

Disclosure of Tax Avoidance Schemes

Who is likely to be affected?

Businesses who market, design or give advice about tax avoidance schemes and businesses and individuals who either use tax avoidance schemes, or are potential users of tax avoidance schemes.

General description of the measure

The measure will revise and extend the Disclosure of Tax Avoidance Schemes (DOTAS) regime to improve the information HM Revenue & Customs (HMRC) receives about both the detail of tax avoidance schemes, and the customers who use them.

Policy objective

This measure supports the Government's objectives for tackling tax avoidance and promoting fairness in the tax system. It does so by supporting HMRC's anti-avoidance strategy, which consists of preventing avoidance before it happens, detecting it early where it persists and countering it effectively by HMRC operational challenge. DOTAS is a key element of the detection strand of the strategy and also contributes to prevention.

Background to the measure

The measure was announced at Budget 2012 and was included in the consultation document *Lifting the Lid on Tax Avoidance* published on 23 July 2012.

The consultation closed on 15 October 2012 and a Summary of Responses was published on 11 December 2012 on the HMRC website.

There will be a further consultation on the draft secondary legislation in 2013.

Detailed proposal

Operative date

Regulation making powers will come into force on the date that Finance Bill 2013 receives Royal Assent.

Current law

DOTAS consists of a mix of primary and secondary legislation.

Part 7 Finance Act 2004 (Part 7) (consisting of sections 306 to 319) provides for certain persons to provide HMRC with information in relation to tax avoidance schemes falling within certain descriptions. Section 98C Taxes Management Act 1970 provides for penalties for persons who fail to provide the information required by Part 7.

The descriptions of schemes required to be disclosed to HMRC are prescribed in three sets of regulations, of which the most important (and the set affected by this measure) is the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006, SI 2006/1543 (the Descriptions Regulations). The Descriptions Regulations prescribe the descriptions of schemes required to be disclosed in relation to income tax, capital gains tax and corporation tax. These descriptions are commonly referred to as 'hallmarks'.

The Tax Avoidance Schemes (Information) Regulations 2012, SI 2012/1836 (the Information Regulations) prescribe the information to be provided under Part 7 and the time limits for providing it. The Information Regulations consolidate earlier regulations which contained information powers.

Section 316 of Part 7 provides that HMRC may specify the form and manner in which the information is to be provided. HMRC does this in its published guidance.

Section 132A of the Social Security Administration Act 1992 provides for regulations to extend DOTAS tax legislation to National Insurance contributions (NICs).

The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 (the NICs Regulations) extend DOTAS tax legislation to NICs (in some cases with modifications) to the extent that it applies to income tax.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to revise Part 7 to include two new information provisions that will be implemented through secondary legislation. Both concern the periodic information that promoters are required to provide to HMRC about clients (client lists).

The first provision concerns a requirement for the client to provide the promoter with information that can be subsequently included on the promoter's client list. HMRC will discuss with promoters the consequential changes required to the client list system.

The second provision is an information power that will enable HMRC to seek further information from a promoter where the client is an intermediary rather than the end user of the scheme.

The Information Regulations will be amended to prescribe the information to be provided under the new Part 7 provisions and the time limits for providing it. They will also be amended, using existing Part 7 provisions, following further consultation on draft regulations, to extend the information HMRC obtains about a disclosed scheme and scheme users.

The Descriptions Regulations will be amended, following further consultation on draft regulations, to revise and extend the hallmarks.

The NICs Regulations will be amended so that changes to tax legislation, to the extent they apply to income tax, will be extended to NICs and come into force at the same time.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	-	negligible	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer. Any impact will be set out at Budget 2013. This measure supports the Exchequer in its commitment to protect revenue.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	The measure will only impact on those individuals and households who sell or use tax avoidance schemes. The main impacts on those individuals would be to report the use of a disclosed avoidance scheme to HMRC, normally by completing a box on the tax return, and to provide certain information to the scheme promoter.					
Equalities impacts	Analysis of persons reporting the use of a disclosable avoidance scheme indicates that the individuals affected will be predominantly males with an income in excess of £100,000. It is not expected that the policy would impact adversely or disproportionately on other equality groups.					

