EXPLANATORY MEMORANDUM TO

THE STAMP DUTY RESERVE TAX (AMENDMENT OF SECTION 89AA OF THE FINANCE ACT 1986) REGULATIONS 2008

2008 No. 3236

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.

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

2. Purpose of the Instrument

The instrument contains regulations that amend the conditions for relief from Stamp Duty Reserve Tax under stock lending or sale and repurchase arrangements entered into by persons authorised under the law of an EEA state to provide certain investment services listed in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments, where the stocks in question are regularly traded on a regulated market as defined in the Directive. The regulations insert a requirement that the securities be transferred in both directions in accordance with the arrangement as a condition of relief.

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

It is regretted that the 21 day rule is not being complied with in this instance. The Stamp Duty Reserve Tax rules for stock lending and sale and repurchase arrangements were amended in Finance Act 2007 to reflect the implementation of the Directive on Markets in Financial Instruments in the United Kingdom on 1 November 2007. Previously relief had been available only in respect of transactions effected on exchange by exchange members. To be compatible with the Directive, the relief was extended, for arrangements in respect of regulated market stocks, to persons who were not exchange members but were authorised by any EEA State to carry on certain investment business described in the Directive. In providing this alternative avenue for relief, the condition that already applied to the existing on-exchange provisions and that required there to be a transfer of securities back to the lender or seller was inadvertently omitted. This means that, strictly, relief can be obtained even where the stocks are not returned at the end of the arrangement, and this in turn opens up the potential for exploitation. Publication of these regulations will alert market participants to this possibility and it is therefore necessary to break the normal 21-day rule in order that the change to the legislation can be made at the earliest possible date.

4. Legislative Context

4.1 Where chargeable securities are transferred under a stock lending or sale and repurchase agreement, both the outward delivery and the return leg are relieved from Stamp Duty Reserve Tax, reflecting the temporary nature of such arrangements. The relief is subject to certain conditions including that securities of the same kind and amount must be returned to the lender or seller at the end of the arrangement.

4.2 These Regulations are made under the power contained in section 89AA (8) Finance Act 1986 that enable the Treasury to make regulations changing the conditions for exemption from tax under that section. By inserting the missing condition, they will ensure that the rules will operate as intended in future.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Ian Pearson (Economic Secretary to the Treasury) has made the following statement regarding Human Rights:

In my view the provisions of the Stamp Duty Reserve Tax (Amendment of section 89AA of the Finance Act 1986) Regulations 2008 are compatible with the Convention rights.

7. Policy background

The underlying policy is to exempt from Stamp Duty Reserve Tax transactions implementing stock lending and sale and repurchase arrangements where the intention is for the securities to be returned to the lender or seller at the end of the arrangement and where certain other conditions are fulfilled. In one situation the provisions currently omit a requirement for the stock actually to be transferred for the relief to apply. These regulations rectify that omission.

8. Consultation outcome

There has been no consultation on these regulations as they are intended to rectify a weakness in the primary legislation.

9. Guidance

No new guidance is proposed as the legislation is simply being amended so that it operates as originally intended.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is none.

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

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring and Review

The operation of the regulations will be monitored and reviewed as part of HMRC's normal assurance processes.

13. Contact

Miles Harwood at HM Revenue and Customs, Tel: 020 7147 2801 or e-mail: Miles.Harwood@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.