EXPLANATORY MEMORANDUM TO

THE MUTUAL SOCIETIES (TRANSFERS OF BUSINESS) (TAX) (AMENDMENT) REGULATIONS 2024

2024 No. 555

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Declaration

2.1 Bim Afolami MP, Economic Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Victoria Garton, Deputy Director for Financial Products and Services, at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Hannah Clay or Andrew Martel at HMRC, email: financialservicesbai@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These regulations make changes to the existing Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (SI 2009/2971), which make provision for the tax consequences of transfers of business by mutual societies.

4.2 SI 2009/2971 includes rules relating to the use of trade losses for Corporation Tax (CT) purposes, in the event of transfers of business by building societies. These regulations amend regulation 4 of SI 2009/2971, to reflect the current provisions in the Corporation Tax Act 2010 (CTA 2010) relating to the use of carried forward trade losses in the event of transfers of trade. This ensures that the tax treatment and reliefs available for transfers of business by building societies are in line with those available for companies undertaking similar transfers.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The current regulations in SI 2009/2971 include rules which apply to building societies transferring their business, specifically in relation to the use of carried forward trade losses in these circumstances.

5.2 Regulation 4 of SI 2009/2971 allows the carried forward trade losses of a transferor building society to be used for CT purposes by the transferee, following the transfer. This reflects the treatment of losses on the transfer of a trade by companies contained in the Income and Corporation Taxes Act 1988, and subsequently in CTA 2010 following the Tax Law Rewrite.

5.3 In 2017, the rules governing relief for CT losses were amended with a number of changes, referred to collectively as CT loss reform. CT loss reform introduced major changes to the use of losses, enabling greater flexibility for offset of post-1 April 2017 losses, as well as a restriction on the amount of carried forward losses which can be offset in any one accounting period. These changes included amendments to the provisions in Part 22 of CTA 2010 in relation to the use of losses where there has been a transfer of trade, and differentiate between losses incurred prior to 1 April 2017 and losses arising on or after 1 April 2017.

5.4 The current regulations were not updated to reflect the changes made under CT loss reform to the treatment of trade losses on a transfer of a trade.

5.5 This amending instrument will update the relevant provisions in SI 2009/2971, so that the current provisions in Part 22 of CTA 2010 will apply to relevant transfers by building societies from 1 January 2023. The amended rules for building societies will also include restrictions on the use of the transferred losses in the first 5 years after the transfer. This reflects rules in Part 14 of CTA 2010 restricting loss relief, which apply in equivalent situations involving companies, where there is a transfer of a trade and a change of ownership.

What was the previous policy, how is this different?

5.6 The current regulations in SI 2009/2971 were introduced to remove tax barriers and ensure tax neutrality for certain transfers by mutual societies.

5.7 The amendments made by this instrument to SI 2009/2971 ensure that the rules relating to the use of trade losses on certain transfers by building societies reflect, and are consistent with, the changes introduced under CT loss reform. This instrument maintains the policy intention, restoring the level playing field between building societies and other companies including banks, in relation to loss relief on the transfer of a trade.

6. Legislative and Legal Context

How has the law changed?

6.1 SI 2009/2971 makes provision for the tax consequences of transfers of business by mutual societies. Regulation 4 sets out how the rules for the use of trade losses operate upon certain transfers of business by building societies.

6.2 This instrument amends regulation 4 of SI 2009/2971, to reflect changes made as part of CT loss reform in connection with the transfer of a trade and the use of post-1 April 2017 losses.

Why was this approach taken to change the law?

6.3 This amending instrument is made under section 124 of the Finance Act 2009, which provides for regulations to be made by statutory instrument, for and in connection with the tax consequences of transfers by mutual societies.

6.4 This is the power under which the original regulations were made, and is the approach taken in making the required changes to the existing regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 Draft regulations were published for a four-week consultation from 31 January 2024. A small number of responses were received welcoming the draft regulations. No changes were made to the draft regulations.

8. Applicable Guidance

8.1 HMRC's Company Taxation Manual explains the CT treatment of transfers of business by building societies at CFM71060[1].

8.2 The guidance will be updated when the instrument comes into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because its impact is limited to a small number of businesses and will result in a low level of impact per business. Businesses impacted by this change will incur insignificant one-off costs of familiarisation with the amendments. There are not expected to be any continuing costs to those businesses from the amendments.

9.2 A Tax Information and Impact Note covering this instrument will be published online[2].

Impact on businesses, charities and voluntary bodies

9.3 The impact on business, charities or voluntary bodies is limited to a very small number of building societies, potentially amalgamating or transferring their business on or after 1 January 2023.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because this instrument only applies to building societies.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 HMRC will monitor the impact of this legislation through information collected on tax returns and through communications with affected taxpayer groups.

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[1] HMRC's Corporate Finance Manual: https://www.gov.uk/hmrc-internal-manuals/corporate-finance-manual/cfm71060

[2] Tax Information and Impact Note: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

10.2 The instrument does not include a statutory review clause. It amends UK tax legislation and therefore falls within the exceptions at section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The provisions of this statutory instrument have retrospective effect for relevant transfers made on or after 1 January 2023. The authority to make provisions with retrospective effect is contained in section 124(5) of the Finance Act 2009, provided that the provisions do not increase any person's liability to tax.

11.2 The provisions have retrospective effect to ensure that those transfers which have been identified as being undertaken before the regulations come into force are not disadvantaged. The amendments do not have effect for transfers between the 1 January 2023 and the date the regulations come into force if they would not be relieving.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").