STATUTORY INSTRUMENTS

2018 No. XXX

CORPORATION TAX

The Insurance Companies (Taxation of Re-insurance Business) Regulations 2018

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Coming into force - - ***

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The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 57(3), 90(4) and (5) and 91 of the Finance Act 2012(**a**):

PART 1
Introduction

Citation and commencement

1. These Regulations may be cited as the Insurance Companies (Taxation of Re-insurance Business) Regulations 2018 and come into force on xx yyyy 2018.

Interpretation

2. In these Regulations—

"the Act" means the Finance Act 2012;

"90% subsidiary" means a body corporate where 90% or more of its ordinary share capital is owned directly, or indirectly, by another body corporate;

"backing assets" means the assets which back the liabilities(**b**) of the policies or contracts which are the subject of a re-insurance arrangement;

"non-investment risk arrangement" means a re-insurance arrangement which wholly concerns the re-insurance of risk other than risk in respect of the investment return;

"re-insurance arrangement" means an arrangement by which an insurance company re-insurers any risk in respect of a policy or contract attributable to its basic life assurance and general annuity business ("BLAGAB").

(**a**) 2012 c. 14.
(**b**) See section 139(1) of the Act.

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Application to new re-insurance arrangements

3. These Regulations apply to any re-insurance arrangement which is entered into on or after the date that these Regulations come into force.

PART 2

Section 57 of the Act and excluded business

Section 57 of the Act and excluded business

4. Except where regulation 13(2) applies, the descriptions of "excluded business" in this Part have effect for the purposes of section 57 of the Act(**a**).

Excluded business: group companies in the UK

5.—(1) Subject to paragraphs (5) and (6), business being re-insured by a re-insurance arrangement is "excluded business" where conditions 1 to 3 are satisfied.

(2) Condition 1 is satisfied where—

(a) the cedant ("C") is a 90% subsidiary of the re-insurer ("R");

(b) R is a 90% subsidiary of C; or

(c) C is a 90% subsidiary of a body corporate ("D")(which is not R) and R is also a 90% subsidiary of D.

(3) Condition 2 is satisfied where—

(a) C is resident in the UK; or

(b) C is resident outside of the UK and—

(i) the re-insurance arrangement is effected by C through a permanent establishment of C situated in the UK; and

(ii) that permanent establishment is within the charge to corporation tax by virtue of section 5(2) of the Corporation Tax Act 2009(**b**) in respect of the re-insurance arrangement or the business being re-insured.

(4) Condition 3 is satisfied where the business being re-insured is BLAGAB in the hands of C.

(5) Business being re-insured by a non-investment risk arrangement which would be excluded business by virtue of conditions 1 to 3 being satisfied is not excluded business.

(6) Business being re-insured by a re-insurance arrangement is not excluded business by virtue of this regulation where condition 2 in regulation 8(3) is satisfied in relation to the arrangement.

Excluded business: overseas companies

6.—(1) Business being re-insured by a re-insurance arrangement is "excluded business" where conditions 1 and 2 are satisfied.

(2) Condition 1 is satisfied where the cedant—

(a) is resident outside of the UK;

(b) does not have a permanent establishment situated in the UK; and

(c) is not within the charge to corporation tax by virtue of section 5(2) of the Corporation Tax Act 2009 in respect of the re-insurance arrangement or the business being re-insured.

(**a**) By virtue of section 57(2)(e) of the Act, basic life assurance and general annuity business ("BLAGAB") does not include re-insurance of life assurance business other than excluded business. Therefore, re-insurance arrangements which are excluded business are BLAGAB.

(**b**) 2009 c. 4.

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(3) Condition 2 is satisfied where the business being re-insured—

(a) is not overseas life assurance business(**a**) in the hands of the cedant; and

(b) is business where the benefits provided for under each policy or contract are determined by reference to the value of matched assets(**b**) which consist wholly or substantially of land in the United Kingdom.

(4) In paragraph (3)(b), "land" includes—

(a) buildings and other structures;

(b) land covered with water;

(c) any estate, interest, easement, servitude, right or licence in or over land.

PART 3

Section 90 of the Act – tax treatment of the cedant - prescribed arrangements

Section 90 of the Act – tax treatment of the cedant - prescribed arrangements

7. Except where regulation 13(2) applies, the re-insurance arrangements prescribed in this Part are excluded from the operation of section 90 of the Act(**c**).

Excluded and non-excluded business

8.—(1) A re-insurance arrangement is prescribed where condition 1 or 2 is satisfied.

