EXPLANATORY MEMORANDUM TO

THE OFFSHORE FUNDS (TAX) (AMENDMENT) REGULATIONS 2013

2013 No. 661

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs 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 The purpose of this instrument is to clarify the application of tax on an offshore income gain in a case where there is a disposal of an interest in an offshore reporting fund but where that interest has previously been at some time in a fund that was not a reporting fund.

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

3.1 These Regulations come into force less than 21 days after the date on which they were made. The Department regrets that compliance with the 21-day rule is not possible in this case. The Regulations clarify the operation of a charging provision and unless the Regulations come into force immediately there is a significant risk that participants in schemes will seek to argue that disposals made before the Regulations come into force would escape a charge to tax.

4. Legislative Context

4.1 The Offshore Funds (Tax) Regulations 2009 (SI 2009/3001) (the Regulations) contain provisions (in particular in regulations 17 and 18) that charge a gain (an 'offshore income gain') on a disposal of an interest in an offshore fund that is not a reporting fund to tax.

4.2 The Regulations also include (in regulation 17(3)) a charge to tax where there is a gain on disposal of an interest in a reporting fund in a case where that interest was at some point an interest in a non-reporting fund and the gain has not previously been charged to tax..

4.3 This Instrument inserts a new paragraph (3A) to regulation 17 to remove any doubt that there is a charge to tax where there is a gain on a disposal of an interest in a reporting fund and, that interest was acquired as a result of an exchange or reconstruction involving a reporting fund which was previously a non-reporting fund.

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 It is intended that any gain realised on an interest in a fund that is not a reporting fund will be charged to tax as an offshore income gain and that where such a holding becomes by reorganisation or conversion (without a taxable disposal) a holding in a reporting fund then the charge to tax on an offshore income gain will then apply on eventual disposal.

7.2 The change made by this instrument is to ensure that it is clear that a tax charge applies on a disposal of an interest in a reporting fund which was acquired in consequence of an exchange or reconstruction involving a fund which was previously a non-reporting fund..

- ***Consolidation***

7.3 There are no plans to consolidate the revised Regulations in the immediate future.

8. Consultation outcome

8.1 There has been no consultation with the industry on these Regulations because of the need to prevent forestalling.

9. Guidance

9.1 Existing guidance already covers the result this legislation is intended to clarify.

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 A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There will be minimal impact on small business as this legislation merely clarifies existing legislation to prevent possible tax avoidance.

12. Monitoring & review

The Government will continue to monitor industry developments and customer feedback to ensure that the revised rules are operating in the way intended.

13. Contact

John Buckeridge (john.buckeridge@hmrc.gsi.gov.uk) or Wayne Strangwood (wayne.a.strangwood@hmrc.gsi.gov.uk) at HM Revenue & Customs can answer any queries regarding the instrument.