

EXPLANATORY MEMORANDUM TO
THE INSURANCE COMPANIES (CORPORATION TAX ACTS) (AMENDMENT)
ORDER 2008

2008 No. 1905

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

2. **Description**

2.1 This instrument amends section 82F of the Finance Act 1989 to cater for a case where the numerator in a fraction used in section 82F is negative with the result that an inappropriate result is given by the section. The amendment provides for a just and reasonable attribution in such a case.

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

3.1 The explanatory note to this Instrument explains that:

“A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.”

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- the total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- the Department’s Better Regulation and Policy team has confirmed that
 - there are no disproportionate impacts on any business or sector; and
 - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes.”

4. **Legislative Background**

4.1 The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2007 (SI 2007/1031) amended the life assurance tax provisions of the Corporation Tax Acts inserting, in particular, sections 82D to 82F of the Finance Act 1989. Section 82D provides for a spreading of profits that would otherwise have arisen entirely in the year of the change of the Rules relating to insurance companies made by the Financial Services Authority. Section 82F deals with a case where there is an insurance business transfer scheme where the transferor was affected by section 82D. Section 82F gives rules for attributing a proportion of the spread amount of

profits to each of the transferees if there is more than one. But the fraction used (in section 82F(7)) gives an inappropriate answer if the liabilities transferred to one or more transferees is negative (which is possible in such transfers).

4.2 This Order inserts section 82F(5A) into the Finance Act 1989 to provide for a just and reasonable apportionment in these particular circumstances.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury (Kitty Ussher) has made the following statement regarding Human Rights:

In my view the provisions of the Insurance Companies (Corporation Tax Acts) (Amendment) Order 2008 are compatible with the convention rights.

7. Policy background

7.1 The taxation of companies carrying on life assurance business is based to a substantial extent on the Rules made by the Financial Services Authority in its Handbook as they relate to insurers.

7.2 Because those Rules are capable of changing quickly and with retrospective effect, and because those changes are capable of having a material effect on the taxation of insurers, section 431A(1) of the Income and Corporation Taxes Act 1988 allows the Treasury to amend the life assurance tax provisions of the Corporation Tax Acts by Order.

7.3 A draft of this Order has been circulated to appropriate bodies and persons within the insurance industry and their advisers.

7.4 Guidance on the changes will be incorporated in HMRC's Life Assurance Manual.

8. Impact

8.1 A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

8.2 There is no impact on the public sector.

9. Contact

Richard Thomas at HM Revenue and Customs Tel: 020 7147 2558 or e-mail: Richard.Thomas@hmrc.gsi.gov.uk can answer any queries regarding the instrument.