EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL TAX ENFORCEMENT (DISCLOSABLE ARRANGEMENTS) (AMENDMENT) (NO. 2) (EU EXIT) REGULATIONS 2020

2020 No. 1649

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the International Tax Enforcement (Disclosable Arrangements) Regulations 2020 (SI 2020/25) (Existing Regulations). The Existing Regulations transposed Council Directive (EU) 2018/822 (Directive), which applied to the United Kingdom while it was a member of the European Union (a member state) and during the transition period. The Existing Regulations imposed obligations on taxpayers and their advisers, referred to in the Existing Regulations as 'intermediaries', to report details of certain cross-border arrangements to HMRC. The amendments made by this instrument ensure that the relevant parts of the rules remain operative after the end of the transition period, whether or not the Free Trade Agreement (FTA) between the United Kingdom and the European Union is ratified. The amendments also ensure that the legislation is aligned with that agreement by limiting reporting to arrangements which would be reportable under the model rules developed by the Organisation for Economic Cooperation and Development.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument comes into force less than 21 days after it is being laid. The instrument needs to come into force before 1 January 2021 so that the relevant parts of the Existing Regulations are operative immediately after the end of the transition period. If this instrument does not come into force before the end of the transition period, there would be a potential gap in the application of the legislation, and taxpayers and intermediaries would be left with unclear obligations. It was not possible to lay this instrument earlier, as negotiations with the European Union were continuing, and the application of these rules after the end of the transition period was subject to those negotiations.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is the whole of 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 On 25 June 2018, the Directive came into force, requiring member states to implement legislation mandating reporting of certain types of cross-border arrangements to tax authorities. Tax authorities will then share this information with one another. As a member state at that time, the Directive applied to the United Kingdom. The Existing Regulations transposed that Directive. The Existing Regulations were laid before the House of Commons on 13 January 2020.

6.2 This instrument amends the Existing Regulations, to ensure that the relevant parts of the rules remain operative after the end of the transition period and are aligned with the requirements of the FTA between the United Kingdom and the European Union.

6.3 The power for this instrument is provided by section 90 of the Finance Act 2019, which allows the Treasury to make provisions they consider appropriate for the purposes of maintaining the effect of any relevant tax legislation on the withdrawal of the United Kingdom from the European Union.

7. Policy background

What is being done and why?

7.1 The Directive applied to the United Kingdom while it was still a European Union member state and continues to apply to the United Kingdom during the transition period. The Directive was accordingly transposed into United Kingdom law by the Existing Regulations.

7.2 This instrument ensures that the relevant reporting obligations in the Existing Regulations remain operative and coherent after the end of the transition period, including during any period while the FTA between the United Kingdom and the European Union is awaiting ratification. The amendments also ensure that the legislation is aligned with that agreement by ensuring that the regulations meet the standard set out in the Organisation for Economic Cooperation and Development's model rules.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it amends the Existing Regulations, which transposed the Directive. This instrument makes changes to the Existing Regulations to ensure that the relevant parts of the rules remain operative after the end of the transition period, including during any period while the FTA between the United Kingdom and the European Union is awaiting ratification. The amendments also ensure that the legislation is aligned with

that agreement by ensuring that the regulations meet the standard set out in the Organisation for Economic Cooperation and Development's model rules.

9. Consolidation

9.1 The changes made by this instrument are not being consolidated as the changes are being made as a matter of urgency to ensure the legislation is operative when reporting starts in January 2021. This instrument ensures that the relevant parts of the rules remain operative after the end of the transition period and does not impose new reporting obligations on businesses, making the need to consolidate less pressing.

10. Consultation outcome

10.1 The government ran a 12-week consultation on the draft Existing Regulations from July to October 2019. Written responses were received from businesses and representative bodies, and officials held meetings with interested organisations. Amendments were made to the Existing Regulations to reflect the comments received. There has been no additional consultation on this instrument, because it ensures the rules remain operative, and therefore is needed urgently before reporting starts in January 2021.

11. Guidance

11.1 Guidance on this legislation is available in HMRC's International Exchange of Information Manual (https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim600000) on gov.uk.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that businesses that are required to report under the Existing Regulations will have to report the same types of arrangements after the end of the transition period. However, the volume of information that is expected to be reported will decrease.

12.2 There is no, or no significant, impact on the public sector, as the instrument maintains the effect of existing legislation.

12.3 This instrument relates to existing requirements set out in the Existing Regulations. A Tax Information and Impact Note covering the Existing Regulations was published on 13 January 2020 alongside the Existing Regulations, and is available on the website 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.

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 instrument imposes no additional obligations on businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will be monitored and reviewed by HMRC in line with wider monitoring of the tax system.

14.2 The instrument does not include a statutory review clause because the legislation relates to tax, and so there is no obligation to include such a clause in accordance with section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 James Marshall at HMRC Telephone: 03000 594912 or email: james.marshall1@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 John Shuker, Deputy Director for International Transparency and Collaboration, at HMRC 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.