EXPLANATORY MEMORANDUM TO

THE LOAN RELATIONSHIPS AND DERIVATIVE CONTRACTS (CHANGE OF ACCOUNTING PRACTICE) (AMENDMENT) REGULATIONS 2008

2008 No. 3237

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

2. Purpose of the instrument

The purpose of this instrument is to correct an anomaly that can result in a company obtaining a double relief or suffering double taxation in respect of certain financial instruments when there is a change of accounting practice.

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

These Regulations have effect in relation to periods of account beginning on or after 01 January 2008 and ending after 31 December 2008. Authority for the limited retrospective effect of these Regulations can be found in paragraph 52(2) of Schedule 4 to Finance Act 2005.

4. Legislative Context

4.1 The Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 Statutory Instrument 2004 No.3271 ("the principal Regulations") set out how certain debits or credits in respect of loan relationships and derivative contracts are to be brought into account for corporation tax.

4.2 This instrument amends the principal Regulations to correct an anomaly in those Regulations.

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

- ***What is being done and why***

7.1 This instrument amends the principal Regulations to correct an anomaly in those Regulations. This anomaly could result in either double taxation or double deduction.

7.2 The anomaly arises where a debit or credit on change of accounting practice represents the reversal of exchange gains or losses recognised under the old accounting practice that were not brought into account for corporation tax.

7.3 The exchange gains or losses were not brought into account because of tax rules known as the 'tax matching provisions' These rules provide that, in certain circumstances, where a loan relationship or derivative contract of a company is acting as a hedge of the foreign exchange risk to the company from holding a particular asset, the exchange gains or losses on the loan relationship or derivative contract are not brought into account for corporation tax until the asset is disposed of.

7.4 Therefore a debit or credit on change of accounting practice that represents a reversal of exchange gains or losses that were not previously brought into account under the tax matching provisions could result in a company being taxed twice or relieved twice.

7.5 This instrument ensures that where exchange gains and losses were not brought into account before the change of accounting practice no amounts, or no further amounts, will be brought into account under the change of accounting practice provisions which represent the reversal of those exchange gains or losses for accounting periods beginning on or after 01 January 2009 or the proportion relating to that part of an accounting period falling after 31 December 2009. This is subject to the overriding proviso that the accounting period in question is part of a period of account starting on or after 01 January 2008.

8. Consultation outcome

8.1 A draft of this instrument was published on 24 November 2008 and circulated to appropriate bodies.
8.2 The drafting of this instrument reflects the comments made by respondents to the short informal consultation.

9. Guidance

Guidance is being published to accompany this instrument.

10. Impact

An Impact Assessment has not been produced for this instrument as it has a negligible impact on business, charities or voluntary bodies.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

Operational staff will keep this matter under review to ensure that the changes made by this instrument achieve their aims.

13. Contact

Aidan Reilly at Her Majesty's Revenue & Customs Tel: 020 71472575 or email: aidan.reilly@hmrc.gsi.gov.uk can answer any queries regarding the instrument.