EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL MOVEMENT OF CAPITAL (REQUIRED INFORMATION) REGULATIONS 2009

2009 No. 2192

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

2. Purpose of the instrument

2.1 Section 37 of and Schedule 17 to the Finance Act 2009 repeal the Treasury Consents legislation in sections 765 to 767 of the Income and Corporation Taxes Act 1988 ('ICTA') and replace it with a requirement to provide a report to HMRC of the details of certain transactions whose value exceeds £100 million.

2.2 The reporting requirement applies to any UK corporate parent which is a 'reporting body' at the time that a reportable event or transaction occurs, but two or more UK parents controlled by the same foreign parent may jointly nominate one of them to be the sole reporting body.

2.3 The purpose of the regulations is to set out the information which is to be supplied and describe how the value of an event or transaction is to be calculated for the purposes of the £100 million limit. They also contain exclusions from the reporting requirement and machinery provisions for the joint nomination of a reporting body.

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

3.1 None.

4. Legislative Context

4.1 The regulations have been made under powers included in Schedule 17 to the Finance Act 2009, introduced by section 37. This is the first occasion on which those powers have been exercised.

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

7. Policy background

7.1 The Treasury Consent rules required companies outside the European Economic Area ('EEA') to seek advance consent from HM Treasury before undertaking certain transactions involving foreign subsidiaries. The Treasury had the power to give general consent to transactions of a described class or special consent to a particular transaction. Companies within the EEA were subject to a reporting requirement. When first enacted in 1951, the Treasury Consent rules were aimed primarily at controlling company migrations. In response to significant developments in UK tax law and changing business practice, the situations to which the rules apply changed over the decades. The aim of the rules remained to prevent groups from entering into certain transactions that resulted in a loss of tax to the Exchequer.

7.2 Business had long called for these rules to be removed as they were considered outdated, administratively burdensome and no longer in line with modern business practice.

7.3 The Government has therefore removed the existing Treasury Consent legislation and replaced it with a modernised post-transaction reporting requirement targeted at transactions where there is a high risk of potential tax avoidance activity.

8. Consultation outcome

8.1 A consultation document was published in December 2008 and this included draft regulations. The repeal of the existing legislation was welcomed. But some felt that the absence of an equivalent to the general consents in the new rules and the failure to address simplified arrangements for transactions of a recurring nature would lead to excessive reporting. The Government addressed these concerns by replicating most of the general consents and introducing a new cash pooling exemption.

8.2 In response to other representations the empowering bill was also amended to include the nomination procedure. These regulations were made publicly available in June 2009 and comments were invited on them. A number of changes were made to them in response to comments received.

9. Guidance

9.1 HMRC will publish guidance on the operation of the Schedule, including the regulations. However the replication of wording from the existing general consents means that most of the additional excluded transactions are already familiar.

10. Impact

10.1 The impact on business, charities or voluntary bodies is generally positive. The regulations outline what information must be submitted and how

transactions should be valued for the purposes of the reporting requirement. They also narrow the scope of the reporting requirement by specifying additional exclusions. Regulation 6 provides additional detail about how a group can nominate a single company to undertake all its reporting requirements.

10.2 The impact on the public sector is expected to be negligible.

10.3 Schedule 17 and the regulations are included in a package of measures being introduced as part of the Government's review of the taxation of the foreign profits of companies. A full and final impact assessment of the effect which the package as a whole will have on the costs of business and the voluntary sector was published on 22nd April 2009 and is available from the HM Treasury website at http://www.hm-treasury.gov.uk/d/Budget2009/bud09_impactassessment_1395.pdf.

10.4 Paragraph 4.4.1 of this document (page 98) contains the following statement.

> "The advance Treasury Consent requirement is seen as unpopular and administratively burdensome by business. Its replacement with a new, targeted information reporting requirement (with fewer reportable transactions) and the removal of the criminal sanction for failure to comply, will be seen as beneficial by all businesses affected. This will save both time and internal compliance costs."

10.5 Table 1 (page 100) identifies a 75% reduction in the administrative burden as a result of the changes introduced by what is now section 37.

11. Regulating small business

The legislation will not in practice apply to small business. This is because the primary legislation restricts the reporting requirement to transactions with a value exceeding £100 million.

12. Monitoring & review

The regulation making powers were introduced to ensure that the reporting requirement can be targeted at the most significant international transactions. HMRC intends to monitor the flow of information and, taking account of the customers' views, consider whether additional regulations need to be made.

13. Contact

David Hannigan at HM Revenue and Customs (Tel: 020 7147 2736 or email: david.hannigan@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.