

EXPLANATORY MEMORANDUM TO
THE TAX AVOIDANCE SCHEMES (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2017

2017 No. 1171

1. Introduction

- 1.1 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 (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543) and the Tax Avoidance (Information) Regulations 2012 (S.I. 2012/1836) to include the Apprenticeship Levy and to make a minor consequential amendment to S.I. 2006/1543 in relation to Part 7A of the Income Tax (Earnings and Pensions) Act 2003.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Part 7 of the Finance Act 2004 (“FA 2004”) (sections 306 – 319) provides for the notification of certain tax arrangements and proposals (“schemes”) to HMRC. This is known as the Disclosure of Tax Avoidance Schemes (“DOTAS”) regime.
- 4.2 Part 6 of the Finance Act 2016 introduced the Apprenticeship Levy. The levy applies to employers with an annual pay bill in excess of £3m and is charged at the rate of 0.5% of that pay bill. Section 104(1) of the Finance Act 2016 added the Apprenticeship Levy to the list of taxes to which DOTAS applies (section 318 of FA 2004).
- 4.3 Section 306 of FA 2004 provides a power to prescribe in Regulations the descriptions (or hallmarks) of schemes that must be disclosed. The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (“the Hallmark Regulations”) describe the types of schemes which must be notified to HMRC.
- 4.4 Sections 308, 309 and 310 of FA 2004 require certain persons to provide information to HMRC about notifiable schemes. This requirement usually falls on a person within the meaning of “promoter” (section 307 of FA 2004). The requirement is engaged on the earliest date where the promoter markets the scheme, makes it available for implementation or becomes aware that it is being implemented.

- 4.5 The Tax Avoidance (Information) Regulations 2012 (“the Information Regulations”) sets out the information which must be provided to HMRC when notifying it of a scheme and the time limits within which it must be provided.
- 4.6 Section 311 of FA 2004 provides that HMRC may issue a scheme reference number (SRN) to the person who made the disclosure. Section 312 of FA 2004 requires a promoter to provide the SRN to a client when the promoter becomes aware that they have entered into a transaction forming part of a disclosed scheme. Section 313 of FA 2004 requires any person who receives a SRN to report it to HMRC to enable the person to be identified as a user of the scheme.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is 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 DOTAS is designed to give HMRC early information about tax avoidance schemes, giving it the opportunity to consider changes to the law to close loopholes or to challenge schemes that it believes do not work. DOTAS requires a person, usually the person who designs or sells the tax avoidance scheme, to provide details to HMRC of the scheme and how it is intended to work.
- 7.2 Part 6 of Finance Act 2016 (“Part 6”) introduced the Apprenticeship Levy (a tax on employers operating in the UK with an annual pay bill exceeding £3 million, to fund new apprenticeships) and added the Apprenticeship Levy to the list of taxes covered by DOTAS.
- 7.3 These Regulations add the Apprenticeship Levy to the Hallmark Regulations and the Information Regulations, so that promoters and users of avoidance schemes that seek an advantage in relation to the Levy are required to disclose their arrangements.

Consolidation

- 7.4 There are currently no plans to consolidate the Hallmark or the Information Regulations.

8. Consultation outcome

- 8.1 The draft Regulations were shared with key stakeholders on the 9 August 2017 and comment sought by 10 October 2017. There were no comments. Minor drafting changes were subsequently made, but these did not affect the substance of the Regulations.

9. Guidance

- 9.1 Relevant guidance will be updated.

10. Impact

- 10.1 The impact on business, charities, voluntary bodies and the public sector is limited to those that engage in schemes intended to avoid the Apprenticeship Levy.
- 10.2 A tax Information and Impact note was published on 4 February 2016 and can be found at <https://www.gov.uk/government/publications/apprenticeship-levy/apprenticeship-levy>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

- 11.1 DOTAS applies to small business in so far as businesses of any size can develop, market or use tax avoidance schemes. The Government expects this measure to have little, if any impact on small businesses. However, the Apprenticeship Levy itself applies only where a business has a pay bill in excess of £3 million

12. Monitoring & review

- 12.1 HMRC routinely monitors the information it receives under DOTAS and will use that information to evaluate how DOTAS operates for the Apprenticeship Levy.

13. Contact

- 13.1 Ativie Edebiri at HM Revenue & Customs telephone: 03000 584748 or email ativie.edebiri@hmrc.gsi.gov.uk can answer any queries regarding the instrument.