**EXPLANATORY MEMORANDUM TO THE**

**TAX AVOIDANCE SCHEMES (INFORMATION) (AMENDMENT) REGULATIONS 2005**

**2005 No. 1869**

**1.** This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

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

## 2. Description

2.1 The above regulations come into force on 1 August 2005.

2.2 The Tax Avoidance Schemes (Information) (Amendment) Regulations 2005 amend The Tax Avoidance Schemes (Information) Regulations 2004 (SI 2004/1864) ("the principal regulations"). The principal regulations prescribe the information to be provided when a person is required to notify arrangements under Part 7 Finance Act 2004, and the time limits for providing that information. The Amending Regulations prescribe the information and time limits in relation to stamp duty land tax.

## 3. Matters of special interest to the Select Committee on Statutory Instruments

None.

## 4. Legislative Background

4.1 Part 7 of Finance Act 2004 ("the Act")(sections 306 – 319) provides for the notification to the Commissioners of certain tax arrangements and proposals for those arrangements (hereafter referred to as "schemes")

4.2 The powers to prescribe arrangements have been exercised in The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 (SI 2004/1865) coming into force on 1 August 2004. These regulations have been amended by the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements)(Amendment) Regulations 2004 (SI 2004/2429) coming into force on 30 September 2004.

4.3 These Regulations, as amended, prescribe schemes in relation to income tax, corporation tax and capital gains tax. The schemes prescribed are those that concern employment or involve the use of certain financial products.

4.4 The Treasury has made and laid The Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005, coming into force on 1 August 2005. These regulations prescribe arrangements in relation to stamp duty land tax.

4.5 Sections 308 – 310 of the Act specify the duties of persons to notify schemes. Section 308 concerns the duties of promoters of schemes. Section 309 concerns the duty of a person dealing with an offshore promoter. Section 310 concerns the duties of parties to a scheme where there is no promoter. These sections provide that a person required to notify a scheme must provide prescribed information within prescribed time limits.

4.6 Section 311 of the Act provides that the Commissioners may issue a reference number to a notified scheme. Section 312 provided that a promoter must notify the client of that number. Section 313 provides that parties to a scheme must provide prescribed information relating to the reference number to the Commissioners.

4.7 These powers to prescribe information and time limits have been exercised in the principal regulations.

4.8 Where there has been a failure to fulfil the obligation to notify the Commissioners may seek to impose a penalty. A person who fails to disclose a scheme etc is liable to an initial penalty of up to a maximum of £5,000. Where after this initial penalty is imposed the failure continues then a further daily penalty of up to a maximum £600 per day will be imposed. Promoters who fail to give a registration number to their client are also liable to a maximum penalty of £5,000.Taxpayers who fail to show scheme registration numbers on returns are liable to an initial penalty of £100 rising to £500 for subsequent failures. In respect of both promoters and taxpayers, initial penalties will be determined by the Special Commissioners and there will be a right of appeal against the imposition of the penalty.

## 5. Extent

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

The Paymaster General, the Rt. Hon. Dawn Primarolo MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

I am satisfied that The Tax Avoidance Schemes (Information) (Amendment) Regulations 2005 do not amend primary legislation and are not subject to approval by the House of Commons. Accordingly, no statement of compatibility is required.

## 7. Policy background

7.1 Tackling avoidance is a key element of the Government's tax policy Strategy, which is aimed at making it easier for businesses to comply with their tax obligations whilst tackling those who abuse the system.

7.2 One of the features of the tax system that provides avoidance schemes breathing space is the existence of information gaps. HMRC generally has powers to open enquiries into tax returns, but not to enquire into schemes in themselves.

7.3 The Commissioners' anti-avoidance strategy has four main elements:

- To discourage taxpayers from using schemes. This includes a critical appraisal of all new legislation to reduce the potential for tax avoidance as well as publicising successes in closing down avoidance schemes.
- To identify as early as possible schemes that are being used.
- To challenge avoidance schemes by contesting returns and, where necessary, pursuing the matter through the Courts.
- To produce legislative changes that will close down avoidance schemes where litigation is not appropriate or where the amount of tax at stake is particularly large.

