tax position would be without the scheme, and whether the scheme provides them with an absolute saving or a deferral of a tax burden); and
- a diagrammatic representation of its structure (showing the participants, transaction flows, etc.).

The scheme description need only provide generic information; you do not need to provide the detail that is specific to your circumstances. For example, a step of the scheme could be described as, "building is leased to Company A" rather than, "1 High Street is leased to Bank plc." It follows that you do not need to submit copies of contracts and other documents. However, if you find it easier to explain the scheme by referring to the specific detail of your case, you may do so. You may also submit supplementary documentation if you wish.

Remember, to the extent that it is known to you, you will need to explain how the involvement of any party to the scheme contributes to the obtaining of the tax advantage. In the example given, you should go on and say whether the lease is taxed and, if so, whether any of the tax charged is recoverable by Company A/Bank plc.

8.4.2 Sequence

Where the order of the arrangements or transactions is critical to the workings of the scheme, this should be explained. You should make it clear what the precise sequence is. We recommend listing these as ‘Step 1’, ‘Step 2’, etc.

8.4.3 Timing and interval

Where the timing of, or interval between, arrangements or transactions are critical to the workings of the scheme, this should be explained.

For example, you should explain if the interval between transactions are due to take place within a short period of time of each other to take advantage of a VAT rule; over a long period to cause a VAT ‘drip feed’ effect; or timed to miss or bridge accounting periods.

8.5 Declaration of hallmarks

This need not be a standalone part of your notification; it can be included as part of your general explanation of the working of the scheme. If you are unsure whether a feature is a hallmark, say why you are unsure.

8.6 The statutory provision

You must let us know the law that you believe gives rise to the tax advantage (see paragraph 7.4.1) derived from use of the scheme. This could be:

- UK law;
- the law of another country, such as where you rely on a different tax treatment; or
- EU law, such as where you rely on the principle of ‘direct effect’ (i.e. that EU law has effect, irrespective of the provisions of UK VAT law).

8.7 Where do I send my notification?

The following rule has the force of law
Your must send your notification to either of the following addresses: **Post to:** VAT Avoidance Disclosures Unit Anti-Avoidance Group (Intelligence) HM Revenue & Customs 1st Floor, 22 Kingsway London WC2B 6NR **Or e-mail to:**

vat.avoidance.disclosures.bst@hmrc.gsi.gov.uk

8.8 What if I send my notification to another address?

If you send your notification to an address other than those given in paragraph 8.7 (for example to your local office or the National Advice Service), you will not have made a proper notification. Failure to make a proper notification will make you liable to a penalty as explained in Section 12.

8.9 How will HM Revenue & Customs deal with my notification?

We will acknowledge receipt of all notifications received at the addresses given in paragraph 8.7. However, the acknowledgement is not a confirmation that you have met your statutory obligation.

If your notification does not contain all the information set out in paragraphs 8.3 to 8.6, you may be contacted and asked to provide the required information or explain why you are unable to provide it. Only when the information (to the extent that you are able) has been provided will your obligation be discharged. If this is not done within the time limit for making a notification, you will be liable to a penalty as explained in Section 12.

Once the required information has been provided, we will consider whether we wish to investigate further at that time – see paragraph 3.10. If we do not contact you, this does not mean the arrangements are acceptable to us.

If we are already investigating your use of the notified scheme, that action will continue as appropriate.

9. Hallmarked schemes – Voluntary Registration Scheme

9.1 Why use the Voluntary Registration Scheme?

The principal objective of the rules for hallmarked schemes is to enable HM Revenue & Customs to find out about new and innovative schemes. The Voluntary Registration Scheme enables us to learn about these schemes whilst reducing the burdens on business – they are exempted from having to notify us of their use of the scheme (see paragraph 7.8).

The Voluntary Registration Scheme does not exempt a person from notifying a listed scheme.

9.2 Is it an approval system?

No. Acceptance of an application to register the details of a hallmarked scheme does not mean that we agree with the analysis that has been provided.

9.3 How do I know whether a scheme has already been registered?

We do not publish details of schemes that have been registered with us. If you apply to register a scheme that is the same as, or a variant of, a scheme that somebody else has already registered with us, we will issue you with your own unique reference number.

