EXPLANATORY MEMORANDUM TO

THE TAX AVOIDANCE SCHEMES (PROMOTERS AND PRESCRIBED CIRCUMSTANCES) (AMENDMENT) REGULATIONS 2015

2015 No. 945

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 Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 (the “Promoter Regulations”) to ensure that employees of promoters resident outside the United Kingdom are not excluded as promoters in the event that their employer does not disclose and to ensure that persons who are to any extent responsible for the organisation or management of notifiable arrangements are not excluded from being treated as a promoter.

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 2004 (sections 306 – 319) provides for the notification (“disclosure”) to the HMRC of certain tax arrangements and proposals for such arrangements (“schemes”).

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. Where the promoter is not resident in the United Kingdom the obligation may fall on other persons if the promoter does not comply with the requirement on them.

4.3. 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 issue 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 issue the SRN to other persons who are party to the scheme. Any person who receives a SRN must report it to HMRC unless exempted by regulations.

4.4. Section 98C of the Taxes Management Act imposes penalties on persons who fail to comply with obligations under Part 7 of the Finance Act 2004.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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 does not believe work. It requires a person, usually the person who designs or sells the tax avoidance scheme, to disclose details of certain descriptions of schemes to HMRC.

7.2. The obligation to disclose applies equally to promoters who are resident in, or outside, the United Kingdom. If a promoter not resident in the United Kingdom fails to disclose, the requirement falls on each person who enters into a transaction forming part of the scheme unless there is another person within the meaning of promoter in the United Kingdom.

7.3. The 2004 Promoter Regulations treat certain persons as not being promoters. Since 2008, where more than one person is within the meaning of promoter, section 308 lifts the obligation to disclose where one of those promoters has disclosed the scheme.

7.4. These regulations make two changes to the 2004 Promoter Regulations. First, where a promoter who is not resident in the United Kingdom fails to disclose, the exemption provided generally to exclude employees of a promoter from being treated as a promoter is disapplied. Second, the regulation that excludes a person from being treated as a promoter if they are responsible to any extent for the organisation or management of the scheme but are not connected to a promoter who is involved in the design of the scheme is removed. Together these changes will make it more difficult for promoters not resident in the United Kingdom to avoid disclosure.

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 disclosure regime, including improving the information available to HMRC. These regulations take forward the elements outlined in that consultation which seek to make it more difficult for promoters not resident in the United Kingdom to avoid disclosure.

9. Guidance

9.1. Relevant guidance will be updated.

10. Impact

10.1. The impact on business, including civil society organisations is expected to be negligible. The regulations impose reporting obligations onto employees or a promoter and persons working with the promoter only to the extent that the promoter fails to comply with DOTAS.

10.2. The impact on the public sector is nil.

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 small business.

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

Gary Coombs in the Counter-Avoidance Directorate of HM Revenue and Customs Tel: 03000 589577 or email: gary.coombs@hmrc.gsi.gov.uk can answer any queries regarding the instrument.