(2) Condition 1 is satisfied where the business being re-insured by a re-insurance arrangement is excluded business by virtue of regulation 5 and—

(a) in cases where the re-insurer is resident in the UK, where section 68 of the Act applies to the re-insurer in respect of the investment return; or

(b) in cases where the reinsurer is resident outside of the UK and the re-insurance arrangement is effected by the re-insurer through a permanent establishment situated in the UK, where section 68 of the Act applies to the permanent establishment in respect of the investment return.

(3) Condition 2 is satisfied where—

(a) section 68 of the Act applies to the cedant in respect of the investment return on the backing assets; and

(b) if an amount is due by the cedant to the re-insurer in return for the cedant having use of the backing assets, none of the amount reduces the I minus E profit of the cedant.

Cedant and re-insurer being group companies: re-insurer not resident in the UK

9.—(1) A re-insurance arrangement is prescribed where conditions 1 to 5 are satisfied.

(2) Condition 1 is satisfied where—

(a) the cedant ("C") is a 90% subsidiary of the re-insurer ("R");

(b) R is a 90% subsidiary of C; or

(c) C is a 90% subsidiary of a body corporate ("D")(which is not R) and R is also a 90% subsidiary of D.

(**a**) See section 61(2) and (3) of the Act.

(**b**) For the definition of "matched" in relation to assets, see section 138 of the Act.

(**c**) By virtue of section 90(1) to (3) of the Act, where risk in respect of a policy or contract attributable to an insurance company's BLAGAB is re-insured, for the purposes of the I minus E rules the investment return is treated as accruing to the company. By section 90(5)(c), such descriptions of re-insurance arrangement as are prescribed by regulations are excluded from the operation of section 90. See also section 90(6) by virtue of which no re-insurance arrangement may be prescribed where the policy or contract was made, and the re-insurance arrangement effected, before 29th November 1994.

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(3) Condition 2 is satisfied where—

(a) C is resident in the UK; or

(b) C is resident outside of the UK and the re-insurance arrangement is effected by C through a permanent establishment of C situated in the UK.

(4) Condition 3 is satisfied—

(a) in cases where the re-insurance arrangement is not effected with a permanent establishment of R, where—

(i) R is resident in an EEA state (other than the UK where the UK is a member of the EEA); and

(ii) R is chargeable to tax under the laws of the territory in which it is resident in respect of the investment return; or

(b) in cases where the re-insurance arrangement is effected with a permanent establishment of R, where—

(i) R is resident in an EEA state (other than the UK where the UK is a member of the EEA);

(ii) the permanent establishment of R is not situated in the UK; and

(iii) the permanent establishment of R is chargeable to tax under the laws of the territory in which it is situated in respect of the investment return.

(5) Condition 4 is satisfied where none of the obligations of R under the re-insurance arrangement are subject to a further re-insurance arrangement.

(6) Condition 5 is satisfied where—

(a) the charge to tax on the investment return is on a basis equivalent to that of the I minus E rule; and

(b) the rate of tax on the investment return is no less than the policyholder's rate of tax(**a**).

Non-investment risk arrangements

10. A non-investment risk arrangement is prescribed.

Re-insurance of protection business and of immediate needs annuities

11. A re-insurance arrangement is prescribed where the business being re-insured—

(a) is protection business, within the meaning given by section 62 of the Act but as if subsection (2)(b) referred to a contract made before 1st January 2013; or

(b) is business which consists of the effecting or carrying out of immediate needs annuities, referred to in section 57(2)(d) of the Act.

PART 4

Investment returns

Section 90(4) - amount of investment returns

12.—(1) For the purposes of section 90(4) of the Act the amount of the investment return that is treated as accruing to the cedant is the amount determined under the Schedule.

(**a**) For policyholder's rate of tax, see section 102 of the Act.

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(2) Paragraph (1) does not apply to policies or contracts which are BLAGAB where those policies or contracts are negligible in comparison to the other policies or contracts which are the subject of the re-insurance arrangement.

(3) Where the cedant is not subject to section 68 of the Act by virtue of the application of section 67 of the Act, paragraph (1) does not apply to a re-insurance arrangement entered into by the cedant.

(4) This regulation is subject to the application of regulation 13(2).

PART 5

Unallowable purpose

Reducing the I minus E profit

13.—(1) Subject to paragraph (3), paragraph (2) applies where the main purpose, or one of the main purposes of the cedant or re-insurer—

(a) in entering into a re-insurance arrangement; or

(b) in allowing any change in the composition of the backing assets relating to a re-insurance arrangement,

is to reduce the amount of the I minus E profit, or where the re-insurance arrangement is prescribed by virtue of regulation 9, the equivalent of the I minus E profit, of the BLAGAB carried on by the cedant or re-insurer.

(2) If this paragraph applies—

(a) Parts 2 to 4 do not apply to the arrangement; and

(b) the amount of the investment return that is treated as accruing to the cedant is the amount determined under the Schedule.