9.4 Who can register a scheme?

Anyone, including advisers, promoters and trade bodies, can apply to register a scheme; you need not have devised or marketed it yourself.

However, in some cases we may decide not to issue you with a reference number (see paragraph 9.9).

9.5 How do I register a scheme?

You should write or send an e-mail to the address shown in paragraph 8.7, giving us the details of the scheme you wish to register. Please make it clear in your notification that you are applying for a reference number under the Voluntary Registration Scheme.

9.6 Information to be provided

When applying to register a hallmarked scheme, you **must** provide the same information that anyone required to make a notification would. The information required is explained in paragraphs 8.3 to 8.6.

You can apply to register variations of a scheme at the same time, although we may decide to issue different reference numbers for each variation.

9.7 Will HM Revenue & Customs acknowledge my application?

Yes, we will acknowledge your application upon receipt.

9.8 How quickly are reference numbers issued?

Subject to paragraph 9.9 below, we aim to examine applications and issue reference numbers (prefixed by the letters VRS) within 10 working days of receipt.

9.9 Will a reference number always be issued?

No, the issue of a reference number is discretionary. Whilst we will normally issue reference numbers in relation to schemes, whether we agree that they work or not, we will not normally issue a reference number in relation to applications that are unclear or ambiguous, or appear to cover several different schemes rather than just one. We will also not issue a reference number for a scheme that appears to be an existing listed scheme.

9.10 What happens if a VRS reference number is not issued?

The normal rules for hallmarked schemes apply – see section 7.

10. The hallmarks

10.1 Descriptions of the 'hallmarks'

The hallmarks are described in paragraphs 10.2 to 10.8 below.

These descriptions are intended to help you decide if they appear in the scheme you are using, so that you will know whether you have to notify your use of the scheme to us. The descriptions are not a substitute for the descriptions contained in the law (see paragraph 1.4). It is your responsibility to decide whether or not a particular hallmark occurs in your scheme.

10.1.1 Connected persons

For the purposes of the hallmark descriptions a person is connected with another where:

- one of them is an undertaking in relation to which the other is a group undertaking as defined by section 259 of the Companies Act 1985 (essentially, one is the parent or subsidiary undertaking of the other, or both are subsidiaries of a common parent undertaking); or

- both of them are connected to the same trust.

A person is connected to a trust where he:

- is the settlor of the trust, or a trustee or beneficiary of it; or
- holds any shares in a company in accordance with the terms of the trust, or is a person on whose behalf such shares are held.

10.2 Confidentiality condition agreements

There is a 'confidentiality condition' hallmark when there is an agreement that prevents or limits a person from giving others details of how a scheme gives rise to a tax advantage (see paragraph 7.4.1).

The hallmark is aimed at confidentiality conditions that are intended to protect the competitive advantage of a promoter or creator of the scheme over other promoters, say because it is an innovative scheme, and is often made before a potential user has the full details of the scheme explained to them. It, therefore, applies where:

- a specific condition of confidentiality is imposed; or
- a client specifically undertakes (either in writing or verbally) not to reveal details of how a particular scheme gives rise to a tax advantage.

10.2.1 General confidentiality clauses

It is standard practice for advisers to include a 'general confidentiality condition' within their terms of engagement, prohibiting the client from passing on advice to third parties.

You need not regard a general confidentiality clause as being a confidentiality condition hallmark if it is simply imposed in relation to all advice, not merely the scheme in question. However, it is regarded as a hallmark where:

- it is introduced specifically in order to prevent or limit a person from revealing details of how a particular scheme gives rise to a tax advantage; or
- it is specifically drawn to a client's attention by an adviser when introducing a scheme to the client in order to prevent or limit him from revealing details of how the particular scheme gives rise to a tax advantage.

10.3 Agreements to share a tax advantage

There is a 'sharing a tax advantage' hallmark when there is an agreement that the tax advantage (see paragraph 7.4.1) accruing from the scheme be shared, to any extent, between the person to whom it accrues and the promoter or any other person who is a party to the scheme.

A 'promoter' is anyone who, in the course of their trade, profession or business of providing taxation services, designs or sells the arrangements entered into.

