**EXPLANATORY MEMORANDUM TO**

**THE CORPORATION TAX ACT 2010 (PROFITS ARISING FROM THE EXPLOITATION OF PATENTS) FOREIGN TAXES DESIGNATION REGULATIONS 2016**

**2016 No. 1181**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of Her Majesty's 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 designates taxes in particular countries, liabilities under which may be reduced by an intellectual property (IP) regime similar to the UK Patent Box. Patents and similar IP transferred from these countries may receive the benefit of transitional treatment under the old Patent Box rules for a limited period of time.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Select Committee on Statutory Instruments***

3.1 This is the first exercise of the power conferred by section 357BP(8)(d) of the Corporation Tax Act 2010.

3.2 The instrument comes into force on 31 December 2016, and will apply to any accounting periods open at that date as well as to future accounting periods. It will not however apply to any part of an accounting period before 1 July because section 64(8) of the Finance Act 2016 provides that such a period is treated, for the Patent Box, as though it were two separate periods and the new provisions introduced by section 64 do not apply to the earlier of these.

***Other matters of interest to the House of Commons***

3.3 As this instrument is subject to negative resolution 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 Finance Act 2016 made changes to the special rules that apply a reduced rate of Corporation Tax to income from patents and similar intellectual property (IP) (the 'Patent Box' regime). The changes implement new guidelines set out by the Organisation for Economic Co-operation and Development concerning such IP regimes. See chapter 4 of 'Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance', OECD, Paris, 2015 – available online here http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/countering-harmful-tax-practices-more-effectively-taking-

into-account-transparency-and-substance-action-5-2015-final-report_9789264241190-en#.WEVKvWfFbmg#page1

4.2 IP already within the previous Patent Box rules before the new rules apply is grandfathered such that it is not subject to the new rules until 2021, but to prevent IP being moved to the UK to take advantage of the grandfathered IP regime, a safeguard is included in line with the OECD guidelines, which are intended to prevent abuse and ensure consistency of treatment in the transition period. This excludes from the grandfathered treatment IP acquired shortly before the new rules commence where certain conditions apply.

4.3 One of the conditions is that the IP was assigned or granted by a person who was not liable to a foreign tax in respect of which there is a corresponding IP regime. In line with the OECD guidelines, this prevents taxpayers that would not otherwise benefit from an existing corresponding IP regime from shifting IP to take advantage of UK Patent Box grandfathering.

4.4 This instrument designates foreign taxes in respect of which there is a corresponding IP regime.

## 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 As part of its programme of work to combat base erosion and profit shifting (BEPS) the OECD Forum on Harmful Tax Practices set out, in October 2015, new guidelines covering tax regimes offering a lower rate of tax to income from patents and similar IP ('IP regimes')

7.2 The rules in Part 8A of the Corporation Tax Act 2010 were amended in Finance Act 2016 to comply with the new guidelines. This instrument supplements those amendments.

## 8. Consultation outcome

8.1 The Government consulted widely on the changes made in Finance Act 2016 and considered comments received before finalising the legislative changes.

## 9. Guidance

9.1 HMRC will publish guidance on the changes made by Finance Act 2016 as a whole so that businesses affected have the information they need to comply with the new rules.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

## 11. Regulating small business

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

11.2 The instrument assists all businesses by ensuring that IP acquired in certain circumstances can be grandfathered after 31 December 2016. No additional assistance for small businesses is necessary.

## 12. Monitoring & review

12.1 The changes made by Finance Act 2016 including those under this instrument will be monitored and reviewed by collecting data from Corporation Tax returns.

## 13. Contact

13.1 David Harris at HMRC Telephone: 03000 586834 or email: david.harris@hmrc.gsi.gov.uk can answer any queries regarding the instrument.