EXPLANATORY MEMORANDUM TO

THE REAL ESTATE INVESTMENT TRUSTS (BREACH OF CONDITIONS) (AMENDMENT) REGULATIONS 2007

2007 No. 3540

1. This explanatory memorandum has been prepared by Her Majesty's 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 amend the Real Estate Investment Trusts (Breach of Conditions) Regulations 2006 (S.I 2006/2864) (the principal Regulations). The amendments make provision relating to breaches of conditions which arise when companies rely on relaxations to the entry conditions made in the Finance Act 2007.

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

The Regulations have retrospective effect in respect of the calendar year in which the regulations are made. This enables companies to take advantage of the provisions in Section 52 and Schedule 17 to the Finance Act 2007, with effect from 1 January 2007, the start date of the regime. The retrospection also includes provision to charge sums to tax, but only where companies choose to join the regime before they meet all the entry requirements. The regime is entirely voluntary, and companies choose when and whether to elect into the regime.

4. Legislative Background

The powers to make the Regulations are in sections 116 of the Finance Act 2006, as amended by section 52 and paragraphs 1 and 7 of schedule 17 to the Finance Act 2007. The amendments extend the powers in section 116 to include provision having retrospective effect in respect of the calendar year in which the regulations are made.

Amendments in Finance Act 2007 allow companies to elect to join the regime even if they do not meet all the specified entry conditions. These Regulations amend the principal Regulations to make provision for the consequence of breaches of the various entry conditions.

One entry condition requires the company to own specified property. The amendments allow companies to join the regime even if they do not meet this condition, but provide a tax charge for this failure, broadly equivalent to the entry charge which the company would have paid if it had owned the properties on the date of entry.

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

Real Estate Investment Trusts, a special tax regime for property investment companies, were introduced in Finance Act 2006, with effect from 1 January 2007. The aim of the regime is to move the burden of taxation from the vehicle to the investor in order to correct a number of inefficiencies in the operation of the UK property rental market. Extensive consultation has taken place since then on both the primary and secondary legislation to ensure that the regime is and remains fit for its intended purpose.

8. Impact

This instrument falls within the scope of a Regulatory Impact Assessment that was prepared by HM Revenue and Customs in respect of Part 4 of the Finance Act 2006. It is available on the HMRC website at www.hmrc.gov.uk/ria

9. Contact

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