

EXPLANATORY MEMORANDUM TO
THE LLOYD'S UNDERWRITERS (TAX) (AMENDMENT) REGULATIONS 2009
2009 No. 2889

1. This explanatory memorandum has been prepared by HM Revenue & Customs ("HMRC") 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**

This instrument amends regulations which deal with administrative matters relating to the tax treatment of members of the Lloyd's insurance market, in particular those provisions relating to HMRC enquiries into returns made by the members' trading syndicates.

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

None.

4. **Legislative Context**

4.1 Paragraph 1 of Schedule 11 to the Finance Act 2007 provides that, in computing the profits or losses for a period of account of a general insurer, the amount of "technical provisions" which may be taken into account in the tax computation of the insurer must not exceed an "appropriate amount" determined in accordance with regulations. These are the General Insurers' Technical Provisions (Appropriate Amount) (Tax) Regulations 2009 (SI 2009/1926) (the "principal regulations").

4.2 The definition of general insurer for this purpose includes members of a syndicate of the Lloyd's insurance market carrying on general business. Lloyd's market practices differ somewhat from insurance companies'. Syndicates are managed by "managing agents" and technical provisions, which largely comprise amounts set aside to meet the cost of estimated future liabilities, usually equate to amounts known as "reinsurance to close". These reflect the "annual venture" system at Lloyd's under which in most cases a syndicate's trading year of account is closed, usually after three years, through the payment of an insurance premium to a successor syndicate which in return agrees to meet the outstanding liabilities. The legislation needs to reflect these adaptations.

4.3 Paragraph 2 of Schedule 11 contains provisions enabling HMRC to call for a report to be prepared by the general insurer on the amount of the technical provisions stated in the accounts. This power extends to members of a Lloyd's syndicate, and these regulations make amendments designed to ensure that the enforcement machinery in paragraph 2 operates in relation to syndicate managing agents, because

it is the agents rather than the members who are in a position to comply with the requirements.

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 Financial reporting law and accounting principles currently applying to general insurers, including Lloyd's underwriting syndicates, focus on the adequacy of technical provisions, to ensure there are sufficient assets to pay claims. For tax purposes, it is also appropriate to ensure that the provisions are not excessive.

7.2 These regulations support the primary legislation and principal regulations designed to achieve this so that they work appropriately in the context of the Lloyd's insurance market.

- *Consolidation*

7.3 This instrument amends The Lloyd's Underwriters (Tax) Regulations 2005 by inserting a new regulation 5A. This is a straightforward addition and HMRC does not propose to consolidate the revised regulations.

8. Consultation outcome

The principal regulations were subject to an extensive consultation process. This adaptation for the Lloyd's insurance market has been discussed and agreed with officials of the Corporation of Lloyd's.

9. Guidance

Guidance on the principal regulations has been published in HMRC's General Insurance Manual and aspects affecting the Lloyd's insurance market in its 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

The legislation does not apply to small business.

12. Monitoring & review

The impact of the Regulations will be monitored through continuing dialogue with officials of the Corporation of Lloyd's and with the HMRC customer relationship managers responsible for Lloyd's managing agents.

13. Contact

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