

2009 No. 611

TAXES

**The Tax Avoidance Schemes (Information) (Amendment)
Regulations 2009**

<i>Made</i>	- - - -	<i>11th March 2009</i>
<i>Laid before the House of Commons</i>		<i>11th March 2009</i>
<i>Coming into force</i>	- -	<i>1st April 2009</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 312, 312A and 313 of the Finance Act 2004(a):

Citation and Commencement

1.—(1) These Regulations may be cited as the Tax Avoidance Schemes (Information) (Amendment) Regulations 2009 and shall come into force on 1st April 2009.

(2) Regulation 3 has effect in relation to duties under sections 312 or 312A of the Finance Act 2004 which arise on or after 1st April 2009.

(3) Regulation 4 has effect in relation to—

- (a) reference numbers notified to a person under sections 311, 312 or 312A of the Finance Act 2004 on or after 1 April 2009, where that person has a duty under section 313 of that Act; and
- (b) claims under either of the provisions mentioned in paragraph (14) of the substituted regulation 8 below made on or after 1 April 2009.

Amendment of the Tax Avoidance Schemes (Information) Regulations 2004

2. The Tax Avoidance Schemes (Information) Regulations 2004(b) are amended as follows.

3. For Regulation 7 (prescribed information under sections 312 and 312A)(c) substitute—

“7. For the purposes of sections 312(2) and (5) (duty of promoter to notify client of number) and 312A(2) (duty of client to notify parties of number) the prescribed information is—

- (a) the name and address of the promoter;

(a) 2004 c.12: the relevant part of the Act, Part 7, was amended by section 108 of the Finance Act 2007 (c. 11) and Schedule 38 to the Finance Act 2008 (c. 9). Section 312 was amended and section 312A inserted by paragraph 4 of Schedule 38 to the Finance Act 2008. Section 318 defines “prescribed” as prescribed in regulations made by the Board. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Inland Revenue, however expressed, shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(b) S.I. 2004/1864 as amended by S.I. 2004/2613, 2005/1869, 2006/1544, 2007/2153, 2007/3103 and S.I. 2008/1947.

(c) Regulation 7 was substituted by S.I. 2008/1947.

- (b) the name, or a brief description of the notifiable arrangements or proposal;
- (c) the reference number (or if more than one, any one reference number) allocated under the provisions of section 311; and
- (d) the date that the reference number was—
 - (i) sent by the promoter to the client; or (as the case may be)
 - (ii) sent to any other person by the client under section 312A(2).”.

4. For Regulation 8 (prescribed information under section 313: timing and manner of delivery)(a) substitute—

“8.—(1) For the purposes of section 313(1) (duty of parties to notifiable arrangements to notify HMRC of number etc.) the prescribed information is that specified in whichever of paragraphs (4) or (5) is applicable.

(2) For the purposes of section 313(3)(a) (cases in which the prescribed information is to be included in returns) the prescribed cases are those specified at paragraphs (6) to (8).

(3) For the purposes of section 313(3)(b) (cases in which the prescribed information is to be provided separately)—

- (a) the prescribed cases are those specified at paragraphs (10) to (14); and
- (b) the prescribed times are those specified at paragraph (15).

(4) In the cases prescribed at paragraphs (6) to (8) the prescribed information is—

- (a) the reference number allocated by HMRC under section 311 to the notifiable arrangements or proposed notifiable arrangements; and
- (b) the year of assessment, tax year or accounting period (as the case may be) in which, or the date on which, the person providing the information expects a tax advantage to be obtained.

(5) In the cases prescribed at paragraphs (10) to (14) the prescribed information is—

- (a) the name and address of the person providing it;
- (b) any National Insurance number, tax reference number, PAYE reference number or other personal identifier allocated by HMRC to the person to whom the information relates;
- (c) the reference number allocated to the scheme by HMRC under section 311 to the notifiable arrangements or proposed notifiable arrangements;
- (d) the year of assessment, tax year or accounting period (as the case may be) in which, or the date on which, the person providing the information or, in the case of paragraph (10), an employee of that person, expects to obtain a tax advantage by virtue of the notifiable arrangements;
- (e) the name of the person providing the declaration as to the accuracy and completeness of the notification; and
- (f) the capacity in which the person mentioned in sub-paragraph (e) is acting.

(6) Subject to paragraphs (10), (12) and (13), in the case of a person who—

- (a) expects an advantage to arise in respect of his liability to pay, entitlement to a repayment of, or to a deferment of his liability to pay, income tax or capital gains tax as a result of notifiable arrangements; and

(a) Regulation 8 has been amended by S.I. 2005/1869 and S.I. 2006/1544.

