

**EXPLANATORY MEMORANDUM TO**  
**THE DRAFT DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX**  
**ENFORCEMENT (THE FEDERAL REPUBLIC OF GERMANY) 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 Convention, Protocol and Joint Declaration made between the Governments of the United Kingdom and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital (“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 Convention. The Convention is scheduled to the Order, and is 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 (The Federal Republic of Germany) Order 2010 are compatible with the Convention rights”.

## 7. Policy background

- *What is being done and why*

7.1 Agreements of the kind scheduled to the Order aim to eliminate the double taxation of income or gains arising in one country and paid to residents of another country. They do this by allocating the taxing rights that each treaty partner has under its domestic law over the same income and gains and/or by providing relief from double taxation. They provide additional protection for taxpayers by specific measures combating discrimination in tax treatment. More generally, such agreements benefit the taxpayer by ensuring certainty of treatment and, as far as possible, by reducing compliance burdens.

They also serve an Exchequer protection role by including provisions to combat tax avoidance and evasion - partly by measures providing for the exchange of information between revenue authorities.

They also encourage and maintain international consensus on the appropriate tax treatment of cross-border economic activity and thus promote international trade and investment. All of the UK's recent double taxation agreements largely follow the approach adopted in the Organisation for Economic Cooperation and Development's ("OECD") *Model Tax Convention on Income and on Capital*. The Agreement scheduled to the Order continues that approach.

- *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 web site at:

<http://www.hmrc.gov.uk/si/dtc-2010.htm>

## 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>

or in the Double Taxation Relief Manual at:

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

A new page to this Manual regarding the Convention will be added once it enters into force.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible. The provisions of the Convention 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 Convention.

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 No impact assessment has been prepared for this Order.

## **11. Regulating small business**

The Convention only applies to small businesses if they have taxed income arising in the Federal Republic of Germany and it is unlikely that there are many such businesses. No special approach for small business is therefore necessary.

## **12 Monitoring & review**

Both Governments will keep the Convention scheduled to the Order under review to ensure that it meets the policy objectives set out above in section 7.

## **13. Contact**

Geoff Barnard at HM Revenue & Customs (tel: 020 7147 2734 or email: [geoff.barnard@hmrc.gsi.gov.uk](mailto:geoff.barnard@hmrc.gsi.gov.uk)) can answer any queries regarding the Order.