EXPLANATORY MEMORANDUM TO

THE INHERITANCE TAX (QUALIFYING NON-UK PENSION SCHEMES) REGULATIONS 2010

2010 No. 51

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

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

These Regulations provide for the definition of a qualifying non-UK pension scheme, to which certain inheritance tax charges will not apply

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

These Regulations will have effect retrospectively on and after 6 April 2006. The Regulations are entirely relieving because they restore to certain non-UK pension schemes protection from inheritance tax charges.

4. Legislative Context

4.1 Inheritance Tax Act 1984 provides for inheritance tax charges on property held in a relevant property settlement. This may include charges when property is transferred into a settlement, periodic charges on property held under a settlement and charges when property is transferred out of a settlement. Inheritance tax charges also arise on transfers of value out of an individual's estate. This can include property held when an individual dies, because the rules treat a person as having made a transfer of value of all the property in their estate immediately before their death.

4.2 Sums and assets held under a pension scheme may be subject to these inheritance tax charges. However, Inheritance Tax Act 1984 contains certain provisions that generally exempt from the charges sums and assets held under a registered pension scheme or a superannuation fund to which section 615(3) Taxes Act 1988 applies. These are contained in sections 12(2), 58(1)(d), 58(2A)(b), sections 151 and 152 of Inheritance Tax Act 1984.

4.3 Before changes were made to the pension tax rules at 6 April 2006, protection from inheritance tax charges applied also to certain non-UK pension schemes. But changes included in Finance Act 2004 (which had effect from 6 April 2006) restricted the protection to registered pension schemes and section 615(3) schemes only. Registered pension schemes are as defined in section 150(2) of Finance Act 2004. Section 615(3) schemes are certain occupational pension schemes set up in the UK for an individual employed wholly outside the UK.

4.4 Paragraph 18 to Schedule 29 of Finance Act 2008 contains provision to extend the inheritance tax protection given to registered pension schemes and section 615(3) schemes to qualifying non-UK pension schemes. The provisions give a regulation-making power to define a qualifying non-UK pension scheme. The Regulations specify that such a scheme must in the country in which it is established satisfy certain regulatory requirements and be tax-recognised. If the country in which the scheme is established has no system of regulation or tax-recognition, or it is a scheme that is established by an international organisation, then the scheme must provide for 70% of the funds in the member's pension scheme to be paid out as a pension income for life.

4.5 The regulation-making power permits regulations to have effect before they are made, providing they do not increase any person's liability to income tax.

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 Before 6 April 2006 protection from inheritance tax charges applied to certain superannuation schemes. As well as UK pension schemes, this could also include pension schemes that were established overseas. Finance Act 2004 introduced significant changes to the tax regime for pension schemes, which took effect from April 2006. As part of these changes protection from inheritance tax charges was restricted to registered pension schemes and section 615(3) schemes. It no longer, therefore, applied to schemes established overseas that were not pension schemes registered in the UK. The policy intention was to limit the inheritance tax protection to pension schemes that were tax-recognised and regulated. It was not intended to remove the protection entirely from all non-UK pension schemes.

7.2 The amendments made by paragraph 18 of Schedule 29 to Finance Act 2008, including the regulations made under section 271A Inheritance Tax Act, will have effect from 6 April 2006. They will restore the inheritance tax protections to certain non-UK pension schemes that are broadly equivalent to registered pension schemes.

8. Consultation outcome

8.1 Draft regulations were published on the HM Revenue & Customs website before Public Bill Committee for Finance Bill 2008. No representations have been received.

9. Guidance

9.1 There is comprehensive guidance in the Inheritance Tax Manual covering how inheritance tax charges apply to funds in registered pension schemes. This guidance will shortly be updated to include guidance on the inheritance tax reliefs available to qualifying non-UK pension schemes, as defined in these Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is none.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation may apply to small business but has a relieving effect.

12. Monitoring & review

Success criteria for this instrument are that inheritance tax reliefs are available to qualifying non-UK pension schemes that are regulated and tax-relieved overseas, so that they do not have to make returns for inheritance tax purposes. Correspondence and inheritance tax returns of qualifying non-UK pension schemes will be reviewed to ensure that the reliefs are applying as intended. We will also discuss with stakeholder groups within 6 months of the regulations being laid.

13. Contact

Angela Walker at HM Revenue & Customs Tel: 020 7147 2773 or email: angela.walker1@hmrc.gsi.gov.uk can answer any queries regarding the instrument.