

EXPLANATORY MEMORANDUM TO
THE TAX AVOIDANCE SCHEMES (INFORMATION) REGULATIONS 2012

2012 No. 1836

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

These regulations revoke The Tax Avoidance Schemes (Information) Regulations 2004 (S.I. 2004 No.1864) (“the 2004 regulations”) and ten amending regulations, replacing them with a single consolidated instrument. The revoked regulations are listed in the Schedule to the instrument.

3. Matters of special interest to the Select Committee on Statutory Instruments

None

4. Legislative Context

4.1 Part 7 of the Finance Act (“FA”) 2004 (“Part 7”), comprising sections 306 – 319, introduced a “disclosure” regime which requires notification to HM Revenue and Customs (“HMRC”) of certain tax arrangements and proposals for arrangements (“schemes”).

4.2 The regime applies to income tax, capital gains tax, corporation tax, inheritance tax (“IHT”) and stamp duty land tax (“SDLT”). The income tax rules are applied to National Insurance Contributions by regulations made under the Social Security Administration Act 1992. There is a separate regime for value added tax.

4.3 Disclosure requires certain persons, usually promoters, to disclose information about schemes falling within certain descriptions, which are prescribed in “descriptions” regulations. There are separate descriptions regulations for IHT, SDLT and other taxes. A scheme reference number (“SRN”) system identifies the users of schemes – when a promoter discloses a scheme, HMRC allocate a SRN and notify it to the promoter; the promoter must pass information relating to the SRN to clients who in turn must identify themselves to HMRC by reporting the information back to HMRC, sometimes on a return, sometimes separately. In addition promoters must periodically provide HMRC with information about clients; clients must pass SRN information to other users of a scheme; and intermediaries may be required to provide HMRC with information leading to the identification of the promoter of a scheme.

4.4 The Tax Avoidance Schemes (Information) Regulations prescribe the information to be provided, the time limits for doing so, and whether SRN information is to be included in a return or provided separately.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

• *What is being done and why*

7.1 Tax avoidance represents a significant part of the UK tax gap. It is not in itself illegal, but it involves using the tax law to obtain a tax advantage that Parliament never intended. It frequently involves contrived, artificial transactions that serve no purpose other than to reduce tax liability. And it enables some taxpayers to gain an unfair advantage, undermining confidence in the tax system.

7.2 HMRC's anti avoidance strategy has three core elements:

- Preventing avoidance at the outset where possible;
- Detecting it early where it persists;
- Countering it effectively by challenge by HMRC

7.3 The disclosure regime is a key component of the detection element of the strategy. It also informs counteraction and contributes to preventing avoidance by affecting the economics of the promotion of avoidance schemes.

• Consolidation

7.4 The 2004 regulations have now been amended ten times. It had been intended to consolidate earlier, but the exercise was deferred to include further planned amendments.

7.5 The consolidation has involved a certain amount of re-ordering to achieve a more rational and clearer structure. Other changes correct some typographical errors, and aim for greater consistency of phraseology. One regulation (regulation 9 of the 2004 regulations) became redundant as a consequence of reforms to the penalties regime in Schedule 24 to FA 2007, and is omitted.

7.6 While the primary purpose of the new regulations is consolidation, some minor but substantive changes are made. These are:

- **Regulation 3(5) of the 2004 regulations (exemption from duty to disclose more than once)** Section 309 FA 2004 requires users of a scheme to make a disclosure when the promoter is off-shore and does not himself disclose. Section 310 requires users to disclose when there is no promoter, including cases where the promoter is prevented from disclosing by legal professional privilege (“LPP”) – in such cases the promoter is deemed not to be a promoter. Regulation 3(5) of the 2004 regulations exempts users of in-house schemes, or where LPP applies, from disclosing the same or a similar scheme under section 310 more than once. It mirrors a similar rule for promoters in section 308(5) FA 2004. There is no reason why the rule should not also apply where the promoter is off-shore and the user has to disclose under section 309. Regulation 4(4) in these 2012 regulations extends the rule accordingly.
- **Regulation 4(6) of the 2004 regulations (non-business day rule)** This excludes non-business days (weekends, bank holidays, Good Friday and Christmas Day) from the computation of time limits and is intended to apply where the time limit is short.

However:

- it applies to cases under regulation 4(5) (disclosure where there is no promoter) where the time limit is 30 days; but
- not to cases under regulations 8A (pre-disclosure enquiry and supporting information), 8B (higher penalties following Tribunal order to disclose) or 8C (information to be provided by intermediaries), where the period is 10 or 14 days.

Regulation 2(3) in these 2012 regulations applies the rule to cases where the period is 14 days or less, disapplying it from cases under old regulation 4(5) (now 5(8)) and extending it to cases under old regulations 8A,8B and 8C (now 14, 16 and 15).

- **Regulation 5 of the 2004 regulations (statutory clearances)** This allows promoters who expect to make a clearance application on behalf of a client to defer disclosure until the scheme is implemented or they no longer expect to make the application. This deferment is inconsistent with the policy behind amendments in FA 2010 designed to ensure early disclosure of schemes. The provision has been little used, and recently not at all. It is omitted in these 2012 regulations.
- **Regulations 8(8A) and (11A) of the 2004 regulations (rules determining whether SRN information goes on returns or is reported separately in IHT cases)** These provisions (regulations 9(5) and 10(6) in the 2012 regulations) are reworded in line with the corresponding provisions for other taxes, so that the obligation to report SRN information is limited to parties who expect a tax advantage.

- **Regulation 8(16) of the 2004 regulations (definition of “filing date”)** Regulation 2(2) of these 2012 regulations extends the definition to IHT cases.
- **Regulation 8(10) of the 2004 regulations (timing and manner of reporting SRN information by an employer)** regulation 12(3) of these 2012 regulations amends the rules to take account of the phased introduction of ‘Real Time Information’ for employers providing Income Tax Pay As You Earn information.

8. Consultation outcome

8.1 As these regulations are primarily a consolidation exercise no formal consultation was undertaken. A draft of the regulations was shown to those (accountancy firms and representative bodies) who had responded to previous consultations, and the final text reflects comments that were made. Attention was drawn to the matters outlined at paragraph 7.6 above, and no objection was raised.

9. Guidance

9.1 The existing guidance will be amended to update references to the regulations.

10. Impact

10.1 The impact of consolidation is nil.

10.2 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

11. Regulating small business

11.1 This is a consolidation exercise and the changes will have no impact on admin burden or compliance costs. The legislation applies to small business. Businesses of any size, develop, market and use avoidance schemes. HMRC does not expect this measure will have a significant effect on small businesses either in absolute terms or proportionately.

12. Monitoring & review

The need for further consolidation will be considered in the light of future amendments.

13. Contact

David Easton at HMRC Tel: 0207 147 2418 or email: david.easton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.