EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (BRUNEI DARUSSALAM) ORDER 2013

2013 No. 3146

1. This explanatory memorandum has been prepared by HM Revenue & 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 set out in an Agreement and Protocol made by the Government of the United Kingdom and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam ("the Arrangements"). The Arrangements further amend an arrangement made in 1950 between the two countries for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income ("the 1950 Arrangement"), which was previously amended by the supplementary arrangements scheduled to the Double Taxation Relief (Taxes on Income) (Brunei) Order 1968 and to the Double Taxation Relief (Taxes on Income) (Brunei) Order 1973.

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

3.1 None.

4. Legislative context

4.1 General

This Order is being made to give effect in United Kingdom legislation to the Arrangements, which amend the 1950 Arrangement. The Arrangements are scheduled to the Order, and are thus given domestic legislative effect.

4.2 This Order does not implement EU legislation.

5. Territorial extent and application

5.1 This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

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

"In my view the provisions of the Double Taxation Relief and International Tax Enforcement (Brunei Darussalam) Order 2013 are compatible with the Convention rights".

7. Policy background

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

7.1 The Arrangements make a number of amendments to the 1950 Arrangement following negotiations between the two Governments. The amendments bring the 1950 Arrangement up to date as regards the territorial scope of the 1950 Arrangement and the definitions of the competent authorities, they also update the Exchange of Information Article to the latest international standard.

7.2 The amendments made to the 1950 Arrangement by the Arrangements are consistent with the approach adopted in the Organisation for Economic Cooperation and Development's ("OECD") *Model Tax Convention on Income and on Capital*.

- ***Consolidation***

7.3 Not applicable.

8. Consultation outcome

8.1 HMRC regularly consults with external interested parties, including business representatives, about the effectiveness of existing arrangements for the avoidance of double taxation as well as new needs. The annual treaty negotiating programme is agreed with Ministers and published on the HMRC website.

9. Guidance

9.1 General guidance on the operation of the UK's double taxation conventions can be found on the HMRC website at:
http://www.hmrc.gov.uk/manuals/intmanual/INTM150000.htm

More detailed guidance on the 1950 Arrangement is available at:
http://www.hmrc.gov.uk/manuals/dtmanual/DT4050+.htm

This will be updated once the Arrangements enter into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. The provisions of the Arrangements 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 country's

fiscal authority in order to benefit from the 1950 Arrangement, as amended by the Arrangements.

10.2 There is no impact on the UK public sector. HMRC already operates the terms of many other similar arrangements currently in force.

10.3 A Tax Information and Impact Note has not been prepared for this Order as it gives effect to a previously announced policy to enact a double taxation agreement.

11. Regulating small business

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

12. Monitoring & review

12.1 Both Governments will keep the Arrangements scheduled to the Order under review to ensure that they meet the policy objectives set out above in section 7.

13. Contact

Geoff Barnard at HM Revenue & Customs (tel: 020 7147 2734/email: geoff.barnard@hmrc.gsi.gov.uk) can answer any queries regarding the Order.