EXPLANATORY MEMORANDUM TO

THE INHERITANCE TAX AVOIDANCE SCHEMES (PRESCRIBED DESCRIPTIONS OF ARRANGEMENTS) REGULATIONS 2017

2017 No. 1172

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations replace the Inheritance Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2011 (SI 2011/170) with new descriptions of inheritance tax (IHT) arrangements which have to be disclosed under the Disclosure of Tax Avoidance Schemes (DOTAS) regime in Part 7 of the Finance Act 2004.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

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 Part 7 of the Finance Act 2004 ("FA 2004") provides for the notification ("disclosure") to HMRC of certain tax arrangements and proposals ("schemes").

4.2 Section 306 of FA 2004 provides a power to prescribe in regulations the description of schemes that must be disclosed. These descriptions ("hallmarks") are contained in a number of regulations relating to:

- Income Tax Corporation Tax and Capital Gains Tax
- Stamp Duty Land Tax
- The Annual Tax on Enveloped Dwellings
- Inheritance Tax.

4.3 Sections 308, 309 and 310 of FA 2004 require certain persons to provide information to HMRC about schemes falling within a hallmark. The requirement usually falls on the person within the meaning of "promoter" (section 307 of FA 2004) who must explain how the scheme works within 5 days of its being marketed, made available for implementation or implemented.

4.4 The Inheritance Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2011 (SI 2011/170) prescribe that schemes in which assets become held

in particular types of trusts (relevant property trusts), and where a main benefit of the scheme is the avoidance or reduction of an IHT 'entry charge' when property is transferred into such trusts, must be disclosed. Schemes which are the same, or substantially the same, as schemes first made available or implemented before 6 April 2011 do not have to be disclosed.

4.5 The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (SI 2006/1543) were amended so that from 23 February 2016 regulation 6 (description 1: confidentiality in cases involving a promoter) and regulation 8 (description 3: premium fee) apply in relation to IHT.

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 DOTAS is designed to give HMRC early information about tax avoidance schemes, giving it the opportunity to consider changes to the law to close loopholes or to challenge schemes that it believes do not work. DOTAS requires a person, usually the person who designs or sells the tax avoidance scheme, to provide details to HMRC of the scheme and how it is intended to work.

7.2 IHT was brought into DOTAS with effect from 6 April 2011 to detect a specific type of IHT avoidance involving the use of trusts. There have been very few IHT disclosures, due mainly to the narrow scope of the IHT hallmark, but also because many schemes are substantially the same as schemes first used before April 2011 and do not have to be disclosed. The hallmark has not been effective in providing information about IHT avoidance schemes.

7.3 HMRC is aware of a variety of IHT schemes which would not be covered by the current hallmark because of its narrow focus. The government believes these should be brought within the scope of DOTAS, which also supports wider anti-avoidance initiatives including Accelerated Payments.

7.4 These regulations replace the current IHT hallmark and describe arrangements designed to reduce the value of an estate on death and those which seek to avoid certain other IHT charges in addition to 'entry charges' on relevant property trusts.

7.5 IHT was added to the DOTAS "confidentiality" and "premium fee" hallmarks (SI 2006/1543) with effect from 23 February 2016. The addition of IHT to the two existing DOTAS hallmarks and the new hallmark provided by these regulations are designed to focus disclosure on specific areas of concern to HMRC while ensuring that straightforward and legitimate use of IHT exemptions and reliefs is not caught.

7.6 A particular complexity arises in relation to established retail IHT planning products that would be described by the new hallmark but which accord with established

practice that HMRC has previously indicated acceptance of through published material such as guidance, or by other means. The hallmark ensures that these products do not have to be disclosed if they continue to be sold and implemented after these regulations take effect as long as they were first made available and entered into at least once before 1 April 2018.

8. Consultation outcome

8.1 The government published a consultation document ("Strengthening the Tax Avoidance Disclosure Regimes") on 31 July 2014. The consultation contained a number of proposals to strengthen DOTAS, including extending the IHT hallmark to other types of IHT arrangements. The Government's response document published on 10 December 2014 confirmed that the proposals would be taken forward.

8.2 Draft regulations were published on 16 July 2015 for a technical consultation. Responses indicated that the draft hallmark was too wide and risked catching ordinary tax planning arrangements. A summary of responses ("Disclosure of Tax Avoidance Schemes: hallmark regulations - summary of responses and next steps") was published in February 2016 with an intention to develop a revised draft hallmark for further consultation in 2016.

8.3 A further draft of the regulations was published on 20 April 2016 as part of the consultation ("Strengthening the Tax Avoidance Disclosure Regimes for Indirect Taxes and Inheritance Tax"). Responses indicated that the proposed hallmark could still catch ordinary IHT planning and suggested that it should focus on specific areas of risk.

8.4 HMRC sought views on whether including specific exceptions would help to better target the hallmark. Responses were mixed: some questioned the need for an exception list if the hallmark is correctly targeted; others highlighted the difficulty in describing exceptions so that only appropriate arrangements are excluded.

8.5 Some respondents were concerned about how long-standing retail products, which would have been caught by the draft hallmark but are considered to be acceptable forms of tax planning, would be impacted. As a result these regulations except from disclosure such retail products that continue to be sold after the new hallmark takes effect providing certain condition are met as described in paragraph 7.6 above.

8.6 HMRC has carefully considered all comments received and held numerous meetings over many months with stakeholders to help develop the hallmark. The resulting regulations take respondents' comments and concerns into account to ensure the hallmark is appropriately targeted.

9. Guidance

9.1 HMRC has shared draft guidance with stakeholders and is in the process of updating it to reflect their helpful and constructive feedback. The guidance will explain how the hallmark works, the conditions to be met for arrangements (or proposals for arrangements) to be notifiable, and the circumstances in which arrangements are excepted from disclosure. This will include guidance on the meaning of 'established practice' used in the regulation that excepts certain arrangements. It will also provide examples of arrangements that are notifiable and those that are not.

9.2 The guidance will be published in good time before the hallmark comes into force on 1 April 2018.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those that engage in tax avoidance schemes.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 and is available on the website at www.gov.uk/government/publications/disclosure-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 to activities that are undertaken by small businesses in so far as businesses of any size can develop, market or use tax avoidance schemes. The Government expects this measure to have little, if any, impact on small businesses.

12. Monitoring & review

12.1 HMRC routinely monitors the information it receives under DOTAS and uses that information to evaluate this measure and any future policy developments.

13. Contact

13.1 Danka Wigley at HMRC Telephone: 03000 585277 or email: danka.wigley@hmrc.gsi.gov.uk can answer any queries regarding the instrument.