EXPLANATORY MEMORANDUM TO

THE STAMP DUTY LAND TAX AVOIDANCE SCHEMES (PRESCRIBED DESCRIPTIONS OF ARRANGEMENTS) (AMENDMENT) REGULATIONS 2012

2012 No. 2395

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.

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

2. Purpose of the instrument

2.1 The instrument amends the Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005 (S.I. 2005/1868).

2.2 S.I. 2005/1868 forms part of the Stamp Duty Land Tax (SDLT) Disclosure of Tax Avoidance Schemes (DOTAS) regime. It prescribes which arrangements fall within the SDLT DOTAS regime.

2.3 The instrument amends S.I. 2005/1868 in a number of ways. First, it removes the thresholds, both in respect of residential and non-residential property, below which some arrangements do not have to be disclosed. Secondly, where certain conditions are met, it removes the exclusion for schemes which were first made available before 1 April 2010 by any promoter for implementation. Thirdly, it amends the Schedule of excluded arrangements to reflect changes in SDLT, by removing obsolete provisions and adding in new ones.

2.4 The result of these amendments is to bring within the SDLT DOTAS regime certain arrangements that are currently excepted from it.

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

3.1 None.

4. Legislative Context

4.1 Part 7 of the Finance Act 2004 contains provisions for the DOTAS regime. It confers powers on the Treasury to make regulations describing the arrangements that fall within the regime. These regulations are made under sections 306(1)(a) and (b) and 318 of Part 7 of the Finance Act 2004.

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 In response to the promotion of various SDLT avoidance schemes, certain arrangements are being brought into the SDLT DOTAS regime that are currently excepted from it. The thresholds are being removed, because HMRC has seen attempted avoidance in transactions with a relatively low value. HMRC has also discerned the continued use of certain old arrangements which were originally excluded from the SDLT DOTAS regime. These arrangements are now being brought into the SDLT DOTAS regime. In addition, the list of arrangements that are currently exempted from SDLT DOTAS is being updated to take account of developments in the tax.

7.2 This will aid HMRC in identifying and tackling attempted SDLT avoidance.

- Consolidation

7.3 Not applicable

8. Consultation outcome

8.1 The intention to make these changes was announced in December 2011. Draft regulations were published on 17 July 2012. There was one substantive response which suggested that the regulations should achieve their objective.

9. Guidance

9.1 The next edition of HMRC's guidance on DOTAS will be updated to reflect these changes.

10. Impact

10.1 The impact on business, charities or voluntary bodies is as follows. We anticipate that these changes will only affect businesses or other organisations entering into (or marketing) certain SDLT avoidance schemes. Those entering into (or marketing) certain arrangements to

avoid SDLT will have to disclose those arrangements to HMRC. This will have a negligible impact on business's administrative costs.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note covering this instrument was published in December 2011 alongside the draft Finance Bill. This will be updated as a result of changes to the impacts as a result of this instrument and will be available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Some of the scheme promoters and users affected by these changes are likely to be small firms (i.e. have fewer than 20 employees). However, the Government is confident they will have the capacity to understand and implement this change because only those promoting or entering into arrangements to attempt to avoid SDLT will be affected.

12. Monitoring & review

12.1 This measure will be monitored through avoidance scheme disclosures and communication with the taxpayers affected.

13. Contact

13.1 Jeremy Schryber at HMRC (tel: 020 7147 2788 or email: jeremy.schryber@hmrc.gsi.gov.uk) can assist with any queries regarding the instrument.