

EXPLANATORY MEMORANDUM TO
THE GROUP RELIEF FOR OVERSEAS LOSSES (MODIFICATION OF THE
CORPORATION TAX ACTS FOR NON-RESIDENT INSURANCE
COMPANIES) (No. 2) REGULATIONS 2006

2006 No. 3389

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

The regulations modify the Corporation Tax Acts as they apply to insurance companies so that those Acts work correctly in any case where a non-resident insurance company based in another member state of the European Union or in a member state of the European Economic Area is able to surrender losses to a UK resident company in the same group.

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

- 3.1 These regulations replace SI 2006/3218 which cited non-existent powers. SI 2006/3218 cited paragraph 16 of Schedule 1 to the Finance Act ("FA") 2006. But the power is in paragraph 16 of Schedule 18A to the Income and Corporation Taxes Act 1988 ("ICTA") which was itself inserted into that Act by paragraph 7 of Schedule 1 to FA 2006.
- 3.2 Copies of this instrument will be made available free of charge to purchasers of SI 2006/3218.

4. Legislative Background

These regulations are made under paragraph 16(2) to (5) of Schedule 18A to ICTA, which Schedule is inserted by Schedule 1 to FA 2006. They are the first regulations to be made under that power.

5. Extent

The 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

- 7.1 Prior to amendment by FA 2006, the Corporation Tax Acts (CT Acts) provided that where one company in a group of companies makes a loss it may surrender that loss to another member which can set the loss against its own profits for tax purposes. This system known as “group relief” was available originally only to UK resident companies, but was extended to non-resident companies which operated in the UK through a permanent establishment (“PE”) in 2000.
- 7.2 In 2005 the Court of Justice of the European Communities held in the case of *Marks & Spencer p.l.c. v Halsey* (HM Inspector of Taxes) (Case C-446/03) [2006] STC 237 that limiting group relief to UK resident companies and those non-residents with a UK PE was, in certain circumstances, contrary to the EC Treaty.
- 7.3 Accordingly, in FA 2006 legislation was enacted which allowed a company resident in a member state other than the UK and which does not have a UK PE (an “EEA company”) to surrender losses to a UK company in the same group.
- 7.4 The loss of the EEA company must be computed following the provisions of the CT Acts. But in the case of some types of company such as insurance companies, the tax law refers to other legislative provisions which apply only to UK resident companies. For example the provisions relating to life assurance rely extensively on the Rules made by the Financial Services Authority. But those rules do not apply to insurance companies from other member states.
- 7.5 Paragraph 16 Schedule 18A ICTA 1988 allows the CT Acts to be modified in the case of particular types of business for the purposes of computing the loss that may be surrendered by the EEA company.
- 7.6 It is not appropriate to amend tax law otherwise than through legislative change, so no alternative avenues of achieving the objective have been explored.
- 7.7 The proposals included in the regulations were described in detail in guidance on Schedule 1 FA 2006 published on 12 April 2006. The attention of the insurance industry was specifically drawn to this aspect of the guidance and comments were requested. Subsequently a draft of the regulations was circulated to the industry bodies for any further comments.
- 7.8 Guidance on the primary legislation is in HMRC’s Company Tax Manual at CTM 81500 onwards and guidance on the regulations will be included in HMRC’s Life Assurance Manual and General Insurance Manual.

8. Impact

A Regulatory Impact Assessment on the extension of Group Relief was published at Budget 2006 and can be found at <http://www.hmrc.gov.uk/ria/ria-ct-extension.pdf>.

9. Contact

Richard Thomas at HM Revenue and Customs Tel 020 7147 2558 or e-mail richard.thomas@hmrc.gsi.gov.uk