



## Disclosure of Tax Avoidance Schemes regime changes

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### Who is likely to be affected?

Firms and individuals who engage in tax avoidance either as promoters who design and sell avoidance schemes, or those who use them.

### General description of the measure

This measure strengthens the Disclosure of Tax Avoidance Schemes (DOTAS) regime by: updating the rules determining what has to be disclosed to ensure avoidance being marketed and used now is disclosed; changing the information that must be provided to HM Revenue & Customs (HMRC); enabling HMRC to publish information about promoters and disclosed schemes; and establishing a taskforce to enforce the strengthened regime.

### Policy objective

While the majority of taxpayers in the UK comply in full with their tax obligations without resorting to tax avoidance schemes, a minority try to avoid tax, usually using schemes that do not deliver the tax results they promise. The Government has made clear that it will act against them and therefore wants to ensure that those who design or market tax avoidance schemes cannot side step the DOTAS rules. For this reason some features of DOTAS need updating.

### Background to the measure

DOTAS was introduced in 2004 to provide early information to HMRC about tax avoidance schemes and their users. It has been amended a number of times to ensure it remains up-to-date and can identify tax avoidance schemes as the tax avoidance market changes.

The intention to strengthen DOTAS in Finance Bill 2015 was announced at Budget 2014 and was followed by a consultation which ran until 23 October 2014. A response document and draft legislation for consultation was issued 10 December 2014. Alongside this HMRC has looked into options aimed at increasing DOTAS compliance and transparency that can accompany these changes.

### Detailed proposal

#### Operative date

Changes to primary legislation included in Finance Bill 2015 will come into force on the date of Royal Assent. Changes that will be made through secondary legislation will be made and come into force shortly after Royal Assent. Further changes to secondary legislation under existing powers will come into force at a later date.

#### Current Law

DOTAS is provided for in Part 7 of the Finance Act (FA) 2004. The detail of what has to be disclosed and the information that must be provided to comply with the regime is set out in regulations. The main regulations impacted by this measure are in SI2006/1543, SI2012/1836, S2011w/170 and SI2004/ 1865.

Section 98C Taxes Management Act 1970 which provides for penalties for persons who fail to comply with the regime.

Regulations currently provide for hallmarks to cover schemes involving income tax, corporation tax, capital gains tax, inheritance tax, stamp duty land tax and the annual tax on enveloped dwellings.

DOTAS also requires disclosure of certain schemes involving National Insurance contributions. Section 132A of the Social Security Administration Act 1992 provides for regulations to extend DOTAS tax legislation to National Insurance contributions.

### Proposed revisions

A number of changes will be made to Part 7 of FA 2004 and in regulations to the hallmarks:

- The rules defining promoters are being changed to ensure disclosure is made by persons resident in the UK where a promoter not resident in the UK fails to disclose. This includes a power to enable HMRC to identify users of undisclosed tax avoidance schemes so that they can be pursued for disclosure.
- The penalty applicable to scheme users who fail to correctly report their use of the scheme to HMRC is increased.
- The descriptions of what has to be disclosed will be updated in regulations.
- HMRC will be able to publish information about promoters and disclosed schemes.
- An employer who enters into a scheme in relation to the employment of its employees will have to provide employees with the SRN and will have to periodically provide HMRC with information about the employees.
- The period during which HMRC may issue a scheme reference number (SRN) is increased from 30 to 90 days.
- HMRC will be able to include additional information in the form used by promoters to provide the SRN to clients and by clients to provide the SRN to others.
- People will be able to voluntarily provide information to HMRC to assist in determining whether there has been a breach of any DOTAS rules.
- The changes will be extended to schemes avoiding National Insurance contributions.

### Summary of impacts

<b>Exchequer impact (£m)</b>	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
	-	negligible	negligible	+30	+50	+70
	These figures are set out in Table 2.1 of Autumn Statement 2014 and have been certified by the office for budget responsibility. More details can be found in the policy costings document published alongside Autumn Statement 2014.					
<b>Economic impact</b>	The measure is not expected to have any significant economic impacts.					
<b>Impact on individuals, households and families</b>	There will only be an impact on those individuals who engage in tax avoidance. It is expected that most of these to be seeking to reduce their tax liability at higher or additional rates.					

<b>Equalities impacts</b>	<p>The measure will not have a disproportionate negative impact on protected groups or families.</p> <p>This measure seeks to ensure that taxpayers pay the tax intended by Parliament. Those engaged in, or promoting tax avoidance will be impacted.</p>
<b>Impact on business including civil society organisations</b>	<p>The measure is expected to have a negligible impact on businesses and civil society organisations. There will only be an impact on businesses if they participate in avoidance schemes.</p> <p>This measure will have no impact on businesses and civil society organisations undertaking normal commercial transactions.</p>
<b>Operational impact (£m) (HMRC or other)</b>	<p>Dealing with outputs from the legislative changes, such as additional scheme disclosures and reporting of reference numbers, will have a negligible impact on HMRC.</p> <p>The additional staff for the taskforce are expected to cost in the region of £2 million per annum.</p>
<b>Other impacts</b>	<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 Gary Coombs on 03000 589577 (email: [gary.coombs@hmrc.gsi.gov.uk](mailto:gary.coombs@hmrc.gsi.gov.uk)) or Alex Wakefield on 03000 589760 (email: [alexander.wakefield@hmrc.gsi.gov.uk](mailto:alexander.wakefield@hmrc.gsi.gov.uk)).

