EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS ORDER 2011

2011 No. 1079

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

2. Purpose of the instrument

The Order brings into effect arrangements set out in a Protocol ("the Protocol") to the joint Council of Europe ("CoE")/Organisation for Economic Co-operation and Development ("OECD") Convention on Mutual Administrative Assistance in Tax Matters ("the Convention"). The Convention was signed on behalf of the United Kingdom of Great Britain and Northern Ireland on 24th May 2007 and entered into force in respect of the United Kingdom of Great Britain and Northern Ireland on 1st May 2008. The Protocol was signed on behalf of the United Kingdom of Great Britain and Northern Ireland on 27th May 2010.

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

None.

4. Legislative context

4.1 General

This Order is being made to give effect in UK legislation to the Convention as amended by the Protocol. The Protocol is scheduled to the Order.

4.2 EU Legislation

This Order does not implement EU legislation.

5. Territorial extent and application

This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, David Gauke, has made the following statement regarding human rights:

"In my view the provisions of the International Mutual Administrative Assistance in Tax Matters Order 2011 are compatible with the Convention rights."

7. Policy background

- ***What is being done and <u>why</u>***

7.1 The Convention is a multilateral agreement drawn up under the aegis of the CoE and OECD. It provides a legal framework to facilitate international cooperation through mutual administrative assistance in tax matters. Its objective is to enable each signatory to the Convention to counter international tax evasion and better enforce its national tax laws, while at the same time respecting the rights of taxpayers. The scope of the Convention is fairly broad as it covers a wide range of taxes and provides for assistance in the form of exchange of information, assistance in the recovery of tax debts and the service of documents.

The Protocol makes some amendments to the Convention following negotiations between representatives of the governments of CoE and OECD member States. Specifically, there are changes to the provisions relating to exchange of information upon request. These amendments are consistent with the approach to exchange of information adopted in other international instruments and models, notably the OECD Model Tax Convention on Income and on Capital. The other significant change made by the Protocol is to enable any State that is not a member of either the CoE or OECD to adhere to the Convention as amended. This delivers on a request at the G-20 London Summit of April 2009 to make it easier for developing countries to secure the benefits of the new cooperative tax environment, including a multilateral approach for the exchange of information.

- ***Consolidation***

7.2 Not applicable

8. Consultation outcome

HMRC regularly consults with external interested parties, including business representatives, about the effectiveness of existing arrangements for the avoidance of double taxation and fiscal evasion, including information exchange, as well as new needs. The annual treaty negotiating programme is agreed with Ministers and published on the HMRC web site.

9. Guidance

General guidance on the operation of the UK's Tax Information Exchange Agreements, including the Convention, can be found on the HMRC web site at:
http://www.hmrc.gov.uk/manuals/intmanual/INTM156000.htm

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on the UK public sector. HMRC already operates the terms of the Convention and also many other similar agreements currently in force.

10.3 An impact assessment has not been prepared for this Order.

11. Regulating small business

None of the provisions of the Convention nor its amending Protocol affect the taxation of small business.

12. Monitoring and review

The signatories to the Convention will keep the Convention, as amended by the Protocol, under review to ensure that it meets the policy objectives set out above.

13. Contact

Jeff Worrell at HM Revenue and Customs (tel: 020 7147 2734/e-mail: jeff.worrell@hmrc.gsi.gov.uk) can answer any queries regarding the Order.