EXPLANATORY MEMORANDUM TO

THE TAXES (DEFINITION OF CHARITY) (RELEVANT TERRITORIES) REGULATIONS 2010

2010 No. 1904

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.

2. Purpose of the instrument

2.1 UK tax reliefs and exemptions for charities are available to organisations in member States of the European Union (EU) provided they meet certain conditions. These regulations extend the reliefs to eligible organisations in The Republic of Iceland and the Kingdom of Norway.

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

3.1 None.

4. Legislative Context

4.1 Following the judgment of the Court of Justice of the European Union in the case of Hein Persche v Finanzamt Lüdenscheid (case C-318/07) in January 2009, UK tax reliefs for charities are required to be extended to certain organisations outside the UK.

4.2 Part 1 of Schedule 6 to the Finance Act 2010 (c. 13) introduces a new definition of "charity" for the purposes of income tax, capital gains tax, corporation tax, value added tax, inheritance tax, stamp duty, stamp duty land tax and stamp duty reserve tax. Paragraph 1(1)(b) of Schedule 6 to the Finance Act 2010 provides that in order for a body of persons to be a charity, the jurisdiction condition contained in paragraph 2 of that Schedule must be met.

4.3 Paragraph 2 of Schedule 6 to the Finance Act 2010 provides that a body of persons or a trust will only meet the jurisdiction condition if it falls to be subject to the control of a relevant UK court (being the High Court in England, the Court of Session in Scotland and the High Court in Northern Ireland) in the exercise of its jurisdiction with respect to charities or any other court in the exercise of a corresponding jurisdiction under the law of a relevant territory. Paragraph 2(3) provides that "a relevant territory" means a member State of the European Union other than the United Kingdom or a territory specified in regulations made by the Commissioners for Her Majesty's Revenue and

Customs (HMRC). This instrument, which comes into force on 20th August 2010 specifies the Republic of Iceland and Kingdom of Norway as relevant territories upon the first use of the power afforded to the Commissioners by paragraph 2(3)(b).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom and extends the benefit of the UK tax reliefs for charities, administered by HMRC, to eligible organisations in Iceland and Norway.

6. European Convention on Human Rights

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

7. Policy background

7.1 Charitable organisations (companies or trusts) established in the UK, and their donors, benefit from a range of tax reliefs and exemptions. For example, charities are exempt from tax on profits from certain trading activities, and can benefit from Gift Aid which enables a charity to reclaim from HMRC the basic rate UK tax paid by donors in respect of their donation.

7.2 Until the beginning of 2009 the UK Government held the view that UK tax reliefs for donors and charities applied only in relation to UK charities. However, this view has changed following a decision in the European Court of Justice in January 2009 (Hein Persche v Finanzamt Lüdenscheid (C-318/07)) ("Persche") which held that tax reliefs and exemptions for charities and their donors may not be limited to charities within a member State of the EU. As a result of the Persche case it was announced at the spring 2010 Budget that UK tax reliefs for charities would be extended to eligible organisations in the EU, Iceland and Norway with effect from the date of the Persche decision in January 2009.

7.3 A new definition of a "charity" was introduced by Schedule 6 of the Finance Act 2010 for the purposes of the UK's tax reliefs and exemptions administered by HMRC, to help minimise the additional costs to the Exchequer of extending UK tax reliefs for charities beyond the UK.

7.4 In order for an organisation in the UK to meet the new definition of a "charity" it must (along with other requirements) be subject to the control of a relevant UK court that exercises jurisdiction with respect to charities (the "jurisdiction condition"). For these purposes the relevant UK courts are the High Court in England, the Court of Session in Scotland and the High Court in Northern Ireland. Organisations that are outside the UK meet the jurisdiction condition if they are subject to the control of a court exercising a corresponding jurisdiction with respect to charities under the law of a relevant territory. A "relevant territory" is a member State of the EU other than the UK,

or, with regard to organisations outside the EU, a territory specified in regulations made by HMRC under paragraph 2(3)(b).

7.5 UK charity tax reliefs are being extended to EEA countries where sufficient information exchange and collection of tax arrangements are in place to ensure the reliefs can be administered properly, including the ability to obtain information about individuals and organisations in those countries, and to recover overpaid tax.

7.6 HMRC have established efficient information exchange and tax collection arrangements with Iceland and Norway. Accordingly, by specifying Iceland and Norway as relevant territories, these regulations enable organisations in these two countries and their donors (provided they meet other relevant conditions imposed by legislation) to benefit from the UK's tax reliefs for charities.

8. Consultation outcome

8.1 No consultation has been undertaken in respect of these regulations. As the regulations simply add two countries to the list of relevant territories, no consultation is necessary.

9. Guidance

9.1 HMRC publicised the introduction of the primary legislation following the spring 2010 Budget, and in all supporting documents reference is made to the legislation applying to the EU as extended to Iceland and Norway. These regulations will place the publicised extension to Iceland and Norway on a legal footing. It is not necessary to publish guidance specific to these regulations as they only give effect to the extension of the primary legislation to two countries outside the EU.

10. Impact

10.1 There is no impact on charities or voluntary bodies in the UK. The impact on businesses in the UK, who will have the option to make donations to eligible organisations to Iceland and Norway as well as to organisations in the EU, will be negligible.

10.2 The impact on the public sector is negligible.

10.3 An impact assessment has not been produced for this instrument as it has negligible or no impact on business, charities and voluntary bodies in the UK. An impact assessment on the wider changes introduced in Finance Act 2010 was published at the spring 2010 Budget.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These regulations extend the territorial scope for which organisations may be eligible to claim UK tax reliefs for charities. The processing of applications for relief from organisations established in Iceland and Norway will demonstrate that the legislation is working.

13. Contact

Nick Jones at HM Revenue and Customs can answer any queries regarding the instrument.
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