EXPLANATORY MEMORANDUM TO

THE DISTRIBUTIONS (EXCLUDED COMPANIES) REGULATIONS 2009

2009 No.

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

2. Purpose of the instrument

2.1 Section 34 of and Schedule 14 to the Finance Act 2009 insert a new Part 9A into the Corporation Tax Act 2009 ('CTA 2009'). Part 9A sets out the conditions according to which a company is exempt from corporation tax in respect of distributions it receives from other companies.

2.2 Part 9A includes section 931B which in the case of a small company makes it a condition for exemption that the distribution is paid by a resident of a qualifying territory. The term "qualifying territory" is defined in section 931C. The purpose of the regulations is to modify the effect of section 931C so that a distribution is not exempt if paid by a company which, although resident in what would otherwise be a qualifying territory, is denied treaty benefits by express provision in the UK's double taxation treaty with that territory.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None.

4. Legislative Context

4.1 The regulations will be made under powers included in section 931C CTA 2009. This will be first time that regulations have been made under this provision.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

In my view, the provisions of the Distributions (Excluded Companies) Regulations 2009 are compatible with the Convention Rights.

7. Policy background

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

7.1 The policy intention is that distributions should be exempt only if the company paying the distribution is resident of a territory with which the UK has a double taxation treaty that includes a non-discrimination provision. A treaty normally gives benefits to all residents of territories that sign the treaty, but in some cases certain classes of company are denied treaty benefits because they are not subject to effective taxation in the territory. These regulations exclude distributions made by such companies from the scope of distribution exemption as it applies to small companies.

8. Consultation outcome

8.1 A consultation document was published in December 2008 on the taxation of the foreign profits of companies. That document proposed denying exemption for distributions received by small companies unless the shareholding constituted less than 10% of the voting power of the paying company. Following representations, exemption was extended to distributions irrespective of the size of shareholding, subject to certain restrictions including the requirement that the paying company is resident of a qualifying territory. The change has been well received by small company representatives.

9. Guidance

9.1 HMRC will publish guidance on the operation of Part 9A and the regulations.

10. Impact

10.1 These regulations are included in a package of measures introduced as part of the Government's review of taxation of the foreign profits of companies. The Impact Assessment for the foreign profits package describes the effects of the new legislation on the compliance burdens faced by companies and, where possible, quantifies the net effects of the legislation in terms of monetary benefits and costs. The Impact Assessment states that the extension of the dividend exemption measure to small companies will save those companies £300,000 in administrative burdens annually, bringing the total administrative benefit to £1.9 million, in 2005 prices.

10.2 The impact of these regulations on business, charities or voluntary bodies is negligible.

11. Regulating small business

11.1 Exemption ends the need for small companies to undertake potentially complex double taxation relief calculations in respect of the great majority of foreign dividends they receive.

12. Monitoring & review

12.1 HMRC intends to monitor the impact distribution exemption has on the overall value of foreign dividends received by UK companies.

13. Contact

13.1 Andrew Page at HM Revenue and Customs (Tel: 020 7147 2673 or email: andrew.page@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.