

EXPLANATORY MEMORANDUM TO

THE INSURANCE COMPANIES (CORPORATION TAX ACTS) (AMENDMENT) (No. 2) ORDER 2008

2008 No. 3096

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.
2. **Purpose of the instrument**
 - 2.1 This instrument amends section 82F of the Finance Act (FA) 1989 to cater for a case where an element in the calculation of a proportion is negative with the result that an inappropriate result is given by the section. The amendment provides for a just and reasonable attribution in such a case. It also amends section 82E so that the result of an election and the default position are reversed, to enable the election to be subject to conditions preventing a loss of tax.
 - 2.2 The order also makes some consequential amendments to section 432YA of the Income and Corporation Taxes Act 1988, a provision equivalent to section 82D of FA 1989.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2007 (SI 2007/1031) amended the life assurance tax provisions of the Corporation Tax Acts inserting, in particular, sections 82D to 82F of the Finance Act 1989. Section 82D provides for a spreading of profits that would otherwise have arisen entirely in the year of the change of the Rules relating to insurance companies made by the Financial Services Authority. Sections 82E and 82F deal with a case where there is an insurance business transfer scheme where the transferor was affected by section 82D. Section 82E gives rules for the transferor and section 82F for the transferee
 - 4.2 SI 2008/1905 inserted section 82F(5A) into FA 1989 to provide for a just and reasonable apportionment in circumstances where the amount of liabilities transferred to one transferee is negative. This instrument does much the same for a case where the overall amount of the liabilities transferred is negative.
5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

In my view the provisions of the Insurance Companies (Corporation Tax Acts) (Amendment) (No. 2) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The taxation of companies carrying on life assurance business is based to a substantial extent on the Rules made by the Financial Services Authority (FSA) in its Handbook as they relate to insurers.

7.2 Because those Rules are capable of changing quickly and with retrospective effect, and because those changes are capable of having a material effect on the taxation of insurers, section 431A(1) of the Income and Corporation Taxes Act 1988 allows the Treasury to amend the life assurance tax provisions of the Corporation Tax Acts by Order.

7.3 Sections 82D to 82F FA 1989 were introduced as a result of a change to the FSA Rules in 2006. The amendments made by this Order ensure that the legislation operates as intended in certain exceptional circumstances.

8. Consultation outcome

8.1 A draft of this Order has been circulated to appropriate bodies and persons within the insurance industry and their advisers.

9. Guidance

9.1 Guidance on the changes will be incorporated in HMRC's Life Assurance Manual.

10. Impact

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

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.

12. Monitoring & review

12.1 The application of sections 82D to 82F FA 1989 will continue to be kept under review to ensure that they operate as intended.

13. Contact

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