

EXPLANATORY MEMORANDUM TO
THE CORPORATION TAX(TREATMENT OF UNRELIEVED SURPLUS
ADVANCE CORPORATION TAX) (AMENDMENT) REGULATIONS 2010

2010 No. 669

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 To amend primary Regulations that provide relief for unrelieved surplus Advance Corporation Tax (ACT). These Regulations require amendment to reflect the anticipated changes to simplify anti-avoidance legislation that counters schemes using dividends, etc. to avoid tax on income. These amendments ensure that a company in receipt of dividends paid under a tax avoidance scheme continues to be denied inappropriate relief for surplus ACT.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 To amend Statutory Instrument 1999/ 358 (1999 SI) so that it continues to provide the appropriate relief for unrelieved surplus Advance Corporation Tax (ACT) following the anticipated changes to simplify the transactions in securities legislation. These changes include the repeal of section 735 of the Corporation Tax Act 2010 (CTA 2010). This section was previously part of section 704 Income and Corporation Taxes Act 1988 covering some circumstances (A in the list) under which a company distribution that is taken into account to reduce corporation tax can lead to the cancellation of a tax advantage. These changes remove a restriction to the calculation of shadow ACT currently at s.704A(da) (rewritten as section 735 CTA 2010). By incorporating the latter restriction into the 1999 SI the impediment to the repeal of s.704 circumstance A, as rewritten in section 735 CTA 2010, is removed.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *Unrelieved surplus ACT regulations*

7.1 Following the repeal of ACT in respect of company distributions made on or after 1 April 1999 a shadow regime was introduced. This regime ensured that any surplus ACT that had not been relieved as at that date did attract relief but only in the same way, as regards amounts and timing, that it would have done absent the ACT repeal. This shadow ACT regime is set out in the 1999 SI. It takes into account the extent to which franked investment income is available to offset the ACT that would have arisen.

- *Simplification of Transactions in Securities legislation*

7.2 The simplification of the transactions in securities legislation is part of a wider Government initiative to reduce the complexity of legislation. As part of this initiative it is anticipated that re-written anti-avoidance legislation, having the effect of counteracting corporation tax advantages arising from certain transactions in securities in the Corporation Tax Act 2010, will be repealed.

- *Effect of the simplification of the Transactions in Securities legislation on the shadow ACT regulations*

7.3 The legislation that it is anticipated will be repealed as part of the simplification, ensured that where a tax advantage was denied when an abnormal amount by way of dividend was paid, the shadow ACT regime ignored the receipt of that dividend. The policy intention is that the shadow ACT regime continues to operate to relieve the appropriate amount of surplus unrelieved ACT. This amendment to the 1999 S I will achieve that intention.

8. Consultation outcome

8.1 There was consultation on the simplification of the Transactions in Securities legislation. Respondents welcomed the repeal of the A circumstances. The amendment to the 1999 S I removes any bar to that repeal.

9. Guidance

9.1 Guidance on the rewritten transactions in securities legislation will include guidance on the amendments made by this instrument to the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

11.2 There is no impact on firms employing up to 20 people.

12. Monitoring & review

12.1 No monitoring or review is required. These regulations merely remove an impediment to the repeal of anti-avoidance legislation that is being re-written as part of the anti-avoidance simplification exercise.

13. Contact

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chris.orchard@hmrc.gsi.gov.uk can answer any queries regarding the instrument.