EXPLANATORY MEMORANDUM TO

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

2013 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

2.1 The Order brings into effect arrangements set out in a Protocol ("the Protocol") made by the Governments of the United Kingdom and the Republic of India. The Protocol amends the Convention between the two Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains ("the Convention") set out in the Schedule to the Double Taxation Relief (Taxes on Income) (India) Order 1993.

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 Convention. 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 and International Tax Enforcement (India) Order 2013 are compatible with the Convention rights".

7. Policy background

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

7.1 The Protocol makes a number of amendments to the Convention following negotiations between the two Governments. The provisions relating to general definitions, fiscal domicile, dividends, partnerships, exchange of information, tax examinations abroad, assistance in collection of taxes and limitation of benefits articles are brought up-to-date.

7.2 The amendments made to the Convention by the Protocol 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

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 Convention is available at:
http://www.hmrc.gov.uk/manuals/dtmanual/DT9550+.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 Agreement 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 agreements 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 India. 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

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