EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (AUSTRIA) ORDER 2019

2019 No. 255

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order brings into effect arrangements between the United Kingdom and Austria ("the Arrangements") for the avoidance of double taxation and the prevention of fiscal evasion. The Arrangements replace previous arrangements ("the 1969 Arrangements") between the two governments.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 In accordance with section 505 of the Taxation (International and Other Provisions) Act 2010 this instrument covers the entire United Kingdom and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Financial Secretary to the Treasury, Mel Stride, has made the following statement regarding Human Rights:

"In my view the provisions of the Double Taxation Relief and International Tax Enforcement (Austria) Order 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 The Order is being made to give effect in UK legislation to the Arrangements, which have been signed by the two governments. The Arrangements are specified in the Schedule to the Order, and are given domestic legislative effect. The Order does not implement EU legislation.

7. Policy background

What is being done and why?

7.1 The Arrangements aim to prevent income or gains being taxed both in the territory in which they arise and the territory in which the recipient is resident. They do this by allocating the taxing rights that each treaty partner has under its domestic law over the same income and gains and/or by providing relief from double taxation. They provide additional protection for taxpayers by specific measures combating discrimination in tax treatment. More generally, such arrangements benefit the taxpayer by ensuring certainty of treatment and, as far as possible, by reducing compliance burdens.

7.2 They protect the Exchequer by including provisions to combat tax avoidance and evasion. For example, measures providing for the exchange of information between revenue authorities make it more difficult for residents of both territories to evade taxation by concealing assets offshore.

7.3 Like all of the United Kingdom's double taxation arrangements (DTAs), the Arrangements largely follow the approach adopted in the Organisation for Economic Cooperation and Development's ("OECD") *Model Tax Convention on Income and on Capital*. In doing so they encourage and maintain international consensus on the appropriate tax treatment of cross-border economic activity and thus promote international trade and investment.

7.4 The government keeps all of the United Kingdom's DTAs under review to ensure that they are in line with current policy. The previous DTA with Austria was signed in 1969. The DTA was last updated in 2009 to modernise the provisions related to exchange of information to bring it into line with the new international standard set out in article 26 of the OECD's Model Double Taxation Convention. Updating the DTA now to follow all the latest provisions in the OECD Model Convention will reduce the need for further individual changes, make the DTA easier for businesses to understand and reflects changes in policy and legislation in the United Kingdom since the earlier DTA was signed.

7.5 In particular, the new DTA meets the minimum standards recommended by the OECD/G20 Business Erosion and Profit Shifting (BEPS) project, which are designed to prevent the DTA from being abused by people trying to reduce their tax liability where the arrangements are not intended to apply. The BEPS project created a single set of consensus-based international tax rules to protect against tax avoidance while offering increased certainty and predictability to taxpayers.

The following paragraphs in this section explain the main differences between the Arrangements and the 1969 Arrangements.

7.6 The preamble to the Arrangements includes a statement that the UK and Austria intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements. This statement is one of the elements of the minimum standard on preventing treaty abuse agreed under Action 6 of the OECD/G20 BEPS project.

7.7 Article 4 ("Residence") confirms that a resident includes a pension scheme and an organisation that is established and is operated for religious, charitable, scientific, cultural, or educational purposes. The new article also provides a revised tie-breaker to determine the residence of persons other than individuals who would otherwise

qualify as a resident of both states. Under the Arrangements the competent authorities will determine the residence status of such persons by mutual agreement, whereas under the 1969 Arrangements such matters were determined on the basis of the place of effective management of the person.

7.8 The new Article 9 ("Associated enterprises") includes a provision absent from the 1969 arrangements which confirms that a state shall make a corresponding adjustment to the profits of its enterprise, where the other state has made a primary adjustment to the profits of its enterprise in accordance with the arm's length principle.

7.9 The new Article 10 ("Dividends") changes the rate at which a state can tax dividends paid by a company resident in that state. Under the 1969 Arrangements the rate was 5% for direct holdings or 15% for portfolio holdings. The Arrangements introduce an exemption for direct holdings and dividends beneficially owned by pension schemes. The portfolio holdings rate is reduced to 10% and a 15% rate applies to dividends paid by Real Estate Investment Trusts.

7.10 Article 14 ("Independent personal services") of the 1969 Arrangements is deleted, but this will make no difference in practice because the taxing rights it provides for are identical to those provided for under Article 7 of the Arrangements.

