EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF (FEDERAL REPUBLIC OF GERMANY) ORDER 2014

2014 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 between the Governments of the United Kingdom and the Federal Republic of Germany. The Protocol amends a Convention between the two governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains ("the Convention"). The Convention is set out in the Schedule to the Double Taxation Relief and International Tax Enforcement (Federal Republic of Germany) Order 2010.

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

None.

4. Legislative context

4.1 This Order is being made to give effect in UK legislation to the amendments to the Convention made by the Protocol. The Protocol is scheduled to the Order, and is thus given domestic legislative effect.

4.2 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 (Federal Republic of Germany) Order 2014 are compatible with the Convention rights".

7. Policy background

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

7.1 The Protocol updates the business profits Article (Article 7) of the Convention, introducing changes made to the Organisation for Economic Cooperation and Development's ("OECD") *Model Tax Convention on Income and on Capital* which were not published by the OECD until after the Convention was agreed.

7.2 The Protocol also amends the Article on government service (Article 18) and substitutes Article 30 (Members of Diplomatic Missions and Consular Posts) to clarify the position of locally engaged staff.

- ***Consolidation***

7.3 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/index.htm

This manual 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 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

The Protocol only applies to small businesses if they have taxed income arising in the Federal Republic of Germany and it is unlikely that there are many such businesses. No special approach for small business is therefore necessary.

12 Monitoring & review

Both Governments will keep the Convention as amended by the Protocol scheduled to the Order under review to ensure that it meets its policy objectives.

13. Contact

Lee Harley at HM Revenue & Customs (tel: 03000 585755/email: lee.harley@hmrc.gsi.gov.uk) can answer any queries regarding the Order.