EXPLANATORY MEMORANDUM TO

THE TAXES (AMENDMENTS) (EU EXIT) (NO. 2) REGULATIONS 2019

2019 No. 818

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument will make changes to keep tax law working in the same way as it does now if the United Kingdom (UK) leaves the European Union (EU) without a negotiated deal. Where changes have been made to remedy deficiencies in retained EU law on intellectual property rights, international accounting standards and financial services that have consequences for tax law, this instrument makes changes to the relevant provisions of tax law.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 According to the definition of "exit day" in the Interpretation Act 1978 on the day this instrument is made, the instrument will be laid before the House of Commons less than 21 days before it comes into force. This instrument was made under the powers in section 90 of the Finance Act 2019. 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). The amendments that relate to intellectual property rights are dependent on a series of instruments that make changes to legislation in that field, the last of which was made on 2 April 2019. The amendments that relate to international accounting standards are dependent on an instrument that was made on 26 March 2019. Lastly the amendments that relate to financial services are dependent on an instrument that was made on 27 March 2019. The instrument is being laid less than 21 days before it comes into force because it is important that the amendments it makes are in force on exit day to ensure that the legislation still works properly after exit from the EU. This will provide certainty to stakeholders that legislation will continue working in the same way if the UK leaves the EU without a negotiated deal. Stakeholders should not be disadvantaged by the shorter period of time between the instrument being laid and coming into effect because the amendments maintain the effect of legislation so there are no practical changes.

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

"In my view the provisions of the Taxes (Amendments) (EU Exit) (No. 2) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Legislation on intellectual property rights, international accounting standards and financial services has been amended to remedy deficiencies in retained EU law under section 8 of the European Union (Withdrawal) Act 2018 in the event the UK leaves the EU without a negotiated deal. Some of these amendments have consequences for tax legislation.

6.2 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: 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.

7. Policy background

What is being done and why?

7.1 Legislation on intellectual property rights, international accounting standards and financial services has been amended to remedy deficiencies in retained EU law under section 8 of the European Union (Withdrawal) Act 2018 in the event the UK leaves the EU without a negotiated deal. Where these amendments have an effect on tax legislation, it is necessary to make consequential changes to tax law to ensure those parts of the UK's tax regime will continue working in the same way. This certainty is important to reduce confusion and maintain stability in the UK tax system.

7.2 The tax legislation on profits arising from the exploitation of patents in Part 8A of the Corporation Tax Act 2010, known as the Patent Box legislation, is being amended to ensure that the range of intellectual property rights that can qualify for corporation tax relief will not be narrowed. The amendments reflect the fact that after exit day some of these rights will exist or will arise under different or amended legislative regimes e.g. under UK law rather than EU law, or under both UK and EU law, owing to (i) the consequences of EU exit, and (ii) changes to the various intellectual property right regimes being made by other government departments under section 8 of the European Union (Withdrawal) Act 2018. Without these consequential changes, the existing legislation may not cover all the rights that currently qualify for relief and the circumstances in which rights might, in future, be granted.

7.3 This instrument makes changes in connection with the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019. The amendments reflect that those regulations grant power to the Secretary of State to adopt with modification international accounting standards (IAS) for use within the UK. Currently, tax legislation permits accounts prepared under IAS as determined by the International Accounting Standards Board or IAS as modified by the European Commission. Without these changes existing tax legislation would not permit the use of IAS as adopted and modified by the Secretary of State.

7.4 This instrument makes amendments which update amendments made by the Taxes (Amendments) (EU Exit) Regulations 2019 and the Stamp Duty and Stamp Duty Reserve Tax (Amendment) (EU Exit) Regulations 2019, to make them consistent with the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019. These amendments continue the effect of tax legislation in relation to entities based in Gibraltar.

7.5 The Taxes (Amendments) (EU Exit) Regulations 2019 made changes to references to the EU, the European Economic Area and related concepts in tax legislation which could cause confusion if unchanged in the event the UK leaves the EU without a negotiated deal. This instrument amends a reference to member State in section 1081 of the Corporation Tax Act 2010.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the UK from the EU because it amends enactments to ensure that the legislation continues to apply as intended if the UK leaves the EU without a negotiated deal.

9. Consolidation

9.1 There are no plans to consolidate the legislation given the changes are consequential upon the UK's withdrawal from the EU.

10. Consultation outcome

10.1 This instrument forms part of wider changes to ensure that the UK has a tax regime that operates as required if the UK leaves the EU without a negotiated deal. As there is no new policy being introduced, it is considered that no formal consultation is required.

11. Guidance

11.1 All relevant notices and guidance will be updated on GOV.UK as appropriate as a result of these changes.

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.

12.4 There is no, or no significant, impact because this instrument does not impose new obligations or substantively change tax policy.

13. Regulating small business

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

13.2 No specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument does not impose new obligations on them.

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 Joanna Hastie at HMRC email: joanna.hastie@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Edwards, Deputy Director for the EU Transition Unit at HMRC can confirm that this Explanatory Memorandum meets the required standard.

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