

**EXPLANATORY MEMORANDUM TO
THE AUTHORISED INVESTMENT FUNDS (TAX) (AMENDMENT No. 3)
REGULATIONS 2008**

2008 No. 3159

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

These Regulations amend the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) ("the principal Regulations"). The amendments made:

- replace existing anti-avoidance provisions for investors in an authorised investment fund which is a qualified investor scheme, by a requirement that such a scheme must meet a genuine diversity of ownership condition to qualify for authorised investment fund tax treatment,
- provide for exemption from Stamp Duty Reserve Tax under Schedule 19 to Finance Act 1999 for a unit trust dedicated to investment in a Property authorised investment fund and provide a facility for net payments to certain unit trusts to simplify tax administration,
- provide rules for the tax treatment of manufactured payments representing distributions by a Property authorised investment fund, and
- revises an existing anti-avoidance provision in the light of further disclosures.

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

None

4. **Legislative Context**

- 4.1 Sections 16 to 19 of the Finance (No. 2) Act 2005 provide the framework for a regime under which the majority of provisions relating to the taxation of authorised investment funds are contained not in primary legislation (as was previously the case) but in secondary legislation made under powers contained in section 17(3) and 18 of that Act. The principal Regulations are the most important Regulations so made.

4.2 Commercial developments carry the implication that the principal Regulations will need amendment from time to time.

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

- *What is being done and why*

7.1 At the time when the principal Regulations were made (29 March 2006) it was stated that it was intended that consultation with industry should continue in order to ensure that the principal Regulations reflected further developments. (See the Explanatory Memorandum accompanying S.I. 2006/964.)

7.2 As a result of such industry consultation a number of amendments have since been made and it is intended that consultations will continue in future so that regulations continue to reflect commercial development.

7.3 Qualified Investor Schemes were introduced by the Financial Services Authority in 2004 for institutional and sophisticated investors but have not been widely used. These regulations remove and replace the existing anti-avoidance tax rules with a more flexible condition.

7.4 These regulations remove specific barriers in the way of setting up Property authorised investment funds. They also specify the tax treatment of manufactured payments representing Property AIF distributions.

7.5 These regulations also update anti-avoidance provisions in the authorised investment fund regulations in the light of disclosed schemes.

- *Consolidation*

7.6 This instrument amends another instrument (the Authorised Investment Fund Regulations 2006 (SI 2006/964)). HM Revenue and Customs will consolidate that instrument and the amendments in due course, and will be preparing a consolidated version for publication on HMRC's website.

8. Consultation outcome

Drafts of the regulations have been consulted on informally with representative bodies for the funds management sector and others, and a number of detailed changes have been made as a result.

9. Guidance

Guidance on the instrument will be published in HMRC's Corporate Tax, Savings and Investment, Corporate Finance, Life Assurance and General insurance Manuals.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been produced for this instrument as it has a negligible impact on business, charities or voluntary bodies.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The Government intends to monitor the effects as the industry takes up the options available.

13. Contact

John Buckeridge at HM Revenue & Customs Tel: 020 7147 2560 or e-mail: john.buckeridge@hmrc.gsi.gov.uk can answer any queries regarding the instrument.