

EXPLANATORY MEMORANDUM TO
THE TAX AVOIDANCE SCHEMES (PRESCRIBED DESCRIPTIONS OF
ARRANGEMENTS) (AMENDMENT) REGULATIONS 2010

2010 No. 2834

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These regulations ("the amending regulations") amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (SI 2006/1543) ("the principal regulations"). The principal regulations prescribe the descriptions of tax schemes which certain persons, normally the promoter of the scheme, are required to provide early information ("disclose") to HMRC
 - 2.2 The amending regulations amend certain of the existing descriptions to improve their focus upon tax avoidance.
3. **Matters of special interest to the Select Committee on Statutory Instruments**

None.
4. **Legislative Context**
 - 4.1 Part 7 of Finance Act ("FA") 2004 (sections 306 – 319) provides for the notification, or "disclosure", to the Commissioners of certain tax arrangements and proposals for those arrangements (hereafter referred to as "schemes").
 - 4.2 Section 306 provides for schemes to be disclosed if they:
 - Enable, or might be expected to enable, any person to obtain an advantage in relation to one of the taxes listed in section 318 ("advantage" is also defined in section 318);
 - Are such that the main benefit, or one of the main benefits, that might be expected to arise from the scheme is that tax advantage; and
 - The scheme falls within a description prescribed in Treasury regulations.
 - 4.3 Sections 308, 309 and 310 require certain persons to disclose information about schemes falling within certain descriptions. The

requirement usually falls on the promoter who must explain how the scheme works within 5 days of marketing the scheme, making it available for implementation or becoming aware that it has been implemented.

- 4.4 The principal regulations prescribe the descriptions of schemes required to be disclosed. There are currently 8 descriptions:
- Description 1: Confidentiality where promoter involved;
 - Description 2: Confidentiality where no promoter involved;
 - Description 3: Premium fee;
 - Description 4: Off market terms;
 - Description 5: Standardised tax products;
 - Description 6: Loss schemes;
 - Description 7: Leasing arrangements;
 - Description 8: Pensions.

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 the 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; and
- 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 of FA 2004, section 98C of TMA, and instruments made under them are intended to achieve early identification of avoidance schemes.

7.4 Part 7 applies across all of the direct taxes. However, the disclosure rules are focused upon the areas at high risk from avoidance. The arrangements prescribed in secondary legislation schemes are limited to those that concern income tax, corporation tax, capital gains tax and stamp duty land tax.

7.5 The descriptions are primarily targeted at new and innovative tax schemes and are intended to redress a timing information gap that exists in relation to the prescribed taxes. For example, the filing date for income tax and corporation tax returns is many 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.

7.6 The purpose of the amending regulations is to improve the targeting of the existing descriptions in the principle regulations upon avoidance. The two confidentiality descriptions and the premium fee description are amended to remove weaknesses identified by HMRC. The premium fee description is amended to remove certain unnecessary disclosures. The off market terms description is removed because it is no longer necessary.

- ***Consolidation***

7.7 It is not intended to consolidate the regulations at this time.

8. Consultation outcome

Draft regulations were consulted upon as part of a package of measures revising the disclosure of tax avoidance schemes (DOTAS) regime following Pre Budget Report 2009. Respondents were broadly content.

9. Guidance

Revised guidance setting out HMRC's approach to disclosure obligations is being placed in the libraries of both Houses.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those that engage in tax 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 these regulations. It is available at: <http://webarchive.nationalarchives.gov.uk/20091222074811/http://hmr.c.gov.uk/budget2010/strength-revise-dotas-ia-5295.pdf>.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 The purpose of the legislation is to identify the detail of schemes seeking to avoid tax and to identify those who use such schemes.
- 11.3 The reasons for not exempting small businesses from obligations or penalties are:
- Revenue protection. Small businesses may promote or use avoidance schemes where the tax at risk is significant and disproportionate to the size of the business; and
 - Fairness. Avoidance puts compliant businesses, large and small, at a disadvantage and distorts competition.

12. Monitoring & review

A review of the effects of the measure is expected 3 years from implementation on 1 January 2011.

13. Contact

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