
STATUTORY INSTRUMENTS

2020 No. 25

TAXES

**The International Tax Enforcement
(Disclosable Arrangements) Regulations 2020**

<i>Made</i>	- - - -	<i>9th January 2020</i>
<i>Laid before the House of Commons</i>	- - - -	<i>13th January 2020</i>
<i>Coming into force</i>	- -	<i>1st July 2020</i>

The Treasury, in exercise of the powers conferred by section 136 of the Finance Act 2002⁽¹⁾ and section 84 of the Finance Act 2019⁽²⁾, make the following Regulations.

Further to section 84(8) of the Finance Act 2019, the Chancellor of the Exchequer has laid before the House of Commons a report on how the powers in section 84 are to be exercised in each of the scenarios in subsection (9) of that section.

PART 1

Introductory provisions

Citation and commencement

1.—(1) These Regulations may be cited as the International Tax Enforcement (Disclosable Arrangements) Regulations 2020 and come into force on 1st July 2020.

(2) These Regulations have effect in relation to—

- (a) a reportable cross-border arrangement which is, or continues to be, made available for implementation or ready for implementation on or after 1st July 2020,
- (b) a reportable cross-border arrangement in respect of which, on or after 1st July 2020, an intermediary within the second paragraph of Article 3(21) of the DAC provided, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of the reportable cross-border arrangement, and

(1) 2002 c. 23.
(2) 2019 c. 1.

- (c) a reportable cross-border arrangement the first step in the implementation of which was made on or after 25th June 2018.

Interpretation

2.—(1) In these Regulations—

- “arrangement reference number” has the meaning given in regulation 8(4);
- “associated enterprise” has the meaning given by Article 3(23) of the DAC;
- “competent authority” has the meaning given by Article 3(1) of the DAC;
- “cross-border arrangement” has the meaning given by Article 3(18) of the DAC;
- “the DAC” means Council [Directive 2011/16/EU](#) on administrative cooperation in the field of taxation and repealing [Directive 77/799/EEC](#)(3), as amended from time to time;
- “HMRC” means Her Majesty’s Revenue and Customs;
- “intermediary”, subject to regulation 13, has the meaning given by Article 3(21) of the DAC;
- “marketable arrangement” has the meaning given by Article 3(24) of the DAC;
- “OECD” means the Organisation for Economic Co-operation and Development;
- “relevant taxpayer” has the meaning given by Article 3(22) of the DAC;
- “reportable cross-border arrangement” has the meaning given by Article 3(19) of the DAC;
- “reportable information” has the meaning given in regulation 6;
- “tax” means any tax to which the DAC applies(4);
- “TCEA 2007” means the Tribunals, Courts and Enforcement Act 2007(5);
- “UK intermediary” means an intermediary in relation to whom the United Kingdom is the member State in any of paragraphs (a) to (d) of the list in Article 8ab(3) of the DAC;
- “UK relevant taxpayer” means a relevant taxpayer in relation to whom the United Kingdom is the member State in any of paragraphs (a) to (d) of the list in Article 8ab(7) of the DAC.

(2) In applying the DAC for the purposes of these Regulations, “TIN” means—

- (i) if the person is resident for tax purposes in the United Kingdom, the unique taxpayer reference number allocated to that person by HMRC,
- (ii) if the person is resident for tax purposes outside the United Kingdom, the unique taxpayer reference number allocated to that person by HMRC or, if they do not have one, the reference number allocated to that person by the tax authority in the country or territory in which they are resident for tax purposes, or
- (iii) if no such reference number has been allocated, the national insurance number, if any, allocated within the meaning of regulation 9 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001(6).

(3) For the purposes of paragraph (2), “resident for tax purposes” means liable under the law of a jurisdiction to tax there by reason of domicile, residence, place of management or any criterion of a similar nature.

(4) For the purposes of these Regulations, “tax advantage” includes—

- (a) relief or increased relief from tax,
- (b) repayment or increased repayment of tax,

(3) OJ No. L064, 11.3.2011, p1, most recently amended by Council Directive (EU) 2018/822 (OJ No. L139, 5.6.2018, p1).

(4) Article 2 of the DAC sets out the scope of the Directive.

(5) 2007 c. 15.

(6) S.I. 2001/769; regulation 9 has been amended by S.I. 2006/2897, 2008/223, 2015/1828 and 2015/67.

