EXPLANATORY MEMORANDUM TO

THE CORPORATION TAX (TREATMENT OF UNRELIEVED SURPLUS ADVANCE CORPORATION TAX) (AMENDMENT) REGULATIONS 2013

2013 No. 157

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

2. Purpose of the instrument

2.1 These Regulations amend the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999 (S.I. 1999/358) ("the principal Regulations"), the purpose of which is to ensure that companies can obtain relief for surplus advance corporation tax ("ACT") that had accrued prior to the abolition of ACT with effect from 6 April 1999.

2.2 These Regulations amend regulation 6 of the principal Regulations (definition of group) so that Shadow ACT (see paragraph 4.2 below) need not be taken into account where a distribution is made to a parent company resident in an EEA member State.

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

3.1 None

4. Legislative Context

4.1 Prior to 5 April 1999, if a company made a distribution to its shareholders it was required to pay an amount of ACT. The company could then, subject to certain limitations, offset that amount of ACT against its liability to corporation tax ("CT") for the accounting period. Unused ACT could be carried forward to be used in subsequent accounting periods. ACT was abolished from 6 April 1999, which left some companies with an amount of unrelieved surplus ACT ("USACT").

4.2 The principal Regulations operate to regulate the timing of relief in respect of USACT after 6 April 1999 and give relief on the same basis as for ACT. In summary, if a company makes a distribution it computes an amount of Shadow ACT ("SACT") which is notionally set against its liability to CT. If the amount of CT liability exceeds the amount of SACT, the company can, within limits, use USACT to reduce its liability to CT.

4.3 Where a company makes a distribution to another UK resident company in the same group, SACT is not computed and so any set-off for USACT is not restricted. However, where a company makes a distribution to a parent resident in another EEA member State, it has to compute and set off SACT restricting the amount of USACT the company can use to reduce its CT liability.

4.4 In order to ensure that UK law is compliant with EU law, (in particular, with the fundamental principle of freedom of establishment), regulation 6 of the principal Regulations is amended so that the parent company of a group can be situated in any member State of the EEA. As a consequence, SACT will not be taken into account on making a distribution to a parent company resident in an EEA member State and the amount of USACT will not be restricted.

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 Please refer to paragraph 4 above for the legislative background and changes being made.

Under current legislation, a group company is required to take into account SACT when making a distribution to a parent company that is resident in an EEA member State other than the UK, whereas it is not if the parent company is resident in the UK. Since SACT restricts the rate at which USACT brought forward from 1999 can be relieved, the difference in treatment may be a restriction on the freedom of establishment under EU law.

The changes mean that SACT need not be taken into account when a company makes a distribution to a parent company resident in any EEA member State, ensuring that the Regulations are compliant with EU law.

- ***Consolidation***

7.2 Not applicable.

8. Consultation outcome

8.1 Consultation ended on 7 December 2012. No issues were identified.

9. Guidance

9.1 HMRC guidance in the Company Taxation Manual will in due course be amended.

10. Impact

10.1 The impact on business is negligible and will lead to only minor changes to tax computations for group companies that still have unrelieved surplus ACT. There is no impact on 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 has been published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation is unlikely to apply to small business as it affects groups of companies only that have unrelieved surplus ACT, of which there are relatively few.

12. Monitoring & review

12.1 This policy will be monitored through information obtained through clearance applications and enquiries into self-assessments.

13. Contact

Clare Dunne at HMRC Tel: 020 7147 2657 or email: clare.e.dunne@hmrc.gsi.gov.uk can answer any queries regarding the instrument.