EXPLANATORY MEMORANDUM TO

THE TAX AVOIDANCE SCHEMES (PRESCRIBED DESCRIPTIONS OF ARRANGEMENTS) (AMENDMENT) REGULATIONS 2016

2016 No. 99

1. Introduction

1.1 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 (Prescribed Description of Arrangements) Regulations 2006 to extend the scope of the confidentiality and premium fee description of arrangements (hallmarks) to include inheritance tax; to make changes to aspects of the standardised tax products and losses hallmarks; and to introduce a new hallmark relating to financial products.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Part 7 of the Finance Act 2004 (sections 306 – 319) provides for the notification (disclosure) of, and provision of information to, HMRC about certain tax arrangements and proposals for such arrangements (schemes).

4.2 Section 306 provides a power to prescribe in regulations the descriptions (or hallmarks) of arrangements which must be disclosed. These descriptions are contained in a number of regulations relating to:

- Income Tax, Corporation Tax and Capital Gains Tax
- Stamp Duty Land Tax
- Inheritance Tax
- The Annual Tax on Enveloped Dwellings

4.3 Sections 308, 309 and 310 require certain persons to notify HMRC and provide prescribed information about schemes falling within the relevant hallmark. The duty to notify usually falls on the promoter who developed and marketed the scheme but may fall on other persons where, for instance, there is no promoter.

4.4 Section 311 provides that HMRC may issue a scheme reference number (SRN) to the person who disclosed the scheme. Section 312 requires a promoter to provide the SRN to a client when the promoter becomes aware that they have entered into a

transaction forming part of the scheme. Any person who receives a SRN must report it to HMRC to enable them to be identified as a user of the scheme.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is 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 The Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of the Finance Act 2004 is designed to give HMRC early warning of tax avoidance schemes, giving it the opportunity to consider changes in the law to close loopholes or challenge schemes that it believes do not work. DOTAS supports the Accelerated Payments legislation as one of the criteria for issuing notices under that legislation is where arrangements are notifiable and have been given a DOTAS reference number.

7.2 DOTAS requires a person, usually the person who designs or sells the tax avoidance scheme, to disclose details of the scheme to HMRC if it comes within one or more of the hallmarks and within the remaining requirements of section 306 of the Finance Act 2004.

7.3 These regulations make amendments to the regulations which describe schemes which involve Income Tax, Corporation Tax or Capital Gains Tax. They do not make any changes to the regulations which describe schemes involving Stamp Duty Land Tax or the Annual Tax on Enveloped Dwellings. They do not make any changes to the regulations which describe schemes involving Inheritance Tax but references to that tax are included in the amendments being made to the other regulations.

7.4 These regulations extend the scope of two of the hallmarks, namely those describing characteristics of confidentiality and premium fee. The changes extend the scope of those hallmarks to include schemes involving Inheritance Tax. They also make changes to strengthen and clarify the hallmarks describing standardised tax products and losses schemes and introduce a new hallmark describing schemes which include certain financial products.

Consolidation

7.5 There is no intention at this time to consolidate these and earlier changes to the Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006.

8. Consultation outcome

8.1 The Government published a consultation document on 31 July 2014 entitled ‘Strengthening the Tax Avoidance Disclosure Regimes’. That consultation contained a number of proposals to strengthen the DOTAS regime, including broadening the meaning of promoter, improving the information available to HMRC and strengthening the descriptions (hallmarks) of arrangements that must be disclosed.

The Government's response, published in December 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384782/141126_2014_DOTAS_Consultation_Response_Document_-_Final.pdf sets out that the proposals will be taken forward.

8.2 Following technical consultations on other aspects of the proposed changes a technical consultation on these regulations ran from 16 July 2015 to 10 September 2015.

8.3 These regulations implement the proposals which strengthen and extend the descriptions of schemes which fall to be disclosed under the DOTAS regime

9. Guidance

9.1 Relevant guidance will be updated.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be negligible. The regulations impose reporting obligations on those who develop and make schemes available for implementation and in certain circumstances on those who enter into any transaction forming part of such schemes.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering these Regulations was published on 10 December 2014 and can be found at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 Businesses of any size can develop, market and use tax avoidance schemes. The Government expects this measure will have little, if any, impact on small 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 Simon Galloway in the Counter-Avoidance Directorate of HM Revenue and Customs Tel: 03000 585154 or email: simon.galloway@hmrc.gsi.gov.uk can answer any queries regarding the instrument.