- (c) avoidance or reduction of a charge to tax or an assessment to tax,
- (d) avoidance of a possible assessment to tax,
- (e) deferral of a payment of tax or advancement of a repayment of tax, and
- (f) avoidance of an obligation to deduct or account for tax,

where the obtaining of the tax advantage cannot reasonably be regarded as consistent with the principles on which the relevant provisions that are relevant to the cross-border arrangement are based and the policy objectives of those provisions.

PART 2

Reporting obligations

Reporting obligations: UK intermediaries

3.—(1) Subject to paragraph (2) and regulation 7, where a UK intermediary participates⁽⁷⁾ in a reportable cross-border arrangement, the UK intermediary must make a return within the specified period setting out the reportable information in relation to the reportable cross-border arrangement that is within the UK intermediary's knowledge, possession or control.

(2) Paragraph (1) does not apply to a UK intermediary ("I") in relation to a reportable cross-border arrangement if—

- (a) I is liable to file information in relation to the reportable cross-border arrangement with the competent authorities of another member State which when applying the list in Article 8ab(3) of the DAC features before, or in the same paragraph as, the United Kingdom, or
- (b) another intermediary who participates in the reportable cross-border arrangement has made a return setting out the reportable information required to be reported by I in relation to the reportable cross-border arrangement, and

I has evidence that the reportable information required to be reported by I in relation to the reportable cross-border arrangement has been filed or returned.

(3) The specified period is—

- (a) in a case where the first step in the implementation of a reportable cross-border arrangement was made between 25 June 2018 and 1 July 2020, the period beginning on 1 July 2020 and ending on 31 August 2020,
- (b) in a case where the intermediary is notified of a reporting obligation in accordance with regulation 7, the period of 30 days beginning on the date that notification is received, and
- (c) in any other case, a period of 30 days beginning on the earliest of—
 - (i) the day after the day the reportable cross-border arrangement is made available for implementation,
 - (ii) the day after the day the reportable cross-border arrangement is ready for implementation,
 - (iii) the day the first step in the implementation of the reportable cross-border arrangement is made, and
 - (iv) in relation to a UK intermediary within the second paragraph of Article 3(21) of the DAC, the day after the day the UK intermediary provided, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing,

(7) "Participate" is defined in section 84(3) of the Finance Act 2019.

organising, making available for implementation or managing the implementation of the reportable cross-border arrangement.

(4) If the reportable cross-border arrangement is a marketable arrangement, the UK intermediary must make a return at the end of every three month period beginning with the date of the return under paragraph (1), setting out any new reportable information within Article 8ab(14)(a), (d), (g) or (h) of the DAC which has become available in respect of the reportable cross-border arrangement since that return or a previous return under this paragraph.

Reporting obligations: UK relevant taxpayers

4.—(1) Subject to paragraph (3), where paragraph (2) applies, the UK relevant taxpayer must make a return within the specified period setting out the reportable information in relation to the reportable cross-border arrangement.

(2) This paragraph applies where—

- (a) a UK relevant taxpayer participates in a reportable cross-border arrangement, and
- (b) no intermediary is required to file the reportable information in relation to the reportable cross-border arrangement under regulation 3 or with the competent authority of another member State.

(3) Paragraph (1) does not apply to a UK relevant taxpayer (“RT”) in relation to a reportable cross-border arrangement if—

- (a) RT is liable to file information in relation to the reportable cross-border arrangement with the competent authorities of another member State which when applying the list in Article 8ab(7) of the DAC features before the United Kingdom, or
- (b) another relevant taxpayer—
 - (i) agreed the reportable cross-border arrangement with the intermediary, or
 - (ii) if there has been no such agreement, manages the implementation of the reportable cross-border arrangement, and

RT has evidence that the reportable information in relation to the reportable cross-border arrangement has been filed or returned.

(4) The specified period is—

- (a) in a case where the first step in the implementation of a reportable cross-border arrangement was made between 25 June 2018 and 1 July 2020, the period beginning on 1 July 2020 and ending on 31 August 2020,
- (b) in a case where the relevant taxpayer is notified of a reporting obligation in accordance with regulation 7, the period of 30 days beginning on the date that notification is received, and
- (c) in any other case, a period of 30 days beginning on the earliest of—
 - (i) the day after the day the reportable cross-border arrangement is made available for implementation to the relevant taxpayer,
 - (ii) the day after the day the reportable cross-border arrangement is ready for implementation by the relevant taxpayer, and
 - (iii) the day the first step in the implementation of the reportable cross-border arrangement is made in relation to the relevant taxpayer.

