

Clause 40: International tax enforcement: disclosable arrangements

Summary

1. This clause gives HM Treasury a power to make regulations to require disclosure of information about certain cross border tax arrangements to HM Revenue and Customs (HMRC) to give effect to international rules. This will allow the UK to implement Directive 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. It would also allow the UK to implement the Organisation for Economic Co-operation and Development (OECD) model mandatory disclosure rules if the Government decides to adopt those rules.

Details of the clause

2. Subsection 1 introduces a power to make regulations to require participants in arrangements of a description specified by the regulations to disclose information for the purpose of securing compliance of the UK government with international tax provisions.
3. Subsection 2 sets out particular matters which may be dealt with by the regulations including the timing and form of the disclosure, that the regulations may require disclosure of information about arrangements entered into before as well as after the coming into force of the regulations, and penalties for failing to comply with the regulations.
4. Subsection 3 provides definitions for the purpose of this section.
5. Subsections 4 enables the regulations to make consequential amendments, including to primary legislation, and provide that they must be made by statutory instrument.
6. Subsection 5 provides that the regulations which amend primary legislation must be made using the affirmative procedure.
7. Subsection 6 provides that the regulations which do not amend primary legislation are subject to negative procedure.

Background note

8. This clause enables the government to implement Directive 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. It will also permit the implementation of new Organisation for Economic Co-operation and Development (OECD) model mandatory disclosure rules, should the decision be taken to implement those. The UK will continue to implement EU law during the Implementation Period in the Withdrawal Agreement.

9. The Directive requires information about certain cross border tax planning arrangements to be filed with EU Member States' tax administrations. This information will be automatically shared between all EU Member States.
10. The purpose of the Directive and OECD rules is to give tax administrations access to early, useful information about taxpayers, intermediaries who provided services in connection with these arrangements, their activities in other countries, and the types of cross border arrangements that are entered into. The rules will help to control and disrupt cross border tax avoidance and evasion which relies on secrecy. This will aid tax administrations to ensure that everyone pays the right amount of tax.
11. This clause will enable the Treasury to make regulations to require the disclosure of information about relevant arrangements by persons who participate in those arrangements, including taxpayers, promoters and persons who provide services in connection with such arrangements to HMRC.
12. If you have any questions about this section, or comments on the legislation, please contact Helen Baird-Parker on 03000 586141 (email: helen.baird-parker@hmrc.gsi.gov.uk)

