EXPLANATORY MEMORANDUM TO

THE STAMP DUTY LAND TAX (ALTERNATIVE FINANCE INVESTMENT BONDS) REGULATIONS 2010

2010 No. 814

1. 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This Statutory Instrument (SI) contains regulations to clarify that paragraph 11 of Schedule 17A, Finance Act 2003 does not apply when determining whether the conditions are met for relief from stamp duty land tax (SDLT) under Schedule 61, Finance Act 2009 (Alternative Finance Investment Bonds), and that Schedule 61 is included within the list of provisions which apply for the purpose of paragraph 11.

2.2 The aim is to ensure that the SDLT relief available for alternative finance investment bonds (AFIBs) operates as intended.

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

None

4. Legislative Context

4.1 Schedule 61, Finance Act 2009 introduced relief from SDLT on land transactions carried out in relation to the issue of AFIBs, provided certain conditions are met. The purpose of the legislation is to ensure that such bonds are taxed on the same basis as their conventional equivalents, for example, Eurobonds.

4.2 Paragraph 11 of Schedule 17A, Finance Act 2003 is an anti-avoidance provision which was introduced to combat certain avoidance schemes involving the granting and subsequent assignment of a lease. It only applies when any one of a number of specified reliefs has been claimed on the original grant of a lease but no such relief is available on the subsequent assignment of that lease. The reliefs that apply for the purposes of paragraph 11 include, for example, group relief and charities relief but not AFIB relief.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Commissioners of Her Majesty's Revenue and Customs has made the following statement regarding Human Rights:

In our view the provisions of the Stamp Duty Land Tax (Alternative Finance Investment Bonds) Regulations 2010 are compatible with the Convention rights.

7. Policy background

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

7.1 Paragraph 11 is an anti-avoidance provision which applies on the first assignment of a lease, in circumstances where there has been a previous grant of lease on which any one of a number of reliefs, specified in the legislation, has been claimed and no such relief is available on that first assignment. The assignment is treated for SDLT purposes as a grant of a lease, thereby bringing the previously exempt rent into charge.

7.2 Schedule 61 makes provision for relief from SDLT for land transactions carried out in relation to the issue of AFIBs, provided certain conditions are met. One of these conditions is that there is a transfer of a qualifying interest in land between the parties involved in an AFIB transaction. In the context of Schedule 61 the term transfer means either a freehold sale or the assignment of a lease.

7.3 Following the introduction of Schedule 61 HMRC has become aware that in certain circumstances paragraph 11of Schedule 17A could operate to prevent the AFIB relief being available as intended. This would happen where prior to the transfer made in connection with the AFIBs there is a grant of a lease and one of the reliefs specified in paragraph 11 was claimed in respect of that grant.

7.4 Clarifying that paragraph 11 does not apply when determining whether AFIB relief is available will ensure that the relief operates as intended. Making clear that Schedule 61is included within the list of reliefs that apply for the purpose of paragraph 11 will mean that when AFIB relief is available no further charges will arise under these provisions, whilst also ensuring that they continue to apply to any further assignments to which none of the specified reliefs applies. This will also provide parity of treatment, in the application of paragraph 11, for the main SDLT reliefs.

- ***Consolidation***

7.5 None required.

8. Consultation outcome

8.1 No consultation has been undertaken in relation to this specific matter. A formal consultation was carried out on the SDLT aspects of

Schedule 61, Finance Act 2009. The consultation was open to everyone.

8.2 Informal consultation on all aspects of Schedule 61 was undertaken with key stakeholders through the Treasury Islamic Finance Technical Working Group.

8.3 The problem that these regulations seek to address was not raised during either consultation.

9. Guidance

9.1 The introduction of the new regulations will be notified to stamp duty land tax customers via the Stamp Taxes Working Together Group and the Stamp Taxes Bulletin, which is available on the HMRC website. Key stakeholders in the Islamic finance community – identified during the consultation exercise – will be informed directly of the changes.

10. Impact

10.1 The legislation will only affect businesses that wish to issue or invest in alternative finance investment bonds.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business but will have no negative impact on them because issuance of alternative finance investment bonds is voluntary and the option won't be taken up by small businesses where the benefits do not outweigh the costs.

12. Monitoring & review

12.1 None specifically required in relation to the purpose of these regulations.

13. Contact

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