## **1 Disclosure of tax avoidance schemes**

Schedule 1 contains amendments relating to the disclosure of tax avoidance schemes.

## SCHEDULE 1

Section 1

## DISCLOSURE OF TAX AVOIDANCE SCHEMES

*Requirement to update DOTAS information*

1 After section 310B of FA 2004 insert –

**“310C Duty of promoters to provide updated information**

- (1) This section applies where –
  - (a) information has been provided under section 308 about any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under section 311, and
  - (b) after the provision of the information, there is a change in relation to the arrangements of a kind mentioned in subsection (2).
- (2) The changes referred to in subsection (1)(b) are –
  - (a) a change in the name by which the notifiable arrangements, or proposed notifiable arrangements, are known;
  - (b) a change in the name or address of any person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal.
- (3) A person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal must inform HMRC of the change mentioned in subsection (1)(b) within 30 days after it is made.
- (4) Subsections (5) and (6) apply for the purposes of subsection (3) where there is more than one person who is a promoter in relation to the notifiable arrangements or proposal.
- (5) If the change in question is a change in the name and address of a person who is a promoter in relation to the notifiable arrangements or proposal, it is the duty of that person to comply with subsection (3).
- (6) If a person provides information in compliance with subsection (3), the duty imposed by that subsection on any other person, so far as relating to the provision of that information, is discharged.”

2 In section 316 of that Act (information to be provided in form and manner specified by HMRC), in subsection (2), after “310A,” insert “310C,”.

3 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), after paragraph (ca) insert –  
“(cb) section 310C (duty of promoters to provide updated information),”.

*Arrangements to be given reference number*

- 4 In section 311(1)(a) of FA 2004 (period for allocation of reference number to arrangements) for “30 days” substitute “90 days”.

*Duty of promoter to notify client of information*

- 5 (1) Section 312 of FA 2004 (duty of promoter to notify client of number) is amended as follows.
- (2) In subsection (2) for the words from “with prescribed information” to the end substitute “with—
- (a) prescribed information relating to any reference number (or, if more than one, any one reference number) that has been notified to the promoter (whether by HMRC or any other person) in relation to—
    - (i) the notifiable arrangements, or
    - (ii) any arrangements substantially the same as the notifiable arrangements (whether involving the same or different parties), and
  - (b) any other prescribed information relating to arrangements within paragraph (a)(i) or (ii) or to notifiable proposals or notifiable arrangements more generally.”
- (3) In subsection (5)(c), for the words from “HMRC” to the end substitute “HMRC—
- (i) prescribed information relating to the reference number that has been notified to the promoter in relation to the proposed notifiable arrangements, and
  - (ii) any other prescribed information relating to the proposed notifiable arrangements, to any arrangements substantially the same as the proposed notifiable arrangements (whether involving the same or different parties), or to notifiable proposals or notifiable arrangements more generally.”
- (4) Accordingly, in the heading, after “number” insert “etc”.

*Notification of employees*

- 6 (1) Section 312A of FA 2004 (duty of client to notify parties of number) is amended as follows.
- (2) In subsection (1), for “prescribed information” to the end substitute “information under section 312(2) or as mentioned in section 312(5)”.
- (3) In subsection (2), after “number” insert “, and any other prescribed information relating to the arrangements or proposed arrangements, to any arrangements substantially the same as those arrangements (whether involving the same or different parties) or to notifiable proposals or notifiable arrangements more generally,”.
- (4) After that subsection insert—
- “(2A) Where the client—
- (a) is an employer, and

- (b) by reason of the arrangements or proposed arrangements, receives or might reasonably be expected to receive an advantage, in relation to any relevant tax, in relation to the employment of one or more of the client's employees, the client must, within the prescribed period, provide to each of the client's relevant employees prescribed information relating to the reference number and any other prescribed information relating to the arrangements or proposed arrangements or to notifiable proposals or notifiable arrangements more generally."
- (5) For subsection (3) substitute –
- “(3) For the purposes of this section –
- (a) a tax is a “relevant tax”, in relation to arrangements or arrangements proposed in a proposal of any description, if it is prescribed in relation to arrangements or proposals of that description by regulations under section 306;
- (b) “relevant employee” means an employee in relation to whose employment the client receives or might reasonably be expected to receive the advantage mentioned in subsection (2A);
- (c) “employee” includes a former employee;
- (d) a reference to employment includes holding an office (and references to “employee” and “employer” are to be construed accordingly).”
- (6) In subsection (4), for “the duty under subsection (2)” substitute “one or both of the duties under this section”.
- (7) In subsection (5), after “subsection (2)” insert “or (2A)”.
- (8) Accordingly, in the heading for “to notify parties of number” substitute “to provide information to parties etc”.
- 7 In section 313 of that Act (duty of parties to notifiable arrangements to notify Board of number, etc), after subsection (5) insert –
- “(6) The duty under subsection (1) does not apply in prescribed circumstances.”
- 8 In section 316 of that Act (information to be provided in form and manner specified by HMRC), in subsection (2), after “312A(2)” insert “and (2A)”.
- 9 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), in paragraph (da), after “312A(2)” insert “and (2A)”.

