

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX ACT 2007 (AMENDMENT) (No.2) ORDER 2007**

**2007 No. 1820**

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

**2. Description**

2.1 The Order makes amendments to the Income and Corporation Taxes Act 1988, the Finance Act 2002 and the Income Tax Act 2007 ("ITA").

2.2 The amendments come into force on 17<sup>th</sup> July 2007 and have effect for income tax for the tax year 2007-2008 onwards and for corporation tax for accounting periods ending after 5th April 2007.

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

3.1 The Order makes a number of consequential amendments that were inadvertently omitted from ITA. It also corrects two minor errors in ITA - one in section 620(1)(c) and the other in Schedule 2.

3.2 The Order is made under sections 1028 and 1029 of ITA which allow amendments that are consequential upon ITA and amendments that undo changes, made by ITA, in the effect of the law.

3.3 The amendments that are contained in the Order take effect retrospectively. The authority for this is contained in sections 1028(4) and 1029(4) of ITA.

**4. Legislative Background**

4.1 ITA completed the work of the Tax Law Rewrite project in relation to the rewrite of income tax. The powers in sections 1028 and 1029 were included to ensure that minor amendments could be made quickly and easily and without recourse to a Finance Bill.

4.2 At the meeting of the Joint Committee on Tax Law Rewrite Bills on 24 January 2007 the Financial Secretary to the Treasury, John Healey, gave an assurance that the power at section 1029 would not be used without the agreement of the Tax Law Rewrite Consultative and Steering Committees. Equally, the project is committed, as appropriate, to obtaining the agreement of those Committees to the exercise of the power contained in section 1028. Agreement has been obtained to the exercise of these powers.

**5. Extent**

The Order applies to the whole of the United Kingdom.

**6. European Convention on Human Rights**

The Paymaster General has made the following statement regarding Human Rights:

In my view the provisions of the Income Tax Act 2007 (Amendment) (No.2) Order 2007 are compatible with the Convention rights.

## **7. Policy background**

- 7.1 The Tax Law Rewrite project was established in 1996. ITA was the project's fourth Act and the third relating to income tax.
- 7.2 The project's aim is to rewrite the United Kingdom's primary direct tax legislation to make it clearer and easier to use, without changing the law (apart from minor identified changes).
- 7.3 The amendments made by the Order concern the following.

7.3.1 By virtue of paragraph 5 of Schedule 2 to ITA a reference to a definition in ICTA, which has been rewritten for income tax purposes, is read as including a reference to the equivalent rewritten provision in ITA. But it is more helpful for ICTA to include express references to ITA. The consequential amendments in article 2 of the Order therefore replace references to definitions in ICTA with references to the equivalent definitions in ITA (for the purposes of legislation concerning the enterprise investment scheme).

7.3.2 Paragraph 419(1) of Schedule 1 to ITA substitutes, for paragraph 12(2) of Schedule 16 to Finance Act 2002, new sub-paragraphs (2), (2A) and (2B). The references to monetary amounts in the former sub-paragraph (2) now appear in sub-paragraph (2B). Article 3 of the Order makes further consequential amendments to sub-paragraphs (4) and (5) of paragraph 12 of Schedule 16 to Finance Act 2002 (power to substitute other amounts by Treasury order) by substituting, for the references to sub-paragraph (2), references to sub-paragraph (2B).

7.3.3 Section 620(1)(c) of ITA identifies the redemption of "variable rate securities" (defined in section 627 of ITA) as the occasion of a transfer of securities which may lead to a charge under Part 12 of ITA (accrued income profits). But redemption of variable rate securities is only such an occasion of transfer if it is preceded by a transfer of those securities within one of the other categories of transfer in section 620(1) of ITA. The substituted section 620(1)(c), in the amendment in article 4(2) of the Order, includes the words "in any case where there has been a transfer of the securities at any time before redemption", to make that clear.

7.3.4 Paragraph 75(2) of Schedule 2 to ITA gives effect to substituted section 294 of ITA which is a transitional provision. The opening words of substituted section 294(4) refer to a qualifying 90% company. This was intended to refer to a qualifying 90% subsidiary of the relevant company, as defined in section 301 of ITA. The amendment in article 4(3) of the Order therefore substitutes "subsidiary of the relevant company" for "company" to make it quite clear that the definition in section 301 of ITA continues to apply.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no adverse impact on business, charities or voluntary bodies

8.2 There is no impact on the public sector.

## **9. Contact**

**Jenny Manson** at HM Revenue and Customs Tel: 020 7438 7698 or e-mail:  
Jenny.Manson@hmrc.gsi.gov.uk can answer any queries regarding the instrument.