Annual reporting requirement

5.—(1) Where a UK relevant taxpayer participates in a reportable cross-border arrangement, the UK relevant taxpayer must make a return for—

- (a) the tax year⁽⁸⁾ or accounting period⁽⁹⁾, as the case may be, in which the first of the following occurs—
 - (i) the reportable cross-border arrangement is made available for implementation to the relevant taxpayer,
 - (ii) the reportable cross-border arrangement is ready for implementation by the UK relevant taxpayer, or
 - (iii) the first step in the implementation of the reportable cross-border arrangement is made in relation to the UK relevant taxpayer, and
 - (b) each subsequent tax year or accounting period, as the case may be, in which the UK relevant taxpayer's participation in the reportable cross-border arrangement has a tax advantage in relation to that UK relevant taxpayer.
- (2) The return must set out—
- (a) the arrangement reference number of the reportable cross-border arrangement, and
 - (b) the tax advantage of the reportable cross-border arrangement in relation to the UK relevant taxpayer for that tax year or accounting period.
- (3) The return must be made—
- (a) where the UK relevant taxpayer is a company, on or before the filing date for the company's tax return as set out in paragraph 14 of Schedule 18 to the Finance Act 1998⁽¹⁰⁾ for the accounting period in which the first of the events in paragraph (1)(a) occurs or in which the reportable cross-border arrangement has a tax advantage in relation to that relevant taxpayer, or
 - (a) in any other case, on or before 31 January in the tax year following the tax year in which the first of the events in paragraph (1)(a) occurs or in which the reportable cross-border arrangement has a tax advantage in relation to that UK relevant taxpayer.

Reportable information

6.—(1) The information required under regulation 3 or 4 to be reported in relation to a reportable cross-border arrangement is that set out in points (a) to (h) of Article 8ab(14) of the DAC.

(2) In these Regulations, “reportable information”, in relation to a reportable cross-border arrangement, means the information mentioned in paragraph (1).

Legal professional privilege

7.—(1) Nothing in these Regulations requires a UK intermediary to disclose any privileged information.

(2) Subject to paragraph (1), a UK intermediary must notify any other intermediary, or, if none, the relevant taxpayer, as soon as reasonably practicable of the reporting obligations under regulation 3 or 4, as the case may be, in relation to the reportable cross-border arrangement to which the privileged information relates.

⁽⁸⁾ “Tax year” is defined in section 4(2) of the Income Tax Act 2007 (c. 3).

⁽⁹⁾ “Accounting period” is defined in section 1119 of the Corporation Tax Act 2010 (c. 4).

⁽¹⁰⁾ 1998 c. 36; paragraph 14 was amended by Part 3(16) of Schedule 40 to the Finance Act 2002 (c. 23).

(3) In this regulation, “privileged information” means information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings.

Arrangement reference number

8.—(1) Where a person complies, or purports to comply, with regulation 3(1) or 4(1) in relation to any reportable cross-border arrangement, HMRC must—

- (a) allocate a reference number to the reportable cross-border arrangement, and
- (b) notify that number to that person.

(2) A UK intermediary or UK relevant taxpayer who has been notified of an arrangement reference number must, within 30 days after the relevant date, notify that number to any person who the UK intermediary or UK relevant taxpayer knows or should reasonably be expected to know is an intermediary or relevant taxpayer in relation to that reportable cross-border arrangement.

(3) In paragraph (2), “the relevant date” means the later of—

- (a) the date on which the arrangement reference number was notified to the UK intermediary or UK relevant taxpayer, and
- (b) the date on which the other intermediary or the other relevant taxpayer became an intermediary or relevant taxpayer in relation to that reportable cross-border arrangement.

(4) In these Regulations, “arrangement reference number”, in relation to a reportable cross-border arrangement, means the reference number allocated under paragraph (1).

Electronic return system

9.—(1) A return required under these Regulations must be made electronically to HMRC using an electronic return system.

(2) The form and manner in which a return is made using an electronic return system is specified in specific or general directions given by the Commissioners for Her Majesty’s Revenue and Customs.

(3) A return which is made otherwise than in accordance with paragraphs (1) and (2) is treated as not having been made.

(4) An electronic return system must incorporate an electronic validation process.

