

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL TAX ENFORCEMENT (DISCLOSABLE
ARRANGEMENTS) REGULATIONS 2023

2023 No. 38

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument implements the Organisation for Economic Co-operation and Development's (OECD) Model Mandatory Disclosure Rules (MDR) for Common Reporting Standard (CRS) Avoidance Arrangements and Opaque Offshore Structures. It requires taxpayers and their advisers to provide details of certain types of arrangements to HMRC, where the arrangements have features commonly seen in schemes used to 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 who sign the multilateral competent authority agreement (MCAA) in relation to these rules. Currently, 16 jurisdictions (including the United Kingdom (UK)) have signed up to this agreement. Schedule 1 of these Regulations will be amended to include partner jurisdictions from time to time as tax authorities sign up and have notified the OECD that they have the necessary laws in place to implement the Model Mandatory Disclosure rules.
- 2.2 These rules replace similar European Union (EU) rules which were implemented in the UK prior to EU Exit through the International Tax Enforcement (Disclosable Arrangement Regulations 2020 (SI 2020/25)). Those Regulations will be revoked at the same time as the new Regulations come into force.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 These Regulations are made under powers in section 84 of the Finance Act 2019. Section 84 provides that Regulations may be made for the purpose of securing compliance with an obligation of the government of the UK under an international tax provision. An international tax provision is defined in section 84(3) as including any provision of any arrangements specified in an Order in Council made under section 173 of the Finance Act 2006. The relevant international tax provision is Article 6 of the Joint Council of Europe/Organisation for Economic Co-operation and Development Convention on Mutual Administrative Assistance in Tax Matters, signed on behalf of the UK on 24 May 2007. These arrangements were specified in the International Mutual Administrative Assistance in Tax Matters Order 2007 (S.I. 2007/2126).

- 3.2 These Regulations include a requirement to report on arrangements entered into before these Regulations come into force. Reporting on arrangements that exist before the rules came into force is retrospective in effect even though the reports have to be made after the Regulations come into force. Authority for this limited retrospective effect is provided by section 84(2)(b) of the Finance Act 2019.
- 3.3 These Regulations include references in Regulations 6(b) and (c) and 7(3) to “partner jurisdictions”. Although these provisions will have no effect until this instrument is amended to include partner jurisdictions in Schedule 1, they have been included in the instrument in order to properly reflect the OECD model rules, to mirror legislation that has been enacted in other jurisdictions (such as Jersey and Guernsey) and to make it clear to users of the legislation from the outset how the partner jurisdiction exemption from reporting will operate.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is 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 The MDR for CRS Avoidance Arrangements and Opaque Offshore Structures (OECD model rules) were approved by the OECD on 8 March 2018.
- 6.2 On 25 June 2018 EU 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. As the UK was an EU Member State at the time, it was required to implement this Directive. This was done in the International Tax Enforcement (Disclosable Arrangement Regulations 2020 (SI 2020/25)). These rules are similar to the OECD model rules but applied within the EU member states and the UK. Reports were required to be made that were relevant to potential evasion arrangements related to the UK and the other EU member states and could be exchanged with other EU member states.
- 6.3 The government announced its intention to implement the OECD model rules in the UK at Spring Budget 2021. These rules will apply at a global rather than EU level and the UK will be able to exchange information received with any jurisdictions that have signed up to the OECD model rules.

7. Policy background

What is being done and why?

- 7.1 The OECD model rules are intended to support jurisdictions in tackling offshore tax evasion, by requiring taxpayers and ‘intermediaries’ (including scheme promoters and advisers) to disclose details of certain types of arrangements to the tax authorities. Arrangements will have to be reported if they contain features and characteristics

commonly seen in arrangements that could be used to evade tax. In the case of the OECD model rules arrangements have to be reported that either avoid reporting under the Common Reporting Standard (CRS) or where arrangements are put in place so that the beneficial ownership of assets is obscured. Tax authorities that have signed up to the MCAA will share the information received with one another to enable them to identify and challenge tax non-compliance in their jurisdictions. This instrument transposes into UK law the OECD model rules with as few modifications as possible to ensure consistency with other jurisdictions that sign up to the model rules.

- 7.2 These rules 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 hide their assets. These rules specifically support the successful operation of the CRS and will help to identify the beneficial ownership of assets held offshore.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU because it replaces Regulations that were transposed from an EU Directive into UK Law.

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 30 November 2021. The consultation ran for 10 weeks to 8 February 2022. During this period 20 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 reduced the period for which pre-existing reporting is required. The document summarising responses to the consultation is available at <https://www.gov.uk/government/consultations/mandatory-disclosure-rules>.

11. Guidance

- 11.1 HMRC will produce comprehensive guidance to provide clarity to taxpayers and businesses on their obligations and to help them comply with the regime. Draft guidance will be shared with interested stakeholders for informal consultation. 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>).

12. Impact

- 12.1 There will be an impact on those businesses that are required to report under these Regulations. 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 There will be costs to government to implement these Regulations. The main costs will be for HMRC to build a 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>.

13. Regulating small business

- 13.1 The legislation deals with specified activities that are undertaken by small businesses.
- 13.2 The UK will be implementing the OECD model rules, and so the scope for amending the rules to assist small businesses is limited. We do not expect the burden on business to be disproportionate and for the small number of reports that will need to be filed burdens will be proportionate and HMRC will issue guidance to help businesses. The period for reporting pre-existing arrangements (as stipulated in the OECD model rules) before these Regulations have come into force has however been reduced so this will reduce the regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 This legislation will be monitored and reviewed by HMRC in line with the 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 John Sandeman at HMRC Telephone 03000 589 486 or email: john.sandeman@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 Victoria Atkins MP, the Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.