EXPLANATORY MEMORANDUM RELATING TO THE TAX AVOIDANCE SCHEMES (INFORMATION) REGULATIONS 2004

SI NO.1864

21/07/04

Laying Authority and Purpose

1. This explanatory memorandum is laid before the House of Commons by command of Her Majesty. It contains information for the Select Committee on Statutory Instruments.

2. The Inland Revenue is the Department responsible.

Description

3. This draft instrument provides the procedural rules necessary to implement the disclosure of tax avoidance schemes rules. (Part 7 Finance Act 2004).

Matters of special interest to the Select Committee on Statutory Instruments

4. The Department regrets that compliance with the 21-day rule is not possible in this case. These Regulations form part of a significant anti-avoidance package announced by the Chancellor of the Exchequer on Budget Day. At the time that announcement was made, it was made clear that the new regime would take effect from 1 August 2004. These Regulations could not be made earlier because they were dependent on Royal Assent to the Finance Act 2004.

Legislative Background

5. Sections 306 to 319 Finance Act 2004 introduce new obligations on promoters and, in some cases, users of certain tax schemes to report details of those schemes to the Inland Revenue.

6. This instrument is to be made under section 32 Finance Act 1999, section 135 Finance Act 2003 and sections 308(1) & (3), 309(1), 310, 311, 313(1), (3) and (4)(g), 317(2) and 318(1) Finance Act 2004 and is subject to annulment in pursuance of a resolution of the House of Commons. The sections cited in the 1999 and 2003 Finance Acts ensure that the Regulations make allowance for information to be provided by electronic means. Otherwise, it is the first time these powers have been exercised since they were enacted in Finance Act 2004.

7. This instrument is one of three sets of Regulations being made in order to implement the disclosure requirements in Part 7 Finance Act 2004 (Disclosure of tax avoidance schemes). The other two instruments are the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 and the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004.

8. The instrument is made in order to provide for the detailed rules needed to implement the disclosure rules.

9. In addition to commencement and transitional arrangements (described in more detail below), it prescribes the information to be provided in respect of disclosures and the periods within which disclosure must be made. It prescribes the circumstances in which scheme users must notify the Inland Revenue of scheme numbers etc on a tax return, when they must notify the Inland Revenue separately and the information to be provided in each case.

10. It prescribes that a penalty in section 98A(4) Taxes Management Act 1970 may not be charged by reason of any failure to provide the Inland Revenue with the scheme number on a PAYE return (P35) [This is because section 315 FA 2004 inserts a new penalty (section 98C into Taxes Management Act 1970 in such cases]. It also provides for electronic delivery of information.

11. During the Standing Committee debate on 22 June PMG said that she was satisfied that it was unreasonable to expect tax advisers to have absorbed, understood and put in place the necessary training and systems to assure proper compliance with the rules by 1 August. The PMG declined to change the operative date or to extend the 5 day reporting deadline, but announced that the Regulations would include commencement and transitional arrangements which would extend the time limits for disclosure while the new rules bed in. These assurances are fulfilled in regulations 1(2), 4(7) and 6.

    - Regulation 1(2) defers commencement until 22 June in respect of schemes, which will be disclosable by virtue of Part II of the Schedule to the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations (Arrangements in relation to financial products). [Hansard 22 June column number 719]

    - Regulation 4(7) extends the 5 day period within which disclosure must be made until the 30 September 2004, if the 5 day period would otherwise expire before that date. [Hansard 22 June column number 718]

    - Regulation 6 extends the time limits for any disclosure for which the date triggering the start of the 5 day period occurs before 1 August. In such a case disclosure will not be required before 31 October 2004. [Hansard 22 June column number 719]

EU Legislation

12. The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 do not implement EU legislation.

Extent

13. The instrument applies to all of the United Kingdom.

Policy Background to the instrument

14. Tax avoidance results in a very significant loss of revenue to the Exchequer. While the Government has focussed on identifying and addressing specific loopholes, the tax avoidance industry continues to find new areas of legislation to exploit.

15. The disclosure rules are a new tool to tackle avoidance by increasing transparency in the avoidance market. They will provide the Inland Revenue with earlier information about potential tax avoidance schemes and arrangements and enable the Government to make a swifter and better-targeted response. And they will act as a disincentive to the creation of contrived and elaborate schemes that rely on confidentiality and whose main purpose is to avoid tax.

16. The primary legislation sets out the broad test that arrangements must be disclosed where a main benefit is expected to be the obtaining of a tax advantage. These Regulations set out the detailed procedural rules necessary to implement the disclosure rules and can roughly be divided into three. The information to be provided by those who design reportable schemes, the time frame within which the information must be provided and the circumstances in which scheme users must inform the Inland Revenue of the scheme number on a return and when information must be provided separately.

17. Draft regulations were published in May and the Revenue has consulted extensively with business and tax advisers to ensure that the regulations are carefully targeted. Individuals and business are entitled to plan their tax affairs efficiently so that they do not incur higher tax liabilities than they need to. The disclosure rules will not interfere with that tax planning.

Impact

18. The regulatory impact assessment that was published in April is attached. We will review the RIA, in consultation with business and tax advisers, after the rules come into effect on 1 August, with a view to publishing an updated RIA in the Autumn

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