(5) Unless the contrary is proved—

- (a) the use of an electronic return system is presumed to have resulted in the making of the return only if this has been successfully recorded as such by the relevant electronic validation process,
- (b) the time of making the return is presumed to be the time recorded as such by the relevant electronic validation process, and
- (c) the person delivering the return is presumed to be the person identified as such by any relevant feature of the electronic return system.

Evidence

10. For the purposes of regulations 3(2) and 4(3), evidence that reportable information has been filed or returned must comprise the following—

- (a) the arrangement reference number or equivalent reference number issued by the competent authority of another member State, and
- (b) such other information which demonstrates to the satisfaction of an officer of Revenue and Customs that the intermediary or relevant taxpayer, as the case maybe, does not have

knowledge, possession or control of any other reportable information in relation to the reportable cross-border arrangement.

Provision of information

11.—(1) In order to determine whether or not the obligations arising under these Regulations have been complied with, an officer of Revenue and Customs may require a person who the officer reasonably suspects is a UK intermediary or UK relevant taxpayer to provide such information or documents as the officer reasonably requires as specified by written notice.

(2) The information or documents required by notice under paragraph (1) must be provided—

- (a) within such period, being no less than 30 days, and
- (b) by such means and in such form,

as is reasonably required by the officer of Revenue and Customs.

Application of Annex IV of the DAC: hallmarks

12. In the application of Annex IV of the DAC for the purposes of these Regulations(11)—

- (a) “tax advantage” has the meaning given in regulation 2(4);
- (b) in paragraph 4 of category C (specific hallmarks relating to transfer of assets in cross-border transactions), the amount treated as payable in consideration for the assets is the amount treated as payable for tax purposes in the jurisdictions involved;
- (c) category D (specific hallmarks concerning automatic exchange of information and beneficial ownership) must be interpreted in accordance with the Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures approved by the OECD on 8 March 2018 and its commentary published in OECD (2018), Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures, OECD, Paris(12);
- (d) category E (specific hallmarks concerning transfer pricing)—
 - (i) does not apply to a cross-border arrangement if the relevant taxpayer and any associated enterprise in relation to the relevant taxpayer would be exempted from the basic transfer pricing rule by Chapter 3 of Part 4 to the Taxation (International and Other Provisions) Act 2010(13); and
 - (ii) must be interpreted in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 published by the OECD on 10 July 2017(14).

Employees

13.—(1) A person (“P”) is not to be treated as an intermediary in relation to a reportable cross-border arrangement where—

(11) Annex IV of the DAC sets out hallmarks at least one of which must be contained in a cross-border arrangement for it to constitute a reportable cross-border arrangement; “hallmark” has the meaning given by Article 3(20) of the DAC.

(12) The Rules and commentary are available at <http://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.pdf>, a hard copy is available for inspection at the offices of HMRC at 10 South Colonnade, 9th Floor, Canary Wharf, London E14 4PU.

(13) 2010 c. 8. Chapter 3 has been amended by paragraphs 2 to 5 of Schedule 2 to the Finance Act 2012 (c. 14) and paragraphs 37 and 40 of Schedule 15 to the Finance (No 2) Act 2017 (c. 32).

(14) The Transfer Pricing Guidelines are available at <http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>; a hard copy is available for inspection to registered readers free of charge at the British Library in the library’s reading rooms, registration for a readers pass is also free of charge (further information can be found at the British Library’s website at <https://www.bl.uk/visit/reading-rooms>).

- (a) P is an employee of an employer (“E”), and
- (b) E is an intermediary or relevant taxpayer in relation to the reportable cross-border arrangement.

(2) In this regulation, “employee” and “employer” have the meanings given by section 4 of the Income Tax (Earnings and Pensions) Act 2003(15) (as read with section 5(2) of that Act).

(3) For the purposes of this regulation, where E is connected to another person (“F”), P is to be treated as an employee of F as well as being an employee of E.

(4) In this regulation, E is connected with F where E is closely bound to F by financial, economic or organisational links.

PART 3

Penalties for breach of obligations

Penalties for failure to comply with Regulations

14.—(1) A person who fails to comply with any of the provisions of these Regulations specified in paragraph (2) is liable—

- (a) to a penalty not exceeding—
 - (i) £5,000, or
 - (ii) in the case of a provision mentioned in sub-paragraph (a), (c), (d) or (f) of that paragraph, if that amount appears to an officer of Revenue and Customs to be inappropriately low after taking into account all relevant considerations, £600 for each day during the initial period, and
- (b) if the failure continues after a penalty is imposed under sub-paragraph (a), to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under sub-paragraph (a) was imposed (but excluding any day for which a penalty under this regulation has already been imposed).