- (b) is required to make a return to HMRC by a notice under section 8 or 8A of the Taxes Management Act 1970 (income tax and capital gains tax: personal return and trustee's return)(a), in respect of income tax or capital gains tax,

the prescribed information shall be included in the return under that section which relates to the year of assessment in which the person first enters into a transaction forming part of the notifiable arrangements and in the return for each subsequent year of assessment until the advantage ceases to apply to that person.

This paragraph does not apply if the advantage arises in respect of a partner's share of partnership profits or gains.

- (7) Subject to paragraphs (10), (12) and (13), in the case of a company which—

- (a) expects a tax advantage to arise in respect of its liability to pay, entitlement to a repayment of, or to a deferment of its liability to pay, corporation tax as a result of notifiable arrangements; and

- (b) is required to make a return to HMRC by a notice under paragraph 3 of Schedule 18 to the Finance Act 1998 (company tax return)(b), in respect of corporation tax,

the prescribed information shall be notified to HMRC in the return under that paragraph covering the period in which the company first enters into a transaction forming part of the notifiable arrangements and in the return covering each subsequent period until the tax advantage ceases to apply to the company.

This paragraph does not apply if the advantage arises in respect of a partner's share of partnership profits or gains.

- (8) Subject to paragraphs (10) to (13), in the case of a partnership—

- (a) which expects an advantage to arise in respect of a partner's liability to pay, entitlement to a repayment of, or to a deferment of the partner's liability to pay any of the prescribed taxes in respect of partnership profits or gains as a result of notifiable arrangements; and

- (b) in respect of which a return is required to be made to the Board by virtue of a notice under section 12AA of the Taxes Management Act 1970 (partnership return)(c) in respect of any of the prescribed taxes,

the prescribed information shall be included in the returns specified in paragraph (9) covering the period in which the partnership first enters into a transaction forming part of the notifiable arrangements and in the returns covering each subsequent period until the tax advantage ceases to apply to the partner in question.

- (9) The returns referred to in paragraph (8) are—

- (a) the partnership's return under section 12AA of the Taxes Management Act 1970; and

- (b) the return under section 8 or 8A of that Act, or under paragraph 3 of Schedule 18 to the Finance Act 1998, of the partner in respect of whom an advantage is expected.

(a) 1970 c. 9; section 8 was substituted, together with section 8A, by section 90(1) of the Finance Act 1990 (c. 29) and was amended by section 104(1) to (3) of the Finance Act 1995 (c. 4), section 121(1) to (3) of, and Part 5(6) of Schedule 41 to, the Finance Act 1996 (c. 8), paragraph 359 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5), ("ITTOIA"), section 88 of the Finance Act 2007 (c. 11) and paragraph 8 of Schedule 12 to the Finance Act 2008 (c. 9). Section 8A was amended by section 178(2) of the Finance Act 1994, sections 103(3) and (4) and 104(1) of the Finance Act 1995, section 121(1) to (3) of, and Part 5(6) of Schedule 41 to, the Finance Act 1996, paragraph 360 of Schedule 1 to ITTOIA, section 89 of the Finance Act 2007 and paragraph 9 of Schedule 12 to the Finance Act 2008.

(b) 1998 c. 36; paragraph 3 of Schedule 18 was amended by paragraph 385(1) of Schedule 1 to the Income Tax Act 2007 (c. 3).

(c) Section 12AA was inserted by section 184 of the Finance Act 1994 (c. 9) and was amended by sections 104(6) and 115(4) of the Finance Act 1995, sections 121(6) and (7), 123(1) to (3) and 124(4) of, and Part 5(6) of Schedule 41 to, the Finance Act 1996, paragraph 3 of Schedule 19 to the Finance Act 1998, paragraph 18 of Schedule 29 to the Finance Act 2001 (c. 9), paragraph 363 of Schedule 1 to ITTOIA, section 90 of the Finance Act 2007 and paragraph 11 of Schedule 12 to the Finance Act 2008.

(10) In the case of a person who is the employer of an employee, by reason of whose employment a tax advantage is expected to arise to any person in respect of income tax, corporation tax or capital gains tax as a result of notifiable arrangements—

- (a) paragraphs (6) to (8) shall not apply; and
- (b) the prescribed information shall be provided separately to HMRC in such form and manner as they may specify by the time in paragraph (15).

