
STATUTORY INSTRUMENTS

2020 No. 25

**The International Tax Enforcement
(Disclosable Arrangements) Regulations 2020**

PART 2

Reporting obligations

Reporting obligations: UK intermediaries

3.—(1) Subject to paragraph (2) and regulation 7, where a UK intermediary participates⁽¹⁾ in a reportable cross-border arrangement, the UK intermediary must make a return within the specified period setting out the reportable information in relation to the reportable cross-border arrangement that is within the UK intermediary's knowledge, possession or control.

(2) Paragraph (1) does not apply to a UK intermediary ("I") in relation to a reportable cross-border arrangement if—

- (a) I is liable to file information in relation to the reportable cross-border arrangement with the competent authorities of another member State which when applying the list in Article 8ab(3) of the DAC features before, or in the same paragraph as, the United Kingdom, or
- (b) another intermediary who participates in the reportable cross-border arrangement has made a return setting out the reportable information required to be reported by I in relation to the reportable cross-border arrangement, and

I has evidence that the reportable information required to be reported by I in relation to the reportable cross-border arrangement has been filed or returned.

(3) The specified period is—

- (a) in a case where the first step in the implementation of a reportable cross-border arrangement was made between 25 June 2018 and 1 July 2020, the period beginning on 1 July 2020 and ending on 31 August 2020,
- (b) in a case where the intermediary is notified of a reporting obligation in accordance with regulation 7, the period of 30 days beginning on the date that notification is received, and
- (c) in any other case, a period of 30 days beginning on the earliest of—
 - (i) the day after the day the reportable cross-border arrangement is made available for implementation,
 - (ii) the day after the day the reportable cross-border arrangement is ready for implementation,
 - (iii) the day the first step in the implementation of the reportable cross-border arrangement is made, and
 - (iv) in relation to a UK intermediary within the second paragraph of Article 3(21) of the DAC, the day after the day the UK intermediary provided, directly or by means

(1) "Participate" is defined in section 84(3) of the Finance Act 2019.

of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of the reportable cross-border arrangement.

(4) If the reportable cross-border arrangement is a marketable arrangement, the UK intermediary must make a return at the end of every three month period beginning with the date of the return under paragraph (1), setting out any new reportable information within Article 8ab(14)(a), (d), (g) or (h) of the DAC which has become available in respect of the reportable cross-border arrangement since that return or a previous return under this paragraph.

Reporting obligations: UK relevant taxpayers

4.—(1) Subject to paragraph (3), where paragraph (2) applies, the UK relevant taxpayer must make a return within the specified period setting out the reportable information in relation to the reportable cross-border arrangement.

(2) This paragraph applies where—

- (a) a UK relevant taxpayer participates in a reportable cross-border arrangement, and
- (b) no intermediary is required to file the reportable information in relation to the reportable cross-border arrangement under regulation 3 or with the competent authority of another member State.

(3) Paragraph (1) does not apply to a UK relevant taxpayer (“RT”) in relation to a reportable cross-border arrangement if—

- (a) RT is liable to file information in relation to the reportable cross-border arrangement with the competent authorities of another member State which when applying the list in Article 8ab(7) of the DAC features before the United Kingdom, or
- (b) another relevant taxpayer—
 - (i) agreed the reportable cross-border arrangement with the intermediary, or
 - (ii) if there has been no such agreement, manages the implementation of the reportable cross-border arrangement, and

RT has evidence that the reportable information in relation to the reportable cross-border arrangement has been filed or returned.

(4) The specified period is—

- (a) in a case where the first step in the implementation of a reportable cross-border arrangement was made between 25 June 2018 and 1 July 2020, the period beginning on 1 July 2020 and ending on 31 August 2020,
- (b) in a case where the relevant taxpayer is notified of a reporting obligation in accordance with regulation 7, the period of 30 days beginning on the date that notification is received, and
- (c) in any other case, a period of 30 days beginning on the earliest of—
 - (i) the day after the day the reportable cross-border arrangement is made available for implementation to the relevant taxpayer,
 - (ii) the day after the day the reportable cross-border arrangement is ready for implementation by the relevant taxpayer, and
 - (iii) the day the first step in the implementation of the reportable cross-border arrangement is made in relation to the relevant taxpayer.

