

EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF (SWITZERLAND) ORDER 2018

2018 No. [XXXX]

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 The Order brings into effect arrangements set out in a Protocol (“the Arrangements”) made by the Government of the United Kingdom and the Swiss Federal Council. The Arrangements further amend the existing arrangements (“the 1977 Arrangements”) between the two Governments for the Avoidance of Double Taxation with Respect to Taxes on Income, which was previously amended by the arrangements scheduled to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1982, the arrangements scheduled to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1994, the arrangements scheduled to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 2007 and the arrangements scheduled to the Double Taxation Relief and International Tax Enforcement (Switzerland) Order 2010. The 1977 Arrangements have also been supplemented by the agreement scheduled to the Double Taxation Relief and International Tax Enforcement (Switzerland) Order 2012.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 The Order is being made to give effect in UK legislation to the Arrangements which amend the 1977 Arrangements. The Arrangements are scheduled to the Order, and are thus given domestic legislative effect.
- 4.2 The Order does not implement EU legislation.

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 The Financial Secretary to the Treasury, Mel Stride, has made the following statement regarding Human Rights:

“In my view the provisions of the Double Taxation Relief (Switzerland) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Arrangements make a number of amendments to the 1977 Arrangements following negotiations between the two Governments. Amendments are made to the articles relating to general definitions, associated enterprises, dividends, interest, royalties, other income, elimination of double taxation and the mutual agreement procedure and an entitlement to benefits article has been introduced.
- 7.2 The amendments made to the 1977 Arrangements by the Arrangements implement certain of the treaty related recommendations from the OECD/G20 Base Erosion and Profit Shifting (“BEPS”) project, including the minimum standards agreed on preventing treaty abuse and improving dispute resolution.

Consolidation

- 7.3 Not applicable.

8. Consultation outcome

- 8.1 HMRC regularly consults with external interested parties, including business representatives, about the effectiveness of existing arrangements for the avoidance of double taxation and fiscal evasion as well as new needs. The treaty negotiating programme is agreed with Ministers and published on the HMRC pages of the Gov.UK website.

9. Guidance

- 9.1 General guidance on the operation of the UK’s double taxation agreements can be found on the HMRC pages of the Gov.UK website at:

<https://www.gov.uk/hmrc-internal-manuals/international-manual/intm150000>

or in the Double Taxation Relief Manual at:

<https://www.gov.uk/hmrc-internal-manuals/double-taxation-relief>

This Manual will be updated once the Arrangements enter into force.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible. The provisions of the Arrangements do not introduce new tax burdens; rather, they ensure that relief from UK tax under the 1977 Arrangements is only granted in circumstances where it was intended.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been produced as DTAs impose no obligations on taxpayers; rather they give UK residents relief from foreign tax in prescribed circumstances. They also provide relief from UK tax for non-residents in a comparable situation.

11. Regulating small business

- 11.1 The legislation applies only to activities that are undertaken by small businesses if they have used the arrangements to artificially reduce their tax burden. No special approach to small business is therefore necessary.

12. Monitoring & review

- 12.1 There are no specific plans to review this Statutory Instrument. However, both Governments will keep the Arrangements scheduled to the Order under consideration to ensure that they continue to meet the policy objectives set out above in Section 7.

13. Contact

- 13.1 Tom Matthews at HM Revenue and Customs Telephone: 03000 585476 or email: tom.o.matthews@hmrc.gsi.gov.uk can answer any queries regarding the instrument.