EXPLANATORY MEMORANDUM TO

THE INCOME TAX (INDEXATION) (No. 4) ORDER 2008

2008 No. 3024

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This Order replaces the amounts of the minimum amount, personal allowance, adjusted net income limit, married couple's allowance and blind person's allowance available to individuals who are not resident in the United Kingdom and who meet the conditions at section 278(2) Income and Corporation Taxes Act 1988 (the Act). This Order replaces the existing amounts with amounts increased by the percentage increase in the retail prices index in the year to September preceding the start of the relevant tax year.

2.2 The individual amounts specified in this Order apply unless Parliament determines otherwise through the annual Finance Bill.

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

None

4. Legislative Context

4.1 Sections 256B, 257, 257A, 257AB and 265 Income and Corporation Taxes Act 1988 contain the amounts of the minimum amount, personal allowance, adjusted net income limit, married couple's allowance, and blind person's allowance. Unless Parliament determines otherwise, section 257C(1) Income and Corporation Taxes Act 1988 provides that if there is an increase in the retail prices index in the year to September preceding the start of the relevant tax year, then these amounts and allowances will be increased by that percentage increase in the retail prices index.

4.2 If after applying the percentage increase in the retail prices index to the amount of the adjusted net income limit the result is not a multiple of £100, section 257C(1)(a) of the Act provides that the amount is rounded up to the nearest multiple of £100.

4.3 After applying the percentage increase in the retail prices index to the amount of the minimum amount, personal allowance, married couple's allowance and blind person's allowance the amount is not a multiple of £10, section 257C(1)(b) of the Act provides that the amount is rounded up to the nearest multiple of £10 before it is added to the amount for the previous year.

4.4 Section 257C(3) of the Act obliges Her Majesty's Treasury to specify by Order the amounts increased by indexation. The Order must be made in the tax year before the tax year to which the amounts are to apply.

4.5 For the years prior to 2007-08, section 257C of the Act was included on the list of statutory instruments which are not subject to negative resolution: sections 828(3) and (4) of the Act. However the Act was amended by paragraph 208(5) of Schedule 1 to the Income Tax Act 2007, so that section 257C of the Act was removed from the list of exclusions. The result of the amendments is that this Order is subject to the negative resolution procedure.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 Since 1977 there has been a statutory obligation to raise personal allowances and tax bands by at least the rate of inflation as measured by the retail prices index during the twelve months to the December preceding the Budget. This was implemented by the Rooker-Wise amendment to the 1977 Finance Act.

7.2 From the November 1993 Budget onwards, the statutory obligation to raise personal allowances was amended to the percentage increase in the retail prices index to the September preceding the Budget.

7.3 As part of the Tax Law Rewrite project, the basic provisions for income tax, including the amounts of the minimum amount, personal allowance, adjusted net income limit, married couple's allowance and blind person's allowance are now included in the Income Tax Act 2007. Those allowances and amounts are available to individuals who are United Kingdom residents or meet one of the alternative tests in section 56(3) Income Tax Act 2007. The Income Tax Act 2007 also includes provision to increase by Order those allowances and amounts. The mechanism for indexation works in exactly the same way as the parallel provisions of the Act that make available the same allowances and amounts to relevant non-UK resident Commonwealth citizens. Similarly to the Act, the Income Tax 2007 also obliges Her Majesty's Treasury to specify those indexed amounts and allowances by Order made in the tax year before the tax year to which they are to apply. The Income Tax (Indexation) (No. 3) Order 2008, 2008 No. 3023 was made on 24th November 2008 and specifies the relevant amounts for 2009-10. The power to make the Income Tax (Indexation) (No. 3) Order 2008 – section 57(6) of the Income Tax Act 2007 – is included on the list of statutory instruments which are not subject to negative resolution: section 1014(1)(b)(i) Income Tax Act 2007.

8. Consultation outcome

No consultation has been undertaken.

9. Guidance

This Order does not impose a new obligation.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This Order fulfils a statutory requirement.

13. Contact

Paul Thomas at Her Majesty's Revenue & Customs Tel: 020 7147 2479 or email: paul.thomas@hmrc.gsi.gov.uk can answer any queries regarding the instrument.