10.4 Contingent fee agreements

There is a ‘contingent fee’ hallmark when there is an agreement that payment to a promoter of a scheme is partly or wholly contingent on the tax advantage (see paragraph 7.4.1) accruing from use of the scheme.

A ‘promoter’ is anyone who, in the course of their trade, profession or business of providing taxation services, designs or sells the arrangements entered into.

10.5 Prepayments between connected persons

There is a ‘prepayment’ hallmark when the operation of a scheme involves a prepayment being made for supplies between connected persons (see paragraph 10.1.1). The prepayment may be of any amount and the time between the prepayment and the actual provision of the goods or services may be of any duration.

10.6 Funding by loans, share subscriptions or subscriptions in securities

This hallmark applies when a supply of goods or services made between two connected persons is funded (in whole or in part):

- by a loan between connected persons;
- by one person subscribing for shares in another with whom he is connected; or
- by one person subscribing in securities issued by another with whom he is connected.

‘Connected persons’ is explained at paragraph 10.1.1.

10.7 Off-shore loops

This hallmark applies when certain exported services (which allow the exporter to recover related input tax) are used to provide other services to UK persons, and these ‘imported’ services are not subject to VAT.

In detail it applies when:

(a) a person makes a supply of services covered by:

- article 3(a) of the VAT (Input Tax) (Specified Supplies) Order 1999 (exempt financial and insurance services supplied to a person who belongs outside the member States of the EU),

- article 3(b) of the VAT (Input Tax) (Specified Supplies) Order 1999 (services directly linked to the export of goods to a place outside the member States), insofar as they are supplies of a description falling within item 2 of Group 5 of Schedule 9 to the VAT Act 1994 (the making of any advance or any credit),

- article 3(c) of the VAT (Input Tax) (Specified Supplies) Order 1999 (the provision of certain intermediary insurance or financial services), or

- paragraphs 1 to 8 of Schedule 5 to the VAT Act 1994 (services supplied where received), and the recipient belongs in a country, other than the Isle of Man, which is not a member State of the EU; and

(b) the service is used or intended to be used, in whole or in part, directly or indirectly, in making to a person belonging in the UK a supply which is:

- zero-rated,

- exempt, or

- treated as made in another country (and not the UK) by virtue of section 7(10) of the VAT Act 1994.

10.8 Property transactions between connected persons

This hallmark applies when:

(a) a grant, which is not a zero-rated grant, is made of:

- any interest in, right over or licence to occupy land, or

- in relation to land in Scotland, any personal right to call for or be granted any such interest or right;

(b) the grantor or grantee of the interest or right is a person who cannot recover input tax in full;

(c) a work of any construction, alteration, demolition, repair, maintenance or civil engineering has been or is to be carried out on the land; and

(d) the grant is made to a person connected with the grantor (see paragraph 10.1.1).

10.9 Issue of face-value vouchers

This hallmark applies when:

(a) face-value vouchers are issued for consideration; and

(b) either:

- the issuer does not expect at least 75% of the vouchers to be redeemed within three years of them being issued, or

- whatever the expected redemption rate, the vouchers are issued to a connected person (see paragraph 10.1.1) outside of any VAT group to which the issuer belongs.

10.9.1 Expected redemption rates

The expected redemption rate is measured by reference to the face value of the vouchers taken together, for example:

- A business issues £1m worth of vouchers and expects £900,000 worth of those vouchers to be redeemed. That is a 90% expected redemption rate, irrespective of whether the expectation is actually met.

- A business issues vouchers that can be partly redeemed, such as may happen with certain electronic vouchers, and expects 100% of them to be redeemed but on average only 30% of the value to be redeemed. That would be a 30% expected redemption rate, again irrespective of whether the expectation is actually met.

11. Hallmarked schemes – Frequently asked questions

11.1 Use of extra statutory concessions

Q: I am using an extra statutory concession (ESC). When I use the ESC I could be seen as obtaining a tax advantage. Do I have to notify HM Revenue & Customs under the new rules?

A: No. An ESC is not, in itself, a scheme. It is a remission of revenue that allows relief in specific sets of circumstances to all businesses falling within the relevant conditions. It is authorised when strict application of the law would create an undue disadvantage or the effect would not be the one intended. However, you should remember that if an ESC is used as part of a tax avoidance scheme, that use is likely to be challenged by HM Revenue & Customs. HM Revenue & Customs may also consider withdrawing or restricting the ESC's application.

