EXPLANATORY MEMORANDUM TO

THE TAXES AND DUTIES, ETC (INTEREST RATE) REGULATIONS 2011

2011 No. 2446

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs ("HMRC"), on behalf of HM Treasury, and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations set out the interest rate setting formulae for late payment interest and for repayment interest. These Regulations will apply whenever the new harmonised interest regime is applied to any tax or duty administered by HMRC.

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

3.1 None.

4. Legislative Context

4.1 The new harmonised interest regime was introduced by sections 101 to 105 of the Finance Act 2009. This new interest regime aligns the rules for the charging and paying of late payment interest and repayment interest for all taxes and duties administered by HMRC. The new interest regime will be phased in for each tax and duty over a number of years.

4.2 The power to make regulations setting the rate of interest for the new interest regime is section 103 of the Finance Act 2009. These Regulations set out the formula for arriving at the interest rate to apply to late payment interest charged by HMRC and the formula for arriving at the interest rate to apply to repayment interest paid by HMRC. They replace the Taxes and Duties (Interest Rate) Regulations 2010 (S.I. 2010/1879, which only applied to bank payroll tax under the terms of S.I. 2010/1878).

4.3 These Regulations replicate the interest rate formulae within S.I. 2010/1879 (but apply generally under the terms of S.I. 2011/2401). Since there is no other change to the interest provisions, the procedure for free issue has been applied to this instrument (but not to S.I. 2011/2401, since S.I. 2010/1878 properly dealt with bank payroll tax only).

4.4 These interest rate Regulations enable the new interest regime to be effective immediately on the coming into force of sections 101 and 102 Finance Act 2009 for the purposes of a particular tax, duty or other sum payable to or by HMRC. A Treasury order under section 104 Finance Act 2009 will appoint the day on which the new interest regime will apply to a specified tax, duty or other sum. Apart from bank payroll tax as mentioned in

section 4.2 above, orders appoint 31 and 6 October 2011 as the day on which sections 101 to 103 come into force for the respective purposes of income tax self assessment and construction industry scheme monthly return penalties (S.I. 2011/701 and S.I. 2011/2391).

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

7.1 HMRC inherited from the former Inland Revenue and HM Customs and Excise the existing legal framework for charging and paying interest. There are a number of differences in the way interest is charged and paid across the heads of taxes. For some taxes, interest is charged as soon as payment is late whereas for others it is only charged where under-declarations are assessed. For some liabilities, there is no late payment interest charge at all.

7.2 Where repayment interest currently applies it may be called a supplement, credit interest or statutory interest and it was applied at a number of different rates depending on the tax to which it related. Those differences were increasingly seen as adding complexity and administrative burdens for taxpayers, their advisors and HMRC, particularly for the many taxpayers who interact with HMRC across a range of taxes.

7.3 Following extensive consultation, legislation was introduced in the Finance Act 2009 to harmonise the way that interest is charged and paid across all taxes and duties. This legislation will, however, take some time to come into force in its entirety as many of the changes will require substantial changes to HMRC IT systems.

7.4 The Taxes and Duties (Interest Rate) (Amendment) Regulations 2009 (S.I. 2009/2032) introduced with effect from September 2009 harmonised interest rates for those taxes where interest was currently charged and paid, in advance of full harmonisation. Those Regulations introduced for the first time one single formula for the late payment interest rate and one single formula for the repayment interest rate. They also introduced a minimum repayment interest rate of 0.5%.

7.5 The current rates and minimum repayment rate are based on the interest rate announced by the Bank of England Monetary Policy Committee. Any changes to the HMRC interest rates take effect 13 working days after the Monetary Policy Committee meets.

7.6 The late payment interest rate formula is: Bank Rate + 2.5.

7.7 The repayment interest rate formula is: Bank Rate -1 (to a minimum of 0.5%).

7.8 For example, if the Monetary Policy Committee announced that the Bank Rate was changed to 2%, the late payment interest rate applied 13 working days later would be: 2% + 2.5 = 4.5%. The repayment interest rate would be: 2% -1 = 1%.

7.9 These Regulations will provide the new interest rates, previously legislated for in the Taxes and Duties (Interest Rate) Regulations 2010 (S.I. 2010/1879). They ensure that future taxes and duties can be brought into the new harmonised interest regime. The policy remains unchanged.

8. Consultation outcome

8.1 HMRC undertook a comprehensive consultation process on the harmonisation of the way interest is charged on late payments and paid on overpayments. This consultation included the way in which interest rates should be calculated.

8.2 Following consultation, the new interest rates for charging late payment interest and paying repayment interest were introduced by S.I. 2009/2032 and S.I. 2010/1879. These Regulations replicate those interest rate formulae.

9. Guidance

9.1 No additional guidance is required. HMRC will continue to publish the interest rates on the HMRC website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is covered in the Impact Assessment published by HMRC on 14 April 2009 and available through the HMRC website at http://www.hmrc.gov.uk/better-regulation/ia.htm. It remains up to date.

10.2 The impact on the public sector is unchanged, as these Regulations ensure that interest is charged and paid in line with the Taxes and Duties (Interest Rate) Regulations 2010 (S.I. 2010/1879).

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that to exempt small businesses would be to exempt the vast majority of UK enterprises from changes which aim to level the playing field by tackling more effectively and consistently those who seek an advantage by not complying with their obligations.

11.3 The basis for the final decision on what action to take to assist small businesses is that if small businesses were exempt there could be a risk that larger businesses would disaggregate.

12. Monitoring and review

12.1 These Regulations are not subject to a review. The full interest harmonisation will be subject to a post implementation review which will take place around three years after the full implementation.

13. Contact

Angela Roach at HM Revenue and Customs Tel: 020 7147 0002 or email: angela.roach@hmrc.gsi.gov.uk can answer any queries regarding the instrument on behalf of HM Treasury.