(3) Paragraph (2) does not apply to business being re-insured by a re-insurance arrangement which is excluded business by virtue of regulation 5 where the reinsurer—

(a) is resident in the UK; or

(b) is resident outside of the UK and—

(i) the re-insurance arrangement is effected through a permanent establishment of the reinsurer situated in the UK; and

(ii) that permanent establishment is within the charge to corporation tax by virtue of section 5(2) of the Corporation Tax Act 2009 in respect of the re-insurance arrangement or the business being re-insured.

PART 6

Insurance business transfers

Insurance business transfers

14.—(1) This regulation applies where by virtue of an insurance business transfer scheme(**a**) of the business of the cedant, a re-insurance arrangement is transferred and—

(a) immediately before the transfer, the amount of the investment return that is treated as accruing to the cedant is the amount determined under the Schedule; and

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(**a**) See section 139 of the Act which refers to section 105 of the Financial Services and Markets Act 2000 (c. 8). Section 105 is amended by Schedule 1 to the Financial Services (Banking Reform) Act 2013 (c. 33) and S.I. 2007/3253, 2008/948 and 2015/575.

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(b) after the transfer, the arrangement is not one prescribed by virtue of Part 3.

(2) For the purposes of the Schedule—

(a) the transferor is the cedant until the transfer;

(b) the transferee is the cedant after the transfer and

(c) the policies and contracts which are the subject of the re-insurance arrangement are not to be treated as ceasing to be in force by virtue of the transfer.

PART 7

Amendment

Amendment

15.—(1) The Insurance Companies (Taxation of Re-insurance Business) Regulations 1995(**a**) are amended as follows.

(2) After regulation 1 (citation, commencement and effect) insert—

"**1A.** These Regulations do not apply in respect of any re-insurance arrangement which is entered into on or after [date].".

Name
Name

Date — Two of the Commissioners for Her Majesty's Revenue and Customs

SCHEDULE

Regulation 12(1)

Investment returns

1. The provisions of this Schedule—

(a) set out the amount of investment return treated as accruing to the cedant for the purposes of section 90(4) of the Act; and

(b) apply—

(i) for the period of the re-insurance arrangement;

(ii) to the policies or contracts subject to the arrangement which are in force in that period; and

(iii) to so much of each accounting period of the cedant ("APC") which falls within that period.

2. Except as provided by paragraphs 3 and 4, the investment return treated as accruing to the cedant for an APC is the imputed return.

(**a**) S.I. 1995/1730, as amended by section 153(3) of the Finance Act 2003 (c. 14) and S.I. 1996/1621, 2001/3629, 2002/1409, 2003/1828, 2003/2573, 2003/2642, 2004/2257, 2004/2310, 2007/2087, 2008/1944 and 2008/2670.

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3. Except for the APC in which the re-insurance arrangement ends, the investment return treated as accruing to the cedant in respect of ceased policies or contracts may be found by applying steps 1 to 3 in relation to those policies or contracts, if the cedant is able to provide to an officer of HM Revenue and Customs evidence which satisfies the officer that the calculation of step 2 can reasonably be supported.

4. For the APC in which the re-insurance arrangement ends, the investment return treated as accruing to the cedant may be found by applying steps 1 to 3 in relation to all the policies or contracts, if the cedant is able to provide to an officer of HM Revenue and Customs evidence which satisfies the officer that the calculation of step 2 can reasonably be supported.

5. Step 1: calculate the total ("the step 1 total") of—

(a) the investment returns for each APC before the APC in question; and

(b) the imputed return for the APC.

6. Step 2: calculate the amount of the investment return which would have been chargeable within I – E for every APC as if the re-insurance had not occurred ("the step 2 total").

7. Step 3: if—

(a) the step 2 total exceeds the step 1 total, the amount of the difference—

(i) where paragraph 3 applies, is the investment return treated as accruing to the cedant for the APC in respect of the ceased policies or contracts; or

(ii) where paragraph 4 applies, is the investment return treated as accruing to the cedant for the APC; or

(b) the step 1 total exceeds the step 2 total, the amount of the difference—

(i) where paragraph 3 applies, is to be deducted from the amount of the investment return treated as accruing under paragraph 2 in respect of other policies or contracts for the APC; or

(ii) where paragraph 4 applies, is a loss treated as accruing to the cedant for the APC to which section 91(6) of the Act applies.