#### *Employers' duty of disclosure*

- 10 After section 313ZB of FA 2004 insert –

#### **“313ZC Duty of employer to notify HMRC of details of employees etc**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that a person who is a promoter in relation to notifiable arrangements or a notifiable proposal is providing (or has provided) services in connection with the notifiable arrangements or notifiable proposal to a person (“the client”).

- (3) Condition B is that the client receives information under section 312(2) or as mentioned in section 312(5).
  - (4) Condition C is that the client is an employer in circumstances where, as a result of the notifiable arrangement or proposed notifiable arrangement –
    - (a) one or more of the client’s employees receive, or might reasonably be expected to receive, in relation to their employment, an advantage in relation to any relevant tax, or
    - (b) the client receives or might reasonably be expected to receive such an advantage in relation to the employment of one or more of the client’s employees.
  - (5) Where an employee is within subsection (4)(a), or is an employee mentioned in subsection (4)(b), the client must provide HMRC with prescribed information relating to the employee at the prescribed time or times.
  - (6) The client need not comply with subsection (5) in relation to any notifiable arrangements at any time after HMRC have given notice under section 312(6) or 313(5) in relation to the notifiable arrangements.
  - (7) The duty under subsection (5) does not apply in prescribed circumstances.
  - (8) Section 312A(3) applies for the purposes of this section as it applies for the purposes of that section.”
- 11 In section 316 of that Act (information to be provided in form and manner specified by HMRC), in subsection (2), for “and 313ZA(3)” substitute “, 313ZA(3) and 313ZC(5)”.
- 12 In section 98C of TMA 1970 (notification under Part 7 of FA 2004), in subsection (2), after paragraph (dc) insert –  
“(dca) section 313ZC (duty of employer to provide details of employees etc),”.

#### *Identifying scheme users*

- 13 (1) Section 313C of FA 2004 (information provided to introducers) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) This section applies where HMRC suspect –
- (a) that a person (“P”) is an introducer in relation to a proposal, and
  - (b) that the proposal may be notifiable.
- (1A) HMRC may by written notice require P to provide HMRC with one or both of the following –
- (a) prescribed information in relation to each person who has provided P with any information relating to the proposal;
  - (b) prescribed information in relation to each person with whom P has made a marketing contact in relation to the proposal.”



- (3) In subsection (3), for “or by virtue of subsection (1)” substitute “subsection (1A)”.
- (4) For the heading substitute “Provision of information to HMRC by introducers”.
- 14 In section 98C of TMA 1970 (notification under Part 7 of FA 2004: penalties), in subsection (2)(f) after “information” insert “or have been provided with information”.

*Protection of persons making voluntary disclosures*

- 15 After section 316 of FA 2004 insert –

**“316A Confidentiality**

No duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by any person to HMRC of information or documents which the person has reasonable grounds for suspecting will assist HMRC in determining whether there has been a breach of any requirement imposed by or under this Part.”

*Publication of DOTAS information*

- 16 After section 316A of FA 2004 insert –

**“316B Publication by HMRC**

- (1) HMRC may publish information about –
- (a) any notifiable arrangements, or proposed notifiable arrangements, to which a reference number is allocated under section 311;
  - (b) any person who is a promoter in relation to the notifiable arrangements or, in the case of proposed notifiable arrangements, the notifiable proposal.
- (2) The information that may be published is (subject to subsection (4)) –
- (a) any information relating to arrangements within subsection (1)(a), or a person within subsection (1)(b), that is prescribed information for the purposes of section 308, 309 or 310;
  - (b) any ruling of a court or tribunal relating to any such arrangements or person (in that person’s capacity as a promoter in relation to a notifiable proposal or arrangements);
  - (c) the number of persons in any period who enter into transactions forming part of notifiable arrangements within subsection (1)(a);
  - (d) whether arrangements within subsection (1)(a) are APN relevant (see subsection (7));
  - (e) any other information that HMRC considers it appropriate to publish for the purpose of identifying arrangements within subsection (1)(a) or a person within subsection (1)(b).
- (3) The information may be published in any manner that HMRC considers appropriate.

- (4) No information may be published under this section that identifies a person who enters into a transaction forming part of notifiable arrangements within subsection (1)(a).
- (5) But where a person who is a promoter within subsection (1)(b) is also a person mentioned in subsection (4), nothing in subsection (4) is to be taken as preventing the publication under this section of information so far as relating to the person's activities as a promoter.
- (6) Before publishing any information under this section that identifies a person as a promoter within subsection (1)(b), HMRC must—
  - (a) inform the person that they are considering doing so, and
  - (b) give the person reasonable opportunity to make representations about whether it should be published.
- (7) Arrangements are “APN relevant” for the purposes of subsection (2)(d) if HMRC has indicated in a publication that it may exercise (or has exercised) its power under section 219 of the Finance Act 2014 (accelerated payment notices) by virtue of the arrangements being DOTAS arrangements within the meaning of that section.

