

EXPLANATORY MEMORANDUM TO
THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX
ENFORCEMENT (BELGIUM) ORDER 2010

2010 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue & Customs (“HMRC”) and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of the instrument**

The Order brings into effect arrangements set out in a Protocol made by the UK Government and the Government of the Kingdom of Belgium (“the Protocol”) to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains signed on 1 June 1987 (“the Convention”).

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

None.

4. **Legislative context**

- 4.1 General

This Order is being made to give effect in UK legislation to the Protocol, which amends the Convention. The relevant arrangements in the Protocol are scheduled to the Order, and are thus given domestic legislative effect.

- 4.2 EU Legislation

This Order does not implement EU legislation.

5. **Territorial extent and application**

This Order applies to all of the United Kingdom.

6. **European Convention on Human Rights**

The Exchequer Secretary to the Treasury, David Gauke, has made the following statement regarding human rights:

“In my view the provisions of the Double Taxation Relief and International Tax Enforcement (Belgium) Order 2010 are compatible with the Convention rights.”

7. Policy background

- ***What is being done and why***

7.1 The Protocol makes a number of amendments to the Convention following negotiations between the two Governments. The amendments bring the Convention up-to-date and in particular substitute new articles dealing with taxes covered, residence (to make clear that pensions schemes and charities are regarded as residents), shipping and air transport, dividends (to provide for no withholding tax on payments to direct investors and pension schemes and to cover dividends paid by real estate investment trusts), interest, company managers, pensions (all new pensions will be taxable solely in the country of source), government service and exchange of information. In addition the mutual agreement procedure article is modified to provide for arbitration.

The amendments made to the Convention by the Protocol are consistent with the approach adopted in the Organisation for Economic Cooperation and Development's ("OECD") Model Tax Convention on Income and on Capital.

- ***Consolidation***

7.2 Not applicable

8. Consultation outcome

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

9. Guidance

General guidance on the operation of the UK's double taxation conventions can be found on the HMRC website at:

<http://www.hmrc.gov.uk/manuals/intmanual/INTM150000.htm> or in the Double Taxation Relief Manual at:

<http://www.hmrc.gov.uk/manuals/dtmanual/DT3400+.htm>, which will be updated once the Protocol enters into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. The provisions of the Protocol do not introduce new tax burdens; rather, they provide relief from tax and thus are of benefit to business both large and small. Taxpayers may have to make a claim to HMRC or the other state's fiscal authority in order to benefit from the Protocol.

10.2 There is no impact on the UK public sector. HMRC already operates the terms of many other similar agreements currently in force.

10.3 An impact assessment has not been prepared for this Order.

11. Regulating small business

The amending Protocol does not introduce new tax burdens and no special approach for small business is necessary.

12. Monitoring and review

Both the UK Government and the Government of Belgium will keep the Protocol scheduled to the Order under review to ensure that it meets the policy objectives set out above.

13. Contact

Geoff Barnard at HM Revenue and Customs (tel: 020 7147 2734/e-mail: Geoff.Barnard@hmrc.gsi.gov.uk) can answer any queries regarding the Order.