

EXPLANATORY MEMORANDUM TO
THE GROUP RELIEF FOR OVERSEAS LOSSES (MODIFICATION OF THE
CORPORATION TAX ACTS FOR NON-RESIDENT INSURANCE COMPANIES)
REGULATIONS 2008

2008 No. 2646

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

2. Description

The regulations replace the Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) (No. 2) Regulations 2006 (SI 2006/3389) ("the 2006 Regulations") to align the tax treatment of companies which are resident in another Member State with insurance special purpose vehicles.

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

None

4. Legislative Background

4.1 The 2006 Regulations modify, in relation to insurance companies, provisions introduced by the Finance Act ("FA") 2006 which allow certain non-resident companies ("EEA life assurance companies") to surrender losses to a UK resident company in the same group.

4.2 These regulations replace the 2006 Regulations most of which are no longer needed, because treating EEA life assurance companies as if they were insurance special purpose vehicles allows the existing rules relating to those vehicles (set out in SI 2007/3430 being amended by the Insurance Companies (Taxation of Insurance Special Purpose Vehicles) (Corporation Tax Acts) (Amendment) Order 2008 SI 2008/1923) to apply in place of the separate rules in the 2006 Regulations.

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

- 7.1 As a result of the judgment of the Court of Justice of the European Communities in the case of Marks & Spencer p.l.c. v Halsey, Schedule 18A to the Income and Corporation Taxes Act 1988 was inserted by FA 2006. The 2006 Regulations were made to ensure that an appropriate basis of determining the loss made by an EEA life insurance company was available. These Regulations ensure that that basis remains appropriate.
- 7.2 A draft of these Regulations has been circulated to appropriate bodies and persons within the insurance industry and their advisers.
- 7.3 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 no impact on the private or voluntary sectors is foreseen.
- 8.2 There is no impact on the public sector.

9. Contact

Carol Johnson at HM Revenue and Customs Tel: 020 7147 0517 or e-mail: carol.johnson@hmrc.gsi.gov.uk can answer any queries regarding the instrument.