### **316C Section 316B: subsequent judicial rulings**

- (1) This section applies if—
  - (a) information about notifiable arrangements, or proposed notifiable arrangements, is published under section 316B,
  - (b) at any time after the information is published, a ruling of a court or tribunal is made in relation to tax arrangements, and
  - (c) HMRC is of the opinion that the ruling is relevant to the arrangements.
- (2) A ruling is “relevant” to the arrangements if—
  - (a) the principles laid down, or reasoning given, in the ruling would, if applied to the arrangements, allow the purported advantage arising from the arrangements in relation to tax, and
  - (b) the ruling is final.
- (3) HMRC must publish information about the ruling.
- (4) The information must be published in the same manner as HMRC published the information mentioned in subsection (1)(a) (and may also be published in any other manner that HMRC considers appropriate).
- (5) A ruling is “final” if it is—
  - (a) a ruling of the Supreme Court, or
  - (b) a ruling of any other court or tribunal in circumstances where—
    - (i) no appeal may be made against the ruling,
    - (ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,

- (iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or
  - (iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.
- (6) Where a ruling is final by virtue of sub-paragraph (ii), (iii) or (iv) of subsection (5)(b), the ruling is to be treated as made at the time when the sub-paragraph in question is first satisfied.
- (7) In this section “tax arrangements” means arrangements in respect of which it would be reasonable to conclude (having regard to all the circumstances) that the obtaining of an advantage in relation to tax was the main purpose, or one of the main purposes.”

*Increase in penalties for failure to comply with section 313 of FA 2004*

- 17 In section 98C of TMA 1970 (notification under Part 7 of FA 2004) –
- (a) in subsection (3) for “penalty of the relevant sum” substitute “penalty not exceeding the relevant sum”, and
  - (b) in subsection (4) –
    - (i) in paragraph (a) for “£100” substitute “£5,000”,
    - (ii) in paragraph (b) for “£500” substitute “£7,500”, and
    - (iii) in paragraph (c) for “£1,000” substitute “£10,000”.

*Transitional provisions*

- 18 (1) Subject to sub-paragraph (2), section 310C of FA 2004 applies in relation to notifiable arrangements, or proposed notifiable arrangements, only if a reference number under section 311 of that Act is allocated to the arrangements on or after the day on which this Act is passed.
- (2) Section 310C of FA 2004 does not apply in relation to notifiable arrangements, or proposed notifiable arrangements, where prescribed information relating to the arrangements was provided to HMRC before that day in compliance with section 308 of that Act.
- 19 Any notice given by HMRC under section 312A(4) of FA 2004 (notice that section 312A(2) duty does not apply) before the day on which this Act is passed is treated on and after that day as given also in relation to the duty under section 312A(2A) of that Act.
- 20 (1) Subject to sub-paragraph (2), section 316B of FA 2004 applies in relation to notifiable arrangements, or proposed notifiable arrangements, only if a reference number under section 311 of that Act is allocated to the arrangements on or after the day on which this Act is passed.
- (2) Section 316B of FA 2004 does not apply in relation to notifiable arrangements, or proposed notifiable arrangements, where prescribed information relating to the arrangements was provided to HMRC before that day in compliance with section 308, 309 or 310 of that Act.
- (3) Section 316B(2)(b) of FA 2004 applies in relation to a ruling of a court or tribunal only if the ruling is given on or after the day on which this Act is passed.



## EXPLANATORY NOTE

### DISCLOSURE OF TAX AVOIDANCE SCHEMES

#### SUMMARY

1. This measure makes changes to the Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of the Finance Act 2004 (FA 2004). In particular it changes the information that employers must provide to employees and to HM Revenue & Customs (HMRC) in relation to avoidance involving their employees. It provides HMRC with a power to identify users of undisclosed avoidance, increases the penalty for users who do not comply with their reporting requirements under DOTAS and introduces protection for those wishing to voluntarily provide information about potential failures to comply with the DOTAS. It also introduces a requirement, under which promoters of tax avoidance schemes must notify HMRC of relevant changes to notified schemes and provides for HMRC to publish information about promoters and schemes that are notified under the regime.

2. These changes will be introduced by Finance Bill 2015 and take effect from Royal Assent to the Bill, to improve the information provided to users of tax avoidance schemes and to HMRC and to improve compliance with the DOTAS regime more generally.

#### DETAILS OF THE SCHEDULE

3. Paragraph 1 introduces a new section 310C into FA 2004. It requires promoters to notify HMRC within 30 days if the name of a scheme, or the name or address of a promoter, changes after a reference number has been issued under section 311 of FA 2004. Subsections (4), (5) and (6) of section 310C deal with the situation where there is more than one promoter in relation to the notified scheme. A promoter is only obliged to provide information about changes to a promoter's detail that apply specifically to itself and the requirement on a promoter to provide information is satisfied if that information has been provided by another promoter.

4. Paragraph 3 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 310C of FA 2004.

5. Paragraph 5 amends section 312(2) and (5) of FA 2004. It enables HMRC to include information not directly related to the reference number issued under section 311 of FA 2004 on the form promoters use to provide that number to their clients.

6. Paragraph 6 amends section 312A(2) of FA 2004 to make similar provision where a client receives information from a promoter under section 312 of FA 2004 and is required to provide prescribed information to others who are party to those arrangements.

7. Sub-paragraph (4) of Paragraph 6 introduces a new subsection (2A) into section 312A of FA 2004. It requires that where an employer receives, or might reasonably be expected to receive, a tax advantage from notifiable arrangements relating to an employee's employment, the employer must provide prescribed information to the employee.

