HM Revenue & Customs

HM Treasury

Reform of taxation of securitisation companies

Consultation

Publication date: 23 March 2021

Closing date for comments: 3 June 2021

Summary

Subject of this consultation

The taxation of securitisation companies, as set out in the Taxation of Securitisation Companies Regulations (SI 2006/3296, the 'Regulations'), and the Stamp Duty loan capital exemption (s79 Finance Act 1986) in relation to securitisations and to Insurance-Linked Securities ('ILS': ILS are defined in, and their taxation set out in, the Risk Transformation (Tax) Regulations 2017, SI 2017/1271).

Scope of this consultation

The government is keen to explore the benefits and potential difficulties of making changes to clarify and/or reform certain aspects of the Regulations, and of the Stamp Duty loan capital exemption as it applies to securitisations and to ILS.

Who should read this

Taxpayers involved in carrying out securitisations in the capital markets or in the issue of ILS, and investors in notes issued as part of securitisation arrangements or in ILS. Advisers and tax professionals who advise on these transactions.

Duration

The consultation will last 10 weeks from 23 March 2021 to 3 June 2021.

Lead official

Taxation of Securitisation Companies Consultation Team, Financial Products and Services Team, HMRC.

How to respond or enquire about this consultation

Electronic responses and enquiries to Securitisations.Consultation@hmrc.gov.uk.

Please include a phone number if it might be helpful to discuss your enquiry.

Additional ways to be involved

As the consultation is largely focused on technical issues with specialist interests, HMRC and HMT will continue to engage directly with existing stakeholder networks.

After the consultation

The government expects to publish a summary of responses in summer 2021 which will include information on next steps. It is envisaged that meetings with those with specialist interests will be held both during the consultation and after all responses have been evaluated.

Getting to this stage

The Regulations came into effect on 1 January 2007 and have been amended a number of times since, principally to provide clarity and certainty on various points.

Previous engagement

HMRC and HMT have engaged for some years with industry, which has resulted in changes, such as those introduced by SI 2016/1182 and SI 2018/143. Engagement with industry has continued, and has identified subjects on which the government now wishes to consult formally.

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1. Introduction

Securitisations: commercial background

1.1. Securitisations are an important part of the UK's capital markets and an important source of finance for UK businesses.

1.2. Securitisation is a widely used method of raising debt finance on the capital markets through the issue of asset-backed securities. It can also aid capital, liquidity and risk management. In securitisations, typically income-producing assets (for example loans) are used as collateral backing for the issue of securities by a bankruptcy-remote special purpose vehicle (the note-issuing SPV). As part of the process the assets are usually transferred directly or indirectly by the originator of the assets to the note-issuing SPV which uses the proceeds of the issue of securities to purchase the assets.

1.3. The note-issuing SPV typically acts as a conduit through which income flows from the securitised assets are channelled to the investor in the form of interest. It will normally only retain a small cash profit over the life of the transaction.

1.4. The government is keen to ensure that the UK's tax code keeps pace with the evolving nature of the capital markets, and contributes to maintaining the UK's position as a leading financial services centre.

Securitisations: special corporation tax rules

1.5. The government acknowledges the important role securitisations play in funding, and in capital, liquidity and risk management. Recognising the limited role of the note-issuing SPV, the government's corporation tax policy is that tax is only paid on the cash profit, provided certain conditions are met (these are set out further below).

1.6. Before 1 January 2005 accounting profits would largely reflect the cash profit, and corporation tax would be chargeable only on that profit under usual principles. Changes in the application of accounting standards from 1 January 2005 led to increased volatility in the accounting profits of note-issuing SPVs. As a result, the statutory accounts no longer formed a suitable basis for calculating the note-issuing SPV's corporation tax liability.

1.7. Special corporation tax rules were therefore introduced in order to enable the securitisation market to continue to function effectively. An 'interim regime' for securitisations was introduced from 1 January 2005. The Taxation of Securitisation Companies Regulations (SI 2006/3296, the 'Regulations') were then introduced in 2006, and brought the 'permanent regime' into effect from 1 January 2007. The Regulations apply to companies involved in the securitisation of financial assets.

1.8. Under the permanent regime, a company is a 'securitisation company' for the purposes of the regime broadly if it meets the following conditions:

I. it is party as a debtor to a capital market investment in respect of which securities are issued and which is part of a 'capital market arrangement'. A capital market arrangement typically involves the issue of securities to third party investors which are rated by an internationally recognised agency and listed on a recognised stock exchange
II. it meets the conditions to be one of five types of securitisation company specified by the Regulations
III. it has provision for a 'retained profit', i.e., an amount required to be retained as profits.

