EXPLANATORY MEMORANDUM TO

THE INDIRECT TAX (NOTIFIABLE ARRANGEMENTS) REGULATIONS 2017

2017 No. 1216

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) on behalf of HM Treasury 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. Purpose of the instrument

2.1 The Regulations detail the features which, together with the provisions in Schedule 17 to the Finance (No. 2) Act 2017, lead to the requirement to disclose indirect tax avoidance schemes.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The Regulations are the first to be made under the powers cited in them.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Regulations detail the features included in indirect tax arrangements which can lead to a disclosure of those arrangements to HMRC.

4.2 The Indirect Tax (Disclosure of Avoidance Schemes) Regulations 2017, laid with these Regulations, detail the requirements placed on promoters and users of, and others connected with, proposals and arrangements for the avoidance of indirect taxes, and the times within which these requirements must be met.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 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 Schedule 17 to the Finance (No.2) Act 2017 lays down the primary rules for reforming the way that indirect tax avoidance is notified to HMRC so that it more closely resembles the regime for direct taxes (the Disclosure of Tax Avoidance Schemes or DOTAS). These Regulations, made under powers contained in that Schedule, provide more detail of specific features within tax arrangements that may require promoters or users of indirect tax avoidance arrangements to disclose their schemes to HMRC.

This gives HMRC earlier and more comprehensive detail about VAT and indirect tax avoidance schemes as they emerge and provides a coherent approach to the requirements to disclose tax avoidance schemes.

Expanding the scope of the disclosure regime to encompass all indirect taxes will allow HMRC early insight into emerging avoidance in these areas.

8. Consultation outcome

8.1 Draft Regulations were published in draft on 20 March 2017 for consultation. There were a number of comments and those received have informed the final Regulations.

9. Guidance

9.1 HMRC will publish guidance on the new disclosure regime by the end of 2017.

10. Impact

10.1 The impact on businesses, charities and voluntary bodies is restricted to the small minority who engage in or promote avoidance of indirect taxes.

10.2 The impact on public bodies is restricted to any which may engage in or promote avoidance of indirect taxes.

10.3 A Tax Information and Impact Note covering this instrument was published on 5 December 2016 and made available alongside the Finance (No.2) Bill 2017 and is available on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people) the approach taken is to exclude them (and businesses with up to 250 employees or a turnover of up to £50 million per annum) from the requirement on users of indirect tax arrangements to disclose to HMRC, where there is no promoter, under the 'confidentiality' hallmark in Regulation 11.

11.3 The basis for the final decision on what action to take to assist small businesses is to align this exclusion with that applied in the direct taxes disclosure regime, to provide clarity and certainty.

12. Monitoring & review

12.1 The measure will be monitored through monitoring of disclosures of indirect tax avoidance schemes, and through communication with taxpayers and practitioners affected by the measure.

13. Contact

13.1 Pete Woodham at HM Revenue & Customs Tel: 03000 586533 or email: peter.woodham@hmrc.gsi.gov.uk can answer any queries regarding the instrument.