7.11 Article 14 ("Income from employment") of the Arrangements amends the rule specific to individuals exercising employment in international traffic. Under the new Article individuals will be taxable only in their state of residence.

7.12 Article 17 ("Pensions") of the Arrangements is expanded to confirm that contributions to pension schemes that would be recognised in one State shall be recognised for tax purposes in the other State. The new article also provides that lump-sum pension payments will be taxable only in the state in which the pension scheme is established.

7.13 Article 21("Elimination of double taxation") of the Arrangements further specifies the conditions under which double taxation shall be eliminated in each country. These amendments reflect changes in the domestic laws and treaty practice of both states.

7.14 Article 21 ("Teachers") and Article 23 ("Adjustment of withholding tax") of the 1969 Arrangements are deleted.

7.15 Article 23 ("Mutual agreement procedure") of the Arrangements is updated in accordance with the minimum standard on improving dispute resolution agreed under Action 14 of the OECD/G20 BEPS project. Changes from the 1969 Arrangements include a deadline of three years for a person to present their case to a competent authority, confirmation that mutual agreements will be implemented notwithstanding time-limits in domestic law and a provision confirming that the competent authorities may consult to eliminate double taxation in cases not covered by the Arrangements. The new Article also includes provision for mandatory binding arbitration.

7.16 Article 25 ("Personal allowances") of the 1969 Arrangements is deleted. Personal allowances in both states will now be granted according to their domestic laws.

7.17 Article 25 ("Assistance in the collection of taxes") is introduced to provide for the mutual assistance in the collection of tax debts between the UK and Austria.

7.18 Article 27 ("Limitation of relief") introduces the "principal purpose test" (PPT) which aims to deny treaty benefits to those seeking to take advantage of the provisions of the Arrangements to secure a result which is contrary to their object and purpose. The

PPT is one of the elements of the minimum standard on preventing treaty abuse agreed under Action 6 of the OECD/G20 BEPS project.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Consolidation is not appropriate because this comprehensive DTA replaces entirely the existing 1969 DTA (as amended). A copy of the text was made available on GOV.UK on 24 October 2018 following signature of the Convention on 23 October 2018.

https://www.gov.uk/government/publications/austria-tax-treaties

10. Consultation outcome

10.1 HMRC regularly consults with external interested parties, including business representatives, about the effectiveness of existing arrangements for information exchange, as well as new needs.

10.2 No representations were made on the 1969 Arrangements in response to this exercise. As explained in paragraph 7.4, the updated Agreement will reduce the need for further individual changes, make the DTA easier for businesses to understand and reflect changes in policy and legislation in the United Kingdom since the earlier DTA was signed.

11. Guidance

11.1 General guidance on the operation of the UK's double taxation agreements can be found on the HMRC pages of the gov.uk website at:

https://www.gov.uk/hmrc-internal-manuals/international-manual/intm150000

or in the Double Taxation Relief Manual at:

https://www.gov.uk/hmrc-internal-manuals/double-taxation-relief

This Manual will be updated once the Arrangements enter into force.

12. Impact

12.1 There is no, or no significant, impact on business, charity or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it gives effect to a DTA. DTAs do not introduce new tax burdens; rather, they provide relief from tax and thus are of benefit to business both large and small. Taxpayers may have to make a claim to HMRC or the other territory's fiscal authority in order to benefit from the Arrangements.

13. Regulating small business

13.1 The Arrangements only apply to small businesses if they have taxed income arising in Austria. As with other businesses, the impact is negligible. No special approach for small business is therefore necessary.

14. Monitoring & review

14.1 The approach to the monitoring of this legislation is that both governments will keep the Arrangements scheduled to the Order under consideration to ensure that they continue to meet the policy objectives set out above in Section 7.

14.2 The Order does not include a statutory review clause. In accordance with section 28(3)(a) Small Business, Enterprise and Employment Act 2015 there is no requirement to make provision for review of any secondary legislation that makes or amends provision imposing, abolishing or varying any tax, duty, levy or other charge.

15. Contact

15.1 Adrian Coates at HM Revenue and Customs, Telephone: 03000 586841 or adrian.coates@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona Hay, Deputy Director for Business, Assets and International, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Mel Stride MP, Financial Secretary to the Treasury and Paymaster General can confirm that this Explanatory Memorandum meets the required standard.