Annual reporting requirement

5.—(1) Where a UK relevant taxpayer participates in a reportable cross-border arrangement, the UK relevant taxpayer must make a return for—

- (a) the tax year⁽²⁾ or accounting period⁽³⁾, as the case may be, in which the first of the following occurs—
 - (i) the reportable cross-border arrangement is made available for implementation to the relevant taxpayer,
 - (ii) the reportable cross-border arrangement is ready for implementation by the UK relevant taxpayer, or
 - (iii) the first step in the implementation of the reportable cross-border arrangement is made in relation to the UK relevant taxpayer, and
 - (b) each subsequent tax year or accounting period, as the case may be, in which the UK relevant taxpayer's participation in the reportable cross-border arrangement has a tax advantage in relation to that UK relevant taxpayer.
- (2) The return must set out—
- (a) the arrangement reference number of the reportable cross-border arrangement, and
 - (b) the tax advantage of the reportable cross-border arrangement in relation to the UK relevant taxpayer for that tax year or accounting period.
- (3) The return must be made—
- (a) where the UK relevant taxpayer is a company, on or before the filing date for the company's tax return as set out in paragraph 14 of Schedule 18 to the Finance Act 1998⁽⁴⁾ for the accounting period in which the first of the events in paragraph (1)(a) occurs or in which the reportable cross-border arrangement has a tax advantage in relation to that relevant taxpayer, or
 - (a) in any other case, on or before 31 January in the tax year following the tax year in which the first of the events in paragraph (1)(a) occurs or in which the reportable cross-border arrangement has a tax advantage in relation to that UK relevant taxpayer.

Reportable information

6.—(1) The information required under regulation 3 or 4 to be reported in relation to a reportable cross-border arrangement is that set out in points (a) to (h) of Article 8ab(14) of the DAC.

(2) In these Regulations, “reportable information”, in relation to a reportable cross-border arrangement, means the information mentioned in paragraph (1).

Legal professional privilege

7.—(1) Nothing in these Regulations requires a UK intermediary to disclose any privileged information.

(2) Subject to paragraph (1), a UK intermediary must notify any other intermediary, or, if none, the relevant taxpayer, as soon as reasonably practicable of the reporting obligations under regulation 3 or 4, as the case may be, in relation to the reportable cross-border arrangement to which the privileged information relates.

(2) “Tax year” is defined in section 4(2) of the Income Tax Act 2007 (c. 3).

(3) “Accounting period” is defined in section 1119 of the Corporation Tax Act 2010 (c. 4).

(4) 1998 c. 36; paragraph 14 was amended by Part 3(16) of Schedule 40 to the Finance Act 2002 (c. 23).

(3) In this regulation, “privileged information” means information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings.

Arrangement reference number

8.—(1) Where a person complies, or purports to comply, with regulation 3(1) or 4(1) in relation to any reportable cross-border arrangement, HMRC must—

- (a) allocate a reference number to the reportable cross-border arrangement, and
- (b) notify that number to that person.

(2) A UK intermediary or UK relevant taxpayer who has been notified of an arrangement reference number must, within 30 days after the relevant date, notify that number to any person who the UK intermediary or UK relevant taxpayer knows or should reasonably be expected to know is an intermediary or relevant taxpayer in relation to that reportable cross-border arrangement.

(3) In paragraph (2), “the relevant date” means the later of—

- (a) the date on which the arrangement reference number was notified to the UK intermediary or UK relevant taxpayer, and
- (b) the date on which the other intermediary or the other relevant taxpayer became an intermediary or relevant taxpayer in relation to that reportable cross-border arrangement.

(4) In these Regulations, “arrangement reference number”, in relation to a reportable cross-border arrangement, means the reference number allocated under paragraph (1).

Electronic return system

9.—(1) A return required under these Regulations must be made electronically to HMRC using an electronic return system.

(2) The form and manner in which a return is made using an electronic return system is specified in specific or general directions given by the Commissioners for Her Majesty’s Revenue and Customs.

(3) A return which is made otherwise than in accordance with paragraphs (1) and (2) is treated as not having been made.

