EXPLANATORY MEMORANDUM RELATING TO THE

THE TAX AVOIDANCE SCHEMES (PRESCRIBED DESCRIPTIONS OF ARRANGEMENTS) (AMENDMENT) REGULATIONS 2004

2004 No. 2429

1. This explanatory memorandum is laid before The House of Commons by Command of Her Majesty. It contains information for the Select Committee on Statutory Instruments. The Department responsible is the Inland Revenue.

2. Description

2.1 These Regulations amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 (SI 2004/1863). Their effect is to apply similar tests which already apply in respect of arrangements involving financial products to arrangements connected with employment to confirm the scope of the disclosure rules out in sections 306 to 319 of the Finance Act 2004 with respect to such arrangements.

3. Legislative Background

3.1 Sections 306 to 319 of the Finance Act 2004 introduce obligations on promoters and users of certain tax schemes to report details of those schemes to the Inland Revenue.

3.2 The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 set out detailed conditions describing arrangements based on employment or financial products that must be reported under the disclosure rules in section 306 to 319 of the Finance Act 2004. It also provides that the disclosure rules apply to arrangements in relation to income tax, corporation tax and capital gains tax. These Regulations were made under the power conferred by section 306(1)(a) of the Finance Act 2004 and are subject to annulment in pursuance of a resolution of the House of Commons.

3.3 This amendment is the first use of this power since the Regulations were laid on 22 July 2004.

4. Matters of Special Interest to the Select Committee on Statutory Instruments

4.1 The 21 days gap between laying and coming into force to enable scrutiny of negative procedure statutory instruments has not been possible in this case.

4.2 By virtue of Regulation 4(7) of the Tax Avoidance (Prescribed Information) Regulations 2004 (SI 2004/1864), advisers and taxpayers will be required to provide information to the Inland Revenue from 30 September 2004 in respect of notifiable arrangements entered into after the coming into force of the Part 7 of the Finance Act 2004. In early September 2004, as part of their ongoing consultation with sectors most likely to be affected by the disclosure rules, the

Inland Revenue were made aware that the Regulations dealing with arrangements connected with employment might be construed as having a wider impact than was intended.

4.3 This amendment will ensure that the Regulations require the disclosure of tax avoidance schemes which contain some element of novelty, but do not require the disclosure of routine tax planning. A delay in the laying of this amendment would not allow businesses to make effective preparation for the implementation of the rules on 30 September 2004.

5. EU Legislation

5.1 The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 do not implement EU legislation.

6. Extent

6.1 The instrument applies to all of the United Kingdom.

7. Policy Background

7.1 Tax avoidance results in a very significant loss of revenue to the Exchequer. While the Government has focussed on identifying and addressing specific loopholes, the tax avoidance industry continues to find new areas of legislation to exploit.

7.2 The disclosure rules are a new tool to tackle avoidance by increasing transparency in the avoidance market. They will provide the Inland Revenue with earlier information about potential tax avoidance schemes and arrangements and enable the Government to make a swifter and better-targeted response. And they will act as a disincentive to the creation of contrived and elaborate schemes that rely on confidentiality and whose main purpose is to avoid tax.

7.3 The primary legislation sets out the broad test that arrangements must be disclosed where a main benefit is expected to be the obtaining of a tax advantage. These regulations set out detailed conditions to target employment and financial product-based arrangements, areas where the Exchequer is at greatest risk from serious tax avoidance. Draft regulations were published in May and the Revenue has consulted extensively with business and tax advisers to ensure that the regulations are carefully targeted. Individuals and business are entitled to plan their tax affairs efficiently so that they do not incur higher tax liabilities than they need to. The disclosure rules will not interfere with that tax planning.

8. Impact

8.1 A regulatory impact assessment was published in April. We will review the RIA, in consultation with business and tax advisers, after the rules come into effect, with a view to publishing an updated RIA in the Autumn.

Contact

Chris Davidson or Craig Mason at the Inland Revenue.

Tel: 020 7438 9034/6165

Email: Chris.Davidson@ir.gsi.gov.uk/Craig.Mason@ir.gsi.gov.uk