

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL INSURANCE CONTRIBUTIONS (APPLICATION OF PART 7 OF**  
**THE FINANCE ACT 2004) (AMENDMENT) (No. 2) REGULATIONS 2009**

**2009 No. 612**

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

**2. Purpose of the instrument**

These Regulations (“the (No 2) NICs amendment regulations”) amend the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2004 (“the principal regulations”). They apply to National Insurance Contributions (“NICs”) provisions of the Tax Avoidance Schemes (Information) (Amendment) Regulations 2009 (“the 2009 tax amendment regulations”), which simplify the procedure under which users of notified avoidance schemes report scheme reference numbers and other information to HMRC.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**  
None

**4. Legislative Context**

***Income Tax***

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

4.2 Disclosure requires certain persons, usually the promoter, to disclose information about schemes falling within certain descriptions within 5 days of the scheme’s being made available or implemented. A scheme reference number (SRN) system identifies the users of the schemes – when a promoter discloses a scheme, HMRC allocate a SRN and notify it to the promoter; the promoter must pass it to clients who in turn identify themselves as users of the scheme by reporting it back to HMRC, along with certain other information. Users normally report SRNs on their tax returns, but in some cases must report them separately. The information to be provided, the cases in which SRNs are reported in returns or separately, and the time limits for doing so are prescribed by regulations.

4.3 Following formal consultation in 2007, Part 7 and the principal regulations were amended by the Finance Act 2008 and the Tax Avoidance (Information) (Amendment) Regulations 2008 (SI 2008/1947) (“the implementing regulations”) to close loopholes in the SRN system, in particular the way SRNs pass from promoters to users. In the course of the debate in the Public Bill Committee the Financial Secretary to the Treasury said that HMRC would continue discussions about issues which had arisen from the consultation relating to the way users report SRNs back to HMRC. The pre-Budget Report confirmed that further changes would be made to simplify and improve these procedures, and the Tax Avoidance Schemes (Information) (Amendment) Regulations 2009 give effect to this.

### ***National Insurance Contributions***

4.4 Section 7 of the National Insurance Act 2006 inserts section 132A Social Security Administration Act 1992.

4.5 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.

4.6 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.

4.7 The principal regulations corresponded to or applied the tax provisions as they stood in May 2007. They were amended with effect from 1 November 2008 by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2008 (SI 2008/2678) in respect of changes made to the tax regime in 2007 and 2008. They were further amended by the National Insurance Contributions (Application of Part 7 of the Finance Act) (Amendment) Regulations 2009 (SI 2009/208), coming into effect on 1 April 2009. These transfer to the new Tribunal certain functions of the Special Commissioners of Income Tax in relation to disclosure, and reflect provisions in the Transfer of Functions and Revenue and Customs and Appeals Order 2009 (S.I. 2009/56) which transfer corresponding functions in relation to tax.

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

7.2 HMRC's anti-avoidance strategy has four main elements:

- To discourage taxpayers from using schemes. This includes a critical appraisal of all new legislation to reduce the potential for tax 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 at stake is particularly large.
- 7.3 Part 7 and instruments made under it are intended to achieve early identification of avoidance schemes and the SRN system to identify who is using them.
- 7.4 There were defects in the SRN system and not all users received a SRN. Finance Act 2008 and the implementing regulations enhanced the SRN system to ensure all users of notifiable schemes receive a SRN. The 2009 tax amendment regulations focus primarily on the procedure for users to report SRNs to HMRC. The (No 2) NICs amendment regulations correspond to those regulations and apply to NICs relevant changes to the tax regime.
- 7.5 The main change is to the time a user must first report the SRN, which is amended to remove an unnecessary complication. The relevant regulation has also been recast for greater transparency.
- 7.6 The tax regulations also prescribe information to be included in a new form for SRNs to be passed from promoters to their clients, and from clients to other users. It is not necessary to provide explicitly for this in the NICs amendments as the drafting is such that the reference in the principal regulations to the relevant tax regulation will update for the change automatically.

## **8. Consultation outcome**

The 2009 tax amendment regulations follow from a formal consultation initiated in November 2007, and the (No 2) NICs amendment regulations follow automatically from the tax changes. They have not themselves been consulted upon.

## **9. Guidance**

A copy of the guidance issued by HMRC has been placed in the libraries of both Houses of Parliament.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is limited to those which engage in avoidance schemes.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has been prepared covering the package of measures, which includes provisions in the Finance Act 2008, the tax amendment regulations and these NICs amendment regulations. It is available at <http://www.hmrc.gov.uk/ria/users-disclosed-tax-avoid-schemes.pdf>

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The purpose of the legislation is to simplify and improve the procedures under which promoters pass scheme reference number information to their clients, and users

of schemes pass information to HMRC. In so far as the legislation simplifies procedures it represents an easement for small business, as for large.

11.3 The reasons for not exempting small businesses from obligations in relation to scheme reference numbers are:

- Revenue protection. Small businesses may promote or use avoidance schemes where tax at risk is significant and disproportionate to the size of the business;
- Fairness. Avoidance puts compliant businesses, large and small, at a disadvantage and distorts competition.

## **12. Monitoring & review**

Review of the effects of the package of changes, including the 2008 Finance Act changes, is expected 3 years from implementation of the latter on 1 November 2008.

## **13. Contact**

David Easton at HM Revenue and Customs Tel: 020 7147 2418 or email: [David.Easton@hmrc.gsi.gov.uk](mailto:David.Easton@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.