8. Paragraph 9 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 312A(2A) of FA 2004.

9. Paragraph 10 introduces a new section 313ZC into FA 2004. It requires employers to provide HMRC with prescribed information at the prescribed time about each employee to whom they have provided information in accordance with section 312A of FA 2004. The duty on the employees to provide similar information under section 313 of FA 2004 is disapplied in regulations in circumstances where section 313ZC of FA 2004 applies.

10. Paragraph 7 amends section 313 of FA 2004 so that the requirements of that section can be disapplied in regulations in cases where an employer is required to provide prescribed information about employees under new section 313ZC of FA 2004.

11. Paragraph 12 amends section 98C of the Taxes Management Act 1970 to introduce penalties where a person has failed to provide information required under section 313ZC of FA 2004.

12. Paragraph 13 amends section 313C of FA 2004. It enables HMRC to require a person suspected of being an introducer in relation to a notifiable proposal to provide prescribed information about those with whom they have made a marketing contact within the meaning of section 307(4B) of FA 2004.

13. Paragraph 14 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 313C of FA 2004.

14. Paragraph 15 introduces a new section 316A into FA 2004. It enables persons to voluntarily provide information or documents to HMRC which they suspect may assist HMRC in determining whether there has been a breach of any of the requirements of Part 7 of FA 2004.

15. Paragraph 16 introduces a new section 316B into FA 2004. It enables HMRC to publish information about promoters and schemes that are notified under Part 7 of FA 2004 and which have been issued with a reference number under section 311 of FA 2004. HMRC must inform a promoter before publishing any information which would identify that person as a promoter and may not publish any information that will identify scheme users.

16. Paragraph 16 also introduces a new section 316C into FA 2004. It requires HMRC to publish information about court rulings that are relevant to the earlier publication of information under section 316B of FA 2004 and to publish it in the same manner as the original publication.

17. Paragraph 17 amends subsection 98C(3) of the Taxes Management Act 1970. It increases the penalties for users of tax avoidance schemes who fail to correctly provide information about the reference number to HMRC under section 313 of FA 2004. The penalties are increased to an amount not exceeding £5,000, £7,500 and £10,000 for each of the three categories of failures mentioned in that subsection.

18. Paragraph 18 sets out transitional provisions for new sections 310C and 316B of FA 2004. The new sections take effect only for schemes which are notified under section 308 and issued with a reference number under section 311 of FA 2004, on or after Finance Bill 2015 receives Royal Assent, and in relation to court rulings given after that day.

19. Paragraph 18 also sets out transitional provisions for section 312A(4) of FA 2004. It treats any notice given under section 312A(4) of FA 2004 before Finance Bill 2015 receives Royal Assent as given also in relation to section 312A(2A) of FA 2004.

## **BACKGROUND NOTE**

20. The Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of FA 2004 is designed to give HMRC early warning of tax avoidance schemes. This provides HMRC with the opportunity to consider changes in the law to close loopholes and to challenge schemes that it believes do not work. It requires a person, usually the person who designs or sells the tax avoidance scheme, to provide details of their scheme to HMRC if it meets certain criteria. The changes being made will improve the information provided to HMRC and to users of tax avoidance schemes as well as improving compliance with the DOTAS regime more generally. The publication of information about promoters and schemes notified under the regime and issued with reference number will help would-be users to better understand the serious risks they face when getting involved with tax avoidance.

21. If you have any questions about this change, or comments on the legislation, please contact Gary Coombs on 03000 589577 (email: [gary.coombs@hmrc.gsi.gov.uk](mailto:gary.coombs@hmrc.gsi.gov.uk) )

**2015 No.**

**TAXES**

**The Tax Avoidance Schemes (Promoters and Prescribed  
Circumstances) (Amendment) Regulations 2015**

<i>Made</i>	- - - -	***
<i>Laid before House of Commons</i>		***
<i>Coming into force</i>	- -	<i>31st March 2015</i>

The Commissioners for Her Majesty’s Revenue and Customs(a) in exercise of the powers conferred by section 307(5) and 318(1) of the Finance Act 2004(b) make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) (Amendment) Regulations 2015 and come into force on 31st March 2015.

2. The Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004(c) are amended as follows.

**Persons not to be treated as promoters – employees**

3. After paragraph (3) of regulation 3 (persons not to be treated as promoters – employees) insert—

“(4) This Regulation does not apply where, but for the requirements of this regulation, a duty falls on any person under section 309.”

**Persons not to be treated as promoters under section 307(1)(b)(ii)**

4. Omit regulation 5 (persons not to be treated as promoters under section 307(1)(b)(ii)).

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(a) The functions of the Commissioners “Board” of Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Inland Revenue, however expressed, shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

(b) 2004 c. 12.

(c) SI 2004/1865. Amended by SI 2004/2613 and SI 2012/1868.



*Name*

Two of the Commissioners for her Majesty's Revenue and Customs

Date

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Tax Avoidance Schemes (Promoters and Prescribed Circumstances Regulations) 2004 (S.I. 2004/1865) ("the 2004 Regulations") to ensure that neither an employee of a promoter resident outside of the United Kingdom in the event that the employer does not make a disclosure, nor any person who is to any extent responsible for the organisation or management of notifiable arrangements, is excluded from being treated as a promoter.

Regulation 1 provides for citation and commencement.

Regulation 3 inserts new regulation 3(4) into the 2004 Regulations which prescribes circumstances where regulation 3 will not apply to employees.

