

EXPLANATORY NOTE

CLAUSE 111 SCHEDULE 38: THE TAX AVOIDANCE

DISCLOSURE REGIME: AMENDMENT 235

SUMMARY

1. This amendment omits the words “involving the client” from section 312 of the Finance Act (“FA”) 2004, as substituted by paragraph 4 of Schedule 38 to the Bill. Section 312 requires promoters of disclosed tax avoidance schemes to pass scheme reference numbers (“SRNs”) to their clients, and is part of the system for identifying users of disclosed avoidance schemes.

DETAILS OF THE AMENDMENT

2. Amendment 235 omits the words “involving the client” from section 312 FA 2004, as substituted by paragraph 4 of Schedule 38 to the Bill to prevent those words having an unintended effect on section 312A.

BACKGROUND NOTE

3. The SRN system is designed to identify users of disclosed tax avoidance schemes. When promoters disclose a scheme, HMRC allocate a SRN and notify

it to the promoter. Promoters must pass it to their clients who in turn must report it back to HMRC, thus identifying themselves as users of the scheme.

4. Clause 111 and Schedule 38 deal with gaps in the coverage of the SRN system. One such gap is where the client is not party to the scheme transactions.
5. Paragraph 4 of Schedule 38 substitutes a modified section 312 in FA 2004, and inserts a new section 312A.
6. Section 312 requires promoters of disclosed tax avoidance schemes to provide their clients with prescribed information relating to the SRN allocated to the scheme by HMRC. The prescribed information is the SRN only.
7. Section 312A requires clients of promoters to pass prescribed information (again the SRN only) to other persons who are party to the scheme transactions and obtain a tax advantage from them.
8. Subsection (2) of section 312 requires promoters to provide the SRN within 30 days of the “relevant date” defined in subsection (3).
9. Subsection (3)(a) provides that the first relevant date is the date the promoter becomes aware of any scheme transaction involving the client. This is similar to the existing rule with the insertion of the words

“involving the client”. The words were inserted to make explicit the link between the client and the transactions in question.

10. However, the words have an unintended effect on section 312A, which targets cases where the promoter’s client is not a party to the scheme transactions, for instance where the client is the parent of a group of companies and the scheme is operated by subsidiaries. Section 312A requires a client who is not a party to the scheme transactions to pass the SRN to those who are. But the words “involving the client” in section 312(3)(a) mean that a promoter never comes under a duty to pass the SRN to such a client.
11. This amendment omits the words “involving the client” from section 312(3)(a). The link between the client and the particular arrangements in relation to which the promoter is providing the client with services is sufficiently clear from the context and wording of section 312 as a whole without requiring that the client actually be a party to the transactions.