EXPLANATORY MEMORANDUM TO

THE LLOYD'S UNDERWRITERS (EQUALISATION RESERVES) (TAX) REGULATIONS 2009

2009 No. 2039

1. This explanatory memorandum has been prepared by HM Revenue & Customs 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 allow tax relief to corporate and partnership members of the Lloyd's insurance market who create equalisation reserves equivalent to those required by the Financial Services Authority to be made by general insurance companies.

2.2 Equalisation reserves are maintained by general insurers against large but intermittent claims, for example on property damage that may arise from adverse weather events.

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

None.

4. Legislative Context

4.1 General insurers in the UK may be insurance companies or members of the Lloyd's insurance market. Since 1996, general insurance companies have been entitled by virtue of sections 444BA to 444BD of the Income and Corporation Taxes Act 1988 to tax relief on amounts reflected in the claims equalisation reserves they are required by the Financial Services Authority to maintain.

4.2 Regulation of the Lloyd's insurance market operates differently from that applying to general insurance companies and Lloyd's members are not required to maintain these reserves.

4.3 These Regulations provide for the equalisation reserves tax relief rules in section 444BA of the Income and Corporation Taxes Act 1988 to apply, suitably amended, to equivalent reserves maintained by corporate and partnership members of the Lloyd's insurance market. The effect is to extend to those members an equivalent tax relief to that is given to general insurance companies.

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

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

7.1 Tax relief on amounts reflected in equalisation reserves was introduced in 1996 following representations from the UK insurance industry that general insurance companies were at a competitive disadvantage compared with insurance companies resident in foreign countries that benefited from similar relief under their domestic tax codes.

7.2 Relief from corporation tax for general insurance companies depends on the companies being required by the Financial Services Authority to maintain equalisation reserves. Lloyd's members are not required to maintain these reserves.

7.3 Initially, the consequence of this difference in treatment was not generally seen by members of the Lloyd's insurance market as a significant disadvantage, partly because the regulatory regimes for general insurance companies and members of Lloyd's then differed quite markedly.

7.4 More recently, there has been greater convergence between the regulatory regimes for general insurance companies and Lloyd's members and the absence of comparable relief for Lloyd's corporate and partnership members has come to be seen as anomalous. The Regulations provide greater uniformity of treatment between general insurance companies and Lloyd's members.

- ***Consolidation***

7.5 This instrument does not amend any other instrument.

8. Consultation outcome

8.1 Officials have been in informal consultation with the representatives of the Lloyd's insurance market since the new relief was announced in the Autumn 2008 Pre-Budget Report. These discussions have focused mainly on the practicalities of administering the relief in the context of "private capital" investors, individuals who invest through the medium of limited partnership or specially formed small company members of the Lloyd's market.

8.2 The proposal for relief has been strongly welcomed by the Lloyd's market. Officials have received no objections to the proposal from the wider insurance industry.

9. Guidance

Guidance on the operation of the relief will be reflected in HM Revenue & Customs' Lloyd's Manual.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

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 approach taken is to agree with Lloyd's Market Services (part of Lloyd's Corporation) that support will be provided to smaller members of the Lloyd's market to assist them in calculating the relief.

11.3 The basis for the final decision on what action to take to assist small business is that the administrative burden will be kept to a minimum with the assistance of Lloyd's Corporation and its small business members will benefit from tax relief accordingly.

12. Monitoring & review

The costs and administrative burden of the relief will be monitored by HM Revenue & Customs, with the assistance of the Lloyd's Corporation.

13. Contact

Victor Baker at the HM Revenue & Customs Tel: 020 7147 2616 or e-mail: victor.j.baker@hmrc.gsi.gov.uk can answer any queries regarding the instrument.