EXPLANATORY MEMORANDUM TO

THE PLATFORM OPERATORS (DUE DILIGENCE AND REPORTING REQUIREMENTS) (AMENDMENT) REGULATIONS 2024

2024 No. 1082

1. Introduction

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

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 John Shuker, Deputy Director for International Collaboration Transparency within Business Assets and International at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Sumeet Singh at HMRC telephone: 03000 538 078 or email: eoi.policy@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Platform Operators (Due Diligence and Reporting Requirements) Regulations 2023 ("the 2023 regulations") which brought into effect the Organisation for Economic Cooperation and Development (OECD) Model Reporting Rules for Digital Platforms (MRDP). The 2023 regulations required operators of digital platforms to collect and report to HMRC information about people selling goods and services on their platforms. This instrument amends regulation 4 of the 2023 regulations to ensure that, where there is a UK platform operator, information about sellers who are resident in the UK must be reported to HMRC. This instrument also removes regulation 10 of the 2023 regulations to remove the proportional reduction of thresholds for reporting in cases where the seller is registered on the platform for only part of a reportable period.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The use of digital platforms has grown rapidly in the sharing and gig economy. These platforms allow the sale of goods, rental of property and provision of services between private individuals. These transactions are not always visible to tax authorities, particularly if the platform operator is based overseas, and sellers are not always aware of their tax obligations. MRDP is designed to help sellers providing goods and services via digital platforms to get their tax right, and to help tax authorities identify and tackle cases of non-compliance.

5.2 MRDP was designed by the OECD and, so far, 26 jurisdictions have indicated their intention to implement the rules. Tax authorities in implementing jurisdictions will exchange information received from digital platforms on sellers who are resident in other participating jurisdictions. This will promote international standardised reporting rules for platform businesses which will avoid a patchwork of different domestic requirements.

5.3 This instrument amends the 2023 regulations to ensure that the effect of the policy is as originally intended and is aligned fully with the OECD model rules. Specifically, it ensures that information on UK sellers held by UK platform operators is reported directly to HMRC, and it removes requirements to apportion certain thresholds, which led to unintended consequences in certain situations.

What was the previous policy, how is this different?

5.4 Regulation 4 of the 2023 regulations provides that a Reporting Platform Operator (RPO) does not have to report information about a seller to HMRC if it has obtained adequate assurances that another Platform Operator (PO) will report the information required to HMRC or to a tax authority in a partner jurisdiction with substantially similar rules.

5.5 As it stands, UK seller information could be reported to another tax authority rather than to HMRC. This will result in a delay to HMRC receiving information as it would be received on exchange from another jurisdiction. Furthermore, where UK seller information is received from a partner jurisdiction, depending on the precise wording of the relevant agreement under which exchange takes place, there may be limitations to the way HMRC is allowed to use the data received.

5.6 This instrument amends regulation 4 so that where there is a UK reporting platform operator, it must report UK seller information to HMRC.

5.7 Regulation 10 of the 2023 regulations provides that various thresholds pertaining to whether a seller is an ‘excluded seller’ are to be proportionally reduced in certain circumstances. That apportionment may result in the unintended effect of bringing into scope sellers that would not otherwise be reportable. Applying the apportionment could also create unnecessary additional burdens on platform operators.

5.8 This instrument removes regulation 10 so that the proportional reductions no longer apply.

6. Legislative and Legal Context

How has the law changed?

6.1 In July 2023, the Platform Operators (Due Diligence and Reporting Requirements) Regulations 2023 were laid before Parliament. The 2023 regulations brought MRDP

into force in the UK from 1 January 2024, with minor modifications to make the rules suitable for the UK. The 2023 regulations require digital platform operators to collect, verify and report to HMRC details about the identity and income of sellers providing goods or services via their platform. Platform operators are also required to provide a copy of the information to sellers. Penalties may be charged if platform operators fail to meet their obligations.

6.2 This instrument amends the 2023 regulations to ensure the policy effect is as originally intended. Specifically, it ensures that information on UK sellers held by UK platform operators is reported directly to HMRC, and it removes requirements to apportion certain thresholds, which could have led to unintended consequences under the 2023 regulations.

Why was this approach taken to change the law?

6.3 An amending instrument is the most efficient way to effect the necessary amendments.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government consulted on the implementation of the MRDP from 30 July 2021 to 22 October 2021. HMRC received 28 written responses from a range of stakeholders including platform operators, third party representatives and accountancy firms.

7.2 Respondents were broadly supportive of the proposals although some had feedback on the specific questions in the consultation. A summary of the consultation responses may be found on the gov.uk website[1].

7.3 From 18 October 2022 until 13 December 2022 the Government sought technical feedback on a draft of the regulations to ensure they operate as intended. The technical consultation was also used to identify any areas that require further clarification in more detailed guidance.

7.4 The amendments made in this instrument have been discussed with stakeholders during working group meetings who have not raised any objections.

7.5 As the changes ensure that the UK rules are fully aligned with the original policy intent of the OECD model rules, it was not necessary to carry out a further full consultation.

8. Applicable Guidance

8.1 HMRC has been working with stakeholders to develop guidance on the application of the 2023 regulations. This was published in HMRC's International Exchange of Information Manual in October 2023[2].

8.2 The guidance is regularly updated to reflect any changes and will be updated in line with this statutory instrument.

[1] Summary of the Consultation Responses: https://www.gov.uk/government/consultations/reporting-rules-for-digital-platforms/outcome/reporting-rules-for-digital-platforms-summary-of-responses
[2] HMRC's International Exchange of Information Manual: https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim900000

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering this instrument will be published on the gov.uk website[3].

Impact on businesses, charities and voluntary bodies

9.2 Businesses that are within scope of the rules as UK platform operators will have to report all UK seller information to HMRC, whereas under the 2023 regulations they may have been able to rely upon a platform operator in another jurisdiction to report the information to the tax authority in that jurisdiction. Businesses may incur some costs to build in processes to report in this way. There should also be a reduction in the burden placed on platform operators as they will not have to apportion excluded seller thresholds, which may reduce the number of reports the platform operator needs to make.

9.3 There is no, or no significant, impact on charities or voluntary bodies, and businesses that are not required to report under these regulations.

9.4 The legislation does impact small or micro businesses.

9.5 No specific action is taken to minimise regulatory burdens on small businesses. This is because the benefits of consistent application of the rules outweigh the potential benefits of any exclusion or exemption for small businesses.

9.6 There is no additional impact on the public sector beyond that which arose from the 2023 regulations, as HMRC are already building new computer systems to receive data from platform operators, and to exchange with other tax authorities.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This legislation will be monitored and reviewed by HMRC in line with wider monitoring of the tax system.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, James Murray MP has made the following statement, "the legislation relates to tax and meets the requirements of the exemption set out in section 28(3)(a)".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 As outlined at paragraph 4.1 above, regulation 2(3) of this instrument makes a correction to the 2023 regulations to achieve the original policy intention. In accordance with paragraph 4.7.6 of Statutory Instrument Practice, HMRC has consulted the SI Registrar. This instrument is issued free of charge to all known recipients of the 2023 regulations.

[3] Tax Information and Impact Note: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

12. European Convention on Human Rights

12.1 No statement required as the instrument is subject to negative resolution procedure and does not amend primary legislation.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).