(2) The provisions are—

- (a) regulation 3(1) (UK intermediary’s obligation to make a return of reportable information),
- (b) regulation 3(4) (UK intermediary’s obligation to make a return of new reportable information),
- (c) regulation 4(1) (UK relevant taxpayer’s obligation to make a return of reportable information),
- (d) regulation 7(2) (UK intermediary’s obligation to notify where legal professional privilege exclusion applies),
- (e) regulation 8(2) (intermediary’s obligation to notify arrangement reference number),
- (f) regulation 11 (requirement to provide information).

(3) For the purposes of this regulation and regulation 16, “relevant considerations” include—

- (a) the desirability of a penalty being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions having regard (in particular)—

- (i) in the case of a penalty for a UK intermediary’s failure to comply with any obligation, to the amount of any fees received, or likely to have been received, by the UK intermediary in connection with the reportable cross-border arrangement, and
 - (ii) in the case of a penalty for a UK relevant taxpayer’s failure to comply with any obligation, to the amount of any advantage gained, or sought to be gained, by the UK relevant taxpayer in relation to any tax in relation to the reportable cross-border arrangement,
- (b) whether the failure giving rise to the penalty was deliberate,
 - (c) any procedures maintained by the person liable to the penalty to secure the identification of reportable cross-border arrangements and compliance with obligations under these Regulations,
 - (d) the reasonably foreseeable consequences of the failure.
- (4) In this regulation, “the initial period” means the period—
- (a) beginning with the relevant day, and
 - (b) ending on the earlier of—
 - (i) the day on which the penalty under paragraph (1)(a)(ii) is determined, and
 - (ii) the last day before the failure ceases.
- (5) For the purpose of paragraph (4), “the relevant day” is the day specified in relation to the failure in the following table.

<i>Failure</i>	<i>Relevant day</i>
A failure to comply with regulation 3(1)	The first day after the end of the specified period prescribed in regulation 3(3)
A failure to comply with regulation 4(1)	The first day after the end of the specified period prescribed in regulation 4(4)
A failure to comply with regulation 7(2)	The day after the day the notification should have been made
A failure to comply with regulation 11	The first day after the latest time by which regulation 11 must be complied with as specified in the notice under that regulation

- (6) A UK relevant taxpayer who fails to comply with regulation 5 (relevant taxpayer’s obligation to make an annual report) is liable to a penalty not exceeding the relevant sum.
- (7) In paragraph (6), “the relevant sum” means—
- (a) in relation to a UK relevant taxpayer not falling within sub-paragraph (b) or (c), £5,000 in respect of each reportable cross-border arrangement to which the failure relates,
 - (b) in relation to a UK relevant taxpayer who has previously failed to comply with regulation 5 on one (and only one) occasion during the period of 36 months ending with the date on which the current failure to comply with that provision began, £7,500 in respect of each reportable cross-border arrangement to which the current failure relates (whether or not the same as the reportable cross-border arrangement to which the previous failure relates), or
 - (c) in relation to a UK relevant taxpayer who has previously failed to comply with regulation 5 on two or more occasions during the period of 36 months ending with the date on which the current failure to comply with that provision began, £10,000 in respect of each reportable cross-border arrangement to which the current failure relates (whether or not the same as the reportable cross-border arrangement to which any of the previous failures relates).

Determination of penalty by HMRC: initial penalty under regulation 14(1)(a)(i)

15.—(1) Subject to paragraph (2), an officer of Revenue and Customs may make a determination imposing a penalty under regulation 14(1)(a)(i) and setting it at such amount as, in the opinion of that officer, is correct or appropriate.

(2) Notice of a determination of a penalty under this regulation must be given to the person liable to the penalty and must state the date on which it is issued and the time within which an appeal against the determination may be made.

(3) After the notice of determination under this regulation has been given the determination must not be altered except on appeal.

Determination of penalty by First-tier Tribunal: daily penalty under regulation 14(1)(a)(ii)

16.—(1) An officer of Revenue and Customs may commence proceedings before the First-tier Tribunal for a penalty under regulation 14(1)(a)(ii).

(2) The person liable to the penalty must be a party to the proceedings.

(3) The First-tier Tribunal may determine a penalty in proceedings under this regulation.

