EXPLANATORY MEMORANDUM TO

THE BUSINESS INVESTMENT RELIEF REGULATIONS 2012

2012 No. 1898

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Finance Act 2012 introduced a new business investment relief for individuals who are eligible to be taxed on the remittance basis. The relief allows such individuals to bring foreign income and gains to the UK tax free for the purposes of making a qualifying investment. If the investment subsequently ceases to qualify for the relief, the foreign income and gains will become taxable unless the investor takes certain mitigation steps within a specified period known as the grace period. This instrument sets out circumstances in which an officer of HM Revenue & Customs may extend that grace period.

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

3.1 The Regulations have effect in relation to qualifying investments made on or after 6 April 2012 by virtue of the power provided by section 809VJ(5) of the Income Tax Act 2007.

4. Legislative Context

4.1 Chapter A1 of Part 14 of the Income Tax Act 2007 provides for the remittance basis of taxation. This is a long standing tax treatment available to individuals who are UK resident but not ordinarily resident and/or not domiciled in the UK. Those who choose to be taxed on the remittance basis are liable to UK tax on their overseas income and gains only to the extent that they are brought ('remitted') to the UK.

4.2 Schedule 12 to the Finance Act 2012 introduced changes to the remittance basis of taxation. These included a new business investment relief which provides that certain income and gains brought to the UK for investment purposes are treated as not remitted to the UK.

4.3 The new relief also provides that, if the investment is disposed of or otherwise ceases to qualify for the relief, the foreign income and gains will become taxable, unless the investor takes certain mitigation steps (normally disposing of the investment and taking the proceeds out of the UK or re-

investing them in a new qualifying investment). The mitigation steps must be taken within a certain period, known as the grace period.

4.4 This instrument sets out circumstances in which an officer of HM Revenue & Customs may extend the grace period.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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 At Budget 2011, the Government announced a package of measures for the reform of the taxation of non-domiciled individuals, including the introduction of a business investment relief. Draft legislation was published on 6 December 2011.

7.2 The relief involves a requirement for appropriate mitigation steps to be taken within a specified grace period if an investment ceases to qualify for relief. In most cases this requirement is that the individual must dispose of the investment and take any proceeds out of the UK or re-invest them in a new qualifying investment.

7.3 However, in certain circumstances an investor might be unable to dispose of a holding of shares, either because the investment is subject to a lock-up agreement related to the listing of a company on a recognised stock exchange or because of a statutory or regulatory barrier.

7.4 This instrument therefore uses the power given to HM Revenue & Customs by section 809VJ(4) of the Income Tax Act 2007 and sets out the circumstances in which the grace period, within which an investor must dispose of his investment but is unable to do so because of a lock-up agreement or because of a legal or statutory barrier, may be extended.

7.5 A lock-up agreement is usually drawn up between the company, the existing shareholder and the underwriters when a company lists its shares on a stock exchange. Usually, this means that restrictions will be placed on the disposal of shares by the shareholder. Typically, the investor will be prevented from disposing of his shares within a certain period but other restrictions may also be placed on the investor. In these circumstances the investor will be unable to dispose of his shares as required by the business investment relief rules without breaching the terms of the agreement but may apply to HM Revenue & Customs for an extension of the grace period.

7.6 An investor may also be unable to dispose of his shares when required, due to a legal or statutory barrier, for example a ‘closed period’ following the company’s year end. Restrictions on dealing in the securities of a listed company are imposed to ensure that persons discharging managerial responsibilities do not abuse, and do not place themselves under suspicion of abusing, inside information that they may be thought to have, especially in periods leading up to an announcement of the company's results. In these circumstances the investor will be unable to dispose of his shares as required by the business investment relief rules but may apply to HM Revenue & Customs under the terms of this instrument for an extension of the grace period.

7.7 HM Revenue & Customs will consider applications to extend the grace period on a case by case basis.

8. Consultation outcome

8.1 HM Revenue & Customs formally consulted on introducing a business investment relief for individuals eligible for the remittance basis of taxation over the period 17 June 2011 to 9 September 2011 and a summary of responses to that consultation was published on 6 December 2011 together with draft legislation.

8.2 Formal consultation on the draft instrument took place between 11 June 2012 and 10 July 2012. One response to this consultation was received which broadly welcomed the regulations but expressed concerns that the regulations were too prescriptive. Regulation 4 has been redrafted as a result of the consultation.

9. Guidance

9.1 HM Revenue & Customs will be publishing guidance on how to apply for an extension of the grace period in the circumstances provided for by the Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note for the Reform of the Taxation of Non-Domiciled Individuals of which these Regulations are a part has been published at www.hmrc.gov.uk/tiin/tiin616.htm

11. Regulating small business

11.1 The regulation only applies to individuals and not small business.

12. Monitoring & review

12.1 The business investment relief will be successful if it encourages business investment by non-domiciles as qualifying businesses will benefit from increased investment helping to generate growth, additional employment and further economic activity.

12.2 The Regulations will be successful if investors do not incur a tax charge because they are unable to dispose of an investment in the required time due to a lock-up arrangement or statutory or regulatory barriers.

12.3 The Regulations will be monitored through the process by which investors apply for an extension of the grace period.

13. Contact

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