**EXPLANATORY MEMORANDUM TO**

**THE OVERSEAS LIFE ASSURANCE FUND (AMENDMENT) ORDER 2004**

**S.I. 2004 No. 3275**

**1.** This explanatory memorandum has been prepared by the Commissioners of Inland Revenue and is laid before the House of Commons by Command of Her Majesty.

**2. Description**

2.1 This Order makes amendments to Schedule 19AA to the Income and Corporation Taxes Act 1988 (ICTA). The main purpose of the amendments is to ensure that where a company writes life assurance business which is linked business and with a non-resident policy holder, breaches of the Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995 do not require the company to remove the corresponding assets from its overseas life assurance fund. Instead certain adjustments are made to the apportionment of its investment return between OLAB and the other relevant categories of business.

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

3.1 None.

**4. Legislative Background**

4. These regulations are being made under powers conferred by paragraph 1 Schedule 19AA ICTA 1988.

**5. Extent**

5.1 The instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

6.1 The Financial Secretary to the Treasury (Stephen Timms) has confirmed that advice provided to him confirms that the provisions of this Order are compatible with the European Convention on Human Rights.

**7. Policy Background**

7.1 Schedule 19AA ICTA 1988 sets out how an insurance company's overseas life assurance fund (OLAF) is calculated. This is necessary so that the income and gains of that fund are exempted from corporation tax. Where a company writes "linked business", that is business where the contract is to pay the policyholder a sum equal to the value at that time of assets held by the insurance company and designated as assets linked to the policy, the assets concerned are the first to be designated as assets of the OLAF. This ensures that there is always a match between assets and liabilities for tax purposes.

Regulations 18 and 19 of the Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995 may have the effect of treating certain policies as referable not to OLAB but to another category of business. Where such policies are linked policies, the effect of this may be to "taint" all the assets of the company linked to OLAB, with consequent effects for recognition and derecognition of assets in the OLAF and the prospect of major compliance difficulties. The main effect of the Order is to prevent this disproportion, but still ensuring that the income and gains of "tainted" policies is not exempt from tax under the OLAB rules

## 8. Impact

8.1 A Regulatory Impact Assessment has not been published for this instrument.

8.2 The regulations are expected to have negligible Exchequer impact.

## 9. Contact

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