Impact on business including civil society organisations	<p>HMRC receives disclosures of schemes from between 50 and 100 promoters (businesses) a year. The measure is not expected to increase that number significantly. It will impose some additional reporting obligations on those firms who are required to disclose, which will result in a negligible increase in ongoing administrative burdens. Businesses will face negligible one-off costs in familiarising themselves with the new regulations.</p> <p>There will also be a negligible impact on civil society organisations.</p>
Operational impact (£m) (HMRC or other)	<p>Dealing with additional scheme disclosures and reporting of information will have negligible impact on HMRC.</p>
Other impacts	<p><u>Small firms impact test:</u> businesses of any size develop, market and use tax avoidance schemes. The Government expects this measure will have little, if any, impact on small businesses either in absolute terms (considering the overall effect on them) or in relative terms (considering the effect on specific businesses).</p> <p>Other impacts have been considered and none have been identified.</p>

Monitoring and evaluation

HMRC monitors the information it receives from promoters and users of disclosed tax avoidance schemes. HMRC checks that information for completeness and accuracy and seeks out non-compliance through a combination of monitoring of the market, intelligence, engagement with promoters and information from HMRC's compliance work. HMRC uses that information to inform DOTAS policy development.

Further advice

If you have any questions about this change, please contact Lesley Hamilton on 020 7147 2564 (email: lesley.hamilton@hmrc.gsi.gov.uk) or Philippa Staples on 020 7147 2444 (email: philippa.staples@hmrc.gsi.gov.uk).

1 Disclosure of tax avoidance schemes

- (1) Part 7 of FA 2004 (disclosure of tax avoidance schemes) is amended as follows.
- (2) After section 312A insert –

“312B Duty of client to provide information to promoter

- (1) This section applies where a person who is a promoter in relation to notifiable arrangements has provided a person (“the client”) with the information prescribed under section 312(2) (duty of promoter to notify client of reference number).
- (2) The client must, within the prescribed period, provide the promoter with prescribed information relating to the client.
- (3) The duty under subsection (2) is subject to any exceptions that may be prescribed.”

- (3) After section 313ZA insert –

“313ZB Enquiry following disclosure of client details

- (1) This section applies where –
 - (a) a person who is a promoter in relation to notifiable arrangements has provided HMRC with information in relation to a person (“the client”) under section 313ZA(3) (duty to provide client details), and
 - (b) HMRC suspect that a person other than the client is or is likely to be a party to the arrangements.
- (2) HMRC may by written notice require the promoter to provide prescribed information in relation to any person other than the client who the promoter might reasonably be expected to know is or is likely to be a party to the arrangements.
- (3) The promoter must comply with a requirement under or by virtue of subsection (2) within –
 - (a) the prescribed period, or
 - (b) such longer period as HMRC may direct.”
- (4) In section 98C(2) of TMA 1970 (notification under Part 7 of FA 2004) –
 - (a) after paragraph (da) insert –

“(daa) section 312B (duty of client to provide information to promoter),” and
 - (b) after paragraph (db) insert –

“(dc) section 313ZB (enquiry following disclosure of client details),”.

EXPLANATORY NOTE

DISCLOSURE OF TAX AVOIDANCE SCHEMES

SUMMARY

1. This clause relates to the Disclosure of Tax Avoidance Schemes (DOTAS). In particular, it relates to the existing requirement for the promoter of a disclosed scheme to provide HM Revenue & Customs (HMRC) with information concerning clients (a client list). Firstly, it provides a power for HMRC to require the promoter to provide further information about parties to the scheme in cases where it suspects the reported clients are not the only parties to the scheme. Secondly, it introduces a requirement for the client to provide information to the promoter that will enable HMRC to identify the client. This clause also makes the client and promoter liable to a penalty for the failure to provide such information.

