

EXPLANATORY MEMORANDUM TO

THE TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010 TRANSFER PRICING GUIDELINES DESIGNATION ORDER 2018

2018 No. 266

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This measure amends the references within the relevant legislation to incorporate the most recent revisions to the Organisation for Economic Co-operation and Development (OECD) Guidelines which are the internationally agreed standard for application of the arm's length principle for transfer pricing purposes.

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 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The instrument will update the definition of "transfer pricing guidelines" within the legislation to incorporate the updated version of the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the 'OECD Guidelines') published by the OECD in July 2017.

5. Extent and Territorial Application

- 5.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Wales, Scotland, and Northern Ireland.

6. European Convention on Human Rights

- 6.1 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 A transfer price is the price charged in a transaction between two connected parties. The transfer pricing legislation requires that, for Income Tax or Corporation Tax purposes, the prices charged in transactions between connected parties are the same as those that would be charged if the parties were not connected. The absence of such a requirement would enable connected parties to reduce the profits which would otherwise be chargeable to United Kingdom taxation by mispricing of the transactions between UK resident parties and connected non-UK resident parties.
- 7.2 The measure will update the definition of "transfer pricing guidelines" within the legislation to incorporate the updated version of the Organisation for Economic Co-operation and Development (OECD)'s Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the 'OECD Guidelines') published by the OECD in July 2017..

Consolidation

- 7.3 The Department does not intend to consolidate the relevant legislation.

8. Consultation outcome

- 8.1 No consultation was held as business and professional advisors were consulted throughout the OECD project which resulted in the revisions to the OECD Guidelines. As the UK's legislation already includes a reference to earlier versions of those Guidelines, it is fully expected that the reference will be updated to refer to the latest version.

9. Guidance

- 9.1 No formal guidance will be issued in respect of the instrument.

10. Impact

- 10.1 There is negligible impact on businesses, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to exclude such businesses from being required to compute their profits in accordance with transfer pricing, with the exception of limited circumstances.

12. Monitoring & review

- 12.1 The instrument will be subject to review in conjunction with the work carried on by both the OECD, HM Treasury, and HM Revenue & Customs.

13. Contact

- 13.1 Jon Clark at HM Revenue & Customs (Business Assets International) Telephone: 03000 585708 or email: jon.a.clark@hmrc.gsi.gov.uk can answer any queries regarding the instrument.