

**EXPLANATORY MEMORANDUM TO THE
VALUE ADDED TAX (DISCLOSURE OF AVOIDANCE SCHEMES)
(AMENDMENT) REGULATIONS 2005**

2005 No. 2009

1. 1.1 This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 These Regulations, which come into force on 1st August 2005, amend the Value Added Tax (Disclosure of Avoidance Schemes) Regulations 2004 (S.I. 2004/1929) ("the principal Regulations"). The principal Regulations prescribe the time within which information concerning VAT avoidance schemes which are notifiable under Schedule 11A to the Value Added Tax Act 1994 (c. 23) must be provided to the Commissioners, the form and manner of such notification and the information to be provided. These Regulations amend the principal Regulations to take account of amendments made to Schedule 11A by the Finance (No. 2) Act 2005 (c. 22) and the designation of two new tax avoidance schemes and one new "hallmarked" scheme by the Value Added Tax (Disclosure of Avoidance Schemes)(Designations) (Amendment) Order 2005 (S.I. 2005/1724).

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 These Regulations come into force before the expiry of 21 days from the date of laying. The Paymaster General has announced that all of the changes to the regime for notification of VAT avoidance schemes will come into force on 1 August 2005. These regulations are an integral part of that package, which also includes section 6 of, and Schedule 1 to, the Finance (No. 2) Act 2005, the Value Added Tax (Disclosure of Avoidance Schemes) (Designations)(Amendment) Order 2005 (S.I. 2005/1724) and the Finance (No. 2) Act 2005, section 6, (Appointed Day and Savings Provisions) Order 2005(S.I. 2005/2010).

3.2 The Paymaster General wrote to the Chairman of the Standing Committee on 15 June informing him of the proposed commencement date and enclosing draft copies of all the secondary legislation involved, including the regulations.

3.3 No Regulatory Impact Assessment has been made for these Regulations. See section 8.

4. Legislative Background

4.1 Schedule 11A to the Value Added Tax Act 1994 (inserted by section 19 of, and Schedule 2 to, the Finance Act 2004) provides for the notification to the Commissioners of VAT avoidance schemes. A number of amendments were made to Schedule 11A by Schedule 1 to the Finance (No.2) Act 2005. Those changes come into force, subject to certain savings provisions, on 1st August 2005 (see the Finance (No. 2) Act 2005, section 6, (Appointed Day and Savings Provisions) Order 2005 (S.I. 2005/2010)).

4.2 Paragraph 6 of Schedule 11A provides, broadly, that a taxable person is (subject to certain conditions set out in the Schedule) required to disclose the use of a scheme when that scheme has made a difference to the amounts shown on his VAT return or to any claim made in respect of such a return. Paragraph 6 was amended by paragraph 5 of Schedule 1 to the Finance (No. 2) Act 2005. A taxable person is now also required (subject to the same conditions) to disclose use of a VAT avoidance scheme where that scheme reduces the amount of his non-deductible tax. Non-deductible tax is defined in paragraph 2A of Schedule 11A, as inserted by paragraph 4 of Schedule 1 to the Finance (No. 2) Act 2005.

4.3 Schedule 11A requires notification of schemes designated by Treasury Order (“designated schemes”) and also of schemes (“hallmarked schemes”) which include or have associated with them a provision (also designated by Treasury Order) likely to be entered into for the purposes of tax avoidance. The Value Added Tax (Disclosure of Avoidance Schemes)(Designations) Order 2004 (S.I. 2004/1933) designates these schemes and provisions and allocates a reference number to each designated scheme. That Order is amended by the Value Added Tax (Disclosure of Avoidance Schemes)(Designations)(Amendment) Order 2005 (S.I. 2005/1724), which designates two new tax avoidance schemes and one new hallmarked scheme with effect from 1st August 2005.

4.4 Where there has been a failure to fulfil the obligation to notify a scheme the Commissioners may assess a penalty; of up to 15% of the tax advantage in respect of a designated scheme and up to £5,000 for a hallmarked scheme.