1.9. If a company is a securitisation company, and meets certain further conditions, the consequence is that it will be taxed on, and only on, its retained profit for corporation tax purposes.

1.10. The key type of securitisation company within 1.8 II is the SPV which issues the securities, the 'note-issuing company', as defined in Regulation 5. In addition to meeting the requirement set out above in 1.8 I (Regulation 5(2)), to qualify as a note-issuing company three further conditions must be met:

I. the securities representing the capital market investments must be issued wholly or mainly (which is interpreted by HMRC as more than 50%) to independent persons (Regulation 5(3))
II. the total value of the capital market investments made per capital market arrangement, and therefore notes issued representing those capital investments, must be at least £10m (Regulation 5(4))
III. the company's only business, apart from being a debtor to a capital market arrangement and from any incidental activities, must be acquiring, holding or managing financial assets forming the whole or part of the security for the capital market arrangement (or equivalent rules in relation to guarantor arrangements) (Regulation 5(5)).

Securitisations and Insurance-Linked Securities ('ILS'): Stamp Duty and SDRT

1.11. The transfer of loan capital is generally exempt from Stamp Duty (and therefore SDRT) under the 'loan capital exemption'. There is uncertainty in some circumstances about the availability of the exemption on the transfer of notes issued in securitisation arrangements and in ILS arrangements (for which, see chapter 5), and also on the transfer of pools of loan assets into and within securitisation arrangements. This uncertainty is understood to add complexity and cost to such arrangements and may be a factor in arrangements being implemented outside the UK.

Areas for consultation

1.12. The government has identified, through ongoing dialogue with industry, areas where it may be beneficial to make changes to further clarify and/ or reform certain aspects of the Regulations, and of the Stamp Duty loan capital exemption as it applies to securitisations and to ILS. The government would like to explore these, to ensure that the UK's tax code keeps pace with the evolving nature of the capital markets, and contributes to maintaining the UK's position as a leading financial services centre. In considering any changes, the government will continue to ensure that the relevant parts of the tax code are well targeted and minimise the risk of exploitation for tax avoidance.

1.13. The following are the four areas in question:

I. circumstances where an originator acquires more than 50% of the securities from the note-issuing company, possibly on a short-term basis (‘retained securitisations’ for the purposes of this consultation): see chapter 2
II. what types of assets can be securitised: see chapter 3
III. the operation of the note issuance threshold for the note-issuing company: see chapter 4
IV. the application of the exemption from Stamp Duty (and therefore SDRT) for loan capital to securitisation arrangements, and to ILS arrangements: see chapter 5.

2. Retained Securitisations

2.1. As set out in 1.2, securitisations can be used to achieve different funding, capital, liquidity and risk management goals, and this will be reflected in the structuring of the securitisation. This chapter focusses on retained securitisations as defined above, i.e., where more than 50% of the securities issued by the note-issuing company are not issued to third parties but are acquired or 'retained' by the originator, possibly on a short-term basis. The term 'retained securitisations' may be used to apply more widely in commercial contexts.

2.2. The government understands retained securitisations are an increasingly key component of the securitisation market. For instance, due to market conditions an originator may acquire the notes issued by the SPV initially but with the intention of transferring them to investors in the market as soon as market conditions allow. Originators may acquire notes issued by the SPV and use them as eligible collateral for the Bank of England term funding scheme with additional incentives for SMEs.

2.3. As set out above, the Regulations provide that the note-issuing company must issue more than 50% (HMRC's view of wholly or mainly) of its notes to 'independent persons'. Independent persons are defined as persons not connected with the note-issuing company, broadly as defined in s1122 Corporation Tax Act 2010, but with some modification. HMRC has provided guidance in relation to when notes are to be treated as wholly or mainly issued to independent persons, both in the Corporate Finance Manual at CFM72390, and in formal engagement with industry.

2.4. The government understands that it may be helpful to make changes, possibly by legislation, to provide further clarity, or to reform the position, on the application of this test in relation to retained securitisations.

2.5. The government therefore welcomes views on whether this is the case and, if so, what form change should take.

Question 1: What are respondents' views on the commercial importance of retained securitisations, the drivers for such securitisations, and the impact of being able to carry out such securitisations in the UK on the competitiveness of the UK as a financial services centre?