DETAILS OF THE CLAUSE

2. This clause inserts two new information provisions into Part 7 Finance Act 2004 (Part 7). Both contain powers for regulations to prescribe the detail of the information to be provided and the time limits for providing it.
3. Paragraph (2) inserts new section 312B into Part 7. It provides that the client of a promoter must provide that promoter with prescribed information that will enable HMRC to identify the client.
4. Paragraph (3) inserts new section 313ZB into Part 7. It provides that HMRC can, in cases where it suspects the client identified on a promoter client list is not the only party to the arrangements, require the promoter to provide further prescribed information about parties to the arrangements.
5. Paragraph (4) applies penalty provisions in section 98C Taxes Management to a failure by a promoter or client to comply with the new provisions.

BACKGROUND NOTE

6. The primary legislation for the DOTAS regime is mainly contained in Part 7 consisting of sections 306 to 319. Penalties for failure by a person to comply with a Part 7 requirement to provide information are provided for in section 98C of the Taxes Management Act 1970.

7. Part 7 requires certain persons, normally a scheme promoter, who is the designer and seller of the scheme, to provide information to HMRC about tax avoidance schemes falling within certain descriptions prescribed in regulations. This gives HMRC an early warning of new schemes, the opportunity to consider changes in the law to close any loopholes identified, or challenge the scheme where it does not agree with the tax effect claimed.
8. HMRC may issue a Scheme Reference Number (SRN) to the promoter of a disclosed scheme. The promoter is required to pass the SRN to each client it becomes aware of entering into the scheme. A client who is not the user is required to pass the SRN on to the user if it knows who that is. The user is required to report the SRN to HMRC, usually on the relevant return in which the tax liability or claim is affected by the scheme.
9. Promoters who issue SRNs to clients are also required to provide a quarterly return of these client names and addresses (i.e. a client list). This informs risk assessment of the scheme and allows HMRC to cross-check against the relevant returns for the scheme users.
10. Currently, the information that promoters are required to provide on client lists is the client's name and address. Frequently, this is insufficient in order for the user of the scheme to be matched to a person in HMRC's records (for example, the promoter's data may be out of date or the client may be merely an intermediary).
11. The clause provides for the client to be required to provide prescribed information to the promoter within prescribed time limits. That information will consist primarily of the client's unique tax reference number (UTR) or national insurance number (NINO). Regulations (under section 312ZA of Part 7) in turn require the promoter to include that information in a client list.
12. The clause also provides that where HMRC suspects that the client is not the user of the scheme, it may require the promoter to produce further information about users of the scheme and other parties involved in the selling and execution of the scheme.
13. Failure to provide information required or requested under the new powers will make the promoter or the promoter's client, as appropriate, liable to a penalty not exceeding £5,000.
14. This measure implements proposals consulted upon in *Lifting the Lid on Tax Avoidance*, which ran from 23 July to 15 October 2012.
15. If you have any questions about this change, or comments on the draft legislation, please contact Lesley Hamilton on 020 7147 2564 (email: lesley.hamilton@hmrc.gsi.gov.uk).

2013 No.

TAXES

**The Tax Avoidance Schemes (Information) (Amendment)
Regulations 2013**

<i>Made</i>	- - - -	<i>2013</i>
<i>Laid before the House of Commons</i>		<i>2013</i>
<i>Coming into force</i>	- -	<i>2013</i>

The Commissioners for Her Majesty's Revenue and Customs in exercise of the powers conferred by sections 312B(2), 313ZA(3), 313ZB(2) and 313ZB(3)(a) of the Finance Act 2004(a), and having regard to the definition of "prescribed" in section 318(1)(b), make the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Tax Avoidance Schemes (Information) (Amendment) Regulations 2013 and come into force on *date* 2013.

Amendments to the Tax Avoidance Schemes (Information) Regulations 2012

2. The Tax Avoidance Schemes (Information) Regulations 2012(c) are amended as follows.

3. In paragraph (3) of regulation 2 after "In reckoning any period under regulation 5 (apart from paragraph (8)), or regulations" insert " 8A, 13A,".

