

**EXPLANATORY MEMORANDUM RELATING TO THE TAX AVOIDANCE
SCHEMES (PROMOTERS AND PRESCRIBED CIRCUMSTANCES)
REGULATIONS 2004**

SI NO.1865

22/07/04

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 rules excluding certain persons from the definition of promoter in section 307 Finance Act 2004. Excluded persons will not be required to make disclosures under sections 308 – 310 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. The draft instrument is made under section 307(5) and 318(1) Finance Act 2004 and is subject to annulment in pursuance of a resolution of the House of Commons. It is the first time these powers have been exercised since Finance Act 2004 was enacted.
6. The instrument is one of three sets of Regulations being made in order to implement the disclosure requirements in sections 306 – 319 Finance Act 2004 (Disclosure of tax avoidance schemes). The other two instruments are the Tax Avoidance Schemes (Information) Regulations and the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004.
7. This instrument is necessary in order to provide for exclusions to the definition of promoter in section 307 of the Finance Act 2004. In addition to exclusions for group members who provide tax advice to other group members and employees of promoters and others, the Regulations exclude:
 - persons who in the course of supplying services relating to taxation are involved with the design of a scheme, but who do not design those

- elements of the scheme which give rise to the tax advantage;
 - persons who provide services relating to taxation as part of their business, but not as part of their responsibilities in relation to the scheme;
 - persons who are not responsible for all of the elements of a scheme which give rise to the tax advantage, and who do not have sufficient information to comply;
 - anyone who is not a scheme designer (unless they are connected to a promoter who is a designer).
8. These exclusions meet the general assurance given to the House during Committee on 22 June, that only those who are at the heart of a scheme or arrangement, and are capable of meeting the obligations, are treated as promoters. [Hansard 22 June column number 717]

Extent

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

Policy Background to the instrument

10. 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.
11. 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.
12. The primary legislation gives the term 'promoter' a broad scope. These Regulations set out exclusions from the definition of promoter to ensure that disclosure is, in the main, required only from those people who are responsible for designing those elements of a scheme from which a tax advantage is expected to arise. 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

13. 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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