

2013 No. 2595

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2013

Made - - - - - *9th October 2013*

Laid before the House of Commons *10th October 2013*

Coming into force - - - *4th November 2013*

The Treasury make the following Regulations in exercise of the powers conferred by sections 306(1)(a) and 317(2) of the Finance Act 2004(a).

Citation and commencement

1.—(1) These Regulations may be cited as the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2013 and come into force on 4th November 2013.

(2) These Regulations do not have effect—

- (a) for the purposes of section 308(1) of the Finance Act 2004 (duties of promoter relating to any notifiable proposal), if the relevant date falls before 4th November 2013;
- (b) for the purposes of section 308(3) of the Finance Act 2004 (duties of promoter relating to any notifiable arrangements), if the date on which the promoter first becomes aware of any transaction forming part of notifiable arrangements falls before 4th November 2013.

Amendments to the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006

2. The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006(b) are amended as follows.

Descriptions 1 and 2: confidentiality

3. In regulation 6(2)—

(a) 2004 c. 12. Section 317(2) was amended by paragraph 8 of Schedule 17 to the Finance Act 2010 (c. 13).
(b) S.I. 2006/1543, amended by S.I. 2007/2484, 2009/1890, 2009/2033 and 2010/2834.

- (a) for “if the promoter would” substitute “if it might reasonably be expected that a promoter would”; and
- (b) for “the way in which the element of these arrangements” substitute “the way in which any element of those arrangements (including the way in which the arrangements are structured)”.

4. After regulation 6(2) insert—

“(2A) Cases where arrangements will be prescribed under paragraph (2) include, but are not limited to, where—

- (a) a promoter does not provide to the user of the arrangements (“the user”), or prevents or discourages the user from retaining, any promotional materials, data or written professional advice relating to those arrangements; and
- (b) it might reasonably be expected that the reason for doing so is to keep the arrangements confidential from HMRC in order to facilitate repeated or continued use of any element of those arrangements.”.

5. In regulation 6(3) replace everything after “for paragraph (2) substitute—” with—

“(2) Arrangements are prescribed if it might reasonably be expected that the user of the arrangements would, but for the requirements of these regulations, wish to keep the way in which any element of those arrangements (including the way in which the arrangements are structured) that secures the tax advantage confidential from HMRC at any time following the material date.”.

6. In regulation 7 the existing provision is numbered paragraph (1).

7. In sub-paragraph (d) of that provision for “the user would” substitute “it might reasonably be expected that a user would”.

8. Insert as regulation 7(2)—

“(2) Arrangements are also prescribed if—

- (a) paragraphs (1)(a) to (c) are met; and
- (b) if there had been a promoter in relation to the arrangements, it might reasonably have been expected that they would, but for the requirements of these Regulations, wish to have kept the way in which any element of the arrangements (including the way in which the arrangements were structured) that secured the tax advantage confidential from HMRC at any time following the material date, and a reason for doing so would be to facilitate repeated or continued use of the same element, or substantially the same element, in the future.”.

Description 8: employment income provided through third parties

9. For regulation 5(2)(h) substitute—

“(h) regulation 18 (description 8: employment income provided through third parties).”.

10.—(1) Part 4 is revoked.

(2) Subsequent to paragraph (1), for regulation 17A and its heading substitute—

“Description 8: Employment income provided through third parties

18.—(1) Arrangements are prescribed if—

- (a) Conditions 1 and 2 are met and Condition 3 is not met; or
- (b) Conditions 1, 2 and 3 are met and at least one of Conditions 4 and 5 is met.

(2) Condition 1 is met if the arrangements involve at least one of the following—

- (a) a relevant third person taking a relevant step under section 554B;

- (b) any person taking a relevant step under section 554C or 554D; or
- (c) B taking a step under section 554Z18 or 554Z19.

(3) Condition 2 is met if the main benefit, or one of the main benefits, of the arrangements is that an amount that would otherwise count as employment income under section 554Z2(1) is reduced or eliminated.

(4) Condition 3 is met if, by reason of at least one of sections 554E to 554X or regulations made under section 554Y, Chapter 2 of Part 7A does not apply.

(5) Condition 4 is met if the arrangements involve one or more contrived or abnormal steps without which the main benefit in paragraph (3) would not be obtained.

(6) Condition 5 is met if the arrangements involve—

- (a) a relevant step being treated as taking place; and
- (b) Chapter 2 of Part 7A applying as a consequence of sub-paragraph (a).

(7) In this regulation—

- (a) references to sections or Parts are to those in ITEPA(a) unless otherwise stated;
- (b) “B” has the meaning given for Part 7A by sections 554A(1)(a) and 554Z17(7) read together;
- (c) “contrived or abnormal” has the same meaning as in section 207 of the Finance Act 2013(b); and
- (d) “relevant third person” has the same meaning as in section 554A(7).”.

Revocation

11. The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2009(c) are revoked.

*Anne Milton
David Evennett*

9th October 2013

Two of the Lord Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543) in relation to aspects of the confidentiality hallmarks and to replace the redundant pensions hallmark with a new hallmark relating to employment income provided through third parties.

Regulations 3 to 8 make amendments to when certain arrangements will be prescribed. Changes are made to clarify when arrangements which a promoter might wish to keep confidential from either HM Revenue and Customs, or other promoters, must be disclosed. A change is also made to the circumstances when arrangements must be disclosed by a user; these are extended to where that user might in the future become a promoter in relation to arrangements.

Regulations 9 to 11 replace the redundant pensions hallmark with the employment income provided through third parties hallmark, and remove a redundant revocation provision.

A Tax Information and Impact Note covering this instrument was published on 11th December 2012 and is available on the HMRC website at <http://www.hmrc.gov.uk/tiin/2012/tiin8003.htm>. It remains an accurate summary of the impacts that apply to this instrument.

(a) 2003 c. 1. Sections 554A(1)(a), 554A(7), 554B, 554C, 554D, 554E, 554X, 554Y, 554Z2(1), 554Z17(7), 554Z18, 554Z19 were inserted by paragraph 1 of Schedule 2 to the Finance Act 2011 (c.11).
(b) 2013 c. 29.
(c) S.I. 2009/2033.

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