

[33.03.01] Mandatory Disclosure

Guidance notes

Created January 2015

1. Legislation

The legislation for the mandatory disclosure regime is set out in:

- Part 33 Taxes Consolidation Act 1997, as updated by Finance Act 2014
- Mandatory disclosure regulations 2011
- Mandatory disclosure (amending) regulations 2015

2. Publications

Revenue [Guidelines](#) for the Mandatory Disclosure regime, which reflected how the regime applies for transactions which were commenced prior to 24 October 2014 were published in 2011.

Revenue [Guidelines](#) for the Mandatory Disclosure regime, which reflect legislative changes up to and including Finance Act 2014, were published in January 2015. The main changes to the regime are:

Incorporation of regulations into primary legislation

The principal change is that much of the material currently contained in regulations has been incorporated into the Taxes Consolidation Act 1997. There are a number of consequential amendments that arise from this process and the necessary changes in language from that used in regulations to that used in the primary taxing statutes. Other than as detailed below, the rules of the mandatory disclosure regime have not been changed by section 80.

Hallmarks

A transaction is a disclosable transaction if, in addition to one of the main benefits of the transaction being tax avoidance, the transaction falls into one of more of the 'hallmarks' or specified descriptions. Finance Act 2014 made two changes to the hallmarks:

- The confidentiality hallmark for users of a scheme, under the regulations, involved a subjective test. The test for promoters involved an objective test in relation to confidentiality as against other promoters but a subjective test in relation to confidentiality as against the Revenue Commissioners. Under the amended wording in the primary legislation, the test is now, in all cases, an objective test. That is, all tests now look at whether or not it 'might reasonably be expected' that the user / promoter would wish to keep the scheme confidential.
- A new hallmark has now been added in relation to discretionary trusts. A transaction which has a trustee of a discretionary trust as party to the transaction is now brought within the scope of the legislation. The schedule to the draft regulations provides that transactions with certain trusts, e.g. a trust for permanently incapacitated individuals, under section 189A, need not be disclosed.

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Transaction numbers

The most significant change to the Mandatory Disclosure regime is the introduction of transaction numbers for any transaction that is commenced after 23 October 2014. Revenue will assign a transaction number to transactions disclosed under the legislation.

A promoter is now required to give the transaction number to any person to whom a scheme is sold and also to any person who markets the scheme on the promoter's behalf. Any person who enters into the scheme or who seeks to obtain a tax advantage from the scheme is deemed to be a chargeable person and must include the transaction number on the relevant return of income (Form 11 or Form CT1, as appropriate).

Marketers

Marketers have an obligation to disclose any scheme that they have reason to believe is a disclosable transaction.