

2004 No. 1864

TAXES

The Tax Avoidance Schemes (Information) Regulations 2004

Made - - - - - 22 July 2004

Laid before the House of Commons 22 July 2004

Coming into force - - - 1st August 2004

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 132 of the Finance Act 1999(a), section 135 of the Finance Act 2002(b), and sections 308(1) and (3), 309(1), 310, 312, 313(1), (3) and (4)(g), 317(2) and 318(1) of the Finance Act 2004(c), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Tax Avoidance Schemes (Information) Regulations 2004 and shall come into force on 1st August 2004.

(2) These Regulations do not have effect in respect of proposals or arrangements (as the case may be) which are notifiable by virtue of any of the provisions of Part 2 of the Schedule to the Arrangements Regulations—

- (a) for the purposes of section 308(1), if the relevant date in relation to a proposal falls before 22nd June 2004;
- (b) for the purposes of section 308(3), if the date on which the promoter first becomes aware of any transaction forming part of arrangements falls before that date;
- (c) for the purposes of sections 309 and 310, if the date on which any transaction forming part of arrangements is entered into falls before that date.

Interpretation

2. In the Regulations—

“the Act” means the Finance Act 2004, and a reference to a numbered section (without more) is a reference to the section of the Act which is so numbered;

“the Arrangements Regulations” means the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004(d);

“corporation tax” shall be construed in accordance with section 318(1);

“employment” has the same meaning as it has for the purposes of the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003(e) (see section 4 of that Act) and

(a) 1999 c. 16.
(b) 2002 c. 23.
(c) 2004 c. 12; section 318(1) is cited for the meaning of “prescribed”.
(d) S.I. 2004/1863.
(e) 2003 c. 1.

includes offices to which the provisions of those Parts that are expressed to apply to employments apply equally (see section 5 of that Act); and “employee” and “employer” have corresponding meanings;

“notifiable arrangements” has the meaning given by section 306(1);

“notifiable proposal” has the meaning given by section 306(2);

“promoter” has the meaning given by section 307;

“the prescribed taxes” means capital gains tax, corporation tax and income tax;

“the relevant date” has the meaning given by section 308(2).

Prescribed information in respect of notifiable proposals and arrangements

3.—(1) The information which must be provided to the Board by a promoter under section 308(1) in respect of a notifiable proposal is sufficient information as might reasonably be expected to enable an officer of the Board to comprehend the manner in which the proposal is intended to operate, including—

- (a) the promoter’s name and address;
- (b) details of the provision of the Arrangements Regulations by virtue of which the proposal is notifiable;
- (c) a summary of the proposal and the name (if any) by which it is known;
- (d) information explaining each element of the proposed arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained under those arrangements arises; and
- (e) the statutory provisions, relating to any of the prescribed taxes, on which that tax advantage is based.

(2) The information which must be provided to the Board by a promoter under section 308(3) in respect of notifiable arrangements is sufficient information as might reasonably be expected to enable an officer of the Board to comprehend the manner in which the arrangements are intended to operate, including—

- (a) the promoter’s name and address;
- (b) details of the provision of the Arrangements Regulations by virtue of which the arrangements are notifiable;
- (c) a summary of the arrangements and the name (if any) by which they are known;
- (d) information explaining each element of the arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained under the arrangements arises; and
- (e) the statutory provisions, relating to any of the prescribed taxes, on which that tax advantage is based.

(3) The information which must be provided to the Board by a client under section 309 (duty of person dealing with promoter outside the United Kingdom) in respect of notifiable arrangements is sufficient information as might reasonably be expected to enable an officer of the Board to comprehend the manner in which the arrangements are intended to operate, including—

- (a) the client’s name and address;
- (b) the name and address of the promoter;
- (c) details of the provision of the Arrangements Regulations by virtue of which the arrangements are notifiable;
- (d) a summary of the arrangements, and the name (if any) by which they are known;
- (e) information explaining each element of the arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained under the arrangements arises; and

- (f) the statutory provisions, relating to any of the prescribed taxes, on which that tax advantage is based.

