EXPLANATORY MEMORANDUM TO

THE INCOME TAX (DEPOSIT-TAKERS AND BUILDING SOCIETIES) (INTEREST PAYMENTS) REGULATIONS 2008

2008 No. 2682

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.

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

2. Description

These Regulations make detailed provision for when deposit-takers and building societies are required to deduct amounts representing income tax from certain payments of interest. The Regulations re-write the Income Tax (Deposit-takers) (Interest Payments) Regulations 1990 (S.I. 1990/2232) and the Income Tax (Building Societies) (Dividends and Interest) Regulations 1990 (S.I. 1990/2231) (the Building Society Regulations) to the extent they have not already been re-written in Chapter 2 of Part 15 of the Income Tax Act 2007 (ITA). Regulation 19 of these Regulations also incorporates Extra Statutory Concession (ESC) number A69. Where a building society converted to company status the ESC allowed certificates of non-liability to tax and declarations by investors given to building societies to be treated as having been given or made to the successor company.

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

None

4. Legislative Background

This is the first use of the powers cited but regulations have been made under predecessor provisions of these powers (primarily sections 477A and 480A to 482 of the Income and Corporation Taxes Act 1988).

Chapter 2 of Part 15 of ITA requires an amount representing income tax to be deducted from certain payments of interest made by deposit-takers and building societies. Prior to ITA the main rules for deposit-takers were in primary legislation but the main rules for building societies were in regulations. For historical reasons the two sets of rules adopted different approaches to identifying payments of interest subject to deduction of an amount representing income tax. ITA adopted a common basis for aligning the rules for building societies with deposit-takers which enabled the regimes to be combined. A common basis for the split between primary and secondary

legislation was achieved by enacting certain provisions of the Building Society Regulations in Chapter 2 of Part 15 of ITA.

Many of the detailed provisions remained in various sets of regulations. These Regulations further simplify the existing regimes by re-writing the main existing regulations to create a unified regulatory regime applicable to both deposit-takers and building societies.

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Following the changes introduced by ITA the opportunity has been taken to re-write the main separate regulations into a single set of rules covering deposit-takers and building societies.

7.2 At the same time the new unified primary legislation framework created by ITA provided the opportunity to legislate ESC A69 in regulation 19 of the regulations.

Part 1 of the Regulations provide for the citation and commencement of the instrument, interpretation and scope. Section 851 of ITA imposes a duty on deposit-takers and building societies to deduct a sum representing income tax from payments of interest on relevant investments. Section 852 of ITA disapplies section 851 in certain circumstances. The main circumstance is that the person beneficially entitled to the payment of interest is unlikely to pay any income tax for a particular year and has given a certificate of non-liability to tax to that effect.

Part 2 makes provision for the certificate. It deals with matters such as who can provide a certificate, the time limit within which a certificate has to be given, the form and content of a certificate, the obligation to notify when a person has become liable to pay tax, circumstances when a certificate is no longer valid, what happens when HMRC consider that a person is or has become liable to pay income tax and provision for joint accounts. Part 3 deals with declarations of non-UK residence made under sections 858 to 861 of ITA. Part 4 covers information requirements. Part 5 deals with general provisions. Regulation 19 provides for continuity of certificates and declarations (ESC A69). Regulation 20 covers consequential amendments, savings and revocations and introduces Schedules 1 to 3.

8. Impact

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 Impact Assessment (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.

9. Contact

Simon Turner at HM Revenue and Customs (Savings Schemes Office) Tel: 0151 472 6154 or e-mail: simon.turner@hmrc.gsi.gov.uk can answer any queries regarding the instrument.