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STATUTORY INSTRUMENTS

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**2012 No. 2396**

**STAMP DUTY LAND TAX**

**The Stamp Duty Land Tax (Avoidance Schemes)  
(Specified Proposals or Arrangements) Regulations 2012**

<i>Made</i>	- - - -	<i>17th September 2012</i>
<i>Laid before the House of Commons</i>	- - - -	<i>18th September 2012</i>
<i>Coming into force</i>	- -	<i>1st November 2012</i>

The Treasury, in exercise of the powers conferred by sections 308(6) and 317 of the Finance Act 2004<sup>(1)</sup>, make the following Regulations.

**Citation and commencement**

1. These Regulations may be cited as the Stamp Duty Land Tax (Avoidance Schemes) (Specified Proposals or Arrangements) Regulations 2012 and come into force on 1st November 2012.

**Interpretation**

2. In these Regulations—

- “chargeable interests” has the meaning given by section 48 of the Finance Act 2003<sup>(2)</sup>;
- “partnership” has the meaning given by paragraph 1 of Schedule 15 to the Finance Act 2003;
- “settlement” has the meaning given by paragraph 1 of Schedule 16 to the Finance Act 2003.

**Application**

3. These Regulations apply where conditions A and B are met.

4.—(1) Condition A is that a chargeable interest is acquired under a contract, the substantial performance or completion of which falls to be disregarded by virtue of section 45(3) of the Finance Act 2003.

(2) Condition B is that the secondary contract referred to in section 45(3) of the Finance Act 2003 arises from a transaction with one or more of the following features—

- (i) a distribution *in specie*;

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(1) 2004 c. 12. Section 308(6) was inserted by section 215 of the Finance Act 2012 (2012 c. 14).

(2) 2003 c. 14.

- (ii) an acquisition by a partnership;
- (iii) an acquisition by a settlement;
- (iv) an element of gift or transfer at an undervalue;
- (v) the grant of an option;
- (vi) an assignment or novation.

(3) In regulation 4(2) above, a distribution in specie means a distribution of an asset in physical form without selling it and distributing the proceeds of sale.

#### **Modification of section 308 of the Finance Act 2004**

5. Section 308 of the Finance Act 2004 shall apply with the following modifications.

- 6.—(1) Where, for the purposes of section 308 of the Finance Act 2004—
- (a) a promoter has provided to HMRC before 1st April 2010 information prescribed by the Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005(3) in relation to a notifiable proposal or notifiable arrangements,
  - (b) the description of the notifiable proposal or arrangements, or part of the description of the notifiable proposal or arrangements, falls within conditions A and B contained in regulation 4 above, and
  - (c) the promoter is, on or after 1st November 2012, a promoter in relation to a notifiable proposal or notifiable arrangements that are of the same, or substantially the same, description as those in respect of which the prescribed information in paragraph (a) was provided,

the modifications specified in paragraphs (2) and (3) shall apply.

(2) Section 308(5) of the Finance Act 2004 shall be disregarded on the first occasion on or after 1st November 2012 that the promoter would, but for section 308(5) of the Finance Act 2004, have a duty to provide prescribed information concerning the proposal or arrangements, falling within regulation 6(1)(c), by virtue of either section 308(1) or (3) of the Finance Act 2004.

(3) The exception from the requirement to provide prescribed information contained in the concluding words of section 308(3) of the Finance Act 2004 shall be disregarded on the first occasion on or after 1st November 2012 that the promoter would, but for the application of the exception, have a duty to provide prescribed information concerning notifiable arrangements falling within regulation 6(1)(c), by virtue of section 308(3) of the Finance Act 2004.

*Michael Fabricant*  
*James Duddridge*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

17th September 2012

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations modify the effect of section 308 of the Finance Act 2004 (“FA 2004”). They create an exception, in relation to proposals and arrangements specified in these Regulations under powers contained in section 308(6)(b) of the FA 2004, to two rules. The first rule is contained in section 308(5) of the FA 2004. It states that a promoter in relation to two or more notifiable proposals or sets of notifiable arrangements, which are substantially the same, need not provide information under sections 308(1) or 308(3) of the FA 2004 if he has already provided information under either of these subsections in relation to any other proposals or arrangements. The second rule is contained in section 308(3) of the FA 2004. It states that the promoter does not have to provide the Board with prescribed information relating to arrangements if those arrangements implement a proposal in respect of which notice has been given under section 308(1) of the FA 2004.

Regulation 4 provides that the description of the notifiable proposals and notifiable arrangements specified in these Regulations is avoidance schemes in which section 45(3) of the Finance Act 2003 is engaged and the secondary contract contained in that section applies to transactions with specified features.

Regulation 6 of these Regulations provides that a promoter, who has made a disclosure of a notifiable proposal or a notifiable arrangement within the specified categories before 1st April 2010, has to make one further disclosure, if the promoter is a promoter after 1st November 2012 in relation to a notifiable proposal or notifiable arrangements that are of the same or substantially the same description as those in respect of which information had been provided by the promoter before 1st April 2010.

A Tax Information and Impact Note covering this instrument was published in December 2011 alongside the draft Finance Bill in December 2011. This will be updated as a result of changes to the impacts as a result of this instrument and will be available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.