EXPLANATORY MEMORANDUM TO

THE FRIENDLY SOCIETY (TRANSFERS OF OTHER BUSINESS) (MODIFICATION OF THE CORPORATION TAX ACTS) REGULATIONS 2008

2008 No. 1942

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. Description

The Regulations modify the tax legislation applying to friendly societies which are not exempt on their sickness ("other") business but which have accepted a transfer of business from another friendly society which in that society's hands was tax exempt "other" business. They also apply in the opposite situation, and are designed to ensure that the accepting society can write both types of business at the same time.

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

3.1 These Regulations have effect in relation to transfers of business taking place on or after 21st July 2008 and is accordingly capable of having retrospective effect in certain circumstances. Authority for the retrospective effect is conferred by section 461D(5)(c) of the Income and Corporation Taxes Act 1988 (which is inserted by paragraph 3(1) of Schedule 18 to the Finance Act 2008).

3.2 The explanatory note to this Instrument explains that:

"A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen."

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- the total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- the Department's Better Regulation and Policy team has confirmed that
  - there are no disproportionate impacts on any business or sector; and
  - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes."

4. Legislative Background

4.1 This instrument provides for appropriate amendments to the tax law applying to friendly societies as a result of the enactment of section 461D of the Income and Corporation Taxes Act 1988 ("ICTA") by Schedule 18 to the Finance Act 2008.

4.2 Section 461D contains powers to ensure that the two types of businesses which it enables a society to carry on in tandem for the first time are ring fenced and treated as separate classes of business and to make other changes to the tax legislation applying to friendly societies to deal with the presence of the two categories.

4.3 These regulations are the first exercise of the power in section 461D.

5. Territorial Extent and Application

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

7.1 The friendly society movement has identified a problem which may inhibit consolidation of societies. A society which fails certain condition is charged to tax on its sickness business – so called "other" business. If that society were to acquire, by amalgamation with or a transfer of engagements from another society whose other business was not taxable, the taxable status of the society would "taint" the otherwise tax exempt business.

7.2 Section 461D of ICTA allows a society to transfer business to a society which is not tax exempt on such business without causing the acquired business to lose its tax exemption. Section 461D also ensures that the transfer of taxable other business to a society already with tax exempt other business does not taint the tax exempt business.

7.3 A draft of these Regulations has been published on HMRC's website and circulated to appropriate bodies and persons within the insurance industry and their advisers.

7.4 Guidance on the changes will be incorporated in HMRC's Life Assurance Manual.

8. Impact

8.1 A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

8.2 There is no impact on the public sector.

9. Contact

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