7.5 Part 7 of the Act and instruments made under it are intended to achieve early identification of avoidance schemes.

7.6 Part 7 applies across all of the direct taxes. However, the Government has targeted the disclosure rules at the areas at high risk from avoidance. The arrangements prescribed in secondary legislation schemes were limited to those that

- concern income tax, corporation tax or capital gains tax; and
- concern employment or certain financial products.

7.7 These rules were aimed at new and innovative schemes and intended to redress a timing information gap that exists in relation to the prescribed taxes. The filing date for income tax and corporation tax returns is many months after the end of the period to which the return relates. So it may be long after an avoidance scheme has been used that HMRC receives a return and can open enquiries.

7.8 Stamp duty land tax was introduced in Finance Act 2003, replacing Stamp Duty in relation to land transactions. One of the main drivers for the introduction of stamp duty land tax was to counter avoidance and a

number of anti-avoidance provisions were included in Finance Act 2003. Even so, The National Audit Office examined the operation of stamp duty land tax in 2003/04 and reported that the measures adopted to minimise avoidance had not fully closed all the known tax avoidance opportunities. The NAO recommended that the Inland Revenue continue to review the tax revenues still at risk and identify new ways of countering avoidance.

7.9 There is considerable evidence that stamp duty land tax is being avoided in relation to commercial property. Stamp duty land tax anti-avoidance measures were included in FA2004 and further measures, announced by the Government in Budget 2005, are included in the current Finance Bill, No. 3 2005.

7.10 HMRC has been hampered in countering avoidance schemes by a particular form of the information gap referred to in paragraph 7.2 above. Stamp duty land tax avoidance schemes usually involve a series of transactions. One transaction (usually the first) may be a land transaction on which a claim to relief is made, or indeed for which no return at all is required. Any HMRC enquiry into that return is restricted to verifying that the right amount of stamp duty land tax has been paid on that particular transaction. However, the other transactions in the series are not land transactions at all (e.g. because the land is wrapped up in the sale of a company) and it is all the transactions taken together that effectively transfer ownership of the property to a third party without a charge to stamp duty land tax arising. Consequently, the normal return and enquiry system will often not provide HMRC with sufficient information to identify when a land transaction is part of an avoidance scheme, or the details of how that scheme works. This information gap inhibits HMRC from taking quick and effective action against such schemes.

7.11 Extending the disclosure rules to stamp duty land tax will close that information gap. In particular, it will provide early warning of any attempts to circumvent the anti-avoidance measures contained in the current Finance Bill

7.12 Drafts of the regulations were published on the Inland Revenue website on 24 March alongside a partial Regulatory Impact Assessment and comments were invited by 29 April. Comments were received from a small number of tax professionals specialising in commercial property. Comments were also received from, and discussions held with the Chartered Institute of Taxation and the Law Society. Those comments have been incorporated into the regulations.

## 8. Impact

8.1 A full Regulatory Impact Assessment has been prepared for this instrument and has been placed on the H M Revenue and Customs website (www.hmrc.gov.uk).

## 9. Contact

David Easton at HM Revenue and Customs Tel: 0207 147 2418 or e-mail: David.Easton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

# REGULATORY IMPACT ASSESSMENT (RIA)
# The Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005

## The Tax Avoidance Schemes (Information) (Amendment) Regulations 2005

### Introduction

1. This Regulatory Impact Assessment estimates the costs and benefits of the proposal to extend the rules requiring disclosure of information to H M Revenue and Customs (HMRC) about certain tax schemes. The new rules will take effect from 1 August 2005. It reflects the responses to the draft regulations published on 24 March 2005.