Question 2: What changes by way of clarifying and/or reforming the Regulations in relation to retained securitisations would be helpful, and what form should they take? What would be the benefits and any potential difficulties of making any such changes?

3. Financial Assets

3.1. As set out in the Introduction, the Regulations apply specifically to securitisations of financial assets.

3.2. The definition of financial asset was originally in Regulation 2, and took the meaning it had for generally accepted accounting practice (GAAP), but amended to specifically include derivative contracts and exclude shares.

3.3. There have been several changes to the definition since the introduction of the Regulations. It was amended, by SI 2007/3339, to specifically exclude derivative contracts related to shares or land, and loan relationships with embedded derivatives related to shares or land. It was amended again, by SI 2018/144, to ensure that the exclusion in relation to loan relationships with embedded derivatives remained effective after a change in accounting standards. The definition of financial assets is now set out in Regulation 9A.

3.4. Subject to the following, the government wishes to explore whether the scope of the assets that can be securitised within the Regulations should be expanded, in order to enhance the competitiveness of the UK as a financial centre.

3.5. As regards to shares, whilst the government will consider representations for broader inclusion, the government is particularly interested in whether there would be value in an extension to include shares held in limited circumstances, for instance to include shares resulting from a restructuring or bailout of an existing securitisation.

3.6. Some stakeholders have expressed interest in the possibility of holding land within a securitisation company. This is not within the scope of this consultation: the government recognises that this would be a significant change and is initially exploring the implications of change with stakeholders.

3.7. If the regime is expanded in terms of the assets which can be held, careful consideration will need to be given to the interactions with other parts of the UK tax code. For instance, the existing treatment under the Corporate Interest Restriction (CIR) rules for a securitisation company (Regulation 22, discussed in CFM95698) is based upon the assets in the vehicle being debt-like instruments. If there is an expansion of the assets which can be securitised, consideration will need to be given to the impact on the CIR provisions.

Question 3: Should the scope of assets which can be securitised within the Regulations be expanded beyond financial assets as defined in Regulation 9A? What would be the benefits and potential difficulties for the UK in doing so?

Question 4: If the scope of assets were expanded, what assets should be included, and should that only be under specified circumstances? For instance, should

shares be included but only as part of restructuring/ bailout of an existing securitisation?

Question 5: If the scope of assets were expanded, what would be the implications for interaction with other parts of the UK tax code? What consequential changes, if any, would be appropriate?

4. Minimum Note Issuance Threshold

4.1. As set out in the Introduction, one of the conditions to be a note-issuing company is (Regulation 5(4)) that the value of the capital market investments made under the capital market arrangement, and so securities representing those investments, should be at least £10m.

4.2. Initially, under the interim regime, the minimum threshold per capital market arrangement was £50m. This was reduced to £10m following the introduction of the Regulations.

4.3. Representations have been made that the requirement to have £10m of securities issued per capital market arrangement restricts access to the regime, for instance, for charities.

4.4. Additionally, the ability to recycle the note-issuing company for multiple issuances is limited by the requirement that each single issuance be in excess of £10m. For instance, the note-issuing company cannot make a £13m issuance under one capital market arrangement, later in the same accounting period make a £7m issuance under a separate capital market arrangement, and still maintain its note issuing status under Regulation 5.

4.5. There is no election to gain access to the Regulations: they apply where the conditions are met. If, for instance, the threshold were to be reduced, the risk that certain arrangements might inadvertently be caught by the regime would be increased. Therefore, if there were changes to the operation of the threshold, consideration should be given to how the regime could continue to ensure that only arrangements intended to operate as securitisation arrangements fall within the regime.

4.6. The government welcomes views on the operation of the threshold, including its impact on the ability of the securitisation regime to provide flexible finance to different sectors.

Question 6: Should the threshold limit per capital market arrangement be changed and if so, to what sum and why? Should the threshold be subject to any other amendment: for instance, should it be possible to take into account an issue made earlier in an accounting period in assessing whether the threshold is met for a second issue later in the period? If so, how and why?

Question 7: If any such changes are proposed, what would be the best way of minimising the risk that arrangements are inadvertently caught by the amended rules?

