



HM Treasury

International Tax Enforcement: Disclosable Arrangements:

Report on how the powers in section
84 of the Finance Act 2019 will be
used in different EU Exit scenarios

Presented to the House of Commons pursuant to section 84 (8) of
Finance Act 2019

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Chapter 1

Introduction

- 1.1 The UK is leaving the European Union on 31st January 2020 with the Deal negotiated by the Prime Minister.
- 1.2 However, Section 84(8) of the Finance Act 2019 provides that no regulations may be made under that section unless the Chancellor of the Exchequer has laid before the House of Commons a report on how the powers in that section are to be exercised in each of the scenarios set out in subsection 9. This report has been prepared by HM Treasury for the Chancellor of the Exchequer to lay before the House of Commons to meet the requirements of section 84(8).
- 1.3 The powers in section 84 of the Finance Act 2019 include allowing for regulations to be made by statutory instrument to implement Council Directive (EU) 2018/822, which amends Directive 2011/16/EU (*on administrative cooperation in the field of taxation*) as regards to *mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements*.
- 1.4 These regulations will require taxpayers and their advisers to provide details of certain types of cross-border arrangements to HMRC, where the arrangements have features commonly seen in schemes used to avoid or evade tax. This will provide HMRC with additional information to identify and challenge offshore non-compliance and deter people from engaging in aggressive tax arrangements.
- 1.5 Before the regulations can be made a report must be laid on how the powers in section 84 are to be exercised in each of the scenarios set out in subsection (9). The two scenarios in subsection 9 of Section 84 are as follows:
 - a) If either –
 - i) a negotiated withdrawal agreement, or
 - ii) a framework for the future relationship with the European Unionhas not been ratified under section 13 of the European Union (Withdrawal) Act 2018 at the time of the United Kingdom ceasing to be a member of the European Union, and
 - b) if both –
 - i) a negotiated withdrawal agreement, and

- ii) a framework for the future relationship with the European Union

have been ratified under section 13 of the European Union (Withdrawal) Act 2018 at the time of the United Kingdom ceasing to be a member of the European Union.

- 1.6 This report sets out the planned approach to both of these scenarios, i.e. if the Withdrawal Agreement has not been ratified, and if the Withdrawal Agreement has been ratified.
- 1.7 While the UK is a member of the EU, and during the Implementation Period, the UK has a legal obligation to transpose the EU Directive into UK law. The EU Directive will be transposed into UK law by regulations made under section 84. Due to the dissolution of Parliament for the General Election, the Government was unable to lay the report and the regulations before the EU-wide transposition deadline of 31st December 2019. The Government will lay the regulations as soon as possible, subject to the availability of Parliamentary time.

Chapter 2

Subsection 9(a)

If either –

- i) a negotiated withdrawal agreement, or
- ii) a framework for the future relationship with the European Union

has not been ratified under section 13 of the European Union (Withdrawal) Act 2018 at the time of the United Kingdom ceasing to be a member of the European Union.

- 2.1 This scenario relates to how the section 84 powers would be used in the unlikely event that the UK leaves the European Union without a negotiated withdrawal agreement or a framework for the future relationship with the EU – i.e. with ‘no deal’.
- 2.2 The UK is legally obliged to transpose the Directive before the UK ceases to be a member of the European Union and during an Implementation Period.
- 2.3 The UK’s commitment to tax transparency will not be weakened as a result of leaving the EU. The Government will continue to work with international partners to tackle offshore tax avoidance and evasion.
- 2.4 We will remain an active and influential member of the OECD and the G20, and will support efforts in these international fora to develop multilateral responses to cross-border tax transparency issues.
- 2.5 If the UK leaves the EU, and a negotiated withdrawal agreement, or a framework for the future relationship with the European Union, has not been ratified under section 13 of the European Union (Withdrawal) Act 2018, the UK would not be obliged to implement the Directive. In this scenario, the Government may make consequential, supplementary, incidental, transitional or saving provision and may do so by amending, repealing or revoking the Regulations.

Chapter 3

Subsection 9(b)

If both –

- i) a negotiated withdrawal agreement, and
- ii) a framework for the future relationship with the European Union

have been ratified under section 13 of the European Union (Withdrawal) Act 2018 at the time of the United Kingdom ceasing to be a member of the European Union.

- 3.1 This scenario relates to how the section 84 powers would be used if the UK left the European Union with a negotiated withdrawal agreement and a framework for the future relationship with the EU – i.e. with ‘a deal’.
- 3.2 The UK is legally obliged to transpose the Directive before the UK ceases to be a member of the European Union and during the Implementation Period, as set out in Article 127 (1) and (3) of the *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* (‘Withdrawal Agreement’).
- 3.3 Article 127(1) of the Withdrawal Agreement provides that “Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period.”
- 3.4 Article 127(3) of the Withdrawal Agreement provides that: “During the transition period, the Union law applicable pursuant to paragraph 1 shall produce in respect of and in the United Kingdom the same legal effects as those which it produces within the Union and its Member States, and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union.”
- 3.5 If, at the date the UK leaves the EU, a negotiated withdrawal agreement and a framework for the future relationship with the European Union, have been ratified under section 13 of the European Union (Withdrawal) Act 2018, the UK will implement the Directive by exercising the powers provided for by section 84 and the regulations made under it. The Government may make consequential, supplementary, incidental, transitional or saving provision and may do

so by amending, repealing or revoking the Regulations in order to ensure that the rules work as intended after the UK leaves the EU.