
DRAFT STATUTORY INSTRUMENTS

2017 No.

CORPORATION TAX

INCOME TAX

The Risk Transformation (Tax) Regulations 2017

Made - - - - *****

Coming into force in accordance with regulation 1(1)

The Treasury, in exercise of the powers conferred by sections 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 sections 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 on the day 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,
- (b) for the purposes of income tax, for payments made on or after that date.

Interpretation

2. For the purposes of 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).

Qualifying transformer vehicle

3. A qualifying transformer vehicle is a transformer vehicle which—

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

- (a) is a company limited by shares,
- (b) carries out the activity of insurance risk transformation, and
- (c) is authorised under Part 4A of the Financial Services and Markets Act 2000^(a) to carry out insurance risk transformation.

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,
- (b) subject to paragraph (3), holding investments in excess of the 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) Where investments cease to be held to meet the amount reasonably required to satisfy the fully funded requirement, paragraph (2)(b) does not apply to those investment until the expiry of 30 days from the date on which those investments ceased to be required.

(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 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of Insurance and Reinsurance (Solvency II), [or the equivalent requirement set out in rules made by the Prudential Regulation Authority^(b)].

Income tax

5. The duty to deduct a sum representing income tax under section 874 of ITA 2007 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, B or C 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 in any subsequent accounting period.

This is subject to paragraphs (3) and (6).

(2) Condition A is that an investor—

- (a) holds more than 20% of the insurance risk transformation investments, and
- (b) is connected with the undertaking from which the risk in relation to the insurance risk transformation is assumed.

(3) Condition B 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),
- (b) Schedule 24 to FA 2007 (penalty for errors), or

(a) 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/****.

(b) Articles 319 and 326 of the Commission Delegated Regulation (EU) 2015/35 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit 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 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II). Regulation 7 of the Risk Transformation Regulations 2017 (S.I. 2017/****) imposes an obligation on the Prudential Regulation Authority to make equivalent rules for transformer vehicles which are not special purpose vehicles.

(c) paragraph 39 of Schedule 36 to FA 2008 (penalty for failure to comply with an information notice or for obstruction).

(4) Where condition B is met, if the qualifying transformer vehicle appeals against the penalty paragraph (1) only applies after the appeal has been determined.

(5) Condition C is that having regard to all the circumstances, it would be reasonable to conclude that the 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.

(6) Where condition C is met, the condition is treated as met when the insurance risk transformation or the arrangements referred to in paragraph (5) are first entered into.

(7) In paragraph (5), “arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(8) Section 1122 of CTA 2010 (“connected” persons) applies for the purposes of condition A.

Loss restriction

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

8. For the purposes of Part 5 of CTA 2010 (group relief), a qualifying transformer vehicle is not treated as a member of any group or consortium.

	<i>Name</i>
	<i>Name</i>
Date	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.

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.

Regulation 6 sets out circumstances where the special tax treatment will be removed.

Regulation 7 makes provision in relation to losses.

[A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.]