EXPLANATORY MEMORANDUM TO

THE TAX AVOIDANCE SCHEMES (PRESCRIBED DESCRIPTIONS OF ARRANGEMENTS) (AMENDMENT) REGULATIONS 2009

2009 No. 2033

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

2. Purpose of the instrument

2.1 These Regulations ("the 2009 amendment regulations") amend the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543) ("the principal regulations"), to insert a new description concerning pension arrangements.

2.2 The amendment regulations will come into force on 1 September 2009.

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

None

4. Legislative Context

4.1 Part 7 of the Finance Act 2004 (sections 306-319) ("Part 7") introduced a "disclosure" regime which requires the notification to HMRC of certain tax arrangements and proposals for arrangements ("schemes").

4.2 Disclosure requires certain persons, usually the promoter, to disclose information about schemes falling within certain descriptions within 5 days of the scheme's being made available or implemented. The descriptions of schemes to be disclosed are prescribed in the principal regulations.

4.3 A scheme reference number (SRN) system identifies the 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 in turn identify themselves as users of the scheme by reporting it back to HMRC, along with certain other information. Users normally report SRNs on their tax returns, but in some cases must report them separately.

4.4 Section [71] and Schedule 35 of the Finance Act 2009 introduce an income tax charge at 20 per cent for certain individuals on certain pension contributions and benefits accrued ("pension savings"). This special annual allowance charge (SAAC) charge is on pension savings accrued in excess of a special annual allowance of £20,000 for individuals whose relevant income is £150,000 or more. It does not apply in respect of an individual's normal pattern of regular pension savings, or the normal way in which their benefits are accrued before 22 April 2009. The Schedule also enables high income individuals to ask their schemes to refund pension contributions that they have paid in the 2009-10 or 20010-11 tax year, which may otherwise create a liability to the SAA provisions. The repayments are subject to a 40% income tax charge on the scheme (effectively clawing back that individual's tax relief).

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

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 HMRC's 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.

7.3 Part 7 and instruments made under it are intended to achieve early identification of avoidance schemes and the SRN system to identify who is using them.

7.4 Section [71] and Schedule 35 of the Finance Act 2009 form an anti-forestalling provision that seeks to restrict pensions tax relief for high income individuals (those having taxable income of at least £150,000) where there is an increase in the normal pattern of regular savings (whether due to increased contributions or in the way in which benefits accrue to the member) between Budget day 2009 and 6 April 2011 when pensions tax relief for high income individuals will be restricted to the basic rate of tax.

7.5 The purpose of the new description in the principal regulations is to require disclosure of tax avoidance schemes that seek to avoid or reduce the restriction of pensions relief in ways that Parliament did not intend.

8. Consultation outcome

8.1 A formal consultation has not been carried out because the measure narrowly targets tax avoidance. A summary of the new description was published at Budget 2009 in paragraph 19 of Budget Note 47. HMRC has discussed the proposed hallmark informally with a number of external stakeholders. None have made representations that the proposed measure is disproportionate or poorly targeted.

9. Guidance

A copy of the guidance issued by HMRC concerning the restriction of pension relief has been placed in the House of Commons library.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those which engage in avoidance schemes.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared covering the measure because it narrowly targets those who seek to promote or use tax avoidance schemes.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The purpose of the legislation is to identify the detail schemes seeking to avoid new legislation restriction pensions relief to high earners, and to identify those who use such schemes.

11.3 The reasons for not exempting small businesses from obligations in relation to scheme reference numbers are:

- Revenue protection. Small businesses may promote or use avoidance schemes where the tax at risk is significant and disproportionate to the size of the business;
- Fairness. Avoidance puts compliant businesses, large and small, at a disadvantage and distorts competition.

12. Monitoring & review

Review of the effects of the measure is expected 3 years from implementation on [date]

13. Contact

David Easton at the HM Revenue and Customs Tel: 020 7147 2418 or email: David.Easton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.