Regulation 4 omits regulation 5 of the 2004 Regulations.

A Tax Information and Impact Note covering this instrument was published on 10th December 2014 alongside the Autumn Statement 2014 and is available on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

**EXPLANATORY MEMORANDUM TO**

**THE TAX AVOIDANCE SCHEMES (PROMOTERS AND  
PRESCRIBED CIRCUMSTANCES) (AMENDMENT)  
REGULATIONS 2015**

**[2015] No. [XXXX]**

1. This explanatory memorandum has been prepared by HM Revenue and 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 Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 (the “Promoter Regulations”) to ensure that employees of promoters resident outside the United Kingdom are not excluded as promoters in the event that their employer does not disclose and to ensure that persons who are to any extent responsible for the organisation or management of notifiable arrangements are not excluded from being treated as a promoter.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
  - 3.1. None
4. **Legislative Context**
  - 4.1. Part 7 of the Finance Act 2004 (sections 306 – 319) provides for the notification (“disclosure”) to the HMRC of certain tax arrangements and proposals for such 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. Where the promoter is not resident in the United Kingdom the obligation may fall on other persons if the promoter does not comply with the requirement on them.
  - 4.3. Section 311 provides that HMRC may issue a scheme reference number (SRN) to the person who disclosed the scheme. 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 issue the

SRN to other persons who are party to the scheme. Any person who receives a SRN must report it to HMRC unless exempted by regulations.

4.4. Section 98C of the Taxes Management Act imposes penalties on persons who fail to comply with obligations under Part 7 of the Finance Act 2004.

## **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. The Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of the Finance Act 2004 is designed to give HMRC early warning of tax avoidance schemes, giving it the opportunity to consider changes in the law to close loopholes or challenge schemes that it does not believe work. It requires a person, usually the person who designs or sells the tax avoidance scheme, to disclose details of certain descriptions of schemes to HMRC.

7.2. The obligation to disclose applies equally to promoters who are resident in, or outside, the United Kingdom. If a promoter not resident in the United Kingdom fails to disclose, the requirement falls on each person who enters into a transaction forming part of the scheme unless there is another person within the meaning of promoter in the United Kingdom.

7.3. The 2004 Promoter Regulations treat certain persons as not being promoters. Since 2008, where more than one person is within the meaning of promoter, section 308 lifts the obligation to disclose where one of those promoters has disclosed the scheme.

7.4. These regulations make two changes to the 2004 Promoter Regulations. First, where a promoter who is not resident in the United Kingdom fails to disclose, the exemption provided generally to exclude employees of a promoter from being treated as a promoter is disapplied. Second, the regulation that excludes a person from being treated as a promoter if they are responsible to any extent for the organisation or management of the scheme but are not connected to a promoter who is involved in the design of the scheme is removed. Together these changes will make it more difficult for promoters not resident in the United Kingdom to avoid disclosure.

## **8. Consultation outcome**

8.1. The Government published a consultation document on 31 July 2014 entitled 'Strengthening the Tax Avoidance Disclosure Regimes'. That consultation contained a number of proposals to strengthen the disclosure regime, including improving the information available to HMRC. These regulations take forward the elements outlined in that consultation which seek to make it more difficult for promoters not resident in the United Kingdom to avoid disclosure.

## **9. Guidance**

9.1. Relevant guidance will be updated.

## **10. Impact**

10.1. The impact on business, including civil society organisations is expected to be negligible. The regulations impose reporting obligations onto employees or a promoter and persons working with the promoter only to the extent that the promoter fails to comply with DOTAS.

10.2. The impact on the public sector is nil.

10.3. A Tax Information and Impact Note covering these Regulations was published on 10 December 2014 and can be found at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

## **11. Regulating small business**

11.1. The legislation applies 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**

Gary Coombs in the Counter-Avoidance Directorate of HM Revenue and Customs Tel: 03000 589577 or email: [gary.coombs@hmrc.gsi.gov.uk](mailto:gary.coombs@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

**2015 No.**

**TAXES**

**Tax Avoidance Schemes (Information) (Amendment)  
Regulations 2015**

*Made* - - - - - \*\*\*

*Laid before the House of Commons* \*\*\*

*Coming into force* - - - [22nd April 2015]

The Commissioners for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 312(2) and (5), 312A(2), 312A(2A) and 312A(5), 313(1), (3) and (6), 313ZC(5), 313C(1A) and (3)(a), 317(2) and 318(1) of the Finance Act 2004(a) and now exercisable by them(b).

**Citation and commencement**

1. These Regulations may be cited as the Tax Avoidance Schemes (Information) (Amendment) Regulations 2015 and come into force on [22nd April 2015].

**Amendment of the Avoidance Schemes (Information) Regulations 2012**

2. The Tax Avoidance Schemes (Information) Regulations 2012(c) are amended as provided for in regulations 3 to 11.

3.—(1) Regulation 6 (prescribed information under sections 312 and 312A), is amended as follows.

(2) After “(duty of promoter to notify client of number)” insert “etc”.

(3) After “312A(2)” for “(duty of client to notify parties of number)” substitute “and (2A) (duty of client to provide information to parties etc)”.

