

**EXPLANATORY MEMORANDUM TO
THE NATIONAL INSURANCE CONTRIBUTIONS (APPLICATION OF PART 7 OF
THE FINANCE ACT 2004) REGULATIONS 2007**

2007 No. 785

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

- 2.1 The above Regulations come into force on 1 May 2007.
- 2.2 The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007 make provisions requiring, or relating to, the disclosure of information in relation to notifiable contribution arrangements.
- 2.3 Those provisions correspond to or apply, with certain modifications, provisions requiring, or relating to, the disclosure of information in relation to notifiable income tax arrangements.

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

None

4. Legislative Background

Income Tax

- 4.1 Part 7 of Finance Act 2004 ("the Act")(sections 306 – 319) provides for the notification to the Commissioners of certain tax arrangements and proposals for those arrangements ("schemes").
- 4.2 Section 306 of the Act provides that the schemes required to be notified are those which:
- fall within any description prescribed by the Treasury;
 - enable, or might be expected to enable, any person to obtain a tax advantage in relation to any tax that is so prescribed in relation to arrangements of that description, and
 - are such that the main benefit, or one of the main benefits that might be expected to arise from the arrangements is the obtaining of a tax advantage.

- 4.3 “Tax” is defined in section 319 of the Act as income tax, capital gains tax, corporation tax, petroleum revenue tax, inheritance tax, stamp duty land tax, or stamp duty reserve tax.
- 4.4 The powers to prescribe arrangements in relation to income tax (and capital gains tax and corporation tax) have been exercised in The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (SI 2004/1543) which came into force on 1 August 2006.
- 4.5 Where there has been a failure to fulfil the obligation to notify the Commissioners may seek to impose a penalty. A person who fails to disclose a scheme is liable to an initial penalty of up to a maximum of £5,000. Where after this initial penalty is imposed the failure continues then a further daily penalty of up to a maximum £600 per day will be imposed. Promoters who fail to give a registration number to their client are also liable to a maximum penalty of £5,000. Initial penalties are determined by the Special Commissioners and there is a right of appeal against the imposition of the penalty. Scheme users who fail to show scheme registration numbers on tax returns are liable to an initial penalty of £100 rising to £500 for a second failure and £,1000 for third and subsequent failures.

National Insurance Contributions

- 4.6 Section 7 of the National Insurance Act 2006 inserts section 132A Social Security Administration Act 1992.
- 4.7 Section 132A provides that the Treasury may make provisions requiring, or relating to, the disclosure of information in relation to any notifiable contribution arrangements or notifiable contribution proposal for arrangements.
- 4.8 Subsection (3) of section 132A defines “notifiable contribution arrangement” and “notifiable contribution proposal” for arrangements. “Notifiable arrangements” are those that:
- might be expected to provide any person with an advantage in relation to a contribution; and
 - are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage
- 4.9 The only provisions which may be made under section 132A are provisions corresponding to or applying, with or without modification, relevant tax provisions requiring, or relating to, the disclosure of information in relation to income tax avoidance arrangements.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

These Regulations are subject to annulment and do not amend primary legislation. Accordingly, no statement of compatibility with the European Convention on Human Rights is required.

7. Policy background

7.1 Tackling avoidance is a key element of the Government's tax and national insurance contributions policy strategy, which is aimed at making it easier for businesses and individuals to comply with their obligations whilst tackling those who abuse the system.

7.2 One of the features of the tax and contributions systems that provides avoidance schemes breathing space is the existence of information gaps. HMRC generally has powers to open enquiries into returns, but not to enquire into schemes in themselves. The filing date for PAYE returns is months after the end of the period to which the return relates. So it may be long after an avoidance scheme has been used that HMRC receives a return and can open enquiries.

7.3 The Commissioners' anti-avoidance strategy has four main elements:

- To discourage employers from using schemes. This includes a critical appraisal of all new legislation to reduce the potential for avoidance as well as publicising successes in closing down avoidance schemes.
- To identify as early as possible schemes that are being used.
- To challenge avoidance schemes by contesting returns and, where necessary, pursuing the matter through the Courts.
- To produce legislative changes that will close down avoidance schemes where litigation is not appropriate or where the amount of tax and or contributions at stake is particularly large.

7.5 These Regulations were published in draft on the HMRC website on 16 August 2006 for consultation. No significant comments were received. Comments were received from a small number of tax practitioners and representative bodies and HMRC's response is published on the HMRC website.

8. Impact

HMRC has undertaken a Regulatory Impact Assessment on the measures contained in the Bill which became the National Insurance Contributions act 2006. The Assessment is published on the HMRC website hmrc.gov.uk/ria-nibillo5.pdf: it concluded that the impact of the Act would be minimal.

9. Contact

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