EXPLANATORY MEMORANDUM TO

THE TAX TREATMENT OF FINANCING COSTS AND INCOME (EXCLUDED SCHEMES) REGULATIONS 2013

2013 No. 2892

1. This explanatory memorandum has been prepared by HMRC and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 Part 7 of the Taxation (International and Other Provisions) Act 2010 (c. 8) ("TIOPA 2010") includes provisions which set a ceiling (known as the "debt cap") on the total interest and other specified financing expenses for which corporation tax deductions are available to UK members of a worldwide group of companies that are subject to corporation tax.

2.2 The ceiling 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 financing costs. The purpose of these Regulations is to address a number of practical issues that arise in applying the anti-avoidance rules contained within the debt cap provisions.

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

3.1 None

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. The debt cap rules are in two parts: a gateway test and the main rules. A group must apply the main rules only if it passes the gateway test.

4.2 Chapter 6 of Part 7 TIOPA 2010 makes provision for schemes that manipulate either the rules in the gateway test or the main rules.

4.3 Section 312(1) TIOPA 2010 includes a broad definition of a 'scheme'. Sections 312(2) and 312(3) enable Regulations to be made to make provisions for certain schemes to be excluded.

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 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.

7.2 The debt cap rules include wide-ranging anti-avoidance rules which could restrict the ability of groups to restructure in a number of circumstances.

7.3 These Regulations ensure that particular commercial arrangements are not caught by the anti-avoidance provisions in the debt cap rules. The Regulations will enable groups to plan with greater certainty about the application of the debt cap rules.

8. Consultation outcome

8.1 The draft Regulations were published on the HMRC website on 19 October 2012 and comments were invited. Comments were received from two accountancy firms, three legal firms and an Industry Representative body.

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

9. Guidance

9.1 HMRC will update the guidance in the Corporate Finance Manual to reflect the fact that these Regulations are being made.

10. Impact

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 does not apply to small business.

12. Monitoring & review

12.1 HMRC will review the Regulations in 2014 to determine whether they operate as intended.

13. Contact

Judith Diamond at HM Revenue and Customs Tel: 03000 585712 or email: judith.diamond@hmrc.gsi.gov.uk can answer any queries regarding the instrument.