(4) An electronic return system must incorporate an electronic validation process.

(5) Unless the contrary is proved—

- (a) the use of an electronic return system is presumed to have resulted in the making of the return only if this has been successfully recorded as such by the relevant electronic validation process,
- (b) the time of making the return is presumed to be the time recorded as such by the relevant electronic validation process, and
- (c) the person delivering the return is presumed to be the person identified as such by any relevant feature of the electronic return system.

Evidence

10. For the purposes of regulations 3(2) and 4(3), evidence that reportable information has been filed or returned must comprise the following—

- (a) the arrangement reference number or equivalent reference number issued by the competent authority of another member State, and
- (b) such other information which demonstrates to the satisfaction of an officer of Revenue and Customs that the intermediary or relevant taxpayer, as the case maybe, does not have

knowledge, possession or control of any other reportable information in relation to the reportable cross-border arrangement.

Provision of information

11.—(1) In order to determine whether or not the obligations arising under these Regulations have been complied with, an officer of Revenue and Customs may require a person who the officer reasonably suspects is a UK intermediary or UK relevant taxpayer to provide such information or documents as the officer reasonably requires as specified by written notice.

(2) The information or documents required by notice under paragraph (1) must be provided—

- (a) within such period, being no less than 30 days, and
- (b) by such means and in such form,

as is reasonably required by the officer of Revenue and Customs.

Application of Annex IV of the DAC: hallmarks

12. In the application of Annex IV of the DAC for the purposes of these Regulations(5)—

- (a) “tax advantage” has the meaning given in regulation 2(4);
- (b) in paragraph 4 of category C (specific hallmarks relating to transfer of assets in cross-border transactions), the amount treated as payable in consideration for the assets is the amount treated as payable for tax purposes in the jurisdictions involved;
- (c) category D (specific hallmarks concerning automatic exchange of information and beneficial ownership) must be interpreted in accordance with the Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures approved by the OECD on 8 March 2018 and its commentary published in OECD (2018), Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures, OECD, Paris(6);
- (d) category E (specific hallmarks concerning transfer pricing)—
 - (i) does not apply to a cross-border arrangement if the relevant taxpayer and any associated enterprise in relation to the relevant taxpayer would be exempted from the basic transfer pricing rule by Chapter 3 of Part 4 to the Taxation (International and Other Provisions) Act 2010(7); and
 - (ii) must be interpreted in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 published by the OECD on 10 July 2017(8).

Employees

13.—(1) A person (“P”) is not to be treated as an intermediary in relation to a reportable cross-border arrangement where—

(5) Annex IV of the DAC sets out hallmarks at least one of which must be contained in a cross-border arrangement for it to constitute a reportable cross-border arrangement; “hallmark” has the meaning given by Article 3(20) of the DAC.

(6) The Rules and commentary are available at <http://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.pdf>, a hard copy is available for inspection at the offices of HMRC at 10 South Colonnade, 9th Floor, Canary Wharf, London E14 4PU.

(7) 2010 c. 8. Chapter 3 has been amended by paragraphs 2 to 5 of Schedule 2 to the Finance Act 2012 (c. 14) and paragraphs 37 and 40 of Schedule 15 to the Finance (No 2) Act 2017 (c. 32).

(8) The Transfer Pricing Guidelines are available at <http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>; a hard copy is available for inspection to registered readers free of charge at the British Library in the library’s reading rooms, registration for a readers pass is also free of charge (further information can be found at the British Library’s website at <https://www.bl.uk/visit/reading-rooms>).

- (a) P is an employee of an employer (“E”), and
- (b) E is an intermediary or relevant taxpayer in relation to the reportable cross-border arrangement.

(2) In this regulation, “employee” and “employer” have the meanings given by section 4 of the Income Tax (Earnings and Pensions) Act 2003⁽⁹⁾ (as read with section 5(2) of that Act).

(3) For the purposes of this regulation, where E is connected to another person (“F”), P is to be treated as an employee of F as well as being an employee of E.

(4) In this regulation, E is connected with F where E is closely bound to F by financial, economic or organisational links.

⁽⁹⁾ 2003 c. 1.