

**EXPLANATORY MEMORANDUM TO
THE STAMP DUTY LAND TAX (VARIATION OF PART 4 OF THE FINANCE ACT
2003) REGULATIONS 2008**

2008 No. 2338

1. 1.1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

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

2. Description

2.1. These Regulations vary section 77A of the Finance Act 2003 which provides for exceptions from the general requirement to notify HM Revenue and Customs of acquisitions of major interests in land. Item 1 of section 77A(1) provides that acquisitions which are exempt from the charge to stamp duty land tax under Schedule 3 of the Finance Act 2003 are not notifiable. That provision is amended so that acquisitions which are exempt by virtue of regulations made under the power at paragraph 5 of Schedule 3 are notifiable.

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

3.1. The explanatory note to this Instrument explains that:

“A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.”

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- the total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- the Department’s Better Regulation and Policy team has confirmed that
 - there are no disproportionate impacts on any business or sector; and
 - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes.

4. Legislative Background

4.1. These Regulations are made under section 109 of the Finance Act 2003 which allows the Treasury the general power to vary Part 4 of the Finance Act 2003. Section 109 particularly provides that the power may be used to alter the descriptions of land transactions that are chargeable or notifiable.

4.2. The Explanatory Notes to Clause 109 of the Finance Bill 2003 stated that the power would be used to “allow avoidance devices to be countered as they arise and to allow reliefs to be implemented with immediate effect”. These Regulations make amendments to the provisions of Part 4 of the Finance Act 2003 which govern notification which are considered necessary in the light of the introduction of an exemption from stamp duty land tax under the powers at Schedule 3 paragraph 5. The amendments are considered necessary to prevent avoidance of stamp duty land tax by those who might claim that the exemption applies to transactions which are not subject to the exemption, by ensuring that HM Revenue and Customs are supplied with details of the transactions so that they may verify whether the exemption applies.

4.3. These Regulations are therefore linked to another set of Regulations made under the powers at paragraph 5 of Schedule 3 of the Finance Act 2003. The Stamp Duty Land Tax (Exemption of Certain Acquisitions of Residential Property) Regulations 2008 (SI 2008/2339) come into force on the same day as these Regulations and exempt from the charge to stamp duty land tax certain acquisitions of residential property for a chargeable consideration of not more than £175,000. At present, those Regulations are the only Regulations to be made under that power. However, the amendment to section 77A will also apply to any further Regulations made under that power.

4.4. Section 77A of Finance Act 2003, which these Regulations vary, was inserted by section 94 of the Finance Act 2008.

5. Territorial Extent and Application

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. The Chancellor of the Exchequer has made the following statement regarding Human Rights:

6.2. In my view the provisions of the Stamp Duty Land Tax (Variation of Part 4 of the Finance Act 2003) Regulations 2008 are compatible with the Convention rights.

7. Policy background

7.1. The Government has decided that it is important to demonstrate its support for homebuyers by taking action to reduce the level of stamp duty land tax on property transactions. It has therefore decided to introduce a short-term exemption from stamp duty land tax for purchases of residential property where the chargeable consideration is not more than £175,000. That exemption will apply to transactions with an effective date on or after 3rd September 2008 and before 3rd September 2009.

7.2. The Government however wishes to ensure that this exemption is not open to avoidance. Therefore, these Regulations vary the notification rules within the Finance Act

2003 to the effect that transactions which are subject to the new exemption are not excepted from the notification requirement. These transactions (unless they are subject to another exception from the requirement to notify) would have been notifiable prior to the introduction of the exemption.

8. Impact

8.1. A full and final impact assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

8.2. The impact on the public sector is negligible.

9. Contact

9.1. Michael Lyttle at HM Revenue and Customs Tel: 020 7147 2792 or e-mail: michael.lyttle@hmrc.gsi.gov.uk can answer any queries regarding the instrument.