EXPLANATORY MEMORANDUM TO

THE OFFSHORE FUNDS (TAX) (AMENDMENT) REGULATIONS 2009

2009 No. 3139

1. This explanatory memorandum has been prepared by the Commissioners for HM Revenue and Customs, on behalf of HM Treasury, 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 This instrument amends the "The Offshore Funds (Tax) Regulations 2009" (SI 2009 No. 3001) (the principal Regulations) and with effect from the same days as those Regulations have effect.

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

3.1 These Regulations have effect from the day on which they are made, authority for this limited retrospective effect is provided by section 42(5) of the Finance Act 2008.

4. Legislative Context

4.1 The current legislation relating to the taxation of investors in offshore funds is contained in Chapter 5 of Part 17 of the Income and Corporation Taxes Act 1988 (consisting of sections 756A to 763 of that Act).

4.2 It is wished to make new provision for the taxation of those investors (see Part 7 of this Memorandum). Legislation providing for the making of regulations on this matter was accordingly introduced in sections 41 and 42 of the Finance Act 2008. Following the enactment of further legislation (to be found in Schedule 22 to the Finance Act 2009), the relevant primary legislation now consists of sections 40A to 42A of the Finance Act 2008. That legislation provides for the definition of the expression "offshore fund" and for the making of regulations.

4.3 The "Offshore Funds (Tax) Regulations 2009" was made on 12 November 2009 and comes into force on 1 December 2009. These Regulations amend that instrument.

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 These amendments are made with effect from the same dates as the principal Regulations in order to facilitate the immediate use of the additional provisions and avoid any investors losing the benefit of the amendments to the transitional provisions.

7.2 To modify the transitional provisions within the principal Regulations.

7.3 To ensure that 'grandfathering provisions' applying to investments not previously within the regime apply to investments in reporting as well as non-reporting funds.

7.4 To amend the time limit for applications for reporting fund status in the case of funds newly launched in the United Kingdom.

8. Consultation outcome

8.1 The policy underlying the principal Regulations and drafts of those Regulations has been the subject of extensive formal public consultation. The consultation originated with "*Offshore funds: a discussion paper"* published in October 2007 followed by "Offshore funds: next steps" in March 2008". Further consultation was carried out after the publication of *"Offshore funds: further steps"* containing draft Regulations and proposals for a new definition of an offshore fund in December 2008. As a result of the formal consultations, a number of changes were the draft Regulations.

8.2 This instrument makes further minor changes which to deal with issues identified by industry following approval of the principal Regulations.

8.3 The Government intends to keep the principal Regulations under review in the light of industry's initial experiences of operating the new tax regime for offshore funds.

9. Guidance

9.1 Guidance on the definition of an offshore fund and on the principal Regulations as amended will be published in a new HMRC Offshore Funds Manual.

10. Impact

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

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

11.1 It is anticipated that the benefits and savings will be available proportionately to smaller firms.

12. Monitoring & review

12.1 The Government intends to monitor the effects of the principal Regulations, as amended by this instrument, on industry.

13. Contact

John Buckeridge (Tel: 020 7147 2560 or email: john.buckeridge@hmrc.gsi.gov.uk), at HM Revenue & Customs, can answer any queries regarding the instrument.