EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (CAYMAN ISLANDS) ORDER 2010

2010 No. [XXXX]

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

The Order brings into effect arrangements between the Governments of the United Kingdom and the Cayman Islands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion ("the Arrangements").

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

None

4. Legislative context

4.1 General

The Order is being made to give effect in UK legislation to the Arrangements. The Arrangements are scheduled to the Order, and are thus given domestic legislative effect.

4.2 EU legislation

The Order does not implement EU legislation.

5. Territorial extent and application

The 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 (Cayman Islands) Order 2010 are compatible with the Convention rights".

7. Policy background

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

7.1 Arrangements of the kind scheduled to the Order aim to eliminate the double taxation of income or gains arising in one country and paid to residents of another country. They do this by allocating the taxing rights that each country 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.

They also serve an Exchequer protection role by including provisions to combat tax avoidance and evasion — partly by measures providing for the exchange of information between revenue authorities.

They also encourage and maintain international consensus on the appropriate tax treatment of cross-border economic activity and thus promote international trade and investment. All of the UK's recent double taxation conventions largely follow the approach adopted in the Organisation for Economic Cooperation and Development's ("OECD") *Model Tax Convention on Income and on Capital*. The Arrangements scheduled to the Order continue that approach.

- ***Consolidation***

7.2 Not applicable

8. Consultation outcome

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

9. Guidance

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

or in the Double Taxation Relief Manual at:
http://www.hmrc.gov.uk/manuals/dtmanual/DT4700.htm

A new page to this Manual regarding the Arrangements will be added once they 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 state's fiscal authority in order to benefit from the Arrangements.

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

10.3 No impact assessment has been prepared for this Order.

11. Regulating small business

The Arrangements only apply to small businesses if they have taxed income arising in the Cayman Islands and it is unlikely that there are many if any such businesses. No special approach for small business is therefore necessary.

12 Monitoring & review

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

Jeff Worrell at HM Revenue & Customs (tel: 020 7147 2723 or email: jeff.worrell@hmrc.gsi.gov.uk) can answer any queries regarding the Order.