8. In this Schedule—

"ceased policies or contracts" means those policies or contracts which ceased to be in force in the APC; and

"the imputed return" means the amount found by the sum—

$$ALx(RR + 4\%)x(M/12)$$

where—

"AL" is the average amount of the liabilities(**a**) that arise in respect of the re-insured business in the APC;

"M" means—

(a) the number of whole months of the APC which fall within the period of the re-insurance arrangement; or

(b) where paragraph 3 applies, the number of whole months of the APC which fall within the period of the re-insurance arrangement in which the ceased policies or contracts are in force; and

"RR" is the average rate of return for UK 5 year gilts in the APC.

(**a**) See section 139(1) of the Act.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 57 of the Finance Act 2012 (c. 14) ("FA 2012") defines basic life assurance and general annuity business ("BLAGAB") as life assurance business other than specific categories of business listed in section 57(2). The Regulations provide for the cases in which reinsurance of life assurance business is within BLAGAB.

The Regulations also set out which reinsurance arrangements are not within the scope of the BLAGAB imputed investment return charge under section 90 of FA 2012 and specify the amount to be treated as BLAGAB income where a charge under section 90 of FA 2012 applies.

The Regulations amend the Insurance Companies (Taxation of Re-insurance Business) Regulations 1995 (S.I. 1995/1370) such that those Regulations do not apply in respect of any re-insurance arrangement which is entered into on or after [date].

Regulations 4, 5 and 6 define the types of reinsurance arrangements that fall to be taxed under the BLAGAB rules on the reinsurer.

Regulation 4 states that regulations 5 and 6 describe the types of business which are excluded business for the purposes of section 57 of and are therefore within the definition of BLAGAB.

By regulation 5, life reinsurance business is BLAGAB where the investment risk of BLAGAB of a UK tax-resident cedant is reinsured intra-group and where both the cedant and reinsurer are within the charge to UK tax. However, where the cedant is charged to UK tax on the investment return from the assets backing the business reinsured, the business is not BLAGAB in the hands of the reinsurer.

By regulation 6, life reinsurance is BLAGAB where the cedant is not subject to UK tax in respect of the business reinsured and the underlying policy liabilities are determined by reference to matched assets which are wholly or substantially UK land and property.

Regulations 7 to 11 provide exclusions from the need to impute investment return to the cedant in respect of a reinsurance arrangement.

Regulation 7 states that, except where a reinsurance arrangement is entered into with a main purpose of reducing the amount charged to tax as BLAGAB income (see regulation 13), regulations 8 to 11 prescribe the types of business excluded from the imputation of income under section 90 of FA 2012.

Regulation 8 provides that no imputation of income to the cedant is required for UK intra-group reinsurance within regulation 5, where either the reinsurer or the cedant is already charged to tax on the related investment income.

Regulation 9 provides that no imputation of income to the cedant is required where the reinsurer is not within the charge to corporation tax in the UK but is chargeable to tax under the laws of another EEA state on a basis equivalent to the UK BLAGAB rules at a rate no less than the policyholder's rate of tax.

Regulation 10 provides that no imputation of income to the cedant is required where the reinsurance arrangement only relates to risks that do not include any investment return risk.

Regulation 11 provides that there is no imputation of income to the cedant where the policies reinsured are protection business (see section 62 of FA 2012) entered into before 1st January 2013 or immediate needs annuities.

Regulation 12 provides that for the purposes of section 90(4) of FA 2012, the amount of income treated as accruing to the cedant is to be calculated in accordance with the Schedule to the Regulations, except where the reinsurance arrangement includes negligible amounts of BLAGAB

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compared to the total reinsured or where the cedant is not within BLAGAB due to the small amount of BLAGAB within its long-term business (see section 67 of FA 2012).

Regulation 13 provides that where arrangements are entered into with a main purpose of reducing the amount of chargeable BLAGAB profit then the income treated as accruing to the cedant is to be calculated in accordance with the Schedule to the Regulations.

Regulation 14 provides for continuity of treatment under the imputation provisions where there is an insurance business transfer scheme of the business of the cedant.

Regulation 15 provides that the Insurance Companies (Taxation of Re-insurance Business) Regulations 1995 cease to apply to arrangements entered into on or after [date].

The Schedule provides the method of calculating the amount of the investment return income to be imputed under section 90(4) of FA 2012.

For continuing policies or contracts, the amount imputed is by reference to a formula, providing a return equivalent to UK 5 year gilts +4%. Where the policy or contract ends in the accounting period or the reinsurance arrangement comes to an end, the amount imputed depends on whether or not the cedant is able to provide evidence of the amount of the investment return that would have been chargeable had the re-insurance not occurred. If the evidence can be provided, a reconciling figure is taken into account, so that the amount imputed over the life of the arrangement is the amount that would have been charged had the arrangement not occurred. Otherwise, the amount imputed in the final accounting period is by reference to UK 5 year gilts +4%.

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

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