EXPLANATORY MEMORANDUM TO

THE MUTUAL SOCIETIES (TRANSFERS OF BUSINESS) (TAX) (AMENDMENT) REGULATIONS 2011

2011 No. 37

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

2. Purpose of the instrument

2.1 The instrument is being made to correct an error in The Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (SI 2009/2971) ("the principal Regulations") which make provision for and in connection with the tax consequences of transfers of business by industrial and provident societies.

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

3.1 This instrument is being issued to correct an error in the principal Regulations and is therefore being issued free to purchasers of those Regulations.

3.2. These Regulations will only have effect in relation to transfers of business that take place on or after 2nd February 2011, and will not have retrospective effect. Although the principal Regulations apply to relevant transfers taking place on or after 22 April 2009, there have been no relevant transfers by industrial and provident societies since that date. Accordingly no taxpayers have been affected by the error in the principal Regulations.

4. Legislative Context

4.1 The instrument is being made to correct an error in The Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (SI 2009/2971) to ensure that the principal Regulations operate as intended.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom except in the case of industrial and provident societies where it will not apply to such societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969.

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 The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 ("the 2007 Act") (c.26) gave HM Treasury the power to modify existing regulatory rules for transfers of business by mutual societies to enable them to transfer business to the subsidiary company of another mutual society even if that society was of a different type to the transferor. That power was exercised to make the Mutual Societies (Transfers) Order 2009 (SI 2009/509) which modified the transfer provisions of the Building Societies Act 1986 (c.53).

7.2 Prior to 2007, legislation permitting transfers of business by mutual societies only permitted:

- Amalgamations between mutual societies of the same type;
- Transfers of business in whole or in part between mutual societies of the same type; or
- Transfers of the whole of the business of a mutual society to a company.

7.3 The Finance Act 2009 gave HM Treasury the power to make regulations in order to remove barriers to transfers of business which arose as a result of the taxation system. The Mutual Societies (Transfers of Business) (Tax) Regulations came into effect on 1 December 2009 and

- removed these tax barriers to facilitate orders made under the 2007 Act;
- ensured tax neutrality for transfers where appropriate; and
- ensured a level playing field where appropriate between the different types of mutual society.

7.4 As a result of an error in regulation 17, it is possible that when industrial and provident societies merge, or when such a society transfers its business to a company, a chargeable gain may still arise leading to a tax charge. This instrument corrects that error, which at present prevents the relief from having its intended effect.

8. Consultation outcome

8.1 As these Regulations are being made to correct an error in the principal Regulations there has been no consultation.

9. Guidance

9.1 No Guidance is being published to accompany this instrument as this simply corrects an error.

10. Impact

10.1 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

11.1 The legislation applies to small business but the effect on small business is negligible.

12. Monitoring & review

12.1 As these Regulations correct an error in the principal Regulations, to ensure that those Regulations operated intended, there will be no monitoring or review of the operation of these Regulations.

13. Contact

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