EXPLANATORY MEMORANDUM TO

THE TAX AVOIDANCE SCHEMES (INFORMATION) (AMENDMENT, etc) REGULATIONS 2013

2013 No. 2592

1. This explanatory memorandum has been prepared by HM 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 amend the Tax Avoidance Schemes (Information) Regulations 2012 (the "Information Regulations") to take account of new obligations introduced in Part 7 of Finance Act 2004 by Finance Act 2013, and to reflect new obligations to disclose arrangements which seek to obtain a tax advantage in relation to annual tax on enveloped dwellings which arise as a result of the Annual Tax on Enveloped Dwellings Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2013.

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

3.1 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 Sections 308, 309 and 310 require certain persons to disclose information about schemes falling within certain descriptions. The requirement usually falls on the promoter who must explain how the scheme works within 5 days of its being marketed, made available for implementation or implemented.

4.3 Section 311 provides that HMRC may allocate a scheme reference number ("SRN") to a disclosed scheme and issue it to the person who disclosed it. Section 312 requires a promoter to notify a SRN to a client who the promoter becomes aware has entered into a transaction forming part of the scheme. Section 312A imposes a similar obligation on the client to pass on a SRN when they are not the intended user of the scheme (the person intended to obtain the tax advantage) but know the person who is. Section 313ZA requires a promoter to provide periodic information to HMRC (a "client list") about clients to whom it has become obliged to issue a SRN.

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

4.5 Part 3 of the FA 2013 introduced the Annual Tax on Enveloped Dwellings.

4.6 These Regulations set out the additional information which promoters are required to include in the client lists they provide to HMRC under new obligations introduced to Part 7. So that the promoter can comply with this new obligation, these Regulations specify that clients must provide this same information to promoters, and set a deadline for this.

4.7 They also specify what additional information promoters must provide to HMRC about users of the relevant tax avoidance scheme, and set a deadline for this. This applies where HMRC has requested additional information because it suspects that a client list does not provide the details of all users of the tax avoidance scheme.

4.8 Finally, they set out the information requirements and time limits for disclosing a notifiable scheme which relates to annual tax on enveloped dwellings.

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. 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.

7.4 The regime requires promoters to provide HMRC with a quarterly list of clients who have implemented a disclosed scheme. This provides HMRC with early notification of the scale of the potential tax at risk and allows a cross-reference to the client's relevant tax record. However, in many instances the information currently provided by promoters is insufficient to correctly match the clients to HMRC's taxpayer records.

7.5 These Regulations will require clients to provide their Unique Taxpayer Reference Number ("UTR") and/or National Insurance Number ("NINO") to the promoter. The promoter will then be required to provide this information on the client lists so that HMRC can more accurately match these details with taxpayer records. These Regulations are drafted to ensure that promoters can provide HMRC with the UTR and NINO even where they receive this information too late to include it in the client list in the normal way.

7.6 These Regulations will also introduce a new information power so that where HMRC suspect that the client on the client list is not the person who is, or who is expected to be, the user of the scheme, HMRC are able to require the promoter to provide certain additional information.

7.7 Finally, these Regulations make consequential amendments to the Information Regulations required in order to extend DOTAS to arrangements which enable or might be expected to enable any person to obtain a tax advantage in relation to annual tax on enveloped dwellings. They also set out the information requirements and time limits for the disclosure obligations of promoters and users of such schemes.

- ***Consolidation***

7.8 This is the first time that the Tax Avoidance Schemes (Information) 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 avoidance schemes. These Regulations take forward the proposals to improve DOTAS outlined in that consultation; they seek to improve the information HMRC receives about users of disclosed schemes. Draft Regulations were published for consultation alongside the draft Finance Bill on 11 December 2012. Comments from consultees were taken into consideration when finalising the relevant provisions.

8.2 As regards the consequential amendments referred to above at paragraph 7.7, draft Regulations were published for consultation on 15 July 2013. Comments from consultees were taken into consideration when finalising the relevant provisions.

9. Guidance

9.1 The relevant guidance will be updated.

10. Impact

10.1 The impact on business, including civil society organisations, is not expected to be significant. HMRC receives disclosures of schemes from between 50 and 100 promoters (businesses) each year. These Regulations are not expected to significantly increase that number.

10.2 The impact on the public sector is nil.

10.3 A Tax Impact and Information Note covering the changes described at paragraphs 2.1 to 2.3 was published on 11 December 2012 on the HMRC website at http://www.hmrc.gov.uk/tiin/2012/tiin8003.htm. It remains an accurate summary of the impacts of these changes.

10.4 A Tax Impact and Information Note covering the changes described at paragraph 2.4 was published on 15 July 2013 on the HMRC website at http://www.hmrc.gov.uk/tiin/high-val-res-prop-non-naturals.pdf. It remains an accurate summary of the impacts of these changes.

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 HMRC routinely monitors the information it receives from promoters and users of disclosed tax avoidance schemes and uses that information to evaluate this measure and any future policy developments.

13. Contact

13.1 Lesley Hamilton at the Anti-Avoidance Group (Tel: 03000 585670 or email: Lesley.Hamilton@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.