EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (SOUTH AFRICA) ORDER 2011

2011 No. 2441

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 a protocol ("the Protocol") made by the Government of the United Kingdom and the Government of the Republic of South Africa. The Protocol amends the Convention made in 2002 between the two countries for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains ("the Convention").

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

3.1 None.

4. Legislative context

4.1 This Order is being made to give effect in UK legislation to the Protocol. The arrangements in the Protocol amending the Convention 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 (South Africa) Order 2011 are compatible with the Convention rights".

7. Policy background

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

7.1 The Protocol updates the exchange of information Article in the Convention to bring it into line with the new international standard for exchange of information as set out in Article 26 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Cooperation and Development ("OECD") and widens its scope to cover taxes of every kind and description. The Protocol also amends paragraph (1) of Article 3 (General Definitions) by providing definitions for "property investment company" and "qualifying dividend", updates Article 10 (Dividends) to reflect changes in the laws of South Africa concerning the taxation of dividends and inserts Article 25A, which provides for assistance in the collection of taxes.

- ***Consolidation***

7.2 Not applicable.

8. Consultation outcome

8.1 HMRC regularly consults with external interested parties, including business representatives, about the effectiveness of existing agreements for the avoidance of double taxation as well as new needs. The need for the exchange of information provisions contained in such arrangements to be updated was considered and acknowledged in the course of such consultation. The annual treaty negotiating programme is agreed with Ministers and published on the HMRC web site.

9. Guidance

9.1 General guidance on the operation of the UK's double taxation Conventions can be found on the HMRC web site at:

http://www.hmrc.gov.uk/manuals/intmanual/INTM150000.htm.

There is also more detailed guidance on the existing UK/South Africa Convention in the Double Taxation Relief Manual at:

http://www.hmrc.gov.uk/manuals/dtmanual/DT17350+.htm

This guidance will be updated once the Protocol enters into force.

10. Impact

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

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

10.3 In line with government commitments, 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 None of the provisions of the Protocol affects the taxation of small business and no special approach for small business is necessary.

12. Monitoring & review

12.1 Both Governments will keep the Protocol scheduled to the Order under review to ensure that it meets the policy objectives set out above in section 7.

13. Contact

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