Explanatory Memorandum to

The Insurance Companies (Amendment to Section 129 of, and Schedule 17 to, the Finance Act 2012) Regulations 2015

[Year] No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by command of Her Majesty.

2. Purpose of the instrument

This instrument amends the tax rules for transfers of long-term life insurance business to ensure that tax neutrality is maintained for all assets and liabilities transferred and that any tax attributes transfer in accordance with an acceptable commercial method.

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

None.

4. Legislative context

4.1 Section 129 of Finance Act 2012 provides tax neutrality on an intra-group transfer of business unless the transferor and transferee recognise different amounts for the assets and liabilities transferred. This instrument ensures that any taxable or relievable amounts arising from these differences do not include amounts arising from non-taxable assets or liabilities.

4.2 Paragraph 13 of Schedule 17 to the Finance Act 2012 allows certain unrelieved receipts and expenses to be transferred to the transferee following an intra-group transfer of part of the long-term business. This instrument ensures that those receipts and expenses are determined by an acceptable commercial method.

4.3 Paragraph 35 of Schedule 17 to the Finance Act 2012 deems assets which were held in the insurance company's shareholder fund as at 31 December 2012 to part of the long-term business fixed capital. This instrument allows this these assets to maintain this status following an intra-group transfer of all of the long-term business.

5. Territorial extent and application

5.1 This instrument applies to all of the UK.

6. European Convention on Human Rights

To be completed post-consultation.

7. Policy background

7.1 The rules for intra-group transfers of insurance business aim to provide tax neutrality by ignoring profits or losses that arise on the transfer and preserving tax attributes of the assets and liabilities transferred.

7.2 If there is a difference between the amounts of liabilities less assets recognised in each party's balance sheet immediately before and after the transfer, that difference is taken into account as either a receipt or expense of the transferee's trade. This instrument puts it beyond doubt that only assets and liabilities which can give rise to taxable or relievable amounts are included in the calculation of this difference.

7.3 Unrelieved receipts and expenses pass from the transferor to the transferee following an intra-group transfer. This instrument ensures that where only part of the insurance business is transferred then an appropriate proportion of these receipts and expenses is calculated by an acceptable commercial method. This replaces the calculation by reference to the proportion of liabilities transferred over total liabilities.

7.4 Assets of the shareholder fund as a 1 January 2013 are deemed to be long-term business fixed capital of a life insurance company. This instrument allows these assets to remain long-term business fixed capital following an intra-group transfer of all the long-term business. This puts their treatment following such a transfer beyond doubt.

7.5 There are no plans to consolidate the revised regulations in the immediate future.

8. Consultation outcome

8.1 To be completed post-consultation.

9. Guidance

9.1 Guidance on this change will be incorporated into HMRC's Life Assurance Manual in due course.

10. Impact

10.1 These regulations apply to businesses writing long-term insurance business. There is no impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument will be published on the GOV.UK website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The impact of this instrument will be kept under review to ensure that the policy objectives are met. Regular communication with the life insurance industry will capture issues around implementation and ongoing compliance and administrative costs.

13. Contact

Darryl Wall at HMRC can answer any queries regarding the instrument:

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