EXPLANATORY MEMORANDUM TO

THE FINANCING-ARRANGEMENT-FUNDED TRANSFERS TO SHAREHOLDERS REGULATIONS 2008

2008 No. 1926

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

2. Description

2.1 This instrument provides rules that attribute a tax charge and a tax deduction under section 83YC and 83YD respectively of the Finance Act 1989("FA 1989") to the various categories of insurance business in cases where there is more than one category of insurance business involved.

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

3.1 These Regulations have effect in relation to periods of account beginning on or after 1st January 2008: and are accordingly capable of having retrospective effect in certain circumstances. Authority for the retrospective effect made by these Regulations is conferred by section 83YE(4) of the Finance Act 1989.

3.2 The explanatory note to this Instrument explains that:

"A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen."

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- the total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- the Department's Better Regulation and Policy team has confirmed that
  - there are no disproportionate impacts on any business or sector; and
  - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes."

4. Legislative Background

4.1 Paragraphs 1 to 4 of Schedule 17 to the Finance Act 2008 introduce a new regime for the taxation of financing-arrangement-funded transfers to shareholders by inserting sections 83YC to 83YF into FA 1989.

4.2 It is not possible to use existing allocation rules in the corporation tax provisions applying to life assurance companies to attribute tax charges under section 83YC or tax deductions under section 83YD.

4.3 Section 83YE contains a power to determine how much of any such transfer as is chargeable to tax is attributable to a category of business where there is more than one. These Regulations, which are the first exercise of the power in section 83YE FA 1989, provide attribution rules for all cases where there is more than category of business involved.

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

7.1 Sections 83YC and 83YD of the Finance Act 1989 (inserted by paragraph 1(3) of Schedule 17 to the Finance Act 2008) provide a revised tax treatment for a type of financing arrangement where a loan or advance made to an insurance company or a financial reinsurance arrangement made by an insurance company has the initial effect of increasing the company's surplus which is used to make a transfer to the shareholders of the company. This type of transfer is known as a "financing-arrangement-funded transfer to shareholders", sometimes abbreviated to "FAFTS". The new section 83YC imposes a charge to tax if an insurance company makes a FAFTS in relation to a non-profit fund; and the new section 83YD provides for corresponding adjustments to be made if a loan or advance is repaid or if liabilities reinsured under a financial reinsurance arrangement are recaptured.

7.2 It is not appropriate or possible to determine tax liabilities otherwise than by statutory provision, so no alternative method of achieving the Government's objective is possible.

7.3 A draft of these Regulations was published on HMRC's website and has been circulated to appropriate bodies and persons within the insurance industry and their advisers.

7.4 Guidance on the changes will be incorporated in HMRC's Life Assurance Manual.

8. Impact

A full and final Impact Assessment has not been produced for this instrument as it has negligible impact on business, charities or voluntary bodies.

9. Contact

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