EXPLANATORY MEMORANDUM RELATING TO

THE TAX AVOIDANCE SCHEMES (PRESCRIBED DESCRIPTIONS OF ARRANGEMENTS) REGULATIONS 2004 No. 1863

Laying Authority and Purpose

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.

2. The Department responsible is the Inland Revenue.

Description

3. The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 sets out detailed conditions describing arrangements based on employment or financial products that must be reported under the disclosure rules in section 306 – 319 Finance Act 2004. It also provides that the disclosure rules apply to arrangements in relation to income tax, corporation tax and capital gains tax.

Matters of Special Interest to the Select Committee on Statutory Instruments

4. The 21 days usually allocated to enable the scrutiny of negative procedure statutoty instruments is not possible in this case. These Regulations form part of a significant anti-avoidance package announced by the Chancellor of the Exchequer on Budget Day. At the time that announcement was made, it was made clear that the new regime would take effect from 1 August 2004. These Regulations could not be made earlier because they were dependent on Royal Assent to the Finance Act 2004.

Legislative Background

5. Sections 306 to 319 Finance Act 2004 introduce new obligations on promoters and, in some cases users, of certain tax schemes to report details of those schemes to the Inland Revenue. Section 306 provides that arrangements must be disclosed where they have as a main benefit the obtaining of a tax advantage and meet further conditions.

6. These Regulations are one of three instruments which set out detailed rules relating to the operation of the disclosure requirements. The others are The Tax Avoidance Schemes (Information) Regulations 2004 and The Tax Avoidance Schemes (Promoter and Prescribed Circumstances) Regulations 2004.

7. These Regulations are to be 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.

8. These Regulations are the first use of this power since section 306 was enacted by the Finance Act 2004.

EU Legislation

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

Extent

10. The instrument applies to all of the United Kingdom.

Policy Background

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

12. 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.

13. 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.

Impact

14. The regulatory impact assessment that was published in April is attached. We will review the RIA, in consultation with business and tax advisers, after the rules come into effect on 1 August, with a view to publishing an updated RIA in the Autumn.

Contact

Rowena Kisely or Craig Mason at the Inland Revenue.

Tel: 020 7438 4388/6165

Email: Rowena.Kisely@ir.gsi.gov.uk/Craig.Mason@ir.gsi.gov.uk

DAWN PRIMAROLO MP

PAYMASTER GENERAL

HM TREASURY

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