

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

2004 No 2613

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. The Department responsible is the Inland Revenue.

2. Description

- 2.1 These Regulations amend the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 (S.I. 2004/1865: 'the Promoters Regulations') and the Tax Avoidance Schemes (Information) Regulations 2004 (S.I. 2004/1864: 'the Information Regulations'). Their effect is to exclude from the definition of a promoter of a scheme, persons who are unable to comply with the obligations imposed by Regulation 3 of the Information Regulations by virtue of legal professional privilege (or, in Scotland, confidentiality of communications). They impose broadly corresponding obligations on the user of a scheme.

3. Legislative Background

- 3.1 Sections 306 to 319 of the Finance Act 2004 introduce new disclosure rules, which impose obligations on promoters and users of certain tax schemes to report details of those schemes to the Inland Revenue.
- 3.2 The Information Regulations prescribe the information which is to be provided under the disclosure rules. The Promoters Regulations prescribe circumstances in which a person is not to be treated as a promoter for the purposes of these rules. These Regulations are made under the power conferred by section 306(1)(a) of the Finance Act 2004 and are subject to annulment in pursuance of a resolution of the House of Commons.
- 3.3 This amendment is the second use of this power since the Regulations were laid on 9 July 2004.
- 3.4 The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 (S.I. 2004/1863) which set out detailed conditions describing arrangements that must be reported under the rules were amended on 22nd September 2004

4. Matters of Special Interest to the Select Committee on Statutory Instruments

- 4.1 This instrument comes into force earlier than would be normal were the 21-day rule were observed. However, the principal provision of the amending

Regulations which has practical effect within the 21-day period is Regulation 2, which is a provision relieving some promoters of their liabilities to provide information.

- 4.2 The disclosure rules were designed to apply fairly to everyone in the business of marketing or advising on tax avoidance schemes. This includes accountants, lawyers and financial institutions.
- 4.3 As part of their ongoing consultation, the Inland Revenue have been in discussion with representatives of the legal profession regarding the scope of legal professional privilege and its impact upon the ability of lawyers (and others) to comply with the disclosure rules. These discussions have not reached a consensus and this instrument is needed to ensure the rules work as they were originally intended.
- 4.4 For the amended rules to be effective, it is necessary to exclude promoters who are unable to comply with their obligations as soon as possible after the Regulations are laid.
- 4.5 The whole instrument is expressed to come into force on 14th October 2004. However, the effect of the transitional provision in regulation 1(3) is that a client who deals with a promoter in circumstances where the latter is precluded by legal professional privilege from making a full disclosure under the Information Regulations will have until 19 November 2004. Therefore a client, to whom the amendment made by regulation 3 applies on 14th October 2004, will have **more** than 21 days to comply with his new obligations.
- 4.6 The disclosure rules come into effect on 30 September 2004.

5. EU Legislation

- 5.1 The Promoters Regulations and Information Regulations do not implement EU legislation.

6. Extent

- 6.1 This instrument applies, as do those which it amends, to the whole of the United Kingdom.

7. Policy Background

- 7.1 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.
- 7.2 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.

8. Impact

- 8.1 A regulatory impact assessment was published in April. We will review the RIA, in consultation with business and tax advisers, after the rules come into effect, with a view to publishing an updated RIA in the Autumn.

Contact

Chris Davidson or Craig Mason at the Inland Revenue.

Tel: 020 7438 9034/6165

Email: Chris.Davidson@ir.gsi.gov.uk/Craig.Mason@ir.gsi.gov.uk