EXPLANATORY MEMORANDUM TO

THE NATIONAL INSURANCE CONTRIBUTIONS (APPLICATION OF PART 7 OF THE FINANCE ACT 2004) (AMENDMENT) REGULATIONS 2013

2013 No. 2600

1. This explanatory memorandum has been prepared by HM Revenue and Customs ("HMRC") on behalf of HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make changes to the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 which apply, or correspond to, changes to Part 7 of the Finance Act 2004 ("Part 7"), or changes to instruments made under Part 7. They introduce new disclosure obligations for promoters and users of national insurance contribution avoidance schemes which correspond to new obligations introduced to Part 7, and make some consequential amendments to apply changes to instruments made under Part 7.

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

None.

4. Legislative Context

4.1. Part 7 of the Finance Act ("FA") 2004 ("Part 7") provides for the disclosure to HMRC of certain tax arrangements and proposals for arrangements ("schemes"). This regime is known as the Disclosure of Tax Avoidance Schemes ("DOTAS").

4.2. DOTAS applies to income tax, capital gains tax, corporation tax, inheritance tax ("IHT") and stamp duty land tax ("SDLT"). There is a separate regime for value added tax.

4.3. Disclosure requires certain persons, usually promoters, to disclose information about schemes falling within certain descriptions, which are prescribed in "descriptions" or "hallmark" Regulations. There are separate descriptions Regulations for IHT and SDLT.

4.4. A scheme reference number ("SRN") system identifies the users of schemes. When a promoter discloses a scheme, HMRC may allocate a SRN and notify it to the promoter; the promoter must pass the SRN to clients who in turn must identify themselves to HMRC by reporting the information back to HMRC, usually on a

return, but sometimes separately. In addition, promoters must periodically provide HMRC with information about clients; clients must pass SRN information to other users of a scheme; and intermediaries may be required to provide HMRC with information leading to the identification of the promoter of a scheme.

4.5. Section 98C of the Taxes Management Act 1970 imposes penalties on persons who fail to comply with disclosure obligations without reasonable excuse.

National Insurance Contributions ("NICs")

4.6. Most NICs avoidance schemes also involve income tax, but some do not. The scope of DOTAS was therefore extended in 2007 specifically to include NICs by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (S.I. 2012/1868). These Regulations contain provisions which correspond to or apply the DOTAS income tax provisions.

5. Territorial Extent and Application

5.1. This instrument applies to all of 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. Tax avoidance represents a significant part of the UK tax gap. It involves using the tax law to obtain a tax advantage that Parliament never intended. It frequently involves contrived, artificial transactions that serve no purpose other than to reduce tax liability. And it enables some taxpayers to gain an unfair advantage, undermining confidence in the tax system.

7.2. HMRC's anti avoidance strategy has three core elements:

- Preventing avoidance at the outset where possible;
- Detecting it early where it persists;
- Countering it effectively by challenge by HMRC.

7.3. The disclosure regime is a key component of the detection element of the strategy. It also informs counteraction and contributes to preventing avoidance by affecting the economics of the promotion of avoidance schemes.

- ***Consolidation***

7.4. This is the first time that the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 have been amended. There are no plans to consolidate this instrument.

8. Consultation outcome

8.1. The Government published a consultation document on 23 July 2012 entitled 'Lifting the Lid on Tax Avoidance Schemes'. That consultation contained a number of different proposals to improve the information available to HMRC and the public about tax and NICs avoidance schemes. Draft instruments making tax changes were published for consultation on 11 December 2012 and 17 July 2013. These NICs changes are made as a consequence of the tax changes, and take account of the responses received during the consultations referred to above.

9. Guidance

9.1. Relevant guidance will be updated.

10. Impact

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

10.2. The impact on the public sector is nil.

10.3. A Tax Information and Impact Note was published on 11th December 2012 and is available on the HMRC website at http://www.hmrc.gov.uk/tiin/2012/tiin8003.htm. This takes account of the effect that this instrument will have on the costs of business and the voluntary sector. It remains an accurate summary of the impacts that apply to these Regulations.

11. Regulating small business

11.1. The legislation applies to 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

12.1. The measure will be monitored by HMRC, and amendments made as appropriate.

13. Contact

13.1. If you have any questions about this instrument, please contact Lesley Hamilton at HMRC on 03000 585670 or at lesley.hamilton@hmrc.gsi.gov.uk.