EXPLANATORY MEMORANDUM TO

THE COLLECTIVE INVESTMENT SCHEMES (TAX TRANSPARENT FUNDS, EXCHANGES, MERGERS AND SCHEMES OF RECONSTRUCTION) REGULATIONS 2013

2013 No. 1400

THE STAMP DUTY AND STAMP DUTY RESERVE TAX (COLLECTIVE INVESTMENT SCHEMES) (EXEMPTIONS) REGULATIONS 2013

2013 No. 1401

THE VALUE ADDED TAX (FINANCE) ORDER 2013

2013 No. 1402

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instruments

2.1 These three sets of Regulations provide the appropriate tax treatment for a new regulated asset pooling vehicle, the authorised contractual scheme (ACS), in relation to capital gains, stamp taxes on shares and VAT.

2.2 The Collective Investment Schemes (Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction) Regulations also amends existing tax provisions to provide certainty of treatment for capital gains purposes for investors in all types of collective investment schemes involved in a reorganisation or reconstruction.

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

3.1 None

4. Legislative Context

4.1 The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (SI 2013/1388) amends the Financial Services and Markets Act to provide for the authorisation of contractual funds which will be fiscally transparent.

4.2 Authorised contractual funds will either be limited partnerships or co-ownership funds. These instruments prescribe the treatment, for the purposes of the taxation of chargeable gains, stamp duties and VAT ACS and holdings in ACS.

4.3 The instrument dealing with the taxation of chargeable gains further provides for certainty of treatment, for the purposes of chargeable gains, of investors in all types of collective investment schemes including co-ownership funds where a fund is involved in a reconstruction or reorganisation.

4.4 The instrument in relation to stamp duties provides exemptions from stamp duty and stamp duty reserve tax for various transactions in securities by an ACS and transactions in units of an ACS.

4.5 The instrument in relation to VAT amends item 9 and Note 6 of Group 5 of Schedule 9 to the Value Added Tax Act 1994 (c.23) to insert ACS into the list of schemes and/or undertakings the management of which are exempt from VAT.

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 Financial Secretary to the Treasury, The Rt. Hon. Greg Clark MP, has made the following statements regarding Human Rights:

In my view the provisions of the Collective Investment Schemes (Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction) Regulations 2013, and of the Stamp Duty and Stamp Duty Reserve Tax (Collective Investment Schemes) (Exemptions) Regulations 2013 are compatible with the Convention rights.

As the instruments relating to VAT are subject to negative resolution procedure and do not amend primary legislation, no statement is required for those instruments.

7. Policy background

- ***What is being done and why***

7.1 The policy objective is to ensure that the UK can compete as a fund domicile for tax transparent funds. The proposed tax measures are designed to remove any tax obstacles to achieving that objective for ACS. Such schemes are being introduced to facilitate the setting up of UK pooled "master fund" investment vehicles under the Undertakings for Collective Investment in Transferable Securities (UCITS) IV Directive[i].

7.2 The Regulations dealing with the taxation of chargeable gains:

7.2.1 provide that, for the purposes of tax on chargeable gains, assets held by investors as part of certain tax transparent collective investment schemes will not be chargeable assets and that, instead, the investor’s interest in the scheme will be treated as if it were a chargeable asset;

7.2.2 provide that, for such chargeable assets, section 212 of the Taxation of Chargeable Gains Act 1992 (TCGA) will apply to interests within the long term fund of an insurance company;

7.2.3 provide a relief for insurance companies which transfer assets to such transparent schemes to ensure that no chargeable gain arises at the point of transfer, together with a provision to prevent abuse of that relief; and

7.2.4 adapt the provisions in TCGA which relate to mergers and reconstructions so that the provisions will work properly and be applied more easily in relation to interests in tax-transparent schemes and existing types of collective investment schemes.

7.3 The Regulations dealing with stamp taxes:

7.3.1 exempt from stamp duty and stamp duty reserve tax transfers of securities to an ACS in consideration for the issue of units in the ACS; and

7.3.2 exempt from stamp duty and stamp duty reserve tax transfers of securities between depositaries under the same ACS; and

7.3.3 exempt from stamp duty and stamp duty reserve tax transfers of units in an ACS.

7.4 The Regulations dealing with VAT provide that a supply of management of an ACS is exempt from VAT. This has the effect that businesses making these supplies are not entitled to recover the VAT which they are charged but neither are they required to charge VAT on their own supplies. This ensures that such supplies are treated equally to the supplies of management of other types of collective investment schemes which are also exempt from VAT.

8. Consultation outcome

8.1 These sets of Regulations are the result of extensive consultation as described in the HM treasury consultation response document published on the HMT website at:http://www.hm-treasury.gov.uk/d/consult_contractual_schemes_collective_investment_summary_of_responses.pdf

9. Guidance

9.1 Draft guidance on this legislation will be published in due course by HM Revenue & Customs.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible as the Regulations act to facilitate use of a new fund structure which has not previously been available and provide certainty in relation to the treatment of existing funds involved in mergers and reconstructions.

10.2 The impact on the public sector is negligible. There may be some initial impact on the work of Revenue and Customs in providing support to the sector depending on the initial levels of take up.

10.3 A Tax Information and Impact Note covering these instruments will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm

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 legislation applies only to investors choosing to invest directly in co-ownership funds. Investments in these funds can also be accessed via non-transparent feeder funds.

11.3 No specific action is required to assist small business as the legislation expands the freedom of industry to provide and investors to choose different types of investment fund. It is envisaged that ACS's will mainly be used as a 'master fund' into which feeder funds invest. Feeder funds may be designed to be suitable for a variety of investors including small business.

12 Monitoring & review

12.1 HMRC has an established programme of liaison with the industry, which will capture issues around implementation and ongoing compliance and administrative costs. In addition, companies are required to prepare tax returns and computations which will provide data to inform any such monitoring and evaluation.

13. Contact

13.1 John Buckeridge at HM Revenue & Customs Tel: 020 7147 2560 or email: john.buckeridge@hmrc.gsi.gov.uk can answer any queries regarding the instruments.

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[i] Directive 2009/65/EC of the European Parliament and of The Council