### Purpose and intended effect of the measure

*The policy objectives*

2. The objective is to counter the avoidance of stamp duty land tax on UK commercial property by requiring information about certain tax schemes and arrangements to be disclosed to HMRC. This will enable HMRC to tackle avoidance in a more targeted way and for the Government to more quickly counteract schemes which seek to defeat its tax policy objectives.

3. The new rules are not intended to have any material impact upon the very large numbers of accountants and lawyers across the UK who merely assist their clients to understand the tax system and plan their property and other transactions appropriately.

*Background*

4. Tax avoidance costs the Exchequer lost revenues each year. It also undermines government public spending objectives and brings unfairness into the tax system itself. Measures closing down loopholes in legislation exploited by avoidance schemes have become a regular feature in annual Finance Bills.

5. One of the features of the tax system that provides avoidance schemes breathing space is the existence of information gaps. HMRC generally has powers to open enquiries into tax returns, but not to enquire into schemes in themselves. For some taxes (e.g. income tax or corporation tax) the filing date of the return is many months after the end of the period to which the return relates. So it may be long after an avoidance scheme has been used that HMRC receives a return and can open enquiries.

6. In order to redress this information gap, in Budget 2004 the Government announced the introduction of new rules that would require either those who design or market potential avoidance schemes, or those who use them, to provide information about the schemes to the Inland Revenue. The Government announced that the

initial scope would be restricted to two high risk areas: employment and financial products.

7. Finance Bill 2004 contained the basic rules which were enacted as Part 7 Finance Act 2004 ("the Act"). In principle, the Act requires disclosure of schemes or arrangements where:

- Use of the scheme or arrangements might be expected to confer a tax advantage; and

- That tax advantage might be expected to be the main benefit, or a main benefit, of using the scheme or arrangements.

The Act applies to income tax, corporation tax, capital gains tax, stamp duty land tax, stamp duty reserve tax, inheritance tax and petroleum revenue tax.

8. However, much of the detail of the rules was contained in regulations laid before Parliament later in the year and, as announced at Budget 2004, these restricted the initial scope of the rule to schemes and arrangements that:

- Concern income tax, corporation tax or capital gains tax; and

- Involve employment or the use of certain financial products.

9. The Inland Revenue published the regulations in draft on 17 May 2004 and invited comments by 30 June. The regulations were eventually made and laid before Parliament on 22 July 2004, coming into force on 1 August 2004. They incorporated significant changes to the published drafts as a result of comments received in response to the consultation, in particular the use of 'filters' to ensure that the rules were targeted on new and innovative schemes.

10. The regulations have been amended twice. The first amendment, coming into force on 30 September 2004, added an additional filter to employment schemes in line with further suggestions made by businesses. The second amendment, coming into force on 14 October 2004, ensured that in circumstances where legal professional privilege prevents a lawyer from making a full disclosure, the obligation falls upon the client to make the disclosure (the client may, however, choose to waive privilege and allow the lawyer to disclose).

11. The current rules are summarised in the **Annex**.

12. Disclosures are risk assessed within HMRC by the Anti-Avoidance Group (Intelligence) ("AAG"). The AAG maintains guidance about the rules on the HMRC website. It also maintains a dialogue with tax advisers in which it has explained the rules and assisted promoters to comply.

13. To date, both the number and quality of disclosures provide strong indication that the rules are working as intended, targeting tax

avoidance without affecting legitimate tax planning. HMRC has not received significant numbers of unnecessary “safety-first” disclosures, which some commentators had predicted.

14. Moreover, although the first disclosures were not due before 30 September 2004, the system has already begun to deliver its policy objectives. Disclosures have informed a number of anti-avoidance measures since the rules were introduced (for example measures, announced at PBR 2005 and included in the post-Election Finance Bill, closing down schemes intended to avoid payment of tax and NICs on employment income in the form of annual bonuses).