4. After regulation 8 insert—

"Prescribed information under section 312B: information and timing

8A.—(1) For the purposes of section 312B (duty of client to provide information to promoter) —

- (a) the prescribed period is 10 days from the later of the date that the client receives the reference number allocated by HMRC under section 311 to the arrangements, or the date the client first enters into a transaction which forms part of the notifiable arrangements; and
- (b) the prescribed information is —

(a) 2004 c.12. Part 7 of this Act was amended by section 1(1) of the Finance Act 2013 (c.XX).
(b) The functions of the Commissioners of Inland Revenue ("the Board") were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) and (2) of the Commissioners for Revenue and Customs Act 2005 (c.11). Section 50(1) of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
(c) SI 2012/1836.

- (i) any identification number allocated to the client by HMRC (“unique taxpayer number”) and the client’s national insurance number; or
- (ii) confirmation that the client does not have a unique taxpayer number or a national insurance number, or has neither number.”.

5. In paragraph (1)(b)(ii) of regulation 13 delete “name and address” and insert “name, address, any identification number allocated to the client by HMRC (“unique taxpayer number”) and national insurance number”.

6. After paragraph (1)(c) of regulation 13 insert –

“(d) in sub-paragraph (b)(ii) where the promoter is unable to provide any unique taxpayer number or national insurance number, they must confirm that either–

- (i) the client has complied with section 312B and does not have a unique taxpayer number or national insurance number; or
- (ii) the client has not complied with section 312B.”.

7. After regulation 13 insert –

“Prescribed information under section 313ZB: information and timing

13A.—(1) For the purposes of section 313ZB (further information from promoters) –

- (a) the prescribed period is 10 days from the date that the promoter receives the written notice under section 313ZB; and
- (b) the prescribed information is –
 - (i) the name and address of any person to whom section 313ZB(2) applies (but only those who will, or are likely to, either sell the arrangements to another person, or achieve a tax advantage by implementing the arrangements);
 - (ii) any identification number allocated by HMRC to any person mentioned at sub-paragraph (b)(i); and
 - (iii) sufficient information, held by the promoter at the time of receipt of a written notice under section 313ZB(2), as might reasonably be expected to enable an officer of HMRC to comprehend the manner in which any person mentioned at sub-paragraph (b)(i) is involved in the arrangements.”.

Name

Name

[Dated]

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Tax Avoidance Schemes (Information) Regulations 2012 (SI 2012/1836) (the “principal Regulations”) in three key ways. These changes are made following amendment of Part 7 of Finance Act 2004 under the Finance Act 2013.

Firstly, regulation 4 prescribes what information a client must provide to a promoter under section 312B of the Finance Act 2004, and by when this information must be provided.

Secondly, regulations 5 and 6 introduce additional information which a promoter must include in a client list it provides to HMRC under section 313ZA of the Finance Act 2004.

Thirdly, regulation 7 prescribes what information a promoter must provide to HMRC on receipt of a written notice under section 313ZB of the Finance Act 2004 and by when this information must be provided.

Regulation 3 affects how time is counted for the purposes of the changes made by regulation 6.

A Tax Information and Impact Note covering this instrument was published on 11th December 2012 alongside clause j8003 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO
THE TAX AVOIDANCE SCHEMES (INFORMATION) (AMENDMENT)
REGULATIONS 2013

