

EXPLANATORY MEMORANDUM TO
THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX
ENFORCEMENT (UKRAINE) ORDER 2018

2018 NO. [XXXX]

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Order brings into effect arrangements set out in an amending Protocol (“the Arrangements”) made by the Governments of the United Kingdom and Ukraine. The Arrangements amend the existing arrangements (“the 1993 Arrangements”) between the two Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains. The 1993 Arrangements are set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Ukraine) Order 1993.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 The Order is being made to give effect in UK legislation to the Arrangements which amend the 1993 Arrangements. The Arrangements are scheduled to the Order, and are thus given domestic legislative effect. The Order does not implement EU legislation.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Financial Secretary to the Treasury, Mel Stride, has made the following statement regarding Human Rights:

“In my view the provisions of the Double Taxation Relief and International Tax Enforcement (Ukraine) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Arrangements make a number of amendments to the 1993 Arrangements following negotiations between the two Governments. Amendments are made to the and the articles relating to persons covered, taxes covered, general definitions, residence, dividends, interest, royalties, mutual agreement procedure and exchange of information. The article relating to limitation of relief is replaced by an article on entitlement to benefits. The article relating to partnerships is deleted.
- 7.2 In general, the amendments made to the 1993 Arrangements by the Arrangements 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

- 7.3 Not applicable.

8. Consultation outcome

- 8.1 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 treaty negotiating programme is agreed with Ministers and published on the HMRC pages of the Gov.UK website.

9. Guidance

- 9.1 General guidance on the operation of the UK's double taxation agreements can be found on the HMRC pages of the Gov.UK website at:

<https://www.gov.uk/hmrc-internal-manuals/international-manual/intm150000>

or in the Double Taxation Relief Manual at:

<https://www.gov.uk/hmrc-internal-manuals/double-taxation-relief>

This Manual will be updated once the Arrangements enter into force.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible. The provisions of the Arrangements do not introduce new tax burdens; rather, they provide relief from tax and thus are of benefit to businesses both large and small. Taxpayers may have to make a claim to HMRC or the other country's fiscal authority in order to benefit from the Arrangements.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been produced as DTAs impose no obligations on taxpayers; rather they give UK residents relief from foreign tax in prescribed circumstances. They also provide relief from UK tax for non-residents in a comparable situation.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The Arrangements only apply to small businesses if they have taxed income arising in Ukraine. As with other businesses, the regulatory burden is negligible. No special approach for small business is therefore necessary.

12. Monitoring & review

- 12.1 There are no specific plans to review this Statutory Instrument. However, both Governments will keep the Arrangements scheduled to the Order under consideration to ensure that they continue to meet the policy objectives set out above in Section 7.

13. Contact

- 13.1 Tom Matthews at HM Revenue and Customs Telephone: 03000 585476 or email: tom.o.matthews@hmrc.gsi.gov.uk can answer any queries regarding the instrument.