EXPLANATORY MEMORANDUM TO

THE TEMPORARY NON-RESIDENCE (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 1810

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the provisions concerning the taxation of temporary non-residents in the Pension Schemes (Taxable Property Provisions) Regulations 2006 ("the Pensions Schemes Regulations") and the Offshore Funds (Tax) Regulations 2009 ("the Offshore Funds Regulations") to align them with similar provisions in Finance Act 2013.

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

3.1 Section 282(2) of the Finance Act 2004 provides that regulations under s237ZA (income and gains from taxable property) are subject to the negative resolution procedure (Commons only).

3.2 Section 372(3) of the Taxation (International and Other Provisions) Act 2010 provides that regulations under section 354(1) (tax treatment of participants in offshore funds) are either subject to the negative resolution procedure or draft affirmative resolution procedure (Commons only). Paragraph 4.11.1 of Statutory Instrument Practice refers to possible criteria for determining when the affirmative procedure would normally be appropriate. Although this instrument amends an anti-avoidance provision of a charging nature, it operates only to replicate the existing provision in regulation 23 of the Offshore Funds Regulations bringing that provision in line with changes made by the Finance Act 2013. It is, therefore, considered that the negative resolution procedure is appropriate for this instrument.

4. Legislative Context

4.1 The introduction of a Statutory Residence Test was announced at Budget 2012 and legislation is in section 218 of, and Schedule 45 to, the Finance Act 2013. Part 4 of Schedule 45 contains revised rules concerning the taxation of temporary non-residents, which provide for the taxation of certain income and gains arising in a period of temporary non-residence (as defined in the legislation). These two existing similar provisions in secondary legislation are being brought into line with the rules in Part 4 of Schedule 45.

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 two instruments being amended contain rules for the taxation of certain payments and gains that arise during a period of temporary period of non-residence. Those rules are modelled on the provisions for the taxation of chargeable gains that arise in a temporary period of non-residence in section 10A of the Taxation of Capital Gains Act 1992, which are being revised by Part 4 of Schedule 45. Accordingly, it is necessary to amend these two instruments to align them with the new Part 4 rules.

7.2 The general rules in Part 4 now apply to all the temporary non-resident provisions in primary legislation. By attracting the definitions in Part 4, the corresponding provisions in the Pension Scheme Regulations have been simplified.

7.3 The existing rules in the Offshore Funds Regulations contained a list of the modifications to the capital gains rules in section 10A of the Taxation of Capital Gains Act 1992 so that they applied to offshore income gains. The revised Regulations instead set out the new text having made the modifications, which is considered to be more helpful to the reader.

7.4 The amendments to the Regulations apply for the tax year 2013–14 and subsequent years. The amendments therefore have retrospective effect to the beginning of the tax year in which they were made. Section 273ZA(6)(b) of the Finance Act 2004 and section 354(6) of the Taxation (International and Other Provisions) Act 2010 provide the necessary vires to make these provisions retrospective to the start of the tax year.

7.5 There are no plans to consolidate the amendments made by this instrument.

8. Consultation outcome

8.1 A formal consultation on the specific changes in this instrument was not undertaken, but a draft of this instrument was published on the website of Her Majesty's Revenue and Customs on 4 February 2013. A formal consultation on the Statutory Residence Test (to which these changes are supplementary) was carried out in 2011, with further consultations on the details of the changes in 2012.

9. Guidance

9.1 HMRC will amend the relevant guidance to reflect changes made by these Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible as these Regulations are directed at individuals.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note (relating to the Statutory Residence Test) covering this instrument was published on 11 December 2012 alongside the draft clauses for inclusion in Finance Bill 2013 and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Although there will be no specific monitoring of the effect of these amendments to Regulations, all aspects of the Statutory Residence Test will be kept under review by communication with affected taxpayer groups.

13. Contact

Richard Davey at Her Majesty's Revenue and Customs, tel: 02071472391 or email: offshorepersonal.taxteam@hmrc.gsi.gov.uk can answer any queries regarding the instrument.