

**EXPLANATORY MEMORANDUM TO THE
THE FINANCE ACT 2004, SECTIONS 38 TO 40 AND 45 AND SCHEDULE 6
(CONSEQUENTIAL AMENDMENTS OF ENACTMENTS) ORDER 2004**

2004 No. 2310

1. This explanatory memorandum has been prepared by the Commissioners of Inland Revenue and is laid before the House of Commons by Command of Her Majesty.
2. **Description**
 - 2.1 The Order makes consequential amendments to Corporation Tax legislation as a result of the enactment of sections 38 to 45 of, and Schedule 6 to, the Finance Act 2004.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 Sections 38 to 45 and Schedule 6 Finance Act 2004 contain a revised code for the tax treatment of management expenses of companies. Section 46 of the Act contains powers to amend tax legislation as a consequence of the enactment of sections 38 to 45 and Schedule 6.
 - 4.2 The Order also amends Schedule 23A to the Income & Corporation Taxes Act 1988 in connection with management expenses – the power to do that resides in paragraph 8 of that Schedule.
 - 4.3 It is the first exercise of the powers in section 46 Finance Act 2004.
5. **Extent**
 - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**
 - 6.1 The Paymaster-General has made the following statement:

In my view the provisions of the Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments of Enactments) Order 2004 are compatible with the convention rights.
7. **Policy background**
 - 7.1 As part of the process of Corporation Tax Reform, the Finance Act 2004 enacts substantial changes to the treatment of expenses of companies that do not relate to a trade or property business – management expenses, and to the

This Explanatory Memorandum refers to the Finance Act 2004, sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments to Enactments) Order 2004

similar rules for the expenses of companies carrying on life assurance business.

- 7.2 The main effect of the changes is to expand the class of company that can claim relief for those expenses – instead of applying only to a specific class of “investment company”, the substituted section 75 Income & Corporation Taxes Act 1988 (“ICTA”) applies to any company with any investment business. The rules in section 76 IC TA relating to companies carrying on life assurance business have also been rewritten and simplified.
- 7.3 Other Corporation Tax legislation in ICTA and elsewhere contains a number of references to provisions of the old sections 75 and 76 and to the restriction of section 75 to investment companies. The Order amends those references to bring them into line with the new sections 75 and 76.
- 7.4 A draft of the Order was circulated to members of Standing Committee A examining the Finance Bill 2004 and was published on the Inland Revenue website in May. No comments have been received. The change is neither politically nor legally important.

8. Impact

- 8.1 A Regulatory Impact Assessment on the changes made to the tax treatment of management expenses by sections 38 to 46 Finance Act 2004 was prepared and is can be found at <http://www.inlandrevenue.gov.uk/budget2004/managing-investments.pdf>. This Order of itself has no impact on business, charities or voluntary bodies.
- 8.2 There is no impact on the public sector.

9. Contact

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