EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2014 (HIGH RISK PROMOTERS PRESCRIBED INFORMATION) REGULATIONS 2015

2015 No. 549

1. This explanatory memorandum has been prepared by H. M. Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

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

2. Purpose of the instrument

Part 5 of the Finance Act 2014 created a new regime applying enhanced disclosure obligations to certain promoters of tax avoidance schemes, as well as their intermediaries and clients. This instrument implements certain aspects of that regime.

This instrument prescribes how a promoter subject to enhanced disclosure obligations must publish that fact; how a client of such a promoter must report that fact to H.M. Revenue & Customs (HMRC); the information and documents that must be provided to HMRC about the promoter's tax avoidance schemes and clients, and the conditions under which copies of documents may be produced instead of the originals.

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

None.

4. Legislative Context

The instrument is made under sections 249(3), (10) and (11), 253 (2) and (4), 257(2), 259(9), 260(7), 261(2), 268(1), 282(4) and 283(1) of the Finance Act 2014. The instrument is subject to annulment in pursuance of a resolution of the House of Commons. It is the first time these powers have been exercised since Finance Act 2014 was enacted.

5. Territorial Extent and Application

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

- What is being done and why

7.1 Part 5 of the Finance Act 2014 is part of the Government's strategic response to tax avoidance and is to deter the use of avoidance schemes through influencing the behaviour of promoters, their intermediaries and clients. The promoters of such schemes pose a significant risk to the Exchequer. The legislation is aimed at changing the behaviour of those promoters who potentially could become 'monitored promoters' under Part 5. A monitored promoter will be subject to new information powers so that HMRC obtains better information about their products and clients and can use that information to target its compliance work in combatting tax avoidance. A monitored promoter may be named through a public disclosure. Naming a monitored promoter should deter intermediaries from acting for them and clients and potential clients from using their products. Including the reason the conduct notice was breached in such a disclosure will also act to inform clients and potential clients of the risks posed by using the promoter's scheme.

7.2 This instrument sets out the detail of what happens once a promoter becomes a monitored promoter. It sets out how the promoter must publish the fact that it is monitored; how clients of the monitored promoter must report that fact to HMRC; what information and documents must be provided to HMRC about the promoter's tax avoidance schemes and clients, and the circumstances under which copies of documents can be produced instead of originals.

- Consolidation

7.3 This is a free-standing instrument, so does not give rise to a need for consolidation.

8. Consultation outcome

8.1 A policy consolidation ("Raising the Stakes on Tax Avoidance") on what became Part 5 of the Finance Act 2014 ran from 12 August to 4 October 2013. Subsequently, a technical consultation on the draft legislation for Part 5 ran from 24 January until 24 February 2014. Various comments were received and reflected in the version of the legislation that was enacted.

8.2 A technical consultation on this instrument ran from 16 December 2014 until 27 January 2015. Taking account of comments received, the conditions in the final version for producing copies of documents make it clear that it is permissible to

redact copies of documents where necessary to preserve legal professional privilege.

9. Guidance

The latest version of guidance on Part 5 of the Finance Act 2014 will be published shortly. The general guidance will be updated to reflect the changes introduced by this instrument but the guidance is not essential to understanding how the instrument will operate.

10. Impact

10.1 The impact on business, including civil society organisations, is not expected to be significant. This instrument are only relevant to organisations which engage in the promotion of tax avoidance schemes and their clients. Approximately twenty promoters were considered to be within the scope of the 2014 legislation. These changes secure the original policy intent. Some of the promoters identified initially are expected to improve their behaviour without HMRC using their powers under the legislation, others are expected to require formal action. Over time it is possible that other promoters under common control will be identified as having breached a threshold condition and become subject to this legislation.

10.2 The impact on the public sector is nil.

10.3 A Tax Impact and Information Note covering the changes described on 17 July 2014 and is available on the HMRC website at:

https://www.gov.uk/government/publications/promoters-of-tax-avoidance-schemes.

It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies small business.

11.2 Businesses of any size develop, market and use tax avoidance schemes. The Government expects this measure will have little, if any, impact on small businesses either in absolute terms (considering the overall effect on them) or in relative terms (considering the effect on specific businesses).

12. Monitoring & review

HMRC routinely monitors the information it receives from promoters and users of tax avoidance schemes and uses that information to evaluate this measure and any future policy developments.

13. Contact

Richard Harries of the Counter Avoidance Directorate in HMRC (Tel: 03000 589218 or email: richard.harries@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.