

2017 No. 1271

CORPORATION TAX

INCOME TAX

The Risk Transformation (Tax) Regulations 2017

Made - - - - 12th December 2017

Coming into force in accordance with regulation 1(1)

The Treasury, in exercise of the powers conferred by section 183 of the Finance Act 2016^(a), make the following Regulations.

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with section 183(9) and (10) of the Finance Act 2016.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Risk Transformation (Tax) Regulations 2017 and come into force three days after the day on which they are made.

(2) These Regulations have effect—

- (a) for the purposes of corporation tax, for accounting periods beginning on or after that date, and
- (b) for the purposes of income tax, for payments made on or after that date.

Interpretation

2. In these Regulations—

“insurance risk transformation” means the activity specified in article 13A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(b);

“insurance risk transformation investments” means the investments issued for the purpose of carrying out insurance risk transformation;

“protected cell company” is a company incorporated under Part 4 of the Risk Transformation Regulations 2017^(c).

(a) 2016 c. 24.
(b) S.I. 2001/544, article 13A was inserted by regulation 5 of the Risk Transformation Regulations 2017 (S.I. 2017/1212).
(c) S.I. 2017/1212.

Qualifying transformer vehicle

3.—(1) A qualifying transformer vehicle is a transformer vehicle(**a**) which—

- (a) is a company limited by shares,
- (b) carries out the activity of insurance risk transformation where substantially all of that activity relates to business other than basic life assurance and general annuity business, and
- (c) is authorised under Part 4A of the Financial Services and Markets Act 2000(**b**) to carry out insurance risk transformation.

(2) In paragraph (1)(b), “basic life assurance and general annuity business” has the same meaning as in Part 2 of the Finance Act 2012(**c**).

Corporation tax

4.—(1) No liability to corporation tax arises in respect of the profits arising from the activity of insurance risk transformation carried out by a qualifying transformer vehicle.

(2) For the purposes of paragraph (1), the following are not treated as an activity of insurance risk transformation—

- (a) administrative or management activities, or
- (b) subject to paragraph (3), holding investments in excess of the minimum amount reasonably required to satisfy the fully funded requirement in relation to the company or, in the case of a protected cell company, the cell.

(3) Paragraph (2)(b) does not apply in relation to investments which were reasonably required to satisfy the minimum fully funded requirement in relation to a risk assumed under a contract of insurance until the expiration of 90 days from the date on which all liabilities under that contract have been satisfied.

(4) For the purposes of this regulation, “the fully funded requirement” is the requirement imposed by Articles 319 and 326 of the Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), or the equivalent requirement set out in rules made by the Prudential Regulation Authority(**d**).

Income tax

5. The duty to deduct a sum representing income tax under section 874 of ITA 2007(**e**) does not apply to the payment of interest made to investors in relation to insurance risk transformation investments.

Removal of special tax treatment

6.—(1) If condition A (set out in regulation 7) or B (set out in regulation 8) is met, regulations 4 and 5 do not apply in relation to profits arising or payments made in the accounting period in which the condition is met, or treated as met, or in any subsequent accounting period.

(a) “Transformer vehicle” is defined in section 183(11) of the Finance Act 2016.
(b) 2000 c. 8; Part 4A was inserted by section 11(2) of the Financial Services Act 2012 (c. 21) and relevantly amended by S.I. 2017/1212.
(c) 2012 c. 14; “basic life and general annuity business” is defined in section 57 of that Act.
(d) Articles 319 and 326 of the Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) apply to transformer vehicles which are special purpose vehicles within the meaning given by Article 13(26) of the Directive 2009/138/EC. Regulation 8 of S.I. 2017/**** imposes an obligation on the Prudential Regulation Authority to make equivalent rules for transformer vehicles which are not special purpose vehicles.
(e) 2007 c. 3.

(2) If the qualifying transformer vehicle is a protected cell company, where condition B is met, paragraph (1) only applies in relation to profits of, and payments by, the cell in relation to which the condition is met.

Condition A

7. Condition A is that the qualifying transformer vehicle is liable to a penalty in relation to the accounting period under—

- (a) paragraph 17 of Schedule 18 to FA 1998 (failure to deliver return: flat-rate penalty)(a) where the penalty has been increased under sub-paragraph (3) of that paragraph, or
- (b) Schedule 24 to FA 2007 (penalty for errors)(b) where the inaccuracy in the document to which the penalty relates was deliberate within the meaning of paragraph 3(1)(b) or (c) (degrees of culpability)(c) of that Schedule.

Condition B

8.—(1) Condition B is that, having regard to all the circumstances, it would be reasonable to conclude that the main purpose, or one of the main purposes, of the insurance risk transformation, or of arrangements which the insurance risk transformation forms part of, is to secure a tax advantage for any person.

(2) Where condition B is met, the condition is treated as met when the insurance risk transformation is, or the arrangements referred to in paragraph (1) are, first entered into.

(3) For the purposes of this regulation, “arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

Application of the Corporation Tax Acts

9. Sections 171 (transfers within a group) and 171A (election to reallocate gain or loss) of TCGA 1992(d) do not apply if “company B” in subsection (1) of each of those sections is a qualifying transformer vehicle.

10. For the purposes of Parts 4 and 5 CTA 2010 (loss relief and group relief)(e), the core and each cell of a protected cell company are treated as separate companies

11. For the purposes of Part 5 of CTA 2010 (group relief), a qualifying transformer vehicle, and, in the case of a protected cell company, a cell or the core of the company, is not treated as a member of any group or consortium.

*Mark Spencer
David Rutley*

12th December 2017

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the taxation of qualifying transformer vehicles.

Regulation 1 provides for citation, commencement and effect.

Regulation 2 defines terms used in the Regulations.

(a) 1998 c. 36.

(b) 2007 c. 11.

(c) Paragraph 3(1) was amended by paragraphs 1 and 5 of Schedule 40 to the Finance Act 2008 (c. 9).

(d) 1992 c. 12; section 171 was relevantly amended by paragraph 2 of Schedule 29 to the Finance Act 2000 (c. 17); section 171A was substituted by paragraph 1 of Schedule 12 to the Finance Act 2009 (c. 10).

(e) 2010 c. 4.

Regulation 3 sets out the conditions for constituting a qualifying transformer vehicle.

Regulation 4 provides for an exemption for corporation tax.

Regulation 5 removes the income tax withholding obligation.

Regulations 6 to 8 sets out circumstances where the special tax treatment will be removed, regulation 7 relates to penalties and regulation 8 applies where the purpose of the risk transformation is to secure a tax advantage.

Regulations 9 to 11 make provision in relation to the application of the Corporation Tax Acts.

A Tax Information and Impact Note covering this instrument was published on 23 November 2016 alongside the draft Risk Transformation (Tax) Regulations 2017 and is available on the website at <https://www.gov.uk/government/publications/tax-regime-for-insurance-linked-securities/tax-regime-for-insurance-linked-securities>. It remains an accurate summary of the impacts that apply to this instrument.

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