EXPLANATORY MEMORANDUM TO

THE TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010 TRANSFER PRICING GUIDELINES DESIGNATION ORDER 2022

2022 No. 1147

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Treasury and is laid before the House of Commons by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends a reference to "transfer pricing guidelines" within the relevant legislation to point to the most recent revisions to the Organisation for Economic Co-operation and Development (OECD)'s Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the 'OECD Transfer Pricing Guidelines'), which are the internationally agreed standard for application of the arm's length principle for transfer pricing purposes. On 20 January 2022, the OECD published updated Transfer Pricing Guidelines ("the 2022 OECD Transfer Pricing Guidelines"). This instrument also revokes the Taxation (International and Other Provisions) Act 2010 Transfer Pricing Guidelines Designation Order 2018 (S.I. 2018/266) in its entirety.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 United Kingdom (UK) transfer pricing legislation can be found at Part 4 of the Taxation (International and Other Provisions) Act 2010 ("TIOPA"), which requires that, for income tax and corporation tax purposes, transactions between connected parties should be treated as if they were negotiated at arm's length rather than on the basis of the actual terms of the transaction, in cases where the actual terms would otherwise confer a UK tax advantage on one or more of the parties ("the arm's length principle"). Section 164 of TIOPA provides that Part 4 should be read in such a manner as best secures consistency between the effect given to parts of section 147, section 148 and 151(2) of TIOPA and the relevant OECD Transfer Pricing

Guidelines. Section 164(4)(b) of TIOPA allows the Treasury, by order, to designate a new or later version of the OECD Transfer Pricing Guidelines for the purposes of construing that provision.

7. Policy background

What is being done and why?

7.1 The instrument will update the definition of "transfer pricing guidelines" in section 164(1) of TIOPA so that it can be read as referring to the 2022 OECD Transfer Pricing Guidelines.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 A transfer price is the price charged in a transaction between two connected parties. The transfer pricing legislation requires that, for income tax or corporation tax purposes, the prices charged in transactions between connected parties are the same as those that would be charged if the parties were not connected ("the arm's length principle"). S.I. 2018/266 designated a now superseded version of the OECD Guidelines, published in July 2017, for the purposes of section 164 of TIOPA.

Why is it being changed?

7.3 The 2022 OECD Transfer Pricing Guidelines are intended to promote international consistency in interpretation of the arm's length principle, to better ensure common interpretation of the allocation of taxing rights and thereby mitigate double taxation and non-taxation.

7.4 It is in the UK's interests to ensure domestic legislation aligns with the international consensus on interpretation of the arm's length principle: both to comply with its bilateral tax treaties, and to provide clarity for individual businesses.

What will it now do?

7.5 The instrument will update UK transfer pricing legislation to refer to the 2022 OECD Transfer Pricing Guidelines.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Consolidation is not applicable. The instrument will instead replace an earlier one, which updated the reference to the previous iteration of the OECD Guidelines.

10. Consultation outcome

10.1 No consultation was held as business and professional advisors were consulted throughout the OECD project which resulted in publication of new OECD Transfer Pricing Guidelines. As UK legislation previously incorporated a reference to the 2017 versions of those Guidelines, it is fully expected that the reference will be updated to refer to the 2022 OECD Transfer Pricing Guidelines.

11. Guidance

11.1 Guidance covering the interaction of UK legislation and the OECD Guidelines can be found at INTM421000 (https://www.gov.uk/hmrc-internal-manuals/international-manual/intm421000), which will be updated to refer to the 2022 Guidelines.

12. Impact

12.1 There is no, or no significant, impact on businesses, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to exclude such businesses from being required to compute their profits in accordance with transfer pricing, with the exception of limited circumstances, as set out elsewhere in the legislation. The general exemption, and its limited exceptions, will not be amended by this instrument.

13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument does not alter the application of transfer pricing to those businesses. This instrument is anticipated to have no impact on small businesses other than to the extent already impacted by the UK transfer pricing rules prior to this instrument, and so no mitigating action has been proposed.

14. Monitoring & review

14.1 The instrument will be subject to review in conjunction with the work carried on by both the OECD, HM Treasury, and HM Revenue & Customs.

15. Contact

15.1 Jamie Vernon at HM Revenue & Customs (Business Assets International) Telephone: 03000540915 or email: jamie.vernon@hmrc.gov.uk can answer any queries regarding the instrument.

15.2 Andrew Page, Deputy Director for Transfer Pricing, at HM Revenue & Customs (Business Assets and International) can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.