EXPLANATORY MEMORANDUM TO

THE STAMP DUTY LAND TAX (AVOIDANCE SCHEMES) (SPECIFIED PROPOSALS OR ARRANGEMENTS) REGULATIONS 2012

2012 No. 2396

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 modifies the application of section 308 of the Finance Act 2004 (s308) where certain conditions are met. S308 is part of the Disclosure of Tax Avoidance Schemes (DOTAS) regime for Stamp Duty Land Tax (SDLT). It is the section that sets out when the promoters of avoidance arrangements have to make a disclosure to HMRC.

2.2 The effect of the instrument is that promoters will have to make one additional disclosure of avoidance arrangements where (i) the arrangements were disclosed to HMRC before 1st April 2010, (ii) the arrangements are of a certain described type and (iii) the promoter is still marketing the arrangements.

2.3 The result of this instrument, in conjunction with The Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2012, which come into force on the same day, 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 was amended by section 215 of the Finance Act 2012 which inserted a new subsection (6) into section 308. These regulations are made under the powers conferred by section 308(6) and section 318.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Exchequer Secretary, David Gauke, has made the following statement regarding human rights:

In my view the provisions of the Stamp Duty Land Tax (Avoidance Schemes) (Specified Proposals or Arrangements) Regulations 2012 are compatible with the Convention Rights.

7. Policy background

- ***What is being done and why***

7.1 In response to the promotion of various schemes designed to avoid SDLT, certain arrangements are being brought into the SDLT DOTAS regime that are currently excepted from it. HMRC has discerned that certain old arrangements, which were first disclosed before the changes to the SDLT DOTAS regime that came into effect on 1st April 2010, are continuing to be used. Before April 2010 the users (as opposed to promoters) of avoidance arrangements did not have to have to make disclosures, but after that date they did. However, arrangements disclosed by promoters before April 2010 did not have to be disclosed again and so remained outside the disclosure regime relating to users of schemes. This instrument will require that such arrangements will have to be disclosed one further time by promoters, if they are within the description of arrangements laid out in the instrument, so that they are brought into the disclosure regime relating to users of schemes.

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 were two substantive responses that suggested that the regulations should achieve their objective subject to three minor technical changes, all of which have been included in the final regulations.

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 alongside the draft Finance Bill in December 2011. 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.