5. Stamp Duty Loan Capital Exemption

Background to Stamp Duty and SDRT

5.1. Stamp Duty is a charge on (paper) instruments that transfer the beneficial interest in stock or marketable securities. SDRT is charged on agreements to transfer uncertificated (paperless) shares and other chargeable securities. Both Stamp Duty and SDRT are normally charged at 0.5% of the consideration (payment) received. A higher 1.5% Stamp Duty or SDRT rate can apply in certain circumstances where securities are transferred into an overseas clearance service or depositary receipt system. SDRT is not payable where either a document has been stamped for Stamp Duty purposes or is exempt from Stamp Duty.

5.2. Loan capital is essentially money which a company raises from borrowing rather than the issue of shares. The transfer of loan capital is generally exempt from Stamp Duty (and therefore SDRT) under the loan capital exemption. There is an exception to this for loan capital which is in some way equity-related, for example by carrying a return linked to the profits of a business or which carries a right to an excessive rate of return or repayment.

Loan capital exemption and securitisations

5.3. The government is aware from stakeholder feedback that uncertainty around the application of the Stamp Duty loan capital exemption can be regarded as a barrier to establishing securitisations in the UK. In particular, two issues are frequently cited.

5.4. Firstly, there can be uncertainty around whether notes issued by the note-issuing company in securitisation arrangements can be transferred without a Stamp Duty or SDRT liability arising. There are certain features, some of which are common, which may occur in such notes, which according to stakeholder feedback create uncertainty around their eligibility for the loan capital exemption. It is understood the concerns generally involve provisions in the legislation which deny exemption when returns are related to the profits of a business or carry a right to an excessive rate of return or repayment.

5.5. In the absence of certainty, the government understands that workarounds can sometimes be implemented to remove the possibility of a Stamp Duty or SDRT charge arising on the transfer of notes (for example by issuing securities into a clearance service or depositary receipt system). However, it is understood that these workarounds complicate the securitisation process and increase its costs.

5.6. Secondly, problems arise from the potential liability to Stamp Duty or SDRT when pools of loan assets are transferred as part of securitisation arrangements, particularly if many small loans are being securitised (e.g. loans to Small and Medium Enterprises (SMEs)).

5.7. It is understood the very large number of loan assets involved in such arrangements typically means that taxpayers do not regard it as economically viable to undertake due diligence on each asset in the portfolio in order to determine whether the asset qualifies for the loan capital exemption. This presents an obstacle to the progress of the arrangements.

Loan capital exemption and ILS

5.8. ILS are an alternative form of risk mitigation for insurance and reinsurance companies. They offer a means of transferring insurance risk to capital market investors and are an established part of the global reinsurance and risk mitigation markets.

5.9. An ILS arrangement will typically involve an insurer or reinsurer transferring specific risks to an insurance special purpose vehicle (ISPV). The ISPV will then issue notes to investors to raise sufficient capital to cover the transferred insurance risk.

5.10. The government is aware from stakeholder feedback that, as with notes issued under securitisation arrangements, certain features, some of which are common, in notes issued by ISPVs create uncertainty around their eligibility for the Stamp Duty loan capital exemption.

Question 8: How and to what extent does uncertainty related to the applicability of the loan capital exemption on the transfer of notes issued in securitisation arrangements increase cost and complexity? To what extent is this a factor in securitisation arrangements being implemented outside the UK?

Question 9: What are the characteristics of notes issued in securitisation arrangements which create uncertainty as to whether the loan capital exemption applies to their transfer?

Question 10: How could the government best address uncertainty about the applicability of the loan capital exemption to the transfer of notes issued in securitisation arrangements? Could updated HMRC guidance provide sufficient certainty?

Question 11: How and to what extent does uncertainty related to the applicability of the loan capital exemption for transfer of pools of loan assets into and within securitisation arrangements increase cost and complexity? To what extent is this a factor in securitisation arrangements being implemented outside the UK?

Question 12: How could the government best address uncertainty related to the applicability of the loan capital exemption to the transfer of pools of loan assets into and within securitisation arrangements? Could updated HMRC guidance provide sufficient certainty? If an exemption is required should there be a value cap on the individual assets and what should that cap be?

Question 13: What are the characteristics of notes issued by ISPVs which create uncertainty as to whether the loan capital exemption applies to their transfer? How and to what extent does uncertainty related to the applicability of the loan capital exemption to transfers of such notes impact commercially on ILS arrangements?

Question 14: How could the government best address uncertainty related to the applicability of the loan capital exemption to the transfer of notes issued by ISPV companies? Could updated HMRC guidance provide sufficient certainty?

