EXPLANATORY MEMORANDUM TO

THE INCOME TAX (ENTERTAINERS AND SPORTSMEN) (AMENDMENT) REGULATIONS 2012

2012 No. 1359

1. This Explanatory Memorandum has been prepared by H.M. Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 With effect from 1 July 2012, this instrument amends the Income Tax (Entertainers and Sportsmen) Regulations 1987 to raise the threshold above which withholding tax obligations apply to payments made to non-UK resident sportspeople and entertainers from £1000 to the level of the Income Tax Personal Allowance (Personal Allowance).

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

3.1 None

4. Legislative Context

4.1 The Income Tax (Entertainers and Sportsmen) Regulations 1987 ("the principal Regulations") provide for a scheme of deduction of tax by payers out of payments (and for payment of tax in respect of transfers of value) made to non-UK resident entertainers, sportsmen and sportswomen in relation to their appearances in the United Kingdom.

4.2 The principal Regulations are in line with article 17 of the Organisation for Economic Co-operation and Development (OECD) model tax treaty, which gives taxing rights for visiting entertainers to the contracting state in which the performance takes place.

4.3 Regulation 4 of the principal Regulations provides rules for calculating the tax payments. Regulation 4(2) requires that a person who makes a payment or transfer connected to a performance in the United Kingdom to an entertainer or sportsperson who is not resident in the United Kingdom must deduct income tax at the basic rate from the payment and account for that sum to HM Revenue & Customs.

4.4 Regulation 4(3)(a) provides that where such payments or transfers for a tax year do not together exceed £1000 the tax payment shall be a nil amount.

4.5 Regulation 5 provides for applications to be made to HM Revenue & Customs for a reduced tax payment to be made for payments of more than £1000 made to non-UK resident entertainers and sportspeople. This provision is designed to ensure that the amount of tax withheld is as near as possible to the payee's final liability after taking expenses and allowances into account. The reduced tax payment applied for may be anything between zero and the point at which basic rate tax becomes due. The application must be made to HM Revenue & Customs no later than 30 days before the payment falls to be made.

4.6 Regulation 13 provides for refunds of excess tax withheld.

4.7 The purpose of this instrument is to amend the principal Regulations to raise to the level of the Personal Allowance, the threshold above which withholding obligations apply to payments made to non-UK resident sportspeople and entertainers. It does this by amending paragraph 4(3) of the principal Regulations by substituting for the figure of '£1000' the amount of the Personal Allowance for income tax set out in section 35(1) of the Income Tax Act 2007 ("ITA 2007"). The new threshold applies to payments or transfers made on or after 1 July 2012.

4.8 The Personal Allowance is set out in section 35(1) ITA 2007. Section 57 ITA 2007 provides that the amount specified in section 35(1) is increased if the retail prices index for the September before the start of the tax year is higher than it was for the previous September. The amount in section 35(1) can be changed by a provision in the annual Finance Act if the Chancellor announces an amount other than the indexed amount.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In the mid-1980s it was identified that sportspeople and other entertainers were coming to the United Kingdom, making taxable performances, then leaving the country without paying any tax. As recovery tax through liaison with foreign tax administrations can be difficult and lengthy, Schedule 11 to the Finance Act 1986 and the

principal Regulations providing for a withholding tax on non-UK resident performers were introduced.

7.2 Many non-resident performers visiting the United Kingdom are due a Personal Allowance, and therefore are not taxable on sums received below this level. The withholding tax however obliges the payer of a foreign entertainer to withhold tax on amounts received above £1,000. Therefore in many cases tax is withheld under Regulation 4, then repaid at the end of the year under Regulation 13. Alternatively an application is made for reduced rate withholding under Regulation 5. Either way, the current system whereby tax is withheld then repaid, or where reduced rate withholding applications need to be made, leads to unnecessary administration for payers of non-UK resident entertainers, the non-UK resident entertainers themselves, and HM Revenue & Customs.

7.3 The figure of £1,000 in Regulation 4(3)(a) and (b) has remained unchanged since the principal Regulations were made.

7.4 Each year the Foreign Entertainers Unit receives around 6,000 Regulation 5 applications for reduced tax payments. Of these, about 40% (2,500) relate to payments that are below £8,000 and in approximately 80% of these cases (2,000) the payee is entitled to the annual Personal Allowance and has no United Kingdom tax liability. The rest of the applications (about 3,500) are made to reduce the tax withheld to a figure closer to the actual final liability of the payee.

7.5 This instrument therefore raises the limit above which the withholding obligation applies to the level of the Personal Allowance in section 35(1) ITA 2007 for the year in which the payment is made. This will mean that non-UK resident entertainers or sportspeople with United Kingdom earnings for the tax year that are below the Personal Allowance, will have no need for any interaction with HM Revenue & Customs. This will save administration for the payer, non-UK resident entertainer, and HM Revenue & Customs.

8. Consultation outcome

8.1 HM Revenue & Customs informally consulted payers of foreign entertainers over the period 3 April to 13 April 2012. Nine responses were received. All respondents to the consultation were in favour of the change.

8.2 As the change is a minor change involving a threshold, a short informal consultation was permitted.

8.3 The feedback received from the respondents was very positive. Key findings:

8.3.1 All respondents were in favour of the change, with 78% thinking the change would have a significant positive effect on them, 22% a marginal positive effect.

8.3.2 78% thought the change would save them time and therefore money, whilst 11% expected no change. One respondent (11%) expected that they would lose a small amount of income from not charging entertainers to make reduced rate withholding applications on their behalf, however they countered that they would prefer not to have to charge for this in the first place.

8.3.3 Respondents thought that on average approx. 45% of payments they make would fall below the new limit, with a range of 25% to 70%.

9. Guidance

9.1 HM Revenue and Customs Guidance booklet FEU50 will be updated to show the revised limit below which withholding tax obligations are not required. Updates will also be sent from H.M. Revenue & Customs' Foreign Entertainers Unit to those we know either pay, or act as tax agents for, foreign entertainers

10. Impact

10.1 A Tax Information and Impact Note covering this instrument will be published at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The purpose of the measure is to reduce burdens on small businesses through reducing the administrative process involved in paying small sums to visiting non-UK resident entertainers.

11.3 Small businesses were consulted as to the potential impact of the change on them, as explained in paragraph (8) above.

12. Monitoring & review

12.1 This instrument will be considered a success if it achieves the desired effect in reducing administrative burdens for payers of foreign entertainers, foreign entertainers, and HM Revenue & Customs. Success will be achieved if:

i.) HM Revenue & Customs are able to redeploy staff dealing with applications for reduced rate withholding tax on amounts below the Personal Allowance to compliance activity on higher taxable sums;

ii.) The burden on payers of foreign entertainers is lifted, as evidenced by survey.

12.2 The change in the administrative requirements for payers of foreign entertainers will be evaluated by way of a survey by HM Revenue & Customs' Foreign Entertainers Unit which will take place 12 months after the 1 July 2012 implementation date.

13. Contact

John Pay at HM Revenue & Customs, tel: 020 7147 0369 or email: john.pay@hmrc.gsi.gov.uk can answer any queries regarding this instrument.