*The risk(s)/harm being addressed*

15. Stamp duty land tax was introduced in Finance Act 2003, replacing Stamp Duty in relation to land transactions. It is charged on land transactions involving any estate, interest, right or power over land in the United Kingdom. The rate of tax is a percentage of the chargeable consideration for the transaction. The current rate for transfers of land and buildings where the consideration is not less than £500,000 is 4%. The rate for the rental element of new leases is 1% if the net present value of the lease is over (for non-residential property) £150,000. Stamp duty land tax is payable by the purchaser who must file a land transfer return within 30 days of the effective date of the transaction. Payment is due with the return.

16. One of the main drivers for the introduction of stamp duty land tax was to counter avoidance and a number of anti-avoidance provisions were included in FA2003. Even so, The National Audit Office examined the operation of stamp duty land tax in 2003/04 and reported that the measures adopted to minimise avoidance had not fully closed all the known tax avoidance opportunities. The NAO recommended that the Inland Revenue continue to review the tax revenues still at risk and identify new ways of countering avoidance.

17. There is considerable evidence that stamp duty land tax is being avoided in relation to commercial property. Stamp duty land tax anti-avoidance measures were included in FA2004 and further measures, announced by the Government in Budget 2005, are included in the post-Election Finance Bill.

18. HMRC has been hampered in countering avoidance schemes by a particular form of the information gap referred to in paragraph 5 above. Stamp duty land tax avoidance schemes usually involve a series of transactions. One transaction (usually the first) may be a land transaction on which a claim to relief is made, or indeed for which no return at all is required. Any HMRC enquiry into that return is restricted to verifying that the right amount of stamp duty land tax has been paid on that particular transaction. However, the other transactions in the series are not land transactions at all (e.g. because the land is wrapped up in the sale of a company) and it is all the transactions taken together

that effectively transfer ownership of the property to a third party without a charge to stamp duty land tax arising. Consequently, the normal return and enquiry system will often not provide HMRC with sufficient information to identify when a land transaction is part of an avoidance scheme, or the details of how that scheme works. This information gap inhibits HMRC from taking quick and effective action against such schemes.

**Options**

*Do Nothing*

19. Doing nothing would preserve the information gap described above and inhibit quick and effective measures against stamp duty land tax avoidance schemes involving significant amounts of tax revenues avoided. This is not acceptable.

*A non-regulatory solution*

20. We could identify no non-regulatory option that was likely to improve the flow of information to HMRC about avoidance schemes. As noted above, it is in the nature of avoidance that promoters and users go to considerable lengths to maintain secrecy. There is no evidence to suggest that they would be prepared to provide information in the absence of a statutory obligation to do so.

*Use pre-transaction rulings*

21. A pre-transaction ruling system would require a very much greater amount of information about the scheme or arrangements to be provided by the promoter or taxpayer thereby increasing the compliance burden on them.

*Require more information on or with the land transaction return*

22. Requiring taxpayers to provide more information on or with returns would also place a considerable additional compliance burden on taxpayers. Moreover, because of the nature of the avoidance schemes (see paragraph 18 above) it would be difficult to obtain a full picture of a scheme by reference to a return for a single land transaction, and in some cases there might be no return at all.

*Extend the disclosure rules*

23. The existing disclosure rules were specifically designed to provide information about potential avoidance schemes. Although the initial scope was limited to the two highest risk areas, employment and financial products, the primary legislation applies across the direct taxes (see paragraph 7 above). So both legislatively and technically the existing rules are, in principle, capable of being extended and adapted to another high risk area. Moreover, the success of the existing rules

(see paragraphs 13 and 14 above) demonstrates that disclosure is a practicable solution to the information gap problem.

*Conclusion*

24. Extending the existing disclosure rules was considered to be by far the best option. However, the existing rules require some adaptation to fit the particular circumstances of stamp duty land tax.

25. The existing rules provide HMRC with information about schemes that it would not normally have an opportunity to obtain until much later, when returns are submitted. The nature of stamp duty land tax avoidance (see paragraph 18) means that HMRC often lacks the opportunity to obtain information altogether and so has an incomplete picture of even established avoidance schemes. Consequently, the objective here is to acquire information about **both new and established schemes** that may be used to avoid stamp duty land tax.

