EXPLANATORY MEMORANDUM TO

THE TAX AVOIDANCE SCHEMES (INFORMATION) (AMENDMENT) REGULATIONS 2008

2008 No. 1947

1. This explanatory memorandum has been prepared by the Commissioners for 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 Select Committee on Statutory Instruments.

2. Description

2.1 The above regulations will come into force on 1st November 2008.

2.2 The Tax Avoidance Schemes (Information) (Amendment) Regulations 2008 ("the amendment regulations") amend The Tax Avoidance Schemes (Information) Regulations 2004 (SI 2004/1864) ("the principal regulations"). The principal regulations prescribe the information to be provided when a person is required to notify arrangements under Part 7 Finance Act 2004, and the time limits for providing that information.

2.3 The amendment regulations prescribe:

- The information to be provided by a promoter to a client under section 312 and by a client to another party under section 312A;
- The period within which the information under section 312A is to be provided; and
- A case in which the duty to provide information under section 312A does not apply

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

None

4. Legislative Background

4.1 Part 7 of Finance Act 2004 (sections 306 – 319) provides for the notification to the Commissioners of certain tax arrangements and proposals for those arrangements (hereafter referred to as "schemes"). Part 7 was amended by Finance Act 2007 to provide powers for HMRC to investigate suspected non-compliance.

4.2 Disclosure requires certain persons, usually the promoter, to disclose information about schemes falling within certain descriptions. The promoter must explain how the schemes work within 5 days of the scheme being made available for implementation or implemented. A scheme reference number (SRN) system is designed to identify users of the schemes. When a promoter

discloses a scheme, HMRC allocate a SRN and notify it to the promoter. The promoter must pass it to clients, who must identify themselves by reporting it back to HMRC. The SRN system is not used in relation to Stamp Duty Land Tax ("SDLT").

- Section 306 defines "notifiable arrangements" and "notifiable proposals" which fall within certain descriptions prescribed by regulations made by the Treasury.

- Section 306A provides for the Special Commissioners to make an order that a scheme be treated as notifiable.

- Section 307 defines "promoter" in relation to "notifiable arrangements" and "notifiable proposals".

- Section 308 requires the promoter to provide prescribed information to HMRC within prescribed time limits. Subsection (4) provides that a co-promoter does not have to provide the information if another promoter does (the "co-promoter rule").

- Section 308A provides for the Special Commissioners to order the promoter to provide further information or documents where the promoter has purported to comply with the obligation to provide information under section 308 but HMRC believe the information to be incomplete.

- Section 311 provides for HMRC to allocate SRNs and notify them to promoters.

- Section 312 requires promoters to notify SRNs to clients.

- Section 313 requires clients to notify SRNs to HMRC.

- Section 313A provides for HMRC to require promoters to give reasons why they think they are not required to disclose a scheme.

- Section 313B provides for the Special Commissioners to order a promoter to provide further information or documents to explain or support the reasons why the scheme is not notifiable.

- Section 314 covers legal professional privilege.

- Section 314A provides for the Special Commissioners to make an order that a scheme is notifiable.

- Section 315 inserts new Section 98C into the Taxes Management Act 1970, providing for penalties for failure to comply with obligations under Part 7 of Finance Act 2004.

- Section 316 requires information to be provided in a form and manner specified by HMRC.

- Section 317 concerns secondary legislation, providing in particular that regulations made under Part 7 are subject to the "negative" annulment procedure.

- Section 318 defines terms used in Part 7, in particular "prescribed" means prescribed in regulations made by HMRC.

4.3 Section 116 of and Schedule 38 to the Finance Act 2008 further amended Part 7 of the 2004 Act to close loopholes in the SRN system.

- Section 308(4) (the "co-promoter rule") is amended so that a co-promoter is relieved of the obligation under section 308 only if another promoter:

    - Provides him with the information prescribed under section 308 along with the SRN allocated by HMRC: or

    - Provides HMRC with his name and address;

- New section 312A requires a promoter's client within the prescribed period to provide prescribed information to any other party to the scheme who might be expected to gain a tax advantage from it; and provides for exemption from this duty in prescribed circumstances;

- Section 316 is amended so that a person does not comply with an information provision (and accordingly becomes liable to a penalty) if he fails to provide information in the form and manner specified;

- There are consequential amendments to sections 311, 312, 313 and to section 98C of the Taxes Management Act 1970, which provides for penalties for failure to comply with duties under Part 7;

- These amendments will come into force on 1st November 2008, but not in relation to SDLT.

4.4 These amendment regulations:

- Prescribe the information a promoter must provide to a client under section 312, or a client must provide to another party under section 312A - it is the SRN only, or one of the SRNs if there are more than one;

- Prescribe the period within which a client must provide information to other parties as 30 days from the time the client becomes aware of any transaction forming part of the scheme, or, if later, from the time the information is notified to the client;

- Exempt an employer from the duty to provide information to an employee under section 312A in the case of employment schemes, ie where the employee receives or expects to receive a tax advantage from the scheme by reason of the employment;

- These regulations will come into force on 1st November 2008.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary, the Rt. Hon. Jane Kennedy MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

I am satisfied that The Tax Avoidance Schemes (Information) (Amendment) Regulations 2007 do not amend primary legislation and are not subject to approval by the House of Commons. Accordingly, no statement of compatibility is required.

7. Policy background

7.1 Tackling avoidance is a key element of the Government's tax policy strategy, which is aimed at making it easier for businesses to comply with their tax obligations whilst tackling those who abuse the system.

7.2 The Commissioners' anti-avoidance strategy has four main elements:

- To discourage taxpayers from using schemes. This includes a critical appraisal of all new legislation to reduce the potential for tax avoidance as well as publicising successes in closing down avoidance schemes.
- To identify as early as possible schemes that are being used.
- To challenge avoidance schemes by contesting returns and, where necessary, pursuing the matter through the Courts.
- To produce legislative changes that will close down avoidance schemes where litigation is not appropriate or where the amount of tax at stake is particularly large.

7.5 Part 7 of Finance Act 2004 and instruments made under it are intended to achieve early identification of avoidance schemes and to identify who is using them.

7.6 Part 7 applies across all of the direct taxes. However, the Government has targeted the disclosure rules at the areas at high risk from avoidance. The schemes prescribed in secondary legislation are limited to those that concern

- income tax, corporation tax or capital gains tax; and
- Stamp Duty Land Tax on non-residential property

7.7 These rules were aimed at new and innovative schemes and intended to redress a timing information gap that exists in relation to the prescribed taxes. For example, the filing date for income tax and corporation tax returns is many months after the end of the period to which the return relates. So it may be long after an avoidance scheme has been used that HMRC receives a return and can open enquiries.

7.8 Disclosure requires certain persons, usually the promoter, to disclose information about schemes falling within certain descriptions. The promoter must explain how the scheme works within 5 days of the scheme being made available for implementation or implemented.

7.9 A scheme reference number (SRN) system is designed to identify users of notifiable schemes. When a promoter provides information under section 308 HMRC allocate a SRN and notify it to the promoter. The promoter must notify it to clients who in turn identify themselves as users of the scheme by reporting it back to HMRC.

7.10 There were defects in the SRN system and not all users received a SRN.

7.11 Finance Act 2008 enhanced the SRN system to ensure all users of notifiable schemes receive a SRN and report it to HMRC.

8. Impact

A Final Implementation Stage Impact Assessment has been prepared for this Measure and has been placed on the HM Revenue and Customs website (www.hmrc.gov.uk).

9. Contact

David Easton at HM Revenue and Customs Tel: 0207 147 2418 or e-mail: David.Easton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.