EXPLANATORY MEMORANDUM TO

THE PROMOTERS OF TAX AVOIDANCE SCHEMES (PRESCRIBED CIRCUMSTANCES UNDER SECTION 235) REGULATIONS 2015

2015 No. 130

THE FINANCE ACT 2014 (SCHEDULE 34 PRESCRIBED MATTERS) REGULATIONS 2015

2015 No. 131

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 instruments

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. These instruments implement certain aspects of that regime.

The Promoters of Tax Avoidance Schemes (Prescribed Circumstances under Section 235) Regulations 2015 prescribe circumstances in which a person is not to be treated as a promoter in relation to tax avoidance schemes for the purposes of Part 5 of that Act. In effect, it creates exemptions which businesses can rely on in order to avoid being subject to this new regime.

The Finance Act 2014 (Schedule 34 Prescribed Matters) Regulations 2015 prescribe what constitutes misconduct by a member of a professional body and what constitutes a sanction imposed by a regulatory authority in relation to misconduct, for the purposes of determining whether a threshold condition has been met bringing a promoter within the scope of certain obligations under the legislation. It also prescribes two additional organisations as professional bodies.

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

None.

4. Legislative Context

The instruments are made under sections 283(1), and respectively, 235(6) and 235(7) of, and paragraphs 8(1), 8(3) and 9(2) of Schedule 34 to, the Finance

Act 2014. Both instruments are 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

Both instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

As the instruments are subject to the negative resolution procedure and do 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 these 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 combating tax avoidance. A monitored promoter may be named by HMRC 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 schemes.

7.2 The Promoters of Tax Avoidance Schemes (Prescribed Circumstances under Section 235) Regulations 2015 remove from the scope of the legislation those who are not complicit in the design or proliferation of tax avoidance schemes. The instrument exempts from the legislation companies that only provide tax services to other companies within the same corporate group and that are not promoting tax avoidance schemes to the public at large. It also exempts innocent advisers who only provide professional advice on discrete points of law or accountancy and who do not advise on tax matters or who are not aware that there is a tax avoidance scheme.

7.3 The Finance Act 2014 (Schedule 34 Prescribed Matters) Regulations 2015 set out what constitutes prescribed misconduct by a member of a professional body and what constitutes a prescribed sanction imposed by a regulatory authority (such as the Financial Conduct Authority)

that are relevant in deciding whether certain reporting obligations are imposed on a promoter of tax avoidance schemes under the legislation.

- Consolidation

7.4 These are free-standing instruments, so do not give rise to a need for consolidation.

8. Consultation outcome

8.1 A policy consultation ("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 2014 until 24 February 2014. Various comments were received and reflected in the version of that legislation which was enacted. These draft regulations are in part to meet concerns raised during the development of the primary legislation

8.2 A technical consultation on The Promoters of Tax Avoidance Schemes (Prescribed Circumstances under Section 235) Regulations 2014 ran from 3 October until 31 October 2014. Taking account of comments received, the conditions in the final version which have to be satisfied in order for companies to rely on the exemption in regulation 2(1) were relaxed.

8.3 A technical consultation on The Finance Act 2014 (Schedule 34 Prescribed Matters) Regulations 2015 ran from 30 October until 27 November 2014. Taking account of comments received, regulations 2 and 3 were reworded to make their meaning clearer.

9. Guidance

9.1 Draft guidance on Part 5 of the Finance Act 2014 was published in May 2014. Comments were received up until 31 July 2014. The general guidance will be updated to reflect the changes introduced by these two instruments but the guidance is not essential to understanding how the instruments will operate.

10. Impact

10.1 The impact on business, including civil society organisations, is not expected to be significant. These instruments are only relevant to organisations which engage in the promotion of tax avoidance schemes. 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 these instruments.

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

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 instruments.