26. The rules need to be able to obtain sufficient information about schemes to allow quick and effective counter-action. However, that objective must be balanced against the objective to keep the compliance burden upon businesses, especially small businesses, to a minimum. The proposal is therefore targeted at schemes to be used for non-residential property with a market value of at least £5 million. Following consultation, the proposal will also except certain schemes that HMRC has already been provided with information about by representative bodies. A person will be required to disclose what is substantially the same scheme once only.

27. A further adaptation is required because the existing arrangements, whereby HMRC issues a scheme reference number to a promoter, who issues it to a client, who includes it on a tax return, is not appropriate for stamp duty land tax. A land transaction return is due within 30 days of the transaction and in practice the return would be due before the taxpayer would have received the reference number. And in some stamp duty land tax avoidance cases there is no return. Consequently, the existing approach is not compatible with the land transaction return system.

28. We therefore considered three specific stamp duty land tax disclosure options. In this paragraph **"**promoter" includes those users required to disclose details of a scheme where either there is no promoter or the promoter is not required to disclose (see paragraph 3 of the Annex)

- Option 1 was to require the scheme user to always make the disclosure. This option would provide information about the schemes, enabling loopholes to be closed. It would also identify the users, allowing compliance action to be targeted. But the compliance burden would fall upon users whereas promoters are generally more readily able to comply. Many promoters are already familiar with the disclosure regime.

- Option 2 was to require a promoter to make the disclosure but not to use a reference number. This option would provide information about the schemes and keep the compliance burden on users to a minimum. However, it would not normally allow HMRC to identify who has used the schemes.

- Option 3 was to require a promoter to disclose, to issue a reference number and to require the client to report the number and other information – but separate from any land transaction return. This option would provide information about the schemes and identify the users. However it would add a further layer of reporting to users.

29. On balance we believe Option 2 is the most proportionate means of attaining the main policy objective. Respondents asked for AAG to issue number to promoters even though there will be no obligation for the promoter to issue the number to a client, or for the client to disclose the number to HMRC. This request has been accepted. The reference number will allow promoters to identify both internally and externally that any particular scheme has been notified to HMRC, thereby reducing the possibility of the same scheme being notified a number of times by the same promoter or by its co-promoters.

**Business sectors affected**

30. The measure will primarily affect accountants and lawyers who devise and promote tax planning schemes for commercial property valued at £5 million or more. There are currently around 1000 transactions a year, reported for stamp duty land tax purposes, for commercial property of this value. 99% of commercial property transactions are below £5 million. The measure does not apply to schemes used only for residential property. The evidence indicates that tax planning schemes for this type of property are typically bespoke schemes, rather than marketed schemes, designed by medium to large size accountants and solicitors.

31. It will also affect businesses buying and selling commercial property who either design a scheme in-house, or who buy a scheme from an offshore promoter. We expect these to mainly be the larger property companies or other businesses that have a substantial property portfolio, who we also expect to be familiar with stamp duty land tax. It will also affect clients of promoters, where those promoters are lawyers who are prevented from making a full disclosure by legal professional privilege.

**Issues of equity and fairness**

32. The proposed measure does not conflict with Human Rights legislation. It is intended, by tackling avoidance, to promote fairness for taxpayers.

**Benefits**

*Economic*

33. Tax avoidance reduces the Government's revenues and affects its ability to meet its spending objectives. The main effect of the measure will be to protect future revenues by providing information that will enable the Government to take early action to close loopholes in the legislation.

34. Tax avoidance also distorts the market and allocates resources to economically unproductive activities. By helping to reduce the incidence of stamp duty land tax avoidance on commercial property, the measure will benefit the efficiency and transparency of the property market.

*Social*

35. No social benefits are expected.

*Environmental*

36. No environmental benefits are expected.

**Costs**

*Economic*

*Business Costs*

37. Promoters will incur costs associated with:

- Learning;
- Set up; and
- Compliance

In this section the term "promoter" again includes those users required to disclose details of a scheme where either there is no promoter or the promoter is not required to disclose (see paragraph 3 of the Annex).