4.5 The principal Regulations prescribe the time within which information concerning VAT avoidance schemes that are notifiable under Schedule 11A must be provided to the Commissioners; they make provision for the form and manner of notification and they prescribe the information to be provided. These Regulations amend the principal Regulations so as to prescribe the time within which notification of VAT avoidance schemes that reduce a taxable persons non-deductible tax must be notified to the Commissioners and make a consequential amendment to regulation 4 of those Regulations. Notification is not required if the prescribed accounting period in which the reduction in the amount of non-deductible tax takes place begins before 1st August 2005 (see

Article 3 of the Finance (No. 2) Act 2005, section 6, (Appointed Day and Savings Provisions) Order 2005 (S.I. 2005/2010)).

4.6 These Regulations also contain provisions relating to the two new designated schemes and one new hallmarked scheme referred to in paragraph 4.3 above. The effect of these provisions is that notification of the new schemes is not required if the prescribed accounting period in which the claimed tax advantage arises begins before 1st August 2005 (unless that scheme is already notifiable under the old regime). If the taxable person has previously notified one of the two new tax avoidance schemes as a “hallmarked” scheme he is not required to notify that scheme again (see paragraph 6 of Schedule 11A, as amended by paragraph 5 of Schedule 1 to the Finance (No. 2) Act 2005).

5. Extent

5.1 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

7.1 Tackling tax avoidance is a key element of the Commissioners' VAT Compliance Strategy, which is aimed at making compliance easier for businesses to comply with their VAT whilst tackling those who abuse the system.

7.2 The role of tax avoidance in producing the VAT Gap between VAT receipts the Commissioners could expect to receive given the level of economic activity and the amount they do receive is significant. It is not possible to estimate losses from avoidance activity by constructing effects from individual elements, but the Commissioners' latest estimate is that £2.5 to £3.0bn a year is lost through VAT avoidance.

7.3 Avoidance tends to be concealed within other business activities and therefore is often difficult to identify.

7.4 The Commissioners' anti-avoidance strategy has four main elements:

- To discourage taxpayers from using schemes. This includes a critical appraisal of all new legislation to reduce the potential for tax avoidance as well as publicising successes in closing down avoidance schemes.
- To identify as early as possible schemes that are being used.
- To challenge avoidance schemes by raising assessments and, where necessary, pursuing the matter through the Courts.

- To produce legislative changes that will close down avoidance schemes where litigation is not appropriate or where the amount of tax at stake is particularly large.

7.5 Schedule 11A and instruments made under it are intended to achieve early identification of avoidance schemes. These regulations are necessary for two purposes. Firstly, they specify the time limits within which taxpayers must notify a scheme where that scheme leads to a reduction in their irrecoverable VAT. Notification will not be required in respect of prescribed accounting periods beginning before 1 August 2005 (see Article 3 of the Finance (No. 2) Act 2005, section 6, (Appointed Day and Savings Provisions) Order 2005 (S.I. 2005/2010)).

7.6 Secondly, they ensure that a taxpayer is not required to notify one of the new designated schemes or the new hallmarked scheme (designated by the Value Added Tax (Disclosure of Avoidance Schemes)(Designations) (Amendment) Order 2005 (S.I. 2005/1724) in respect of prescribed accounting periods beginning before 1 August 2005 (unless they had an obligation to notify under the existing legislation).

7.7 The Value Added Tax (Disclosure of Avoidance Schemes) (Designations)(Amendment) Order 2005 (S.I. 2005/1724) was exposed for consultation on 24 March 2005 and comments invited by 29 April. The final version of the Order takes account of the comments received. As these regulations merely make amendments necessary as a result of that Order and the changes made by section 6 of, and Schedule 1 to, the Finance (No. 2) Act 2005, it was not felt necessary to expose them for consultation.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument. This is the established policy for anti-avoidance measures, such as this, where the impact on business, charities and voluntary bodies that do not engage in tax avoidance is minimal. The Commissioners have agreed with the Regulatory Impact Unit of the Cabinet Office that this measure does not call for a Regulatory Impact Assessment for this reason.

8.2 The Commissioners issued a Tax Avoidance Impact Assessment, which replaces a Regulatory Impact Assessment in respect of these Regulations, on 24 March 2005. An updated Assessment can be found on the H M Revenue and Customs website (www.hmrc.gov.uk) and a copy is annexed to this memorandum.

8.3 The impact on the public sector is negligible

9. Contact

David Easton at HM Revenue and Customs Tel: 0207 147 2418 or e-mail: David.Easton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.