EXPLANATORY MEMORANDUM TO

THE INCOME TAX (REMOVAL OF ORDINARY RESIDENCE) REGULATIONS 2013

2013 No. 605

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

2. Purpose of the instrument

2.1 These regulations provide for the amendment of: the Income Tax (Entertainers and Sportsmen) Regulations 1987, the Individual Savings Account Regulations 1998, the Pensions Schemes (Taxable Property Provisions) Regulations 2006, the Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 and the Offshore Funds (Tax) Regulations 2009.

2.2 They amend these regulations in order to remove references to being 'ordinarily' resident.

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

3.1 None.

4. Legislative Context

4.1 Draft legislation has been published for Finance Bill 2013 which will remove the concept of 'ordinary residence' from primary legislation for most tax purposes, although it continues to exist in relation to some tax purposes. These regulations are being made to remove references to being 'ordinarily resident' from certain statutory instruments not covered by provisions in that Finance Bill.

4.2 The abolition of the concept of ordinary residence was announced at Budget 2012.

5. Territorial Extent and Application

5.1 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

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

7.1 The concept of ordinary residence for tax purposes has no statutory definition and this creates uncertainty. The abolition of the concept of ordinary residence is part of the Government's plan to simplify the UK tax system and is being addressed at the same time as the introduction of a statutory definition of tax residence.

7.2 Most references to 'ordinary residence' and 'ordinarily resident' are removed from primary legislation by the Finance Bill 2013. This statutory instrument removes other such references from five statutory instruments: the Income Tax (Entertainers and Sportsmen) Regulations 1987, the Individual Savings Account Regulations 1998, the Pensions Schemes (Taxable Property Provisions) Regulations 2006, the Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 and the Offshore Funds (Tax) Regulations 2009. The amended legislation will now turn on whether an individual is resident (or not resident) in the United Kingdom.

7.3 The amendments to the Income Tax (Entertainers and Sportsmen) Regulations 1987, the Individual Savings Account Regulations 1998, the Pensions Schemes (Taxable Property Provisions) Regulations 2006 and the Offshore Funds (Tax) Regulations 2009 apply for the tax year 2013 –14 and subsequent years. The amendments apply in advance of the removal of the concept of ordinary residence from primary legislation in the forthcoming Finance Bill, and operate independently of it..

7.4 The amendments to the Investment Trusts Regulations will apply in respect of interest distributions made on or after 6 April 2014. These Regulations contain provision about the obligation to deduct tax from interest distributions, which is subject to a number of exceptions, including where the 'residence condition' is met. Broadly, the 'residence condition' is met where there is a valid declaration that the recipient is not ordinarily resident. Such a declaration must contain an undertaking to notify if the recipient becomes ordinarily resident. The amended legislation will require a valid declaration that the recipient is not resident, and an undertaking to notify if the recipient becomes resident. These amendments will apply to declarations made on or after 6 April 2014. After that date the residence condition will continue to be met where there is an existing declaration made before that date that the recipient is 'ordinarily resident'. In relation to such declarations the notification obligations will continue as though the amendments made in these regulations had not been made.

7.5 Whether a person becomes ordinarily resident for the purposes of the declaration of the notification obligations will be determined by reference to existing case law, and not by reference to the statutory residence test (which only contains rules relating to residence, and not to ordinary residence).

7.6 There are no plans to consolidate the amendments made by this instrument.

8. Consultation outcome

8.1 A formal consultation on the specific changes in this instrument was not undertaken, but a draft of this instrument was published on the website of Her Majesty's Revenue and Customs on 11 December 2012. An amended draft was published on 4 February 2013. A formal consultation on the removal of ordinary residence (to which these changes are supplementary) was carried out in 2012.

9. Guidance

9.1 Her Majesty's Revenue and Customs will be amending its published guidance to reflect the changes made by this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible as these regulations are directed at individuals.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note (relating to the removal of ordinary residence in primary legislation) covering this instrument was published on 11 December 2012 alongside the draft legislation for inclusion in Finance Bill 2013 and is available on the website of Her Majesty's Revenue and Customs at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Although there will be no specific monitoring of the effect of these amendments to regulations, the policy of the abolition of ordinary residence will be kept under review by communication with affected taxpayer groups.

13. Contact

Richard Davey at Her Majesty's Revenue and Customs, tel: 02071472391 or email: offshorepersonal.taxteam@hmrc.gsi.gov.uk can answer any queries regarding the instrument.