(4) The amount of a penalty under regulation 14(1)(a)(ii) is to be arrived at after taking account of all relevant considerations.

(5) If the maximum penalty under regulation 14(1)(a)(ii) appears inappropriately low after taking account of those considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.

(6) Where it appears to an officer of Revenue and Customs that a penalty under regulation 14(1)(a)(ii) has been determined on the basis that the initial period begins with a day later than that which the officer considers to be the relevant day, an officer of Revenue and Customs may commence proceedings for a re-determination of the penalty.

(7) In addition to any right of appeal on a point of law under section 11(2) of TCEA 2007(16), the person liable to the penalty may appeal to the Upper Tribunal against the determination of a penalty in proceedings under paragraph (1), but not against any decision which falls under section 11(5)(d) and (e) of that Act and was made in connection with the determination of the amount of the penalty.

(8) Section 11(3) and (4) of TCEA 2007 applies to the right of appeal under paragraph (7) as it applies to the right of appeal under section 11(2) of that Act.

(9) On any such appeal the Upper Tribunal may—

- (a) if it appears that no penalty has been incurred, set the determination aside,
- (b) if the amount determined appears to be appropriate, confirm the determination,
- (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the Upper Tribunal considers appropriate, or
- (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the Upper Tribunal considers appropriate.

Determination of penalty by HMRC: further daily penalty under regulation 14(1)(b) and penalty in relation to annual report

17.—(1) An officer of Revenue and Customs may make a determination imposing a penalty under regulation 14(1)(b) or (6) and setting it at such amount as, in the opinion of that officer, is correct or appropriate.

(16) Section 11 of TCEA 2007 was amended by paragraph 5 of Schedule 2 to the Crime and Security Act 2010 (c. 17), paragraph 130 and 131 of Schedule 19 to the Data Protection Act 2018 (c. 12) and sections 116(1) and 181I(1) of Tax Collection and Management (Wales) Act 2016 (2016 anaw 6).

(2) Notice of a determination of a penalty under this regulation must be given to the person liable to the penalty and must state the date on which it is issued and the time within which an appeal against the determination may be made.

(3) After the notice of determination under this regulation has been given the determination must not be altered except in accordance with paragraph (4) or on appeal.

(4) If it is discovered by an officer of Revenue and Customs that the amount of a penalty determined under this regulation is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which, in the opinion of that officer, is correct or appropriate.

Time limits and treatment of penalties

18.—(1) Proceedings in relation to a penalty under regulation 14(1)(a)(ii) must be commenced, or a determination of a penalty under regulation 14(1)(a)(i) or (b) or (6) must be made, before the latest of the following dates—

- (a) the date 24 months after the date on which the inaccuracy or failure first came to the attention of an officer of Revenue and Customs,
- (b) the date six years after the date on which the person became liable to the penalty, and
- (c) in the case of a determination of a penalty under regulation 14(1)(b), the date three years after the date of determination of a penalty under regulation 14(1)(a).

(2) A penalty determined under this Part is due and payable at the end of the period of 30 days beginning with the date of determination of the penalty by the First-tier Tribunal or issue of the notice of determination, as the case may be.

(3) A penalty determined under this Part is to be treated for all purposes as if it were tax charged in an assessment and due and payable.

Appeals against penalty determinations by HMRC

19.—(1) An appeal may be brought against the determination of a penalty under regulation 15 or 17 and, subject to the following provisions of this regulation, the provisions of the Taxes Management Act 1970(17) relating to appeals have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax, except that references to the tribunal shall be taken to be references to the First-tier Tribunal.

(2) On any such appeal, section 50(6) to (8) of the Taxes Management Act 1970(18) does not apply but the First-tier Tribunal may—

- (a) if it appears that no penalty has been incurred, set the determination aside,
- (b) if the amount determined appears to be appropriate, confirm the determination,
- (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the First-tier Tribunal considers appropriate, or
- (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the First-tier Tribunal considers appropriate.

(3) In addition to any right of appeal on a point of law under section 11(2) of TCEA 2007, the person liable to the penalty may appeal to the Upper Tribunal against the amount of the penalty which has been determined under paragraph (2), but not against any decision which falls under

(17) 1970 c. 9. Part 5 of the Act contains provisions relating to appeals.

