EXPLANATORY MEMORANDUM TO

THE ALTERNATIVE FINANCE INVESTMENT BONDS (STAMP DUTY LAND TAX) (PRESCRIBED EVIDENCE) REGULATIONS 2009

2009 No. 2052

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This Statutory Instrument contains regulations that prescribe the evidence that must be provided to HMRC in relation to claims for relief from Stamp Duty Land Tax (SDLT) on the issue of Alternative Finance Investment Bonds.

2.2 There are a number of conditions attached to the claiming of the relief, the most important of which is that a charge in favour of HMRC must be registered with the relevant land registry against the title of the land used in the arrangements.

2.3 The main legislation provides for certain evidence to be provided to HMRC in connection with the registration and discharge of the charge and for this to be prescribed in regulations: these regulations prescribe that evidence.

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

3.1 Depending on when the Finance Bill 2009 receives Royal Assent this Statutory Instrument may breach the 21 day rule. The reason for the delay in laying this Statutory Instrument is that it could not be finalised until the main legislation had been debated by the Public Bill Committee as amendments may have been required. Delaying the legislation will result in the provisions of the main legislation not being fully effective and HMRC not being provided with the required information.

4. Legislative Context

4.1 Paragraphs 5(6), 9, 18(5), 18(6) and 23(1) of Schedule 61 to the Finance Bill 2009 permit HMRC to make regulations to prescribe the evidence that needs to be provided in relation to the registration and discharge of the charge.

4.2 These regulations will ensure that the correct evidence is provided to HMRC which will enable them to verify that the charge has been correctly registered and take the appropriate action to discharge the charge when required to do so.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 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 The Government announced three measures in Budget 2009 on alternative finance as part of the ongoing commitment to maintain the UK's position as a global leader in Islamic Finance and providing, where possible, equal tax treatment between alternative finance products and their conventional equivalents:

- the provision of relief from SDLT in respect of transactions undertaken as part of the issue of alternative finance investment bonds;
- the provision of relief from tax on capital gains in respect of these same types of transactions; and
- clarification of how the capital allowances regime will interact with these changes.

7.2 To deter avoidance and protect Exchequer revenue a charge in favour of HMRC must be registered with the relevant land registry against the title of the land used in the arrangements.

7.3 The charge means that HMRC has an interest in property, registered with the relevant land registry (similar to that a mortgage lender uses). The charge will ensure that in the event of avoidance or default HMRC are able to collect any SDLT and related interest and penalties that become due.

- ***Consolidation***

7.2 Not applicable.

8. Consultation outcome

8.1 A formal consultation was carried out on the SDLT aspects of this legislation over a 12 weeks period from June to September 2008. This consultation was open to everyone.

8.2 Informal consultation on all aspects of the legislation was undertaken with key stakeholders through HM Treasury's Islamic Finance Technical Working Group.

8.3 All respondents broadly welcomed the legislation which demonstrates the Government's continued commitment to provide equal tax treatment where possible for Islamic finance products compared with their conventional equivalents.

8.4 The consultation sought views of the proposed structure of the relief and the responses received influenced how the relief was structured.

8.5 A summary of responses to the consultation was published in February 2009 and this and the Impact Assessment can be view on the HMRC website at www.hmrc.gov.uk.

9. Guidance

9.1 A guidance note explaining how this new relief works and the associated administration procedures will be published on the HMRC website when the legislation comes into force. A draft has already been shown to members of the Treasury Islamic Finance Technical Working Group.

10. Impact

10.1 An Impact Assessment was prepared for the main legislation that this Statutory Instrument helps to implement. It has been published alongside the 2009 Finance Bill and is annexed to the Explanatory Note which is available on the OPSI website. Confirmation is given that the figures used in the Impact Assessment are up to date.

10.2 The legislation will only affect businesses that wish to take up the opportunity to develop Alternative Finance Investment Bonds.

11. Regulating small business

11.1 The legislation applies to small business but will have no negative impact because issuance of Alternative Finance Investment Bonds is voluntary and is a decision for each individual business.

12. Monitoring & review

12.1 By removing the tax barriers to the issuance of Alternative Finance Investment Bonds the Government aim is to:

- maintain the UK's position as a global leader in Islamic Finance; and
- ensure that everyone, irrespective of their religious or ethical beliefs, has access to competitively priced financial products.

12.2 The success of this legislation will be measured by monitoring claims made for relief and through continued engagement with key stakeholders.

12.3 A post-implementation review will be conducted within 1-3 years of the introduction of the legislation.

13. Contact

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