EXPLANATORY MEMORANDUM TO

THE CORPORATION TAX ACT 2009, SECTION 582 (CONTRACT FOR DIFFERENCES) (AMENDMENT) ORDER 2013

2013 No. 3218

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument amends the definition of "contract for differences" in the derivative contracts rules in the Corporation Tax Act 2009 (CTA 2009). It brings "contracts for difference" (CFDs) and "investment contracts" under the Energy Act 2013 within the scope of those rules.

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

3.1 It is with regret that this instrument is laid in breach of the "21 day rule" which requires the laying of an instrument 21 days before its provisions take effect.

3.2 The making and laying of this Order was dependent on Royal Assent being received for the Energy Act 2013, as it is this Act which introduces CFDs and investment contracts. Royal Assent was received on 18 December 2013.

3.3 The amendment made by this Order needs to come into force by 31 December 2013 to ensure that the correct tax treatment is applied in relation to any CFDs or investment contracts entered into before that date, as any companies affected are likely to have an accounting period ending on that date. Accordingly it is not possible to allow 21 days to elapse between the laying of this instrument and its coming into force. Authority for the limited retrospective effect is provided by section 701(5) of the Corporation Tax Act 2009 which permits provisions to have effect in relation to accounting periods ending on or after the day on which the order comes into force.

4. Legislative Context

4.1 Section 6(2) of and paragraph 1(1) of Schedule 2 to the Energy Act 2013 provide, respectively, for contracts known as "CFDs" and "investment contracts" (a form of predecessor to CFDs) to be entered into by low carbon electricity generators.

4.2 Such contracts do not fall within the existing definition of "contract for differences" in section 582 CTA 2009 and so are not derivative contracts for corporation tax purposes. This instrument amends the definition so that it includes such contracts.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, David Gauke MP, has made the following statement regarding Human Rights:

In my view the provisions of the Corporation Tax 2009, Section 582 (Contract for Differences) (Amendment) Order 2013 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Electricity Market Reform (EMR) is the cornerstone of the Energy Act 2013. Under EMR developers of low carbon generation projects will enter into "CFDs" and may enter into "investment contracts" which guarantee a "strike price" for the electricity they produce, in order to provide an incentive to invest in such projects.

7.2 Under current accounting rules the results from a CFD or investment contract will be spread over the life of the contract, and this result will be followed for tax purposes. The amendment ensures that the current tax treatment will continue in the event of any change to accounting rules.

- Consolidation

7.3 Not applicable.

8. Consultation outcome

8.1 The amendment relates to the EMR provisions of the Energy Act. EMR has been the subject of extensive public consultation, from the EMR consultation document in December 2010[1] to the EMR implementation proposals consultation document in October 2013[2]. The amendment is a minor technical change consequential on the enactment of the Energy Act, and as such does not require formal consultation. HMRC has carried out informal consultation with stakeholders in the low carbon generation sector.

[1] https://www.gov.uk/government/consultations/electricity-market-reform
[2] https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform

9. Guidance

9.1 The guidance in HMRC's Corporate Finance Manual on "contracts for differences" will be updated.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. The amendment made by the instrument affects only companies engaged in low carbon electricity generation projects.

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 HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As the purpose of the measure is to ensure continuity of tax treatment in the event of a change in accounting rules, evaluation and monitoring are not required.

13. Contact

Geoff Heaton at HM Revenue & Customs Tel: 03000 585806 or email: geoff.heaton@hmrc.gsi.gov.uk can answer any queries regarding the instrument.