(4) The information which must be provided to the Board by a person obliged to do so by section 310 (duty of parties to notifiable arrangements not involving promoter) is sufficient information as might reasonably be expected to enable an officer of the Board to comprehend the manner in which the arrangements of which that transaction forms part are intended to operate, including—

- (a) the name and address of the person entering into the transaction;
- (b) details of the provision of the Arrangements Regulations by virtue of which the arrangements are notifiable;
- (c) a summary of the arrangements and the name (if any) by which they are known;
- (d) information explaining each element of the arrangements (including the way in which they are structured) from which the tax advantage expected to be obtained under the arrangements arises; and
- (e) the statutory provisions, relating to any of the prescribed taxes, on which that tax advantage is based.

Time for providing information under section 308, 309 or 310

4.—(1) The period or time (as the case may be) within which the prescribed information under section 308, 309 or 310 must be provided to the Board is found in accordance with the following paragraphs of this regulation.

(2) In the case of a notification under section 308(1), the prescribed period is the period of 5 days beginning with the day after the relevant date.

(3) In the case of a notification under section 308(3), the prescribed period is the period of 5 days beginning with the day after that on which the promoter first becomes aware of any transaction forming part of arrangements to which that subsection applies.

(4) In the case of a notification under section 309(1), the prescribed period is the period of 5 days beginning with the day after that on which the client enters into the first transaction forming part of notifiable arrangements to which that subsection applies.

(5) In the case of a notification under section 310 the prescribed time is any time during the period—

- (a) beginning with the day after that on which the person enters into the first transaction forming part of the notifiable arrangements; and
- (b) ending with the latest time at which he would first have had to provide the Board with information under section 313 in accordance with regulation 8.

(6) In reckoning any period under this regulation or regulation 5 any day which is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(a) shall be disregarded.

(7) Where paragraph (2), (3) or (4) applies, if the prescribed period referred to in that paragraph would otherwise end before 30th September 2004, it shall instead end upon that date.

(8) This regulation is subject to regulations 5 (statutory clearances) and 6 (transitional provisions).

Statutory clearances

5.—(1) If—

- (a) a promoter must provide information under subsection (1) of section 308;

(a) 1882 c. 61; section 92 was amended by sections 3 and 4 of the Banking and Financial Dealings Act 1971 (c. 80).

- (b) the relevant date by reference to which he must provide that information is that referred to in subsection (2)(a) of that section; and
- (c) he reasonably expects to make an application on behalf of a client under any of the provisions listed in paragraph (3) (“a clearance application”);

the prescribed period is that beginning with the day after the relevant date and ending with the applicable date.

(2) The applicable date is—

- (a) the date on which the first transaction occurs in pursuance of the arrangements, or
- (b) if the promoter ceases to hold the reasonable expectation referred to in paragraph (1)(c) 5 days after he ceases to hold it.

(3) The provisions are—

- (a) sections 215, 225, 444A and 707 of the Income and Corporation Taxes Act 1988(a); and
- (b) sections 138, 139, 140B and 140D of the Taxation of Chargeable Gains Act 1992(b).

Time for providing information under section 308, 309 or 310: transitional provisions

6.—(1) Where paragraph (2) or (3) applies, the prescribed period or time (as the case may be) to be found in accordance with regulation 4 shall end upon 31st October 2004 instead of the day on which it would end by virtue of that regulation.

(2) This paragraph applies in respect of proposals or arrangements (as the case may be) that are notifiable by virtue of any of the provisions of Part 1 of the Schedule to the Arrangements Regulations—

- (a) for the purposes of section 308(1), if the relevant date in relation to a proposal falls within the period beginning with 18th March 2004 and ending with 31st July 2004;
- (b) for the purposes of section 308(3), if the date on which the promoter first becomes aware of any transaction forming part of arrangements falls within the period beginning with 18th March 2004 and ending with 31st July 2004;
- (c) for the purposes of sections 309 and 310, if the date on which any transaction forming part of arrangements is entered into falls within the period beginning with 23rd April 2004 and ending with 31st July 2004.

(3) This paragraph applies in relation to proposals or arrangements that are notifiable by virtue of any of the provisions of Part 2 of the Schedule to the Arrangements Regulations—

- (a) for the purposes of section 308(1), if the relevant date in relation to a proposal falls within the period beginning with 22nd June 2004 and ending with 31st July 2004;
- (b) for the purposes of section 308(3), if the date on which the promoter first becomes aware of any transaction forming part of arrangements falls within the period beginning with 22nd June 2004 and ending with 31st July 2004;
- (c) for the purposes of sections 309 and 310, if the date on which any transaction forming part of arrangements is entered into falls within the period beginning with 22nd June 2004 and ending with 31st July 2004.

