EXPLANATORY MEMORANDUM TO

THE UNAUTHORISED UNIT TRUSTS (TAX) REGULATIONS 2013

2013 No. 2819

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

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations contain provisions as to the requirements for an unauthorised unit trust ("UUT") to be approved by HMRC as an exempt unauthorised unit trust ("EUUT") and the taxation of EUUTs and their investors. These Regulations also contain provisions as to the tax treatment of non-exempt unauthorised unit trusts ("NEUUTs") and their investors. The Regulations also provide transitional rules for EUUTs and NEUUTs, and make various consequential amendments to the Taxes Acts.

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

3.1 These Regulations are laid in draft before the House of Commons for approval by resolution of that House.

4. Legislative Context

4.1 These Regulations give effect to changes announced by the Government following a formal consultation on changes to the tax rules for UUTs and their investors.

4.2 These Regulations are the first instance in which the powers provided by Section 217 Finance Act 2013 have been exercised and are subject to the affirmative resolution procedure.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Exchequer Secretary to the Treasury, David Gauke, has made the following statement regarding Human Rights:

In my view, the provisions of the Unauthorised Unit Trusts (Tax) Regulations 2013 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 These Regulations make changes to the tax rules for UUTs and their investors.

7.2 The changes follow a formal consultation on proposals to simplify the rules to reduce administrative burdens and at the same time remove avoidance opportunities. Modernisation of the rules for UUTs was announced at Budget 2011 and followed publication of "Tackling tax avoidance", which set out how the Government would deal with areas of the tax code that had been the subject of repeated abuse. The changes also complement reforms to the tax code over recent years that have modernised the tax rules for other forms of collective investment schemes, such as authorised investment funds and investment trusts.

- Consolidation

7.3 These Regulations do not consolidate any other instruments.

8. Consultation outcome

8.1 An initial consultation document was published on 30 June 2011[1] setting out the Government's broad proposals for changes to the tax rules for UUTs and their investors.

8.2 A second consultation with more detailed proposals, together with a summary of responses to the first consultation, was published on 24 May 2012[2]. A summary of responses to the second consultation[3], together with draft Finance Bill clauses, draft Regulations[4] and draft guidance[5] were published on 11 December 2012.

8.3 Stakeholders generally welcomed the Government's proposals to change the tax rules for UUTs and their investors. There were some comments that highlighted potential concerns with particular technical issues, preparation of accounts, provision of tax vouchers and the proposals to deal with minor or inadvertent breaches of the new rules. There were also concerns that exempt investors such as pension funds that are currently invested in NEUUTs could be adversely affected. The summary of responses dated 11 December 2012 details the Government's response to each of those points, as reflected in the published draft and these final

[1] See http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_031408
[2] See http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_032081
[3] See http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_032483
[4] See pages 38 to 56 at http://www.hmrc.gov.uk/budget-updates/11dec12/anti-avoidance.pdf
[5] See http://www.hmrc.gov.uk/drafts/uut-guidance.pdf

Regulations, which have been shared on an informal basis with industry stakeholders.

9. Guidance

9.1 The draft guidance will be consolidated into the HMRC Savings and Investment Manual.

10. Impact

10.1 The impact on business, charities or voluntary bodies is set out in the Tax Information and Impact Note.

10.2 The impact on the public sector is set out in the Tax Information and Impact Note.

10.3 The Tax Information and Impact Note covering this instrument was published on 11 December 2012[6]. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken is that the proposed rules relating to EUUTs are broadly beneficial and excluding companies with fewer than 20 employees would not achieve the policy objective. The proposed rules relating to NEUUTs are broadly expected to result in disadvantageous tax treatment to counter use of those vehicles for tax avoidance, but this is the intended outcome and applies to all sizes of business.

11.3 No indication was given by small firms responding to the consultation that they would have any difficulty understanding and operating the legislation. HMRC will however provide assistance to small firms through the usual contact channels for customers requiring assistance, and by publishing guidance.

12. Monitoring & review

12.1 The impact will be assessed through monitoring information collected on tax returns and applications for approval as an EUUT to ensure that the proposed legislation is working in the way intended. HMRC and HM Treasury will also

[6] See http://www.hmrc.gov.uk/tiin/2012/tiin4752.htm

continue to liaise with stakeholders from time to time to discuss the implementation of the proposed new rules as part of continuing engagement with industry.

13. Contact

13.1 Wayne Strangwood at HMRC (Tel: 03000 585493 or email: wayne.a.strangwood@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.