(4) In sub-paragraph (d)(ii)—

(a) after “312A(2)” for “.” substitute “or 312A(2A); and” and

(b) after sub-paragraph (d)(ii) insert—

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(a) 2004 c. 12. Sections 312 and 313 were amended by, and section 312A inserted by Schedule 38 to the Finance Act 2008 (c. 9). Sections 312A(2A), 313(6), 313C(1A) and 313ZC were inserted by Schedule 1 to the Finance Act 2015 (c. X.) Section 313C was inserted by and section 317 was amended by Schedule 17 to the Finance Act 2010. Section 318(1) is cited because of the meaning of “prescribed”.

(b) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference in an enactment, instrument or other document to the Commissioners of Inland Revenue, however expressed, shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

(c) S.I. 2012/1836. Amended by S.I. 2013/2592. There are other amending instruments but none is relevant.

“(e) any other information relating to notifiable arrangements, or substantially the same as the notifiable arrangements (whether or not involving the same or different parties), which HMRC may from time to time require to be conveyed to others.”

4. In regulation 7 (time for providing information under section 312A), after “312A(2)” insert “or 312A(2A)”.

5. Omit regulation 8 (exemption from duty under section 312A).

6. After regulation 8A insert—

**“Exemption from duty under section 313**

8B. Where an employee receives prescribed information from an employer under section 312A(2) or 312A(2A) in circumstances where the employer has a duty to notify HMRC under section 313ZC(a) in respect of that employee, then no duty arises under section 313(1) in respect of that employee.”

7. In regulation 9 (prescribed cases under section 313(3)(a)), in paragraphs (2), (3), and (4) for “10(4), (7)” substitute “10(7)”.

8. In regulation 10 (prescribed cases under section 313(3)(b)), omit paragraph (4).

9. In regulation 11(3)(d) (prescribed information under section 313(1)) omit “or, in the case of regulation 10(4), an employee of that person.”

10. In regulation 12 (time for providing information under section 313(3)(b)) omit paragraph (3).

11. After regulation 13A(b) (prescribed information under section 313ZB: information and timing) insert—

**“Prescribed information under section 313ZC: information and timing**

**13B.**—(1) For the purposes of section 313ZC (duty of employer to notify HMRC of details of employees etc) the prescribed time for providing prescribed information is 14 days after the end of the final tax period in respect of the tax year in which any person first enters into a transaction forming part of the notifiable arrangements and on the same date in each subsequent year until an advantage ceases to apply to the employee and the employer.

In this paragraph, “tax period” has the meaning given in regulation 2(1) (interpretation) of the Income Tax (Pay As You Earn) Regulations 2003.

(2) For the purposes of section 313ZC the prescribed information is—

- (a) the name, address and reference number of the employer;
- (b) the name and any National Insurance Number of the employee;
- (c) the reference number (or if more than one, any one reference number) allocated by HMRC under section 311 (arrangements to be given reference number) to the notifiable arrangements or proposed notifiable arrangements;
- (d) where the employee obtains or might reasonably be expected to obtain a tax advantage by virtue of the notifiable arrangements, the tax year in which the employee expects to obtain a tax advantage;
- (e) where a tax advantage is obtained, or might reasonably be expected to be obtained only by any person other than the employee by virtue of the notifiable

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(a) Inserted by section [X] of Sch [X] to the Finance Act 2015 (c. X).

(b) Inserted by S.I. 2013/2592.

arrangements, confirmation that the employee's tax advantage is expected to be nil; and

- (f) the name and address of the promoter, and any name given to the notifiable arrangement when it was notified.”

**12.**— Regulation 15(1)(prescribed information under section 313C: information and timing) is amended by:

- (a) in sub-paragraph (a) omitting “and”; and
- (b) in sub-paragraph (b), after “proposal” inserting—  
“; and
- (c) the name and address of each person with whom P has made a marketing contact.”

	<i>Name</i>
	<i>Name</i>
Date	Two of the Commissioners for her majesty's Revenue and Customs

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Tax Avoidance Schemes (Information) Regulations 2012 (S.I. 2012/1836) (“the 2012 Regulations”) to take account of the new obligations introduced into Part 7 of the Finance Act 2004 (c. 12) by the Finance Act 2015 (c. X). They change the information that employers must provide to employees and to HMRC in relation to avoidance involving their employees and extend the prescribed information that introducers must provide to HMRC in relation to avoidance to include information relating to persons with whom an introducer has made a marketing contact.

These Regulations prescribe the information which is to be given to HMRC under Part 7 of the Finance Act 2004 (“the 2004 Act”) in relation to tax avoidance schemes which are prescribed by the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543).

Regulation 1 provides for the citation and commencement.

Regulation 2 introduces the amendments to the 2012 Regulations.

Regulation 3 and 4 make consequential amendments to regulation 6 and 7 of the 2012 Regulations.

Regulation 5 omits regulation 8 (exemption from duty under section 312A) from the 2012 Regulations which removes the duty under section 312A(2) of the 2004 Act in prescribed circumstances.

Regulation 6 inserts new regulation 8B “Exemption from duty under section 313” which removes the duty under section 313(1) of the 2004 Act in prescribed circumstances.



Regulations 7, 8, 9 and 10 omit references to regulation 10(4) in regulations 9, 10, 11 and 12 of the 2012 Regulations. This is as a consequence of the duty imposed on an employer by new section 313ZC of the 2004 Act.