11.2 Use of partial exemption special methods

Q: I have negotiated a new partial exemption special method (PESM). It gives me a higher rate of input tax recovery compared with my previous method. Do I notify HM Revenue & Customs under the new rules?

A: No, a PESM is not a scheme. When a PESM is agreed with HM Revenue & Customs it is a fair and reasonable estimate of input tax recovery.

11.3 Changes to VAT group structures

Q: On occasions we add or remove a company from our VAT group. Changes to our group generally affect the amount of VAT declared by the group on its returns. Do we notify HM Revenue & Customs under these rules?

A: No. Making such a change does not, in itself, constitute a scheme as it can only be done on application to HM Revenue & Customs.

11.4 VAT audits

Q: I do not have the staff or expertise to check all my purchase invoices to ensure I claim all the input tax I am entitled to. I am therefore going to engage someone to do this for me, who charges a fee contingent on the amount of VAT claimed. This is not being done in conjunction with any other arrangements or transactions. Contingent fees are a hallmark of tax avoidance. Do I notify HM Revenue & Customs under the new rules?

A: No. Simply claiming all input tax to which you are entitled is not a ‘scheme’. You are not implementing arrangements or transactions to gain a tax advantage. You are simply seeking to recover the correct amount of tax.

11.5 Identifying use of hallmarks

Q: I am using a scheme, and am not sure whether it contains any hallmarks of avoidance. Should I notify my use of this scheme to protect myself from the possible imposition of a penalty at a later date?

A: You may make a protective notification if you wish. There is further information on this at paragraph 7.2. Remember, however, the presence of a hallmark of avoidance is not the only test for having to notify a scheme. A scheme is notifiable only if all the tests in paragraph 7.1 are met. If your turnover is below £10 million, for example, you do not have to notify us.

11.6 Subsidiaries funded by share capital or loans

Q: My Company is forming a subsidiary company that will supply it with goods and services. The subsidiary will be funded by share capital or a loan. For the purposes of the law we are connected persons. This is the funding by share subscriptions or loans hallmark. I will have to investigate whether this results in a tax advantage. It is difficult for me to do this, so to be safe should I notify HM Revenue & Customs under the new rules?

A: Not unless **all** the tests listed in paragraph 7.1 are met. In relation to the **tax advantage test**, the **obtaining a tax advantage** has to be a **main purpose**. The presence of a tax advantage does not automatically cause the test to be met.

12. Penalties

12.1 The penalties

The penalties for failing to make a full notification to us at the correct time are:

- 15% of the VAT saved (see paragraph 12.2 below) for listed schemes; and
- £5,000 for hallmarked schemes.

12.2 What is the VAT saved?

The VAT saved by a taxable person is the aggregate of:

- the amount by which the amount of VAT he has shown as payable in relevant VAT returns is less than the amount that he would have shown were it not for the scheme;
- the amount by which the amount of VAT he has shown as repayable in relevant VAT returns exceeds the amount that he would have shown were it not for the scheme;
- the amount by which the amount he has claimed (for example in a voluntary disclosure) exceeds the amount that he would have claimed were it not for the scheme; and,
- the amount by which the amount of non-deductible VAT (see paragraph 7.4.2) that he would have incurred were it not for the scheme exceeds that which has been incurred (to the extent that it is not already represented in the calculation).

12.2.1 Relevant VAT returns

Relevant VAT returns begin with that in which a tax advantage (see paragraph 7.4.1) first arose and end with the VAT return covering:

- the date on which the person complied with the requirement to notify; or, if earlier,
- the VAT return for the period immediately before HM Revenue & Customs notify the penalty assessment to the taxpayer.

If it is unclear which VAT returns are to be used for the calculation, we will use best judgement to determine which apply and advise you accordingly.

12.3 Will a penalty always be issued?

No, there are a number of circumstances where a penalty will not be issued. We will not issue a penalty if you:

- can demonstrate that you had a reasonable excuse for failing to notify us;

or as a result of the actions which triggered your requirement to notify you:

- are convicted of an offence under the VAT Act 1994 or other legislation; or
- are assessed for a penalty for conduct involving dishonesty under the rules relating to VAT evasion.