(11) In the case of a person who would be obliged to comply with a duty under paragraphs (6) to (8), but is not required, in respect of a year of assessment, accounting period or tax year—

- (a) in the case of notifiable arrangements to which paragraph (6) applies, to make a return under either of the provisions mentioned in paragraph (6)(b);
- (b) in the case of notifiable arrangements to which paragraph (7) applies, to make a return under the provision referred to in paragraph (7)(b); or
- (c) in the case of notifiable arrangements to which paragraph (8) applies, to make a return under any of the provisions in paragraph (9);

the person must provide the information specified in paragraph (5) separately to HMRC in such form and manner as they may specify by the time in paragraph (15).

(12) In a case of a person who is obliged to comply with a duty under paragraphs (6) to (8) and—

- (a) the relevant return is not delivered by the filing date; or
- (b) the relevant return is delivered by the filing date but does not include the prescribed information;

paragraphs (6) to (8) shall not apply and the prescribed information shall be provided separately to HMRC in such form and manner as they may specify by the time in paragraph (15).

(13) In a case where—

- (a) a person is required to provide information relating to more than one reference number;
- (b) the information is included in a return under paragraphs (6) to (8); and
- (c) the number of reference numbers in relation to which information is required exceeds the number of spaces allocated to the information on the return form;

the information relating to so many of the reference numbers as exceeds the number of allocated spaces shall be provided separately to HMRC in such form and manner as they may specify by the time in paragraph (15).

(14) In addition to the duty under any other paragraph above, in a case where the arrangements give rise to a claim submitted separately from the return under—

- (a) section 261B of the Taxation of Chargeable Gains Act 1992 (treating trade loss etc as CGT loss)(a); or
- (b) Part 4 of the Income Tax Act 2007 (loss relief)(b);

the prescribed information shall be provided separately to HMRC in such form and manner as they may specify at the time in paragraph (15).

(15) The prescribed times for providing information separately under paragraphs (10) to (14) are—

- (a) in the case of paragraph (10), any time during the period ending on the date on which—

(a) 1992 c. 12; section 261B was inserted by paragraph 329 of Schedule 1 to the Income Tax Act 2007 (c. 3).
(b) 2007 c. 3.

- (i) the return under regulation 73 of the Income Tax (Pay As You Earn) Regulations 2003^(a) is or would be due in respect of the tax year in which the employer first enters into a transaction forming part of the notifiable arrangements; and
 - (ii) the return for each subsequent year is or would be due until an advantage ceases to apply to any person;
- (b) in the case of paragraph (11)—
- (i) for sub-paragraph (a), any time during the period ending on 31st January next following the end of the year of assessment in question;
 - (ii) for sub-paragraph (b), any time during the period ending on the date defined as the filing date for the purposes of paragraph 14 of Schedule 18 to the Finance Act 1998 in respect of the period of account in question;
 - (iii) for sub-paragraph (c), any time during the period ending on the earliest date by which the person in question could be required to file a return under section 12AA of the Taxes Management Act 1970, determined in accordance with whichever of subsections (4) and (5) of that section is applicable;
- (c) in the case of paragraphs (12) and (13), any time during the period ending on the filing date for the relevant return;
- (d) in the case of paragraph (14), the time that the claim is made;
- (16) For the purposes of paragraph (15)(c) “the filing date” is whichever date in paragraph (i) to (iii) of paragraph (15)(b) applies to the relevant return.
- (17) This regulation does not apply to information provided in respect of the SDLT Arrangement Regulations^(b).”.

Mike Eland
Dave Hartnett

11th March 2009

Two of the Commissioners for Her Majesty’s Revenue and Customs

(a) S.I. 2003/2682.
(b) S. I. 2005/1868.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tax Avoidance Schemes (Information) Regulations 2004 (“the 2004 Regulations”) and come into force on 1st April 2009 for reference numbers notified and claims made on or after that date.

Regulation 3 substitutes regulation 7 of the 2004 Regulations which prescribes the information to be provided under the duties to notify information relating to the reference number under sections 312 and 312A of the Finance Act 2004 (which were substituted and inserted by the Finance Act 2008 to ensure that all users of a notifiable scheme receive a reference number). This information is to be provided by a promoter to a client or a client to other parties.

Regulation 4 substitutes regulation 8 of the 2004 Regulations which prescribes the information to be provided under the duty of parties to notify Her Majesty’s Revenue and Customs of information relating to the reference number under section 313 of the Finance Act 2004. This regulation is amended to change the period in relation to which the user first has to notify the reference number and to specify the cases in which the information must be notified separately from returns.

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

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STATUTORY INSTRUMENTS

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