EXPLANATORY MEMORANDUM TO

THE BANKING SURCHARGE (INFORMATION) REGULATIONS 2016

2016 No. 566

1. Introduction

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

2. Purpose of the instrument

2.1 The instrument sets out the additional information banking companies must provide when providing written notification of payments of banking surcharge. This information will help HM Revenue and Customs (HMRC) quickly and accurately to identify all surcharge payments

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 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Finance Act (No2) 2015 introduced legislation to levy a surcharge of 8% on the profits of banking companies from 1 January 2016.

4.2 Banking companies are defined in section 269B Corporation Tax Act 2010.

4.3 The surcharge profits are calculated on the same basis as for corporation tax but before the offset of losses that arise before the commencement date or from non-banking companies, before the surrender of group relief from non-banking companies and ignoring any elections to transfer chargeable gains to or from non-banking companies. R&D expenditure credits are excluded from the surcharge,

4.4 The surcharge also applies to any chargeable profits of a Controlled Foreign Company (CFC) which are apportioned to a banking company, see Part 9A of the Taxation (International and Other Provisions) Act 2010.

4.5 There is an annual allowance of £25 million available to groups, or, where a group has only one banking company or the banking company is not in a group, to that banking company alone. The allowance exempts surcharge profits or CFC profits apportioned to a banking company from liability to the surcharge.

4.6 The banking surcharge is paid alongside a company's liability to CT. When a company makes a payment that includes, or is wholly, surcharge liability, the company responsible for discharging the liability must notify HMRC of the amount of

surcharge paid (s269DM(2) Corporation Tax Act 2010 for surcharge profits and s371UBA(2) of the Taxation (International and Other Provisions) Act 2010 for CFC chargeable profits).

4.7 These regulations set out the detailed information to be provided when the responsible company notifies HMRC of the surcharge payment.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Regulations are being laid so that HMRC can accurately identify all surcharge payments made for the purposes of the HMRC Trust Statement and for the Office of Budget Responsibility and the Office for National Statistics.

Consolidation

7.2 None

8. Consultation outcome

8.1 The draft regulations and explanatory memorandum were published on 29 February 2016 and the consultation closed on 31 March. Copies of the draft regulations and explanatory memorandum were sent to groups representing banks and building societies and professional advisers. Responses were received from two groups representing a large number of banks neither of which raised any concerns over the regulations or the compliance burden which is expected to be negligible.

9. Guidance

9.1 Guidance will be published to accompany this Instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to banking companies. There are no impacts upon other business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument will be published on the website at

https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

11. Regulating small business

11.1 The surcharge allowance means the legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 This measure will be kept under review with affected taxpayer groups.

13. Contact

13.1 Ursula Crosbie at Her Majesty's Revenue and Customs. Telephone: 03000 589086 or email: ursula.crosbie@hmrc.gsi.go.uk can answer any queries regarding the instrument.