**EXPLANATORY MEMORANDUM TO**

**THE TAX TREATMENT OF FINANCING COSTS AND INCOME (AVAILABLE AMOUNT) REGULATIONS 2010**

**2010 No. 2929**

**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.

This memorandum contains information for the Select Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 Part 7 of the Taxation (International and Other Provisions) Act 2010 ("TIOPA 2010") includes provisions which set a ceiling (known as the "debt cap") on the total interest and other specified financing expenses which may be deducted by those members of a worldwide group of companies that are subject to corporation tax.

2.2 The debt cap is calculated by reference to the difference between the financing expenses of the members of the worldwide group which are subject to corporation tax and the amount (called the "available amount") disclosed in the accounts of the worldwide group in respect of specified finance costs. The purpose of these Regulations is to widen the range of financing costs which are to be included in the available amount.

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

3.1 This is the first exercise of the powers conferred by section 332(1)(g) of TIOPA 2010.

## 4. Legislative Context

4.1 Part 7 of TIOPA 2010 (originally Schedule 15 to the Finance Act 2009) is one of several measures introduced as part of the Government's review of the taxation of the foreign profits of companies.

4.2 Section 332(1) of TIOPA 2010 describes those matters in respect of which amounts disclosed in the accounts of the worldwide group are included in the available amount.

4.3 Section 332 (1) (g) TIOPA 2010 enables regulations to be made to specify additional matters in respect of which amounts are to be included in the available amount.

## 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 the 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 policy underlying the debt cap is to restrict the deductions that the members of a worldwide group of companies which are subject to corporation tax (that is, the UK companies and those non-UK companies carrying on a trade in the UK through permanent establishments) are permitted to make for financing expenses incurred in transactions between members of the group. This is done by disallowing a deduction for the financing expenses of the companies which are subject to corporation tax, to the extent that the total of their net financing expenses exceeds the finance costs disclosed in the consolidated accounts of the group as a whole. There is a corresponding exemption from corporation tax for financing income, up to the amount of the disallowance. The worldwide group is required to allocate disallowances and exemptions among members of the group.

7.2 These Regulations widen the range of financing costs that are included in the available amount, thereby targeting the disallowance of deductions more closely on excessive financing expenses incurred in transactions between group members.

## 8. Consultation outcome

8.1 A working group consisting of representatives from corporate groups and their advisers has been consulted by HMRC on the debt cap legislation and regulations. A draft of the Regulations was published on the HMRC website on 2 November 2010 and comments were invited. Comments were received from four accountancy firms and one law firm.

8.2 The Regulations were well received. Some changes were made in response to comments received.

## 9. Guidance

9.1 HMRC will publish guidance on the operation of the Regulations.

## 10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has a negligible impact on business, charities or voluntary bodies.

## 11. Regulating small business

11.1 The Regulations will not apply to small business.

## 12. Monitoring & review

12.1 HMRC intend to monitor the legislation for further categories of financing costs which might be included in the available amount and to make further regulations if necessary. HMRC will review the Regulations in 2012 to determine whether they operate as intended.

## 13. Contact

Lesley Hamilton at HM Revenue and Customs (Tel: 020 7147 2564 or email: Lesley.hamilton@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.