

2010 No. 2834

TAXES

The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2010

Made - - - - - *25th November 2010*
Laid before the House of Commons *26th November 2010*
Coming into force - - - *1st January 2011*

The Treasury make the following Regulations in exercise of the powers conferred by section 306(1)(a) and (b) of the Finance Act 2004(a).

Citation and commencement

1. These Regulations may be cited as the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2010 and come into force on 1st January 2011.

Amendments to the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006

2. Amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006(b) as follows.

3.—(1) In regulation 2(2) (interpretation: general)—

(2) After the definition of “business” insert—

““HMRC” means Her Majesty’s Revenue and Customs”.

(3) After the definition of “the Information Regulations” insert—

““the material date” means whichever of the following is applicable—

(a) for a proposal notifiable under section 308(1) of FA 2004(c), the relevant date (as defined in section 308(2) of FA 2004);

(b) for arrangements notifiable under section 308(3) of FA 2004, the date the promoter first becomes aware of any transaction forming part of the notifiable arrangements;
or

(c) for arrangements notifiable under section 309 or 310 of FA 2004, the date the person enters into any transaction forming part of the notifiable arrangements.”.

(4) Omit the definition of “lease”, “lessor” and “lessee”.

(a) 2004 c. 12.

(b) S.I. 2006/1543, amended by S.I. 2007/2484, 2009/1890 and S.I. 2009/2033.

(c) Regulation 2(1) of S.I. 2006/1543 provides that FA 2004 means the Finance Act 2004.

(5) In the description of “plant or machinery lease” for “regulation 14” substitute “section 70K CAA 2001(a)”.

4. Omit regulation 5(2)(d) (prescribed descriptions of arrangements).

5. For regulation 6 (description 1: confidentiality where promoter involved) substitute—

“6.—(1) Arrangements are prescribed if—

- (a) any element of the arrangements (including the way in which the arrangements are structured) gives rise to the tax advantage expected to be obtained under the arrangements; and
- (b) it might reasonably be expected that a promoter would wish the way in which that element of those arrangements secures, or might secure, a tax advantage to be kept confidential from any other promoter at any time following the material date.

(2) Arrangements are prescribed if the promoter would, but for the requirements of these Regulations, wish to keep the way in which the element of these arrangements that secures, or might secure, the tax advantage confidential from HMRC at any time following the material date, and a reason for doing so is to facilitate repeated or continued use of the same element, or substantially the same element, in the future.

(3) In a case where—

- (a) by virtue of regulation 6 of the Promoters Regulations (persons not to be treated as promoters: legal professional privilege)(b), no person is to be treated as the promoter in relation to the arrangements; or
- (b) by virtue of section 309(1) of FA 2004 (duty of person dealing with promoter outside United Kingdom), a user of the arrangements has a duty to provide prescribed information,

for paragraph (2) substitute—

(2) Arrangements are prescribed if the user of the arrangements wishes to keep the way in which the element that secures the tax advantage confidential from HMRC at any time following the material date.”.

6.—(1) Amend regulation 7 (description 2: confidentiality where no promoter involved) as follows.

(2) For paragraph (d) substitute—

“(d) the user would, but for the requirements of these Regulations, wish to keep the way in which that element secures the advantage confidential from HMRC at any time following the material date; and”.

(3) For paragraph (e) substitute—

- “(e) a reason for the user’s wishing to keep the element confidential from HMRC is—
- (i) to facilitate repeated or continued use of the same element, or substantially the same element, in the future; or
 - (ii) to reduce the risk of HMRC using that information to open an enquiry into any return or account which a person is required by or under any enactment to deliver to HMRC; or
 - (iii) to reduce the risk of HMRC using that information to withhold payment of all or part of an amount claimed separately from a return under—

(a) 2001 c. 2. Regulation 2(1) of S.I. 2006/1543 provides that CAA 2001 means the Capital Allowances Act 2001. Section 70K was inserted by paragraph 7 of Schedule 8 to the Finance Act 2006 (c. 25).

(b) S.I. 2004/1865; regulation 6 was added by S.I. 2004/2613.

- (aa) section 261B of the Taxation of Chargeable Gains Act 1992 (treating trade loss etc as CGT loss)(a); or
- (bb) Part 4 of the Income Tax Act 2007 (loss relief)(b).”.

- 7.—(1) Amend regulation 8 (description 3: premium fee) as follows.
 - (2) In paragraph (1) for “to disclose information under” substitute “of”.
 - (3) In paragraph (2)(b) after “advantage” insert “as a matter of law”.
- 8. Omit regulation 9 (description 4: off market terms) and the heading before it.
- 9. In regulation 11(2)(a) (arrangements excepted from description 5) omit “(see regulation 14)”.
- 10. In regulation 13(1)(a) (description 7: leasing arrangements) omit “(see regulation 14)”.
- 11. Omit regulation 14 (meaning of “plant or machinery lease”).
- 12. In regulation 15(5)(b) (the additional conditions) for “228F(5)” substitute “228A(2)(c)”.
- 13. At the end of regulation 17 (short-term leases) insert—
 - “(5) In this regulation “inception” has the meaning given by section 70YI CAA 2001(d).”

*Angela Watkinson
Michael Fabricant*

25th November 2010

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543 amended by S.I. 2007/2484 and S.I. 2009/2033) (“the principal regulations”).

Regulation 3 inserts a new definition of “material date” and amends the definition of “plant or machinery lease” to refer to the definition in the Capital Allowances Act 2001.

Regulation 5 substitutes Description 1 in the principal regulations (confidentiality where a promoter is involved) to change the period to which confidentiality applies to any time following the event that triggers the disclosure and to include cases where a tax advantage is secured or might be secured.

Regulation 6 amends Description 2 in the principal regulations (confidentiality where no promoter is involved) to change the period to which confidentiality applies to any time following the day on which any transaction forming part of the arrangements is entered into and to extend this rule to cover circumstances where a user may wish not to disclose in order to prevent HMRC obtaining information that might lead to an enquiry or inhibit repayment.

Regulation 7 amends Description 3 in the principal regulations (premium fee) to prevent the argument being used that as the existence of the disclosure regime results in a premium fee not being obtainable the scheme is not notifiable. It also amends the second leg of the definition of a premium fee so that it applies only if the fee is contingent upon the scheme working as a matter of law rather than upon other factors (e.g. it is an employment scheme where the fee is contingent upon the scheme being taken up by a certain number of employees).

(a) 1992 c. 12. Section 261B was inserted by paragraph 329 of Schedule 1 to the Income Tax Act 2007 (c. 3) and was amended by S.I. 2009/56.
(b) 2007 c. 3.
(c) Section 228A of the CAA 2001 was substituted by paragraph 12 of Schedule 20 to the Finance Act 2008 (c. 9).
(d) Section 70YI of the CAA 2001 was inserted by paragraph 7 of Schedule 8 to the Finance Act 2006 (c. 25).

Regulation 8 removes Description 4 (off market terms) from the principal regulations.

Regulation 11 removes regulation 14 (meaning of plant or machinery lease) from the principal regulations. This is replaced by the amended definition in regulation 2 and the amendments made by regulations 9 and 10.

Regulation 12 amends the definition of a lease and finance leaseback.

Regulation 13 adds the definition of “inception” to regulation 17 of the principal regulations.

A full Impact Assessment has been prepared covering the package of measures which includes these regulations. It is available at <http://webarchive.nationalarchives.gov.uk/20091222074811/http://hmrc.gov.uk/budget2010/strength-revise-dotas-ia-5295.pdf>.

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