

**EXPLANATORY MEMORANDUM TO
THE TAX AVOIDANCE SCHEMES (INFORMATION) (AMENDMENT)
REGULATIONS 2009**

2009 No. 611

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations (“the 2009 amendment regulations”) amend the Tax Avoidance Schemes (Information) Regulations 2004 (S.I. 2004/1864) (“the principal regulations”), to simplify the procedure under which users of notified tax avoidance schemes report scheme reference numbers and other information to HMRC.

2.2 The amendment regulations will come into force on 1 April 2009.

3. Matters of special interest to the Select Committee on Statutory Instruments

None

4. Legislative Context

4.1 Part 7 of the Finance Act 2004 (sections 306-319) (“Part 7”) introduced a “disclosure” regime which requires the notification to HMRC of certain tax arrangements and proposals for arrangements (“schemes”).

4.2 Disclosure requires certain persons, usually the promoter, to disclose information about schemes falling within certain descriptions within 5 days of the scheme’s being made available or implemented. A scheme reference number (SRN) system identifies the users of the schemes – when a promoter discloses a scheme, HMRC allocate a SRN and notify it to the promoter; the promoter must pass it to clients who in turn identify themselves as users of the scheme by reporting it back to HMRC, along with certain other information. Users normally report SRNs on their tax returns, but in some cases must report them separately. The information to be provided, the cases in which SRNs are reported in returns or separately, and the time limits for doing so are prescribed by the principal regulations.

4.3 Following formal consultation in 2007, Part 7 and the principal regulations were amended by the Finance Act 2008 and the Tax Avoidance (Information) (Amendment) Regulations 2008 (SI 2008/1947) (“the implementing regulations”) to close loopholes in the SRN system, in particular the way SRNs pass from promoters to users. In the course of the debate in the Public Bill Committee the Financial Secretary to the Treasury said that HMRC would continue discussions about issues which had arisen from the consultation relating to the way users report SRNs back to HMRC. The pre-Budget Report confirmed that further changes would be made to simplify and improve these procedures.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Tackling avoidance is a key element of the Government's tax policy strategy, which is aimed at making it easier for businesses to comply with their tax obligations whilst tackling those who abuse the system.

7.2 HMRC's anti-avoidance strategy has four main elements:

- To discourage taxpayers from using schemes. This includes a critical appraisal of all new legislation to reduce the potential for tax avoidance as well as publicising successes in closing down avoidance schemes.
- To identify as early as possible schemes that are being used.
- To challenge avoidance schemes by contesting returns and, where necessary, pursuing the matter through the Courts.
- To produce legislative changes that will close down avoidance schemes where litigation is not appropriate or where the amount of tax at stake is particularly large.

7.3 Part 7 and instruments made under it are intended to achieve early identification of avoidance schemes and the SRN system to identify who is using them.

7.4 There were defects in the SRN system and not all users received a SRN. Finance Act 2008 and the implementing regulations enhanced the SRN system to ensure all users of notifiable schemes receive a SRN. These 2009 amendment regulations focus primarily on the procedure for users to report SRNs to HMRC.

7.5 The main changes are to the time a user must first report the SRN, which is amended to remove an unnecessary complication, and to the cases in which SRNs must be reported separately from returns. The regulations also prescribe information to be included in a new form for SRNs to be passed from promoters to their clients, and from clients to other users, and recasts regulation 8 of the principal regulations for greater transparency.

Consolidation

7.6 The principal regulations have been amended by SI 2004/2613, 2005/1869, 2006/1544, 2007/2153, 2007/3103, 2008/1947 and by these regulations. It is intended to consolidate the principal regulations and the amending regulations towards the end of 2009.

8. Consultation outcome

- 8.1 A consultation document “The Tax Avoidance Disclosure Regime: Improving the Scheme Reference Number System” was published on 17 November 2007, along with draft primary legislation concerned principally with improving the way reference numbers were transmitted to users of disclosed avoidance schemes. Comments were invited by 12 February 2008.
- 8.2 8 written responses were received, one from a representative body and the remaining 7 from business. In addition as part of the consultation process HMRC held meetings with accountancy firms.
- 8.3 The response was generally positive. The proposals were seen as reasonable and sensible enhancements of the existing system. Some concerns were expressed in relation to certain aspects, and further meetings were held with those who had raised these issues to examine them in more depth. The concerns were reflected in the legislation which now forms Schedule 38 to the Finance Act 2008.
- 8.4 A number of comments were also made concerning the procedures for users to report reference numbers, as distinct from the way reference numbers reached users. Following the Financial Secretary’s statement during the course of the debate on the primary legislation in the Public Bill Committee, further discussions were held with those who had raised these issues. The present regulations are the product of those discussions. They were published in draft on HMRC’s website on 19 January 2009. Comments were invited by 20 February.
- 8.5 Three responses have been received, welcoming the changes. Some minor drafting changes have been made in response to some constructive comments.

9. Guidance

A copy of the guidance issued by HMRC has been placed in the House of Commons library.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is limited to those which engage in avoidance schemes.
- 10.2 The impact on the public sector is nil.
- 10.3 An Impact Assessment has been prepared covering the package of measures which includes provisions in the Finance Act 2008 and these 2009 amendment regulations. It is available at <http://www.hmrc.gov.uk/ria/users-disclosed-tax-avoid-schemes.pdf>

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 The purpose of the legislation is to simplify and improve the procedures under which promoters pass scheme reference number information to their clients, and users of schemes pass information to HMRC. In so far as the legislation simplifies procedures it represents an easement for small business, as for large.

11.3 The reasons for not exempting small businesses from obligations in relation to scheme reference numbers are:

- Revenue protection. Small businesses may promote or use avoidance schemes where the tax at risk is significant and disproportionate to the size of the business;
- Fairness. Avoidance puts compliant businesses, large and small, at a disadvantage and distorts competition.

12. Monitoring & review

Review of the effects of the package of changes, including both this instrument and the changes in Finance Act 2008, is expected 3 years from implementation of the latter on 1 November 2008.

13. Contact

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