(18) Section 50(6) to (8) of the Taxes Management Act 1970 was amended by section 67(2) of the Finance (No. 2) Act 1975 (c. 45), paragraph 17 of Schedule 19 to Finance Act 1994 (c. 9), paragraph 7 of Schedule 19 to the Finance Act 1996 (c. 8), paragraph 30 of Schedule 29 to the Finance Act 2001 (c. 9) and S.I. 2009/56.

section 11(5)(d) and (e) of that Act and was made in connection with the determination of the amount of the penalty.

(4) Section 11(3) and (4) of TCEA 2007 applies to the right of appeal under paragraph (3) as it applies to the right of appeal under section 11(2) of that Act.

(5) On an appeal under this section the Upper Tribunal has the same powers as are conferred on the First-tier Tribunal by virtue of this regulation.

Special reduction

20.—(1) If an officer of Revenue and Customs thinks it right because of special circumstances, the officer may reduce a penalty under this Part.

(2) In paragraph (1), “special circumstances” does not include—

- (a) ability to pay, or
- (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

(3) In paragraph (1), the reference to reducing a penalty includes a reference to—

- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

Matters to be disregarded in relation to liability to penalties

21.—(1) Liability to a penalty under regulation 14 does not arise if the person satisfies an officer of Revenue and Customs or, on a determination by the First-tier Tribunal or an appeal notified to the tribunal, the tribunal that there is a reasonable excuse for a failure to do anything required to be done under these Regulations.

(2) For the purposes of this regulation none of the following is a reasonable excuse—

- (a) that there is an insufficiency of funds to do something,
- (b) that the person relies on legal advice if—
 - (i) the advice was given or procured by a person who is an intermediary within the first paragraph of Article 3(21) of the DAC in relation to the reportable cross-border arrangement to which the failure relates,
 - (ii) the advice was not based on a full and accurate description of the facts, or
 - (iii) the conclusions in the advice that the person relied upon were unreasonable.

(3) In considering whether a person had a reasonable excuse, the officer of Revenue and Customs or the tribunal must consider whether the person maintains such procedures as it is reasonable in all the circumstances to have in place to secure the identification of reportable cross-border arrangements and compliance with obligations under these Regulations.

(4) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

9th January 2020

Rebecca Harris
Mike Freer
Two of the Lords Commissioners of Her
Majesty's Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provisions implementing Council Directive 2018/822 which amends Council Directive 2011/16/EU (“the DAC”) on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC and requires persons to report information in relation to certain types of arrangements known as reportable cross-border arrangements (defined in the DAC) to HMRC.

Part 1 contains introductory provisions. Regulation 1 provides for citation and commencement; authority for the limited retrospective effect is provided by section 84(2)(b) of the Finance Act 2019. Regulation 2 is an interpretation provision.

Part 2 sets out the reporting obligations and supplementary provisions. Regulation 3 concerns the reporting obligations of a UK intermediary, regulation 4 concerns the reporting obligations of a UK relevant taxpayer. “UK intermediary”, “intermediary”, “UK relevant taxpayer” and “relevant taxpayer” are defined in regulation 2 by reference to the DAC. Regulation 5 imposes an annual reporting requirement on UK relevant taxpayers. Regulation 6 specifies the information required to be reported in relation to a reportable cross-border arrangement. Regulation 7 disapplies the reporting obligation from intermediaries in relation to privileged information. Regulation 8 provides for an arrangement reference number. Regulation 9 makes provision for use of an electronic return system to make returns under these Regulations. Regulation 10 provides for the evidence to be given as proof of a return or filing of information. Regulation 11 permits an officer of Revenue and Customs to request information to determine whether the obligations under these Regulations have been satisfied. Regulation 12 contains provisions to be applied when applying the DAC in determining whether an arrangement is a reportable cross-border arrangement. Regulation 13 provides that employees are not subject to the reporting obligations.

Part 3 sets out the penalty provisions for breach of any obligation under the Regulations. Regulation 14 sets out the penalties. Regulations 15 and 17 provides for penalties to be determined by HMRC. Regulation 16 provides for penalties to be determined by the First-tier Tribunal. Regulation 18 sets out the time limits in which proceedings can be brought to determine a penalty by the First-tier Tribunal or a penalty determined by HMRC and provides for the treatment of penalties as if tax charged in an assessment and due and payable. Regulation 19 provides for appeals against penalties determined by HMRC. Regulation 20 provides for cases where HMRC may reduce a penalty. Regulation 21 provides that no liability for a penalty arises where a person has a reasonable excuse for failing to complying with an obligation under the Regulations.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.