EXPLANATORY MEMORANDUM TO

THE TAXES (AMENDMENTS) (EU EXIT) REGULATIONS 2020

2020 No. 332

1. Introduction

1.1 This Explanatory Memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of 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 instrument is required to ensure that the United Kingdom (UK) has a functioning statute book. This instrument will come into force at the end of the transition period. This instrument makes changes to maintain the current treatment in two different parts of tax legislation from the end of the transition period (TP) for the UK-EU withdrawal agreement.

2.2 First, the instrument amends references in tonnage tax legislation to European Union (EU) related concepts such as Member State and Community-flagged. Secondly, the instrument amends the conditions for entitlement to the income tax Personal Allowance, Blind Person's Allowance, Marriage Allowance and Married Couple's Allowance (personal reliefs). This will ensure that UK nationals who are not resident in the UK from the end of the TP onwards will still benefit from the personal reliefs as they do now.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt Hon Jesse Norman MP, the Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of the Taxes (Amendments) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument makes changes to the Finance Act 2000 and to the Income Tax Act 2007.

Tonnage Tax

6.2 Tonnage tax is an alternative method of calculating Corporation Tax for companies operating qualifying ships, by reference to the net tonnage of the ships operated. The tonnage tax regime is provided for by section 82 of, and Schedule 22 to, the Finance Act 2000. It is currently subject to approval by the EU Commission and aspects of the tonnage tax legislation in Schedule 22 to the Finance Act 2000 reflect this.

6.3 Under current legislation if during a non-excepted financial year a company in the tonnage tax regime starts to operate a potentially qualifying ship that is not registered in a "Member States' register", then they must first carry out a "flagging test" under paragraph 22A of the Schedule to determine whether that ship can enter the tonnage tax regime. This term "Member States' registers" is defined by reference to guidelines on maritime transport produced by the EU Commission. If unchanged, these requirements could cause confusion at the end of the TP.

6.4 This instrument will amend Schedule 22 to the Finance Act 2000 to preserve the existing tax treatment in respect of UK "flagged" (registered) vessels under the tonnage tax regime. This instrument will replace references to "Member States' registers" at paragraphs 22A, 22B, 22D, 22E and 43A of Schedule 22 with references to "relevant registers" as defined at new paragraph 22B(6A). This new definition of "relevant registers" at paragraph 22B(6A) will also cover the register of British ships maintained under section 8 of the Merchant Shipping Act 1995 and the Gibraltar register of ships.

6.5 This instrument will also amend paragraph 49 of Schedule 22 to the Finance Act 2000 with regards to the treatment of dividends or other distributions of overseas companies over which more than 50% of the voting power is held by companies resident in a "member State". If unchanged, this term could cause confusion at the end of the TP as the UK will no longer be a Member State. This instrument will replace the references to "member State" at paragraph 49 of Schedule 22 with "the United Kingdom, Gibraltar or a member State".

Personal Allowance

6.6 Under current legislation nationals of a European Economic Area (EEA) state who are not resident in the UK are entitled to the Personal Allowance. The Personal Allowance is a tax-free amount on a proportion on an individual's income. In 2019-20 and 2020-21 this amount is set at £12,500.

6.7 Other forms of personal tax allowances are also available to individuals in certain circumstances in addition to the Personal Allowance. These are the Blind Person's Allowance, Marriage Allowance and the Married Couple's Allowance.

6.8 Section 56 of the Income Tax Act 2007 sets out conditions for benefiting from personal reliefs. Section 56(2) provides that the individual must either be UK resident for the tax year, or, if not, must satisfy one of the conditions in section 56(3). The condition at section 56(3)(za) is that the individual is a national of an EEA state.

6.9 This definition covers UK nationals during the TP. It will however cease to do so from the end of the TP onwards.

6.10 This instrument will amend section 56(3)(za) to insert a specific reference to UK nationals alongside the existing reference to nationals of an EEA state to maintain current tax treatment for UK nationals not resident in the UK.

6.11 The enabling powers for this instrument in section 90 of the Finance Act 2019 were amended at report stage which required one of the following conditions to be met before the power came into force (section 90(7)): the House of Commons has approved a negotiated withdrawal agreement and framework for the future relationship; the Prime Minister has notified the European Council, under article 50, of the UK's request to extend the period in which the EU Treaties shall apply to the UK; or the House of Commons has approved leaving the EU without a withdrawal agreement and framework for the future relationship. Those powers came into force on 20 March 2019 when the Prime Minister notified the President of the European Council of the UK's request to extend the period in which the EU Treaties shall still apply to the UK, which satisfied the condition in subsection (7).

7. Policy background

What is being done and why?

7.1 The legislation reflects terms which will no longer be appropriate from the end of the TP and onwards. Amendments to paragraphs 22A, 22B, 22D, 22E and 43A of Schedule 22 to the Finance Act 2000 will ensure that the existing tax treatment in respect of UK flagged vessels under the UK tonnage tax regime is continued. The amendment to paragraph 49 of Schedule 22 to the Finance Act 2000 will maintain its existing effect with regards to the treatment of dividends or other distributions of overseas companies over which more than 50% of the voting power is held by companies resident in the UK, Gibraltar or a Member State.

7.2 The government estimates there are between 200,000 and 300,000 UK nationals living outside the UK that receive UK income and benefit from the personal reliefs.

7.3 The amendments to section 56(3)(za) of the Income Tax Act 2007 maintain the effect of the existing legislation so that UK nationals not resident in the UK will continue to be eligible for the UK's personal reliefs, after the end of the TP.

8. Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU because it amends the Finance Act 2000 and the Income Tax Act 2007 to ensure that they continue to apply as intended at the end of the transition period.

9. Consolidation

9.1 There are no plans to consolidate the legislation which is amended by this instrument.

10. Consultation outcome

10.1 As the change under this instrument does not create a change in policy, but ensures the continuation of current tax treatment, no consultation has been carried out.

11. Guidance

11.1 No guidance is required as the instrument will maintain current tax treatment.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 HMRC will keep this instrument under review to ensure that it meets the policy objectives set out in paragraph 7 above.

14.2 The instrument does not include a statutory review clause. None is required under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 because the power by which this instrument is made is being exercised so as to make or amend provisions imposing, abolishing, or varying any tax duty, levy, or other charge or provisions in connection with such provisions.

15. Contact

15.1 Olivia Roberts Telephone: 03000 590 831 or email: Olivia.roberts@hmrc.gov.uk and Victor Baker Telephone: 03000 585 490 or email: Victor.j.baker@hmrc.gov.uk at Her Majesty's Revenue and Customs can be contacted with any queries regarding the instrument.

15.2 Jackie McGeehan, Deputy Director for Income Tax Policy at Her Majesty's Revenue and Customs, and Martyn Rounding, Deputy Director for Corporation Tax Structure at HM Revenue and Customs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, the Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.