Civil investigations into VAT evasion are undertaken in accordance with Code of Practice 9.

12.4 Reasonable excuse

No penalty will be payable if you are able to satisfy us, or on appeal, the VAT and Duties Tribunal, that there is a reasonable excuse for your failure to notify us that you are using a scheme. Notice 700/42 Misdeclaration penalty and repeated misdeclaration penalty gives more guidance on the term ‘reasonable excuse’. If reasonable excuse does not apply, there may still be grounds for mitigation.

12.5 Mitigation

A penalty can be reduced if there are mitigating circumstances that fall short of a reasonable excuse.

The law does not define the grounds for mitigation but it specifically **excludes**:

- your lack of funds to pay any tax or penalty due;
- the fact that little or no tax has been lost; and

- the fact that you acted in good faith.

When we consider mitigation we will consider all the facts that led to the failure to notify us. The amount of mitigation allowed will depend on the specific circumstances of your case.

12.6 Issuing a penalty assessment

If you are liable to a penalty we will notify you in writing of your liability to the penalty and explain:

- the amount of the penalty;
- the reasons for the imposition of the penalty;
- how the penalty has been calculated; and
- the amount of any mitigation allowed.

An assessment for a penalty that is due will be issued even if, before that happens, the taxable person concerned ceases to be a party to the scheme that gave rise to the requirement to notify. Any penalty due is treated as recoverable as if it were VAT due from the assessed person. The penalty cannot be claimed as input tax.

12.7 Time period for issuing a penalty

No assessment to a penalty can be issued more than two years after we had sufficient facts to enable us to issue one.

13. Reconsiderations and appeals

13.1 What if I disagree with a penalty or direction?

If you disagree with:

- your liability to a penalty;
- the amount of a penalty; or
- a direction issued in the circumstances explained in paragraphs 4.3.2 and 7.6.2,

you may ask for a reconsideration to be undertaken or appeal to the VAT and Duties Tribunal.

13.2 Reconsiderations

You should write to us within 30 days of the date of the letter in which we notified our decision to you, and ask for a reconsideration to be undertaken if you think that:

- you have a reasonable excuse for the failure to notify (see paragraph 12.3); or
- there are mitigating circumstances which warrant reduction of the penalty (see paragraph 12.5).

The notification letter will give the address to which you should write asking for a reconsideration to be undertaken.

13.3 Appeals

You also have the right to appeal to an independent VAT and duties tribunal.

The Leaflet Appeals and applications to the Tribunal tells you what to do. You can request a copy of the leaflet by telephoning any of the Tribunal Centres in:

- London (0207 631 4242);
- Manchester (0161 868 6600); and
- Edinburgh (0131 226 3551).

The tribunal can consider whether there is a reasonable excuse and can also increase as well as decrease any amount of mitigation that we have allowed.

Do you have any comments?

We would be pleased to receive any comments or suggestions you may have about this notice. Please write to:

VAT Avoidance Disclosures Unit
Anti-Avoidance Group (Intelligence)
HM Revenue and Customs
1st Floor
22 Kingsway
London
WC2B 6NR

Please note this address is not for general enquiries. You should ring our National Advice Service about those.

If you have a complaint or suggestion

If you have a complaint please try to resolve it on the spot with our officer. If you are unable to do so, or have a suggestion about how we can improve our service, you should contact one of our Regional Complaints Units. You will find the telephone number under ‘Revenue & Customs' or under 'Customs and Excise' in your local telephone book. Ask for a copy of our code of practice ‘Complaints and putting things right’ (Notice 1000). You will find further information on our website at http://www.hmrc.gov.uk.

If we are unable to resolve your complaint to your satisfaction you can ask the Adjudicator to look into it. The Adjudicator, whose services are free, is a fair and unbiased referee whose recommendations are independent of Revenue & Customs.

You can contact the Adjudicator at:

The Adjudicator's Office
Haymarket House
28 Haymarket
LONDON
SW1Y 4SP

Phone: (020) 7930 2292
Fax: (020) 7930 2298
E-mail: **adjudicators@gtnet.gov.uk**
Internet: **http://www.adjudicatorsoffice.gov.uk/**