38. There may be one-off learning and professional education costs for promoters in the first year associated with understanding the

requirements of the new rules. We expect that the guidance we produce will help alleviate the cost in this respect. The larger firms of accountants and solicitors are expected to be already familiar with the existing disclosure regime (for employment and financial product schemes) and for those promoters the additional learning costs associated with the stamp duty land tax regime will be marginal.

39. Promoters will incur set up costs in putting systems in place to identify those schemes required to be disclosed and disclosing them, within the time limits, to HMRC. Again, we expect that the larger promoters will already have put systems in place to comply with the existing disclosure rules and for them the additional costs of the new measure will be marginal.

40. Promoters will also incur compliance costs in having to register details of the scheme or arrangement with HMRC at an early stage. We expect that the information required by the promoter to make the disclosure would be readily at hand as part of the arrangements around designing and implementing the scheme and so will not involve significant additional cost.

41. Promoters will be expected to comply by providing plain English description of the scheme etc. This does not mean that appropriate technical language cannot be used and it will not be necessary to provide explanation of common technical and legal terms.

42. Disclosure will not require any more information than is necessary to explain the scheme and it will not be necessary for promoters to supply documents such as sale agreements, accounts correspondence and so on.

43. Businesses using a scheme or arrangements may incur a cost of obtaining additional professional advice to ensure compliance. However, for the kind of schemes that the rules are aimed at we would expect such advice to be obtained irrespective of these rules.

44. Promoters may also incur some additional marginal operational costs in talking to, or meeting with, the AAG to discuss disclosures made.

45. As the rules become more widely understood then we expect compliance with them to become a standard feature of planning the scheme.

*HMRC costs*

46. The AAG will handle disclosures received in HMRC. HMRC expects to be able to carry out the additional work by prioritising existing anti-avoidance resources. The additional cost will be marginal.

47. There will be negligible costs associated with additional guidance and publicity.

*Social*

48. No social costs are expected

*Environmental*

49. No environmental costs are expected

**Small Business impacts**

50. In our assessment there should be little impact on small business. Users of stamp duty land tax schemes will not be affected unless there is not a promoter required to disclose the scheme, and even then a user will only have to disclose if they are to use the scheme for commercial property with a market value of at least £5 million. We expect that the purchaser of a £5m + property will not generally fall within the small business size.

51. Some small businesses may be promoters of stamp duty land tax schemes. However, this is a specialised area and we would not expect scheme promoters to fall generally within the small business size.

**Competition assessment**

52. The competition filter test has been applied. There is considered to be a low risk of a significant detrimental effect on competition.

**Securing compliance**

53. There is a targeted campaign to advise likely promoters and users of notifiable schemes about of the rules (for example, information will be made available via the Land Registry). We will also update the published guidance on disclosures, to describe who will be affected and how the rules will work in practice. Drafts of the guidance have been exposed for comment to representative bodies and the main practitioners in this area. The disclosure itself will be made through the already existing system, operated in HMRC by the AAG.

54. Sanctions will be needed to ensure compliance and the existing disclosure penalty regime (described in paragraph 7 of the Annex) will apply to promoters and taxpayers that fail to disclose full details of a notifiable scheme by the due date. The existing penalties in relation to reference numbers (paragraphs 8 and 9 of the Annex) will not apply.

### Consultation

55. The Chancellor announced the measure in his Budget on 16 March 2005. Draft legislation was published on 24 March and comments on the detail of the regulations invited by 29 April. Comments were received from accountancy and law firms. We also received comments from, and had meetings with, representative bodies. The final rules have been amended to reflect comments. In particular:

- A list of excepted arrangements has been included. These are arrangements that HMRC does not require to be notified of because details of the schemes have already been made available to us during the consultation process. Listing should not be taken to read that HMRC finds the arrangements acceptable, or considers them to work under existing law;

- The commencement provisions have been changed so that there is no need to disclose a scheme where any part of the arrangements falls before 1 August 2005;

- The application of the £5 million market value test has been clarified; and

- We have accepted representations to issue a reference number to the promoter (see paragraph 29).