1. This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations amend the Tax Avoidance Schemes (Information) Regulations 2012 (the “Information Regulations”) to take account of new obligations introduced in Part 7 of Finance Act 2004 by Finance Act 2013.
 - 2.2 They set out the additional information which promoters are required to include in the client lists they provide to HMRC. So that the promoter can comply with this new obligation, these Regulations specify that clients must provide this same information to promoters, and set a deadline for this.
 - 2.3 They also specify what additional information promoters must provide to HMRC about users of the relevant tax avoidance scheme, and set a deadline for this. This applies where HMRC has requested additional information because it suspects that a client list does not provide the details of all users of the tax avoidance scheme.
3. **Matters of special interest to the Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Part 7 of Finance Act (“FA”) 2004 (sections 306 – 319) provides for the notification, or “disclosure”, to HMRC of certain tax arrangements and proposals for those arrangements (“schemes”).
 - 4.2 Sections 308, 309 and 310 require certain persons to disclose information about schemes falling within certain descriptions. The requirement usually falls on the promoter who must explain how the scheme works within 5 days of its being marketed, made available for implementation or implemented.
 - 4.3 Section 311 provides that HMRC may allocate a reference number to a disclosed scheme and issue it to the person who disclosed it. Section 312 requires a promoter to issue a SRN to a client who the promoter becomes aware has entered into a transaction forming part of the scheme. Section 312A imposes a similar obligation on the client to pass on a SRN when they are not the intended user of

the scheme (the person intended to obtain the tax advantage) but know the person who is. Section 313ZA requires a promoter to provide periodic information to HMRC (a 'client list') about clients to whom it has become obliged to issue a SRN to

- 4.4 Section 96C of the Taxes Management Act imposes penalties on persons who fail to comply with disclosure obligations without reasonable excuse.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Tax avoidance represents a significant part of the UK tax gap. It is not in itself illegal, but it involves using the tax law to obtain a tax advantage that Parliament never intended. It frequently involves contrived, artificial transactions that serve no purpose other than to reduce tax liability. And it enables some taxpayers to gain an unfair advantage, undermining confidence in the tax system.

7.2 HMRC's anti avoidance strategy has three core elements:

- Preventing avoidance at the outset where possible
- Detecting it early where it persists
- Countering it effectively by challenge by HMRC

7.3 The disclosure regime is a key component of the detection element of the strategy. It also informs counteraction and contributes to preventing avoidance by affecting the economics of the promotion of avoidance schemes.

7.4 The regime requires promoters to provide HMRC with a quarterly list of clients who have implemented a disclosed scheme. This provides HMRC with early notification of the scale of the potential tax at risk and allows a cross-reference to the client's relevant tax record. However, in many instances the information currently provided by promoters is insufficient to correctly match the clients to HMRC's taxpayer records.

7.5 These new regulations will require clients to provide their Unique Taxpayer Reference Number ("UTR") and/or National Insurance Number ("NINO") to the

promoter. The promoter will then be required to provide this information on the client lists so that HMRC can more accurately match these details with taxpayer records.

- 7.6 The regulations will also introduce a new information power so that where HMRC suspects that the client on the client list is not the person who is, or who is expected to be, the user of the scheme, HMRC are able to require the promoter to provide certain additional information.

8. Consultation outcome

- 8.1 The Government published a consultation document on 23 July 2012 entitled 'Lifting the Lid on Tax Avoidance Schemes'. That consultation contained a number of different proposals to improve the information available to HMRC and the public about tax avoidance schemes. These regulations take forward the DOTAS elements outlined in that consultation which seek to improve the information HMRC receives about users of disclosed schemes.

9. Guidance

- 9.1 Guidance will be published in advance of this instrument coming into force.

10. Impact

- 10.1 The impact on business, including civil society organisations is expected to be negligible. HMRC receives disclosures of schemes from between 50 and 100 promoters (businesses) each year. These regulations are not expected to increase that number. They will impose some additional reporting obligations on those firms who are required to disclose and require those firms' clients who implement schemes to provide their specific, individual reference numbers to the firms.

- 10.2 The impact on the public sector is nil.

- 10.3 A Taxes Impact Assessment is published alongside this Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to small business.

- 11.2 Businesses of any size can develop, market and use tax avoidance schemes. The Government expects this measure will have little, if any, impact on small businesses.

12. Monitoring & review

12.1 HMRC routinely monitors the information it receives from promoters and users of disclosed tax avoidance schemes and uses that information to evaluate this measure and any future policy developments.

13. Contact

Lesley Hamilton at the Anti-Avoidance Group Tel: 020 7147 2564 or email: Lesley.Hamilton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.