(a) Section 215 was amended by paragraph 3(5) of Schedule 18 to the Finance Act 2003 (c. 14). Section 444A was inserted by paragraph 7 of Schedule 9 to the Finance Act 1990, and relevantly amended by paragraph 14(25) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12).

(b) Section 138 was amended by paragraph 5(6) of Schedule 9 to the Finance Act 2002. Section 139 was amended by section 251(5) of, and Part 8(1) of Schedule 26 to, the Finance Act 1994 (c. 9), section 134(1) of the Finance Act 1998 (c. 36), paragraph 5 of Schedule 29 to the Finance Act 2000 (c. 17), paragraph 5(7) of Schedule 9, and Part 3(2) of Schedule 40, to the Finance Act 2002 and paragraph 2(3) of Schedule 27 to the Finance Act 2003. Sections 140B and 140D were inserted by sections 44 and 45 respectively of the Finance (No. 2) Act 1992 (c. 48).

Prescribed information under section 312

7. For the purposes of section 312 (duty of promoter to notify client of number), the prescribed information is the reference number referred to in subsection (1) of that section.

Prescribed information under section 313: timing and manner of delivery

8.—(1) For the purposes of section 313 (duty of parties to notifiable arrangements to notify the Board of number, etc.)—

- (a) the prescribed information is—
 - (i) the reference number allocated by the Board under section 311 to the notifiable arrangements or proposed notifiable arrangements; and
 - (ii) the year of assessment, tax year or accounting period (as the case may be) in which, or the date on which, the person making the notification expects a tax advantage to be obtained; and
- (b) the prescribed times at which a person who is a party to notifiable arrangements must provide the Board with information under that section are those specified in whichever of paragraphs (2) to (6) are applicable in his case.

(2) 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
- (b) is required to make a return to the Board 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 he is notified of the reference number under section 311 or 312 (as the case may be), or in which the advantage is expected to arise if earlier; and (in any case) in the return for each subsequent year of assessment until the advantage ceases to apply to him.

This paragraph does not apply if the advantage arises in respect of a partner's share of partnership profits or gains, and is subject to the qualifications in paragraph (6).

(3) 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)(b) in respect of any of the prescribed taxes,

the prescribed information shall be included in the returns specified in paragraph (4) covering the period in which the person required to make the return in question is notified of the reference number under section 311 or 312 (as the case may be), or in which the advantage is expected to arise, if earlier; and (in any case) in the return covering each such period until the advantage ceases to apply to the partner in question.

(4) The returns referred to in paragraph (3) are—

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

(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) and section 121(1) to (3) of, and Part 5(6) of Schedule 41 to, the Finance Act 1996 (c. 8). 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 and section 121(1) to (3) of, and Part 5(6) of Schedule 41 to, the Finance Act 1996.

(b) Section 12AA was inserted by section 184 of the Finance Act 1994 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 and paragraph 18 of Schedule 29 to the Finance Act 2001 (c. 9).

- (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.

(5) 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 the Board by a notice under paragraph 3 of Schedule 18 to the Finance Act 1998 (company tax return), in respect of corporation tax,

the prescribed information shall be notified to the Board in the return under that paragraph covering the period in which the company is notified of the reference number under section 311 or 312 (as the case may be), or in which the advantage is expected to arise if earlier; and (in any case) 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, and is subject to the qualifications in paragraph (6).

(6) 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 falling within Part 1 of the Schedule to the Arrangements Regulations, the prescribed information shall be notified to the Board—

- (a) in the return required under regulation 73 of the Income Tax (Pay As You Earn) Regulations 2003^(a) which relates to the tax year in which—
 - (i) the employer is notified under section 311 or 312 (as the case may be) of the reference number allocated by the Board under section 311, or
 - (ii) if earlier in the tax year in which the tax advantage is first expected to arise; and
- (b) in the return required under that regulation for each subsequent tax year until the tax advantage ceases to apply.

(7) In the case of a person who would be obliged to comply with paragraph (2), (3), (5) or (6), but is not otherwise required, in respect of a year of assessment, accounting period or tax year—

- (a) in the case of notifiable arrangements to which paragraph (2) applies, to make a return under any of the provisions mentioned in paragraph (2)(b),
- (b) in the case of notifiable arrangements to which paragraph (3) applies, to make a return under any of the provisions referred to in paragraph (4),
- (c) in the case of notifiable arrangements to which paragraph (5) applies, to make the return mentioned in that paragraph, or
- (d) in a case to which paragraph (6) applies, to make the return mentioned in that paragraph,

the person must provide the information specified in paragraph (8) to the Board by the appropriate date.

