EXPLANATORY MEMORANDUM TO

THE TAX AVOIDANCE SCHEMES (INFORMATION) (AMENDMENT) REGULATIONS 2021

2021 No. 980

AND

THE INDIRECT TAXES (DISCLOSURE OF AVOIDANCE SCHEMES) (AMENDMENT) REGULATIONS 2021

2021 No. 979

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 Schedule 31 to the Finance Act 2021 amended the reporting obligations in relation to direct and indirect tax avoidance schemes in Part 7 of the Finance Act 2004 (known as DOTAS) and Schedule 17 to the Finance (No. 2) Act 2017 (known as DASVOIT) respectively. The purpose of these instruments is to amend the existing regulations governing the information that must be provided under DOTAS and DASVOIT and the time limits for doing so to ensure the amendments made in Schedule 31 to the Finance Act 2021 operate correctly.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Part 7 of the Finance Act 2004 and Schedule 17 to the Finance (No. 2) Act 2017 introduced the DOTAS regime and the DASVOIT regime respectively. Those regimes allow HMRC to obtain early information about tax avoidance schemes, how they work and who has used them. The regimes operate by imposing an obligation on promoters of tax avoidance schemes to disclose details of relevant schemes to HMRC. Where a scheme has been disclosed HMRC may allocate a scheme reference number

(SRN) which is notified to the promoter. Once an SRN has been notified there are then reporting obligations for the promoter and their clients.

6.2 The Tax Avoidance Schemes (Information) Regulations 2012 (S.I. 2012/1836) and the Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2017 (S.I. 2017/1215) prescribe the information that must be provided, the person who must provide it and the deadline by which they must do so where an SRN has been allocated.

6.3 Schedule 31 of the Finance Act 2021 made amendments to Part 7 of the Finance Act 2004 and Schedule 17 to the Finance (No. 2) Act 2017, which enable HMRC to allocate an SRN where they have reasonable grounds for suspecting that an undisclosed scheme should have been disclosed. Amendments were also made so that where an SRN is allocated under the new power, HMRC may notify the number to anyone they reasonably suspect of being a promoter or other supplier involved in the supply of the arrangements or proposed arrangements.

6.4 There are two instruments. One instrument is amending DOTAS and the other is amending DASVOIT. These instruments are being made to amend respectively the Tax Avoidance Schemes (Information) Regulations 2012 and the Indirect Taxes (Disclosure of Avoidance Schemes) Regulations 2017 to reflect the changes to Part 7 of the Finance Act 2004 and Schedule 17 to the Finance (No. 2) Act 2017 made by Schedule 31 to the Finance Act 2021.

7. Policy background

What is being done and why?

7.1 Changes were first announced in December 2019 as part of the government's response to Lord Morse's Independent Review of the Loan Charge. In that response the government announced that it would take further measures to tackle promoters of tax avoidance schemes that would reduce the scope for promoters to market tax avoidance schemes. At Budget 2020 the government announced that these measures would be taken forward in Finance Bill 20/21, which became Finance Act 2021. These proposals were also described in the 'Promoter Strategy' published by HMRC in March 2020.

7.2 DOTAS and DASVOIT require a disclosure within 6 days of a scheme first being promoted, assuming that the arrangements are indeed notifiable.

7.3 Once a scheme is disclosed to HMRC, HMRC may issue an SRN to the promoter, who in turn must pass this number on to all users of the avoidance scheme. Scheme users must inform HMRC when they are using the scheme. However, only promoters are required to disclose, not suppliers, and Finance Act 2021 does not change this.

7.4 The changes made by the Finance Act 2021 make it possible for HMRC to allocate SRNs to arrangements or proposals which have not been disclosed where HMRC reasonably suspects they should have been disclosed. Where an SRN is allocated under the new pathway in DOTAS and DASVOIT, as well as being required to notify the number to suspected promoters of the arrangements or proposal, HMRC must also notify it to other persons it suspects of being involved in the supply of the arrangements or proposed arrangements. However, until HMRC notify the suppliers of the SRN that has been allocated, they are outside its scope.

7.5 These changes give HMRC earlier and more comprehensive detail about avoidance schemes as they emerge and provides a coherent approach.

7.6 Expanding the scope of the disclosure regimes to enable HMRC to allocate an SRN where HMRC reasonably suspects they should have been disclosed and to also notify suppliers as well as promoters of their suspicions will allow HMRC early insight into emerging avoidance in these areas as they arise.

7.7 The Finance Act 2021 legislation also includes provisions that would allow HMRC to publish information about the scheme, promoters and suppliers as appropriate, along with the SRN to ensure that taxpayers are sufficiently informed of HMRC's interest in the scheme.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No consolidation is planned, because these are just consequential amendments required because of the amendments to the primary legislation.

10. Consultation outcome

10.1 The government consulted on the changes introduced by the Finance Act 2021 between 21 July 2020 and 15 September 2020. A summary of responses was published on 3 March 2021 and can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966003/Promoters_of_tax_avoidance_summary_of_responses.pdf.

10.2 These instruments, which make necessary changes consequential to the Finance Act 2021, were published in draft for consultation on 17 May 2021. The consultation closed on 13 June 2021. The publication on GOV.UK was brought to the attention of external stakeholders via email and the actual publication invited general comments. No comments were received on the draft regulations.

11. Guidance

11.1 HMRC published draft guidance on the changes to the regimes on 23 March 2021 Tackling promoters of tax avoidance draft guidance - GOV.UK (www.gov.uk) and the final guidance will be available, as soon as is practicable, after the instruments come into force.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering these instruments was published on 21 July 2020 alongside draft legislation amending Part 7 of the Finance Act 2004 and Schedule 17 to the Finance (No. 2) Act 2017 and is available on GOV.UK at https://www.gov.uk/government/publications/new-proposals-for-tackling-promoters-and-enablers-of-tax-avoidance-schemes. It remains an accurate summary of the impacts that apply to these instruments.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the impact on them is an inevitable consequence of their doing business in this area, which is justified by the wider public interest in ensuring that a proper disclosure is made.

14. Monitoring & review

14.1 HMRC will monitor the impact of the legislative changes introduced by these instruments on a continuing basis using information collected from its internal systems and processes, as well as regular engagement with affected stakeholder groups.

14.2 No review clause is required as the instruments are not made by a Minister of the Crown.

15. Contact

15.1 Leroy Wilson at HMRC Telephone Number 03000 513499 or email: leroy.wilson@hmrc.gov.uk can answer any queries regarding these instruments.

15.2 Angela Walker, Deputy Director for Counter Avoidance Policy, at HMRC Telephone Number: 03000 586965 or email: angela.walker1@hmrc.gov.uk can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.