

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

2020 No. 713

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the International Tax Enforcement (Disclosable Arrangements) Regulations 2020 (SI 2020/25). Those regulations imposed obligations on taxpayers and their advisers, referred to in the regulations as 'intermediaries', to report details of certain cross-border arrangements to HMRC. Those regulations imposed certain deadlines by which such reports had to be made. These regulations defer those reporting deadlines by six months to January 2021, in recognition of the difficulties faced by taxpayers and intermediaries in meeting their reporting obligations, as a result of the Covid-19 pandemic.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

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. The International Tax Enforcement (Disclosable Arrangements) Regulations 2020 transposed that Directive.

- 6.2 On 27 June 2020, Council Directive (EU) 2020/876 came into force, giving implementing jurisdictions the option to defer the reporting time limits introduced in Directive (EU) 2018/822 by six months. In light of the Covid-19 pandemic, the Government has decided to implement this deferral. This instrument gives effect to the deferral.
- 6.3 This instrument is made under the power in section 84 of the Finance Act 2019. This is the second 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 8 January 2020 and can be found here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856709/International_Tax_Enforcement_-_Parliamentary_Report_PDF.pdf.

7. Policy background

What is being done and why?

- 7.1 Council Directive (EU) 2018/822 is intended to support jurisdictions 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. Tax authorities will share the information received with one another to enable them to identify and challenge tax non-compliance in their jurisdictions.
- 7.2 The International Tax Enforcement (Disclosable Arrangements) Regulations 2020 came into force on 1 July 2020, with the first possible reporting deadline under those regulations being 30 July 2020. However, as a result of the Covid-19 pandemic, the reporting deadlines have been deferred by six months, to ease the burdens on businesses coping with the immediate impacts of the pandemic.

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 an EU Directive into UK law. The EU Directive in question applies to the UK during the transition 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 The changes made by this instrument are not being consolidated as the changes are being made as a matter of urgency to address the impacts of the Covid-19 pandemic. The changes being made are relatively straightforward, and so the need to consolidate is less pressing.

10. Consultation outcome

- 10.1 The Government ran a 12-week consultation on the draft International Tax Enforcement (Disclosable Arrangements) Regulations 2020 from July to October

2019. There has been no additional consultation on this instrument, because it has been prepared urgently to address the impact of the Covid-19 pandemic on people's ability to meet their reporting obligations. The amendments are straightforward in nature, postponing initial reporting deadlines by six months.

11. Guidance

- 11.1 HMRC has committed to publish guidance on the International Tax Enforcement (Disclosable Arrangements) Regulations 2020. This guidance will be updated to include the changes made by this instrument. The guidance will be published in HMRC's International Exchange of Information Manual (<https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information>) on gov.uk.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that those businesses that are required to report under the International Tax Enforcement (disclosable Arrangements) Regulations will now have an additional six months to make their first reports.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note covering this instrument was published on 13 January 2020 alongside the International Tax Enforcement (Disclosable Arrangements) Regulations 2020, and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the provisions in this instrument defer reporting obligations for all businesses, including small businesses. No specific action is therefore required to minimise burdens on small businesses.

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. The Government will keep these rules under review. This is in line with the report published on 8 January 2020 on how the powers in section 84 of the Finance Act 2019 would be used in different EU Exit scenarios.
- 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 James Marshall at HMRC Telephone: 03000 594912 or email: james.marshall1@hmrc.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 John Shuker, Deputy Director for International Transparency and Collaboration, 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.