6. Assessment of impacts

Summary of impacts

It is currently not expected that the outcome of the consultation will have any direct Exchequer impact. This will be considered again following consultation, final scope and design and any costing will be subject to scrutiny by the Office for Budget Responsibility.

Year	2020-21	2021-22	2022-23	2023-24	2024- 2025	2025-26
Exchequer impact (£m)	nil	nil	nil	nil	nil	nil

Impacts	Comment
Economic impact	Any clarifications and/or reforms will ensure that the UK's tax code keeps pace with the evolving nature of the capital markets, and contributes to maintaining the UK's position as a leading financial services centre. Any further economic impacts will be identified following consultation and final design of the policy.
Impact on individuals, households and families	There is expected to be no impact on individuals as the consultation only affects businesses. There is expected to be no impact on family formation, stability or breakdown.
Equalities impacts	It is not anticipated that there will be impacts for those in groups sharing protected characteristics.
Impact on businesses and Civil Society Organisations	There is no impact on businesses at present. Any impacts resulting from steps taken after this consultation will be fully explored and detailed. There is expected to be no impact on civil society organisations.
Impact on HMRC or other public sector delivery organisations	This measure carries no delivery costs to HMRC at this stage. HMRC will assess any future delivery funding requirement depending on the outcome of the consultation. No impacts on other public sector organisations have been identified.
Other impacts	Other impacts have been considered and none have been identified.

7. Summary of consultation questions

Question 1: What are respondents' views on the commercial importance of retained securitisations, the drivers for such securitisations, and the impact of being able to carry out such securitisations in the UK on the competitiveness of the UK as a financial services centre?

Question 2: What changes by way of clarifying and/or reforming the Regulations in relation to retained securitisations would be helpful, and what form should they take? What would be the benefits and any potential difficulties of making any such changes?

Question 3: Should the scope of assets which can be securitised within the Regulations be expanded beyond financial assets as defined in Regulation 9A? What would be the benefits and potential difficulties for the UK in doing so?

Question 4: If the scope of assets were expanded, what assets should be included, and should that only be under specified circumstances? For instance, should shares be included but only as part of restructuring/ bailout of an existing securitisation?

Question 5: If the scope of assets were expanded, what would be the implications for interaction with other parts of the UK tax code? What consequential changes, if any, would be appropriate?

Question 6: Should the threshold limit per capital market arrangement be changed and if so, to what sum and why? Should the threshold be subject to any other amendment: for instance, should it be possible to take into account an issue made earlier in an accounting period in assessing whether the threshold is met for a second issue later in the period? If so, how and why?

Question 7: If any such changes are proposed, what would be the best way of minimising the risk that arrangements are inadvertently caught by the amended rules?

Question 8: How and to what extent does uncertainty related to the applicability of the loan capital exemption on the transfer of notes issued in securitisation arrangements increase cost and complexity? To what extent is this a factor in securitisation arrangements being implemented outside the UK?

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Question 13: What are the characteristics of notes issued by ISPVs which create uncertainty as to whether the loan capital exemption applies to their transfer? How and to what extent does uncertainty related to the applicability of the loan capital exemption to transfers of such notes impact commercially on ILS arrangements?

Question 14: How could the government best address uncertainty related to the applicability of the loan capital exemption to the transfer of notes issued by ISPV companies? Could updated HMRC guidance provide sufficient certainty?

8. The consultation process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A summary of the questions in this consultation is included at chapter 7.

Responses should be sent by 3 June 2021, by email to securitisations.consultation@hmrc.gov.uk.

Telephone enquiries to Padrig Davies on 03000 532458 (from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

HMRC is committed to protecting the privacy and security of your personal information. This privacy notice describes how we collect and use personal information about you in accordance with data protection law, including the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act (DPA) 2018.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, UK General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the UK General Data Protection Regulation.

Your data

We will process the following personal data:

Name

Email address

Postal address

Phone number

Job title

Purpose

The purpose(s) for which we are processing your personal data is: Reform of Taxation of Securitisation Companies.

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

0303 123 1113

casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC

100 Parliament Street

Westminster

London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer

HM Revenue and Customs

14 Westfield Avenue

Stratford, London E20 1HZ

advice.dpa@hmrc.gov.uk

Consultation principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: Consultation Principles Guidance

If you have any comments or complaints about the consultation process, please contact the Consultation Coordinator using the following link:

Submit a comment or complaint about HMRC consultations

Please do not send responses to the consultation to this link.