EXPLANATORY MEMORANDUM TO

THE STAMP DUTY LAND TAX (OPEN-ENDED INVESTMENT COMPANIES) REGULATIONS 2008

2008 No. 710

1. This explanatory memorandum has been prepared by Her Majesty's 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

These regulations provide a relief from Stamp Duty Land Tax where a UK authorised unit trust (AUT) converts into an open-ended investment company (OEIC) or merges with an existing OEIC.

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

None

4. Legislative Background

4.1 The regulations replicate for SDLT the terms of existing reliefs for Stamp Duty and Stamp Duty Reserve Tax in the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997 (S.I. 1997/1156).

4.2 They are made in connection with the Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/705).

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 These regulations follow the terms of similar reliefs for Stamp Duty and SDRT which were introduced with the UK OEICs regime in 1997. They apply only where the whole of the AUT's assets becomes the property of the OEIC, the units in the AUT are extinguished and shares in the OEIC are issued to the holders of the extinguished units in proportion to their holdings of those units.

7.2 The regulations are made principally to allow existing AUTs to enter the new Property Authorised Investment Funds (Property AIFs) regime established by the Authorised Investment Funds (Tax) (Amendment) Regulations 2008. However, the relief will apply to assets in the form of real property held by any AUT which converts to an OEIC and in doing so complies with the terms of the relief.

7.3 The Property AIFs regime is an elective tax framework for UK authorised collective investment funds which invest principally in real property. Its purpose is, as far as possible, to put investors in these funds in the same tax position as if they had invested directly in the underlying property. Property AIFs are open-ended funds (OEICs) and the regime is a counterpart to the Real Estate Investment Trusts (REITs) regime for closed-ended funds (Investment Trusts).

7.2 For tax reasons Property AIFs must be OEICs whereas, typically, existing UK-authorised open-ended funds investing in real property are constituted as AUTs. These funds will have to covert to OEICs in order to enter the Property AIFs regime, and in the absence of relief would incur an SDLT charge in so doing. This means that the funds may be prevented from doing so for regulatory reasons, as incurring such a charge would disadvantage investors in the fund.

7.5 Draft SDLT regulations were included in H M Treasury's final consultation document on the PAIFs regime *Property authorised investment funds: next steps*, published in December 2007. Consultation extended over eight weeks. Only a couple of comments were received on the draft SDLT regulations, advocating that property unit trusts based offshore should be able to convert directly to UK OEICs for the purpose of entering the PAIFs regime. This point will be considered in further discussions with the funds industry at a later stage.

8. Impact

8.1 These regulations are included in the Impact Assessment for the main PAIFs Regulations, a copy of which is attached to this memorandum.

8.2 There is no impact on the public sector.

9. Contact

Keith Brown at Her Majesty's Revenue and Customs, telephone 020-7147 2790 or email keith.brown@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.