EXPLANATORY MEMORANDUM TO

THE NATIONAL INSURANCE CONTRIBUTIONS (APPLICATION OF PART 7 OF THE FINANCE ACT 2004) REGULATIONS 2012

2012 No. 1868

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These regulations revoke the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007 (S.I. 2007 No. 785) and four amending regulations, replacing them with a single consolidated instrument. The revoked regulations are listed in regulation 29 of these regulations.

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

None

4. Legislative Context

4.1 Section 132A of the Social Security Administration Act 1992 provides for the Treasury to make regulations mirroring the Disclosure of Tax Avoidance Schemes ("DOTAS") regime as it applies to income tax.

Income tax

4.2 DOTAS requires certain persons, usually promoters, to disclose information about schemes falling within certain descriptions. A scheme reference number ("SRN") system identifies the users of schemes – when a promoter discloses a scheme, HMRC allocate a SRN and notify it to the promoter; the promoter must pass information relating to the SRN to clients who in turn must identify themselves to HMRC by reporting the information back to HMRC, sometimes on a return, sometimes separately. In addition promoters must periodically provide HMRC with information about clients; clients must pass SRN information to other users of a scheme; and intermediaries may be required to provide HMRC with information leading to the identification of the promoter of a scheme.

4.3 The regime applies to income tax, capital gains tax, corporation tax, inheritance tax and stamp duty land tax. There is a separate regime for value added tax.

4.4 Part 7 of the Finance Act 2004 ("Part 7"), comprising sections 306–319, contains the primary legislation introducing the regime.

4.5 Section 98C of the taxes Management Act 1970 (“TMA”) provides for penalties for failure to comply with the various disclosure obligations.

4.6 Regulations made under Part 7 or section 98C TMA prescribe the descriptions of schemes covered by the regime; the information to be provided, along with time limits for doing so; the amount of penalty in certain cases; and certain circumstances in which a person is not to be treated as a promoter.

National Insurance Contributions (“NICs”)

4.7 Most NICs avoidance schemes also involve income tax, but some do not. The scope of DOTAS was therefore extended in 2007 specifically to include NICs.

4.8 Section 7 of the National Insurance Act 2006 inserted section 132A in the Social Security Administration Act 1992 to provide for the Treasury by regulations to make provision requiring or relating to the disclosure of information in relation to NICs avoidance schemes.

4.9 The only provisions which may be made under section 132A are provisions corresponding to, or applying (with or without modification) the tax provisions in Part 7, section 98C or secondary legislation, as they apply to income tax.

4.10 The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007 (S.I. 2007 No. 785) (“the NICs Regulations”) corresponded to or applied the income tax provisions as they stood in May 2007. They have been amended four times to correspond to amendments to the tax provisions.

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 Tax avoidance represents a significant part of the UK tax gap. It is not in itself illegal, but 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. And 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 DOTAS 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.

- Consolidation

7.4 The NICs Regulations have now been amended four times. The Tax Avoidance Schemes (Information) Regulations 2004 (S.I. 2004 No. 1864), which have been amended ten times, are being consolidated, and the opportunity is taken to consolidate the NICs Regulations at the same time.

8. Consultation outcome

As these regulations are a consolidation exercise entailing no change in policy, no consultation has been undertaken.

9. Guidance

9.1 The existing guidance will be amended to update references to the regulations.

10. Impact

10.1 The impact of consolidation is nil.

10.2 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

11. Regulating small business

This is a consolidation exercise and the changes will have no impact on admin burden or compliance costs. The legislation applies to small business. Businesses of any size, develop, market and use avoidance schemes. HMRC does not expect this measure will have a significant effect on small businesses either in absolute terms or proportionately.

12. Monitoring & review

The need for further consolidation will be considered in the light of future amendments.

13. Contact

David Easton at HMRC Tel: 0207 147 2418 or email: david.easton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.