

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL TAX ENFORCEMENT (DISCLOSABLE
ARRANGEMENTS) REGULATIONS 2020

2020 No. 25

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument implements Council Directive (EU) 2018/822. It requires taxpayers and their advisers to provide details of certain types of cross-border arrangements to HMRC, where the arrangements have features commonly seen in schemes used to avoid or evade tax. This will provide HMRC with additional information to identify and challenge offshore non-compliance, and deter people from engaging in aggressive tax arrangements. HMRC will share the information received with tax authorities in other European Union (EU) Member States.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument requires information to be disclosed in relation to arrangements in which persons participated on or after 25 June 2018. Authority for this limited retrospective effect is provided by section 84(2)(b) of the Finance Act 2019.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 On 25 June 2018, Council Directive (EU) 2018/822 came into force, requiring Member States to implement legislation mandating reporting of certain types of cross-

border arrangements to tax authorities. Tax authorities will then share this information with one another. This instrument transposes that Directive into United Kingdom law.

- 6.2 This instrument is made under the power in section 84 of the Finance Act 2019. This is the first use of that power. That power only allows regulations to be made if the Chancellor of the Exchequer has laid a report before the House of Commons setting out how the power will be exercised if a negotiated withdrawal agreement and a framework for the future relationship with the European Union have been ratified, or if they have not been ratified. That report was laid on 08 January 2020.

7. Policy background

What is being done and why?

- 7.1 Council Directive (EU) 2018/822 is intended to support Member States in tackling offshore tax avoidance and tax evasion, by requiring taxpayers and intermediaries to disclose details of certain types of cross-border arrangements to the tax authorities. Arrangements will be reportable under these regulations if they meet one of a number of hallmarks set out in the Directive. The hallmarks in the Directive are features and characteristics commonly seen in arrangements that could be used to avoid or evade tax. Tax authorities will share the information received with one another to enable them to identify and challenge tax non-compliance in their jurisdictions. This instrument transposes that Directive by setting out the obligations on taxpayers and intermediaries, as well as the penalties for non-compliance.
- 7.2 This Directive is one of a number of international transparency initiatives developed over the last ten years. It will provide tax authorities with more information and data to better identify and challenge non-compliance by people who are hiding money offshore or using artificial structures to obtain a tax advantage. This builds on previous tax transparency initiatives, including the common reporting standard and country by country reporting.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom (UK) from the European Union (EU) because the instrument transposes a EU Directive into UK law and will continue to have effect after the withdrawal of the UK from the EU during any implementation period, as set out in Article 127 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

9. Consolidation

- 9.1 This instrument does not amend any other instruments and so no consolidation is necessary.

10. Consultation outcome

- 10.1 The Government published a consultation document and draft legislation on 22 July 2019. The consultation ran for 12 weeks to 11 October 2019. During this period approximately 60 written responses were received, primarily from those who expect to have reporting obligations under this instrument. This includes accountants, tax

advisers, law firms, financial institutions and asset managers. In addition, officials met with a number of businesses and representative bodies to discuss the consultation and the application of the rules.

- 10.2 Following the consultation, the Government has updated the instrument to ensure that the requirements are proportionate. This has included limiting the scope of arrangements that need to be reported and ensuring that the reporting obligations only fall on those with a UK connection. The Government is publishing a summary of the responses to the consultation, which will be available at <https://www.gov.uk/government/consultations/draft-regulations-implementation-of-disclosable-arrangements>

11. Guidance

- 11.1 HMRC will produce comprehensive guidance to provide clarity to businesses on their obligations and to help them comply with the regime. Draft guidance will be shared with interested stakeholders for informal consultation imminently. Based on the comments received during this informal consultation, the guidance will be finalised in the coming months and published in HMRC's International Exchange of Information Manual (<https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information>) on gov.uk before this instrument comes into force on 1 July 2020.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that those businesses that are required to report under these regulations will incur additional costs. One-off costs will include building new computer systems and training staff. Ongoing costs will include the costs of identifying reportable arrangements and providing details to HMRC. There is no significant impact on charities or voluntary bodies, nor on businesses that are not required to report under these regulations.
- 12.2 The impact on the public sector is that there will be costs to HMRC to build a new computer system to receive and exchange reports, and to deal with reports received under these rules.
- 12.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.
- 12.4 The measure is expected to raise additional revenue for the Exchequer. The Office for Budget Responsibility will include the impact of this measure in its forecast at the next fiscal event.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that certain hallmarks have been applied consistently with the UK's domestic transfer pricing legislation. UK transfer pricing rules exempt small and medium businesses from certain obligations, and so aligning this instrument with those rules will avoid placing additional burdens on small businesses where there is no significant tax risk.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that these regulations should be proportionate and applying these rules consistently with

the UK transfer pricing rules will avoid placing unnecessary burdens on businesses. Equally, the UK must implement the Directive properly in accordance with the provisions of the underlying Directive, and so the scope for amending the rules is limited. Therefore, beyond alignment with the transfer pricing rules, no further steps have been taken to minimise the regulatory burdens on small businesses specifically.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that it will be monitored and reviewed by HMRC in line with wider monitoring of the tax system.
- 14.2 The regulation does not include a statutory review clause because the legislation relates to tax, and so there is no obligation to include such a clause in accordance with section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Sarah Weston at HMRC Telephone: 03000 589165 or email: mandatorydisclosure.rules@hmrc.gov.uk or sarah.weston@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 John Shuker, Deputy Director for International Collaboration and Transparency, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.