

EXPLANATORY MEMORANDUM TO
THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX
ENFORCEMENT (GEORGIA) 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 the Protocol (“the Protocol”) made by the Governments of the United Kingdom and Georgia. The Protocol amends an agreement made in 2004 between the two countries for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital (“the Agreement”).

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

None.

4. **Legislative context**

- 4.1 General

The Order is being made to give effect in UK legislation to the Protocol. The arrangements in the Protocol amending the Agreement 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**

The 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 (Georgia) 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 Agreement following negotiations between the two Governments. Article 3 is amended to include a definition of “pension scheme”. Article 5 is amended to extend to 12 months the time limit after which a building site or construction project will constitute a permanent establishment. Article 10 is amended to provide for dividends, other than those paid by property investment vehicles, to be paid free of withholding tax.

The amendments made to the Agreement 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 and fiscal evasion 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 web site at:

<http://www.hmrc.gov.uk/manuals/intmanual/INTM150000.htm>

There is also more detailed guidance on the existing UK-Georgia Agreement at:

<http://www.hmrc.gov.uk/manuals/dtmanual/DT7750+.htm>

This guidance 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 Agreement.

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

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

11. Regulating small business

The Protocol only applies to small businesses if they have taxed income arising in Georgia and it is unlikely that there are many if any such businesses. Given also that the Agreement provides relief from tax and the Protocol does not introduce new tax burdens, no special approach for small business is necessary.

12. Monitoring & review

Both Governments will keep the Agreement as amended by the Protocol scheduled to the Order under review to ensure that it meets the policy objectives set out above in section 7.

13. Contact

Steve Reszetniak at HM Revenue & Customs (tel: 020 7147 2674 or email: steve.reszetniak@hmrc.gsi.gov.uk) can answer any queries regarding the Order.