EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF (CHINA) ORDER 2013

2013 No. 3142

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 made by the Government of the United Kingdom and the Government of the People's Republic of China ("the Protocol"). The Protocol amends the arrangements set out in the Schedule to The Double Taxation Relief and International Tax Enforcement (China) Order 2011 ("the Arrangements").

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 UK legislation to the Protocol, which amends the Arrangements. The relevant arrangements in the Protocol 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 (China) Order 2013 are compatible with the Convention rights".

7. Policy background

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

7.1 The Protocol makes an amendment to the Arrangements following negotiations between the two Governments The Protocol amends sub-paragraph (a) of Article 10(2) of the Arrangements, which relates to dividends, so that it applies only where the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends.

- ***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 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 Arrangements is available at:
http://www.hmrc.gov.uk/manuals/dtmanual/DT4900+.htm

This will be updated once the Protocol enters into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. The provisions of the Protocol 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 Arrangements as amended by the Protocol.

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 Protocol only applies to small businesses if they have taxed income arising in China. 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 Protocol scheduled to the Order under review to ensure that it meets the policy objectives set out above in section 7.

13. Contact

Douglas Rankin at HM Revenue & Customs (tel: 020 7147 2696/email: douglas.rankin@hmrc.gsi.gov.uk) can answer any queries regarding the Order.