## Monitoring and evaluation

56. The measure is designed to provide information about existing stamp duty land tax avoidance schemes and it should become apparent relatively quickly whether or not it is working as intended. Disclosures received will be monitored and analysed by the AAG and technical experts within HMRC and compared with wider intelligence. An initial evaluation of the rules will be made no later than six months after they come into effect. Further evaluation will be decided upon in the light of the initial evaluation.

### Summary and recommendation

57. There is evidence of significant avoidance of stamp duty land tax on commercial property and the HMRC's ability to counter that avoidance is affected by an information gap attributable to the nature of stamp duty land tax and the return system. The most proportionate means of closing that gap is by extending the existing rules requiring disclosure of potential tax avoidance schemes to schemes that concern commercial property of a value of at least £5 million.

## Contact point

David Easton
HM Revenue & Customs
Room 3/45
100 Parliament Street
London SW1A 2BQ
Tel: 0207 147 2418
Fax: 0207 147 0128
E-mail – David.Easton@ hmrc.gsi.gov.uk

**Annex**

## THE DISCLOSURE RULES

Scope

1. FA 2004 requires promoters and, in some cases, users to disclose details of direct tax schemes and arrangements that might be expected to obtain a tax advantage as one of the main benefits. The legislation applies across the direct taxes (income tax, corporation tax, capital gains tax, petroleum revenue tax, stamp duty land tax, stamp duty reserve tax and inheritance tax).

2. Regulations limit the initial scope to notifiable arrangements that concern income tax, corporation tax or capital gains tax and involve either employment or certain specified financial products. Filters are used to restrict disclosure to new or innovative avoidance schemes and avoid affecting ordinary tax planning. The two main filters are "confidentiality" and "premium fee".

3. Normally it is the promoter of the scheme who is required to disclose. But there are three circumstances in which the taxpayer must disclose:

- "in-house" schemes, i.e. where there is no promoter;
- where the promoter is offshore;
- where the promoter is a lawyer who is prevented from making a full disclosure of the required information by legal professional privilege (LPP). The client may, however, waive privilege , in which case the lawyer is required to disclose.

Timing of disclosures

4. In general, disclosure must be made within five working days of the scheme being made available for implementation or when the first transaction to use the scheme takes place. However, users of in-house schemes are generally allowed to disclose on their tax returns.

Reference numbers

5. The rules provide that the HMRC may issue a reference number for any scheme disclosed within 30 days of receipt of the disclosure. Where HMRC issues a number to a promoter, the promoter must provide this to clients within 30 days of the later of:

- Becoming aware of the first transaction to use the scheme; or if later
- Receipt of a reference number from HMRC.

Further obligations on users of a disclosed scheme

6. A person who uses a scheme who has been issued with a reference number, either by the promoter or directly by HMRC, must declare that number on each return that is affected by the scheme.

Penalties

7. A promoter who fails to disclose scheme etc will be liable to an initial penalty of up to a maximum of £5,000. Where after this initial penalty is imposed the failure continues then a further daily penalty of up to a maximum £600 per day will be imposed.

8. Promoters who fail to give a registration numbers to their client will also be liable to a maximum penalty of £5,000.
9. Taxpayers who fail to show scheme registration numbers on returns will be liable to an initial penalty of £100 rising to £500 for subsequent failures.
10. In respect of both promoters and taxpayers, initial penalties will be determined by the Special Commissioners and there will be a right of appeal against the imposition of the penalty.

# REGULATORY IMPACT ASSESSMENT

**The Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005**

**The Tax Avoidance Schemes (Information) (Amendment) Regulations 2005**

## Statement of Ministerial Approval

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

Dawn Primarolo

Paymaster General

Date: 6th July 2005