Regulation 11 inserts new regulation 13B into the 2012 Regulations. New regulation 13B prescribes the information and the time by which that information must be provided to HMRC about each employee to whom they have provided information in accordance with section 312A of the 2004.

Regulation 12 amends regulation 15 of the 2012 Regulations by inserting new paragraph (1)(c) which prescribes the requirement to provide the name and address of each person with whom an introducer has made a marketing contact.

A Tax Information and Impact Note covering this instrument was published on XX December 2014 alongside the Autumn Statement 2014 and is available on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins> It remains an accurate summary of the impacts that apply to this instrument.

**EXPLANATORY MEMORANDUM TO**  
**THE AVOIDANCE SCHEMES (INFORMATION) (AMENDMENT)**  
**REGULATIONS 2015**

**[2015] No. [XXXX]**

1. This explanatory memorandum has been prepared by HM Revenue and 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 into Part 7 of Finance Act 2004 by Finance Act 2015.
  - 2.2. They set out information which employers are required to provide to employees who are party to notifiable arrangements or proposed notifiable arrangements relating to their employment. They specify what information employers must provide to HMRC, and when they must provide it, about employees to whom they have provided such information.
  - 2.3. They set out information HMRC can require an introducer, as defined in section 307 of the Finance Act 2004, to provide to HMRC to identify users of undisclosed avoidance.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
  - 3.1. None
4. **Legislative Context**
  - 4.1. Part 7 of the Finance Act 2004 (sections 306 – 319) provides for the notification (“disclosure”) to the HMRC of certain tax arrangements and proposals for such 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. Where the promoter is not resident in the United Kingdom the obligation may fall on other persons if the promoter does not comply with the requirement on them.

- 4.3. Section 311 provides that HMRC may issue a scheme reference number (SRN) to the person who disclosed the scheme. 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 issue the SRN to other persons who are party to the scheme. Any person who receives a SRN must report it to HMRC unless exempted by regulations.
- 4.4. Different rules apply where the client is an employer and employees of that employer receive or expect to receive a tax advantage by reason of their employment. The employer is not required to issue the SRN to the employees and only the employer is required to report the SRN to HMRC. No information is received from or about employees.
- 4.5. Section 98C of the Taxes Management Act imposes penalties on persons who fail to comply with obligations under Part 7 of the Finance Act 2004.

## **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. The Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of the Finance Act 2004 is designed to give HMRC early warning of tax avoidance schemes, giving it the opportunity to consider changes in the law to close loopholes or challenge schemes that it does not believe work. It requires a person, usually the person who designs or sells the tax avoidance scheme, to disclose details of certain descriptions of schemes to HMRC.
- 7.2. Different reporting rules apply to schemes entered into by an employer where employees receive or expect to receive a tax advantage by reason of their employment. The requirement for employees to receive the SRN from their employer and to report it to HMRC is lifted in regulations and instead the employer is required to notify only their use of the scheme. This means that HMRC does not learn the identity of employees by means of the DOTAS regime.
- 7.3. Finance Act 2015 introduces a requirement on employers in relation to such schemes both the issue the SRN to relevant employees and to report certain information to HMRC about those employees. These regulations prescribe the information

employers must provide to employees and to HMRC and the time at which it must be provided. They also lift the requirement on employees to report the SRN they receive from their employer, given that the information will be received from the employer.

- 7.4. HMRC has a power to require a person whom they suspect of being an introducer (as defined in section 307) to provide information to HMRC about a person from whom they have received information about a scheme. This is to enable HMRC to look along the supply chain to identify the promoter of the scheme and force disclosure under DOTAS.
- 7.5. Finance Act 2015 introduces a new power to enable HMRC to look along the chain of supply in the other direction to identify persons they suspect of being users of a disclosable scheme. This will enable HMRC to pursue disclosure with those persons under section 309 where a promoter resident outside the United Kingdom has not disclosed the scheme.
- 7.6. These regulations prescribe the information HMRC may require an introducer to provide about persons with whom they have made a marketing contact as defined in section 307(4B) of the Finance Act 2004.

## **8. Consultation outcome**

- 8.1. The Government published a consultation document on 31 July 2014 entitled 'Strengthening the Tax Avoidance Disclosure Regimes'. That consultation contained a number of proposals to strengthen the disclosure regime, including improving the information available to HMRC. These regulations take forward the elements outlined in that consultation which seek to improve information available to HRMC and to employees in relation to scheme connected to their employment.

## **9. Guidance**

- 9.1. Relevant guidance will be updated.

## **10. Impact**

- 10.1. The impact on business, including civil society organisations is expected to be negligible. The regulations impose reporting obligations on employers who implement tax avoidance schemes for their own or their employees' benefit, to provide information to employees who are affected by the scheme and to provide information to HMRC annually to identify those employees.
- 10.2. The impact on the public sector is nil.
- 10.3. A Tax Information and Impact Note covering these Regulations was published on 10 December 2014 and can be found at

<https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

It remains an accurate summary of the impacts that apply to this instrument.

## **11. Regulating small business**

11.1. The legislation applies 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**

Gary Coombs in the Counter-Avoidance Directorate of HM Revenue and Customs Tel: 03000 589577 or email: [gary.coombs@hmrc.gsi.gov.uk](mailto:gary.coombs@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.