

**EXPLANATORY MEMORANDUM TO**  
**THE TAX AVOIDANCE SCHEMES (PRESCRIBED DESCRIPTIONS OF**  
**ARRANGEMENTS) (AMENDMENT) REGULATIONS 2013**

**2013 No. 2595**

- 1.** This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 2. Purpose of the instrument**
  - 2.1 These Regulations amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 to clarify aspects of the confidentiality hallmarks and to replace the redundant pensions hallmark with a new hallmark relating to employment income provided through third parties.
- 3. Matters of special interest to the Select Committee on Statutory Instruments**

None.
- 4. Legislative Context**
  - 4.1 Part 7 of the Finance Act (“FA”) 2004 provides for the disclosure to HMRC of certain tax arrangements and proposals for arrangements (“schemes”). This regime is known as the Disclosure of Tax Avoidance Schemes (“DOTAS”).
  - 4.2 Sections 308, 309 and 310 require certain persons to disclose information about schemes falling within certain descriptions. The requirement usually falls on the promoter who must explain how the scheme works within 5 days of its being marketed, made available for implementation or implemented.
  - 4.3 Section 311 provides that HMRC may allocate a scheme reference number (“SRN”) to a disclosed scheme and issue it to the person who disclosed it. Section 312 requires a promoter to notify a SRN to a client who the promoter becomes aware has entered into a transaction forming part of the scheme. Section 312A imposes a similar obligation on the client to pass on a SRN when they are not the intended user of the scheme (the person intended to obtain the tax advantage) but know the person who is. Section 313ZA requires a promoter to provide periodic information to HMRC (a “client list”) about clients to whom it has become obliged to issue a SRN.

4.4 Section 98C of the Taxes Management Act 1970 imposes penalties on persons who fail to comply with disclosure obligations without reasonable excuse.

## **5. Territorial Extent and Application**

5.1. This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 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. Tax avoidance represents a significant part of the UK tax gap. It involves using the tax law to obtain a tax advantage that Parliament never intended. It frequently involves contrived, artificial transactions that serve no purpose other than to reduce tax liability. And it enables some taxpayers to gain an unfair advantage, undermining confidence in the tax system.

7.2. HMRC's anti avoidance strategy has three core elements:

- Preventing avoidance at the outset where possible;
- Detecting it early where it persists;
- Countering it effectively by challenge by HMRC.

7.3. The disclosure regime is a key component of the detection element of the strategy. It also informs counteraction and contributes to preventing avoidance by affecting the economics of the promotion of avoidance schemes.

7.4. The changes to the confidentiality hallmarks are to make it clear that regulation 6(2) of the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543) applies in the same way as regulation 6(1), and to resolve uncertainty about the application of regulation 7, so that HMRC receives disclosures of "in-house" schemes.

7.5. The "employment income provided through third parties" hallmark is being introduced to remove any doubt whether it is necessary to disclose schemes which are intended to circumvent the "disguised remuneration" rules in Part 7A of the Income Tax (Earnings and Pensions) Act 2003.

- ***Consolidation***

7.6. There are no plans to consolidate this instrument.

## **8. Consultation outcome**

8.1. A broad consultation relating to various proposed policy changes to DOTAS was launched on 23 July 2012 and ran until 15 October 2012. This consultation related in part to the changes now being implemented by these Regulations. A technical consultation of these Regulations was published on 17 July 2013. Comments from the public were taken into consideration when finalising this instrument.

## **9. Guidance**

9.1. Relevant guidance will be updated.

## **10. Impact**

10.1. The impact on business, including civil society organisations, is expected to be small. HMRC receives disclosures of schemes from between 50 and 100 promoters (businesses) each year. These Regulations are not expected to significantly increase that number.

10.2. A Tax Information and Impact Note covering these Regulations was published on 11 December 2012 and can be found at <http://www.hmrc.gov.uk/tiin/2012/tiin8003.htm>. It remains an accurate summary of the impacts that apply to this instrument.

## **11. Regulating small business**

11.1. The legislation applies to small business.

11.2. Businesses of any size develop, market and use tax avoidance schemes. The Government expects this measure will have little, if any, impact on small businesses either in absolute terms (considering the overall effect on them) or in relative terms (considering the effect on specific businesses).

## **12. Monitoring & review**

12.1. The measure will be monitored by HMRC, and amendments made as appropriate.

## **13. Contact**

13.1. Lesley Hamilton at the Anti-Avoidance Group (Tel: 03000 585670 or email: [Lesley.Hamilton@hmrc.gsi.gov.uk](mailto:Lesley.Hamilton@hmrc.gsi.gov.uk)) can answer any queries regarding the instrument.