

EXPLANATORY MEMORANDUM TO
THE TAX AVOIDANCE SCHEMES (INFORMATION) (AMENDMENT)
REGULATIONS 2015

2015 No. 948

1. This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) 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 (Information) Regulations 2012 (the “Information Regulations”) to take account of new obligations introduced into Part 7 of Finance Act 2004 by Finance Act 2015.
 - 2.2. They set out information which employers are required to provide to employees who are party to notifiable arrangements or proposed notifiable arrangements relating to their employment. They specify what information employers must provide to HMRC, and when they must provide it, about employees to whom they have provided such information.
 - 2.3. They set out information HMRC can require an introducer, as defined in section 307 of the Finance Act 2004, to provide to HMRC to identify users of undisclosed avoidance.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1. None
4. **Legislative Context**
 - 4.1. Part 7 of the Finance Act 2004 (sections 306 – 319) provides for the notification (“disclosure”) to the HMRC of certain tax arrangements and proposals for such arrangements (“schemes”).
 - 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. Where the promoter is not resident in the United Kingdom the obligation may fall on other persons if the promoter does not comply with the requirement on them.

- 4.3. Section 311 provides that HMRC may issue a scheme reference number (SRN) to the person who disclosed the scheme. Section 312 requires a promoter to issue 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 issue the SRN to other persons who are party to the scheme. Any person who receives a SRN must report it to HMRC unless exempted by regulations.
- 4.4. Different rules apply where the client is an employer and employees of that employer receive or expect to receive a tax advantage by reason of their employment. The employer is not required to issue the SRN to the employees and only the employer is required to report the SRN to HMRC. No information is received from or about employees.
- 4.5. Section 98C of the Taxes Management Act imposes penalties on persons who fail to comply with obligations under Part 7 of the Finance Act 2004.

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. The Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of the Finance Act 2004 is designed to give HMRC early warning of tax avoidance schemes, giving it the opportunity to consider changes in the law to close loopholes or challenge schemes that it does not believe work. It requires a person, usually the person who designs or sells the tax avoidance scheme, to disclose details of certain descriptions of schemes to HMRC.
- 7.2. Different reporting rules apply to schemes entered into by an employer where employees receive or expect to receive a tax advantage by reason of their employment. The requirement for employees to receive the SRN from their employer and to report it to HMRC is lifted in regulations and instead the employer is required to notify only their use of the scheme. This means that HMRC does not learn the identity of employees by means of the DOTAS regime.
- 7.3. Finance Act 2015 introduces a requirement on employers in relation to such schemes both the issue the SRN to relevant employees and to report certain information to HMRC about those employees. These regulations prescribe the information

employers must provide to employees and to HMRC and the time at which it must be provided. They also lift the requirement on employees to report the SRN they receive from their employer, given that the information will be received from the employer.

7.4. HMRC has a power to require a person whom they suspect of being an introducer (as defined in section 307) to provide information to HMRC about a person from whom they have received information about a scheme. This is to enable HMRC to look along the supply chain to identify the promoter of the scheme and force disclosure under DOTAS.

7.5. Finance Act 2015 introduces a new power to enable HMRC to look along the chain of supply in the other direction to identify persons they suspect of being users of a disclosable scheme. This will enable HMRC to pursue disclosure with those persons under section 309 where a promoter resident outside the United Kingdom has not disclosed the scheme.

7.6. These regulations prescribe the information HMRC may require an introducer to provide about persons with whom they have made a marketing contact as defined in section 307(4B) of the Finance Act 2004.

8. Consultation outcome

8.1. The Government published a consultation document on 31 July 2014 entitled 'Strengthening the Tax Avoidance Disclosure Regimes'. That consultation contained a number of proposals to strengthen the disclosure regime, including improving the information available to HMRC. These regulations take forward the elements outlined in that consultation which seek to improve information available to HRMC and to employees in relation to scheme connected to their employment.

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 negligible. The regulations impose reporting obligations on employers who implement tax avoidance schemes for their own or their employees' benefit, to provide information to employees who are affected by the scheme and to provide information to HMRC annually to identify those employees.

10.2. The impact on the public sector is nil.

10.3. A Tax Information and Impact Note covering these Regulations was published on 10 December 2014 and can be found at

<https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1. The legislation applies small business.

11.2. Businesses of any size can develop, market and use tax avoidance schemes. The Government expects this measure will have little, if any, impact on small businesses.

12. Monitoring & review

12.1. HMRC routinely monitors the information it receives from promoters and users of disclosed tax avoidance schemes and uses that information to evaluate this measure and any future policy developments

13. Contact

Gary Coombs in the Counter-Avoidance Directorate of HM Revenue and Customs Tel: 03000 589577 or email: gary.coombs@hmrc.gsi.gov.uk can answer any queries regarding the instrument.