# EXPLANATORY MEMORANDUM TO

# THE EMPLOYMENT INCOME (MEANING OF SECURITIES) ORDER 2007

## 2007 No. 2130

**1.** This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of her Majesty.

**2. Description**

This Order is needed to add Alternative Finance Investment Bonds (AFIBs) to the list of employment-related securities in section 420 (1) of Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).

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

None

**4. Legislative Background**

4.1 The employment-related securities legislation in Chapters 1-5 Part 7 ITEPA 2003, as amended by Schedule 22 of Finance Act 2003, sets out the rules to tax value obtained by an employee from securities acquired by reason of employment.

4.2 Section 420(1) of ITEPA provides a list of securities for the purpose of this legislation and Section 420 (6) permits this list to be amended by Treasury Order.

4.3 Section 53 of Finance Act 2007 introduced new rules in the tax legislation on alternative (that is, Islamic) finance, which are set out in Finance Act 2005. Islamic finance products must satisfy the Shari'a law prohibition on the payment of interest, but where they provide a return that is economically equivalent to interest, tax rules treat the return as if it were interest. The new rules apply to a form of Islamic bond known as sukuk (referred to in the legislation as an 'alternative finance investment bond'), which in economic substance is similar to a conventional debt security, and broadly replicate the corporation tax, income tax and capital gains tax treatment of such securities.

**5. Extent**

This Order applies throughout the United Kingdom.

## 6. European Convention on Human Rights

The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Employment Income (Meaning of Securities) Order 2007 are compatible with the Convention rights.

## 7. Policy Background

7.1 The UK government has worked on tax and regulatory reform to support the development of Islamic Shari'a compliant finance since 2003. HMRC and HMT's objective with regard to "sukuk" is to put the tax treatment of these on a level playing field with conventional securities.

7.2 Section 53 of Finance Act 2007 provides new rules on the taxation of AFIBs which include "sukuk," to ensure that they are taxed on a par with equivalent conventional securities. The changes apply for income tax and capital gains tax purposes from 6 April 2007 and for corporation tax purposes from 1 April 2007.

7.3 This Section provides that "sukuk" are securities for the purposes of an enactment about any tax, including Chapters 1 to 5 of Part 7 of ITEPA, which provide the tax rules for employment-related securities.

7.4 This Order will add AFIBs to the list of securities in section 420 ITEPA to make it explicit in the employment-related securities legislation that AFIBs are securities for the purpose of this legislation. It will also make it clear that AFIBs are securities for the purpose of the corresponding National Insurance Contributions legislation at SI 2001/1004.

## 8. Impact

This instrument falls within the scope of a full regulatory impact assessment for the measures in Section 53 of Finance Act 2007 which was published in March 2007 and can be viewed at http://www.hmrc.gov.uk/ria/4-alternative-finance-products.pdf.

## 9. Contact

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