(8) The information specified in this paragraph 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 the Board to the person to whom the information relates;
- (c) the reference number allocated to the scheme by the Board under section 311;
- (d) the year of assessment, accounting period or tax year in which, or the date on which, the person providing the information 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;

(a) S.I. 2003/2682.

(f) the capacity in which the person mentioned in sub-paragraph (e) is acting.

(9) For the purposes of paragraph (7) “the appropriate date” is—

- (a) in a case falling within sub-paragraph (a), 31st January next following the end of the tax year in question;
- (b) in a case falling within sub-paragraph (b), 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 applies to him;
- (c) in a case falling within sub-paragraph (c), the date defined as the filing date for the purposes of paragraph 14 of Schedule 18 to the Finance Act 1998(a) in respect of the period of account in question; and
- (d) in a case falling within sub-paragraph (d), the date by which the return under regulation 73 of the Income Tax (Pay As You Earn) Regulations 2003 would be due in respect of the tax year in question.

(10) References in this regulation to information being included in a return include that information being so included by way of an amendment to the return.

Exemption from liability for penalty

9. For the purposes of section 313(4)(g) (exemption from liability to penalty under other provisions about returns in respect of duty to notify Board of reference number for notifiable arrangements) section 98A(4) of the Taxes Management Act 1970(b) is prescribed.

Electronic delivery of information

10.—(1) Information required to be delivered to the Board or to any other person by virtue of these Regulations may be delivered in such form and by such means of electronic communications as are for the time being authorised for that purpose.

(2) The use of a particular means of electronic communications is authorised for the purposes of paragraph (1) only if—

- (a) it is authorised by directions given by the Board under section 132(5) of the Finance Act 1999 (voluntary filing by electronic means of returns and other documents); and
- (b) the user complies with any conditions imposed by the Board under that section.

(3) Nothing in this regulation prevents the delivery of information by electronic communications if the information is contained in a return which is—

- (a) authorised to be delivered electronically by virtue of regulations under section 132 of the Finance Act 1999; or
- (b) required to be so delivered by virtue of regulations under section 135 of the Finance Act 2002 (mandatory e-filing).

22 July 2004

Helen Ghosh
Dave Hartnett
Two of the Commissioners of Inland Revenue

(a) Paragraph 14 was amended by Part 3(16) of Schedule 40 to the Finance Act 2002.
(b) Section 98A was inserted by section 165 of the Finance Act 1989 (c. 26).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the information which is to be given to the Inland Revenue under Part 7 of the Finance Act 2004 (“the 2004 Act” c. 12) in respect of tax avoidance schemes which are prescribed by the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 (S.I. 2004/xxx).

Regulation 1 provides for the citation, commencement and effect of these Regulations and regulation 2 for interpretation of terms used in them.

Regulation 3 prescribes the information to be given in respect of notifiable proposals and arrangements.

Regulation 4 prescribes the time at which the information under regulation 3 is to be given. This is subject to regulations 5 and 6.

Regulation 5 provides a longer period for the provision of that information if it is provided in conjunction with a clearance application to the Board of Inland Revenue (“the Board”).

Regulation 6 provides a longer period by way of transitional provisions for cases where certain relevant dates fall before 1st August 2004 (the date on which the provisions of Part 7 of the 2004 Act come into force generally).

Regulation 7 prescribes the information relating to any reference number notified to him by the Board that a promoter must notify to any client.

Regulation 8 prescribes the time at which information prescribed under section 313 of the 2004 Act is to be delivered to the Board.

Regulation 9 prescribes section 98A(4) of the Taxes Management Act 1970 for the purposes of section 313(4)(g) of the 2004 Act (exemption from liability to penalty under other provisions about returns in respect of duty to notify Board of reference number for notifiable arrangements).

Regulation 10 provides for information required to be delivered to the Board or to any other person by virtue of these Regulations to be delivered by means of electronic communications.

These Regulations impose new costs on business. A regulatory impact assessment in respect of the effects of the 2004 Act prepared by the Inland Revenue was published on 8th April 2004 and is available on the Inland Revenue website (www.inlandrevenue.gov.uk).

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