EXPLANATORY MEMORANDUM TO

THE DOUBLE TAXATION RELIEF (SWEDEN) ORDER 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument brings into effect arrangements set out in a Protocol (the 2021 Protocol) made by the Government of the United Kingdom and the Government of the Kingdom of Sweden. The 2021 Protocol amends the existing arrangements 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, signed in 2015 (the 2015 Arrangements).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 In accordance with section 505 of the Taxation (International and Other Provisions) Act 2010 this instrument covers the entire United Kingdom and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of the Double Taxation Relief (Sweden) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The instrument is being made to give effect in United Kingdom legislation to the 2021 Protocol, which has been signed by the two Governments. The arrangements in the 2021 Protocol are specified in the Schedule to the instrument.

7. Policy background

What is being done and why?

7.1 The 2015 Arrangements aim to prevent income or gains being taxed both in the territory in which they arise and the territory in which the recipient is resident. They do this by allocating the taxing rights that each treaty partner has under its domestic law over the same income and gains and by providing relief from double taxation. They provide additional protection for taxpayers by specific measures combating discrimination in tax treatment. More generally, they benefit the taxpayer by ensuring certainty of treatment and, as far as possible, by reducing compliance burdens.

7.2 They protect the Exchequer by including provisions to combat tax avoidance and evasion. For example, they provide for the exchange of information between revenue authorities making it more difficult for residents of both territories to evade taxation by concealing assets offshore.

7.3 Like all of the United Kingdom's more recent double taxation arrangements (DTAs) and protocols amending them, the 2021 Protocol largely follows the approach adopted in the Organisation for Economic Cooperation and Development's (OECD) latest *Model Tax Convention on Income and on Capital* (OECD Model). The OECD Model encourages and maintains international consensus on the appropriate tax treatment of cross-border economic activity promoting international trade and investment.

7.4 The Government keeps all of the United Kingdom's DTAs under review to ensure that they are in line with current policy.

7.5 The 2021 Protocol introduces provisions recommended by the OECD/G20 Base Erosion and Profit Shifting (BEPS) project. The BEPS project created a single set of consensus-based international tax rules to protect against tax avoidance while offering increased certainty and predictability to taxpayers. The BEPS provisions are designed to prevent DTAs from being abused in circumstances where the DTA is not intended to apply. These provisions are now included in the 2017 version of the OECD Model.

The following paragraphs explain the main changes introduced by the 2021 Protocol.

7.6 Article I modifies the preamble of the 2015 Arrangements to include a statement that the United Kingdom and Sweden intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements. This statement is one of the elements of the minimum standard on preventing treaty abuse agreed under the BEPS project.

7.7 Articles II, III, IV and V modify Articles 10 (Dividends), 11 (Interest), 12 (Royalties) and 21 (Other Income) respectively of the 2015 Arrangements by removing the anti-abuse provisions which are no longer necessary following the introduction of a principal purpose test (PPT) by Article VII.

7.8 Article VI modifies Article 23 (Mutual agreement procedure) of the 2015 Arrangements. This ensures that mutual agreements can be implemented notwithstanding time limits in domestic law. This amendment ensures that the DTA meets the BEPS minimum standard on effective dispute resolution.

7.9 Article VII inserts the new Article 27A (Entitlement to benefits) into the 2015 Arrangements. It contains the PPT, an anti-abuse mechanism based on the principal purpose of transactions or arrangements. Under the PPT, if one of the principal purposes of a transaction or arrangement is to obtain treaty benefits, such as lower

withholding, these benefits will be denied unless it can be shown that granting the benefits would be in accordance with the object and purpose of the DTA. The PPT is one of the minimum standards on preventing treaty abuse agreed by the BEPS project.

7.10 Article VIII sets out how the 2021 Protocol will enter into force and when the provisions of the Protocol will take effect.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 An informal consolidated version of the 2015 Arrangements will be published on the HMRC pages of the gov.uk website on entry into force of the 2021 Protocol.

10. Consultation outcome

10.1 HMRC regularly consults with external interested parties, including business representatives, about the United Kingdom's network of DTAs.

11. Guidance

11.1 General guidance on the operation of the UK's double taxation agreements can be found on the HMRC pages of the gov.uk website at: https://www.gov.uk/hmrc-internal-manuals/international-manual/intm150000 or in the Double Taxation Relief Manual at: https://www.gov.uk/hmrc-internal-manuals/double-taxation-relief. This Manual will be updated once the 2021 Protocol enters into force.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The provisions of the 2021 Protocol do not introduce new tax burdens; rather, they ensure that relief from UK tax under the arrangements is only granted in circumstances where it was intended.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument as it is secondary legislation enacting a protocol to a DTA. DTAs impose no obligations on taxpayers, rather they seek to eliminate double taxation and fiscal evasion.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific steps are proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that the DTA only applies if they have taxed income arising in Sweden. As with other businesses, the impact is negligible. No special approach for small businesses is therefore necessary.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that both Governments will keep the Protocol scheduled to the instrument under consideration to ensure that it continues to meet the policy objectives set out above in Section 7.

14.2 The instrument does not include a statutory review clause. In accordance with section 28(3)(a) Small Business, Enterprise and Employment Act 2015 there is no requirement to make provision for review of any secondary legislation that makes or amends provision imposing, abolishing or varying any tax, duty, levy or other charge.

15. Contact

15.1 Tom Matthews at HM Revenue and Customs, Telephone: 03000 585 476 or tom.o.matthews@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona Hay, Deputy Director for Business, Assets and International, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.