EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (MALAYSIA) 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 set out in a Protocol ("the Protocol") made by the Governments of the United Kingdom and Malaysia. The Protocol amends an agreement made in 1997 between the two countries for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("the Agreement").

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

None.

4. Legislative context

4.1 General

This Order is being made to give effect in UK legislation to the Protocol. The arrangements in the Protocol amending the Agreement are scheduled to the Order, and are thus given domestic legislative effect.

4.2 EU legislation

This Order does not implement EU legislation.

5. Territorial extent and application

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 (Malaysia) Order 2010 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 Agreement 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 to cover taxes of every kind and description imposed by the two countries.

- ***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 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 website.

9. Guidance

General guidance on the operation of the UK's double taxation agreements 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-Malaysia Agreement at:
http://www.hmrc.gov.uk/manuals/dtmanual/dt12750+.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.

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 An impact assessment has not been prepared for this Order.

11. Regulating small business

None of the provisions of the Protocol affects the taxation of small business.

12. Monitoring & review

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.