EXPLANATORY MEMORANDUM TO

THE SECURITISATION COMPANIES AND QUALIFYING TRANSFORMER VEHICLES (EXEMPTION FROM STAMP DUTIES) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument provides exemption from Stamp Duty and Stamp Duty Reserve Tax (SDRT) for the transfer of certain types of loan notes issued as part of securitisation and insurance-linked securities (ILS) arrangements. By providing certainty that a charge to Stamp Duty or SDRT will not arise on the standard notes, this instrument will reduce the cost and complexity of securitisation and ILS arrangements and encourage their location in the United Kingdom.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Stamp Duty is charged on a paper written instrument or other document which transfers on sale 'stock or marketable securities' (as defined by Section 122 of the Stamp Act 1891). Part 1 of Schedule 13 to the Finance Act 1999 provides that the rate of Stamp Duty is 0.5% calculated by reference to the amount or value of consideration paid.

6.2 Where no paper written instrument is executed and the transaction is to be settled electronically, a 0.5% SDRT charge replaces the Stamp Duty charge. Section 87 of the Finance Act 1987 provides that an SDRT charge arises whenever 'chargeable securities' (as defined under section 99(3) of the Finance Act 1999) are 'agreed to be transferred'.

6.3 Sections 67, 70, 93 and 96 of the Finance Act 1986 provide that a higher 1.5% Stamp Duty or SDRT rate replaces the 0.5% charge when United Kingdom incorporated company shares are transferred into non-UK 'clearance services' and 'depositary receipt systems'.

6.4 Section 99(5) of the Finance Act 1986 provides that chargeable securities do not include securities the transfer of which are exempt from all stamp duties.

6.5 Section 79 of the Finance Act 1986 provides a general exemption from Stamp Duty (and therefore SDRT) for the transfer of loan capital. There are exceptions 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.

6.6 A specific corporation tax regime applies to securitisation companies, the Taxation of Securitisation Companies Regulations 2006 (SI. 2006/3296), known as the TSCR. The TSCR introduced new tax rules with effect from accounting periods beginning on or after 1 January 2007 for securitisation companies involved in the securitisation of financial assets. Such companies are taxed on their 'retained profit' (the amount they retain from their participation in the transaction) rather than the profit or loss shown in their statutory accounts.

6.7 A specific corporation tax and income tax regime applies to insurance-linked securities, the Risk Transformation (Tax) Regulations 2017 (SI 2017/1271).

6.8 This instrument provides certainty that no Stamp Duty or SDRT charge will arise on the transfer of standard notes issued as part of securitisation or ILS arrangements.

6.9 This instrument will be made under [section xx of the Finance Act 2022] [to be inserted when known]

6.10 Amendments are also being made to the TSCR addressing an area of uncertainty and complexity and widening access to the regime in the Taxation of Securitisation Companies (Amendment) Regulations 2022 [SI 2022/xxxx] which is laid [date will be inserted].

7. Policy background

What is being done and why?

7.1 Where UK securities are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or SDRT on agreements to transfer where the transfer will take place electronically. SDRT is not payable where either a document has been stamped for Stamp Duty purposes or is exempt from Stamp Duty. The transfer of loan capital is generally exempt from Stamp Duty under the loan capital exemption There are exceptions to this for loan capital which is in some way equity related, for example by carrying a return linked to the profits of the business or which carries a right to an excessive rate or return of repayment.

7.2 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 typical securitisations, income-producing assets (for example loans) are used as collateral backing for the issue of securities by a special purpose vehicle (the note-issuing SPV). As part of the process the assets are usually transferred directly or indirectly by the original creator of the assets (for example the lender), the originator, to the note-issuing SPV which uses the proceeds of the issue of securities to purchase the assets.

7.3 ILS are an alternative form of risk of risk mitigation for insurance and reinsurance companies. They offer a means of transferring insurance risk to capital market investors. Arrangements will typically involve an insurer or reinsurer transferring specific risks to an insurance SPV known as a qualifying transformer vehicle. The qualifying transformer vehicle will then issue notes to investors to raise sufficient capital to cover the transferred insurance risk.

7.4 The standard loan notes issued as part of securitisation and ILS arrangements are known as 'capital market investments' and are issued as part of 'capital market arrangements' by the note-issuing securitisation SPV or qualifying transformer vehicle. These notes commonly have characteristics which make it unlikely or uncertain that the loan capital exemption will apply.

7.5 Where notes clearly do not fall within the loan capital exemption or where there is uncertainty, taxpayers structure securitisation and ILS arrangements so that a charge to Stamp Duty or SDRT does not arise. This adds costs and complexity and may be a factor in arrangements being implemented outside the UK.

7.6 The exemption will provide exemption for the transfer of capital market investments issued as part of capital market arrangements by note-issuing securitisation and ILS SPVs. There are exceptions to the exemption where the specific securitisation or ILS tax regime does not apply when the capital market arrangement was entered into or where notes carry certain conversion or acquisition rights.

7.7 This instrument provides certainty that no Stamp Duty or SDRT charge will arise on the transfer of standard notes issued as part of securitisation and ILS arrangements. This will reduce the cost and complexity of arrangements.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate this instrument.

10. Consultation outcome

10.1 Following continuing dialogue with industry, a consultation document entitled ['Reform of taxation of securitisation companies'] was issued on 23 March 2021, for comments by 3 June 2021. This covered whether there should be changes to further clarify or reform certain aspects of the Stamp Duty loan capital exemption as it applies to securitisations and to ILS. It also covered whether to clarify or reform certain aspects of the TSCR regime.

10.2 Written responses were received from industry representative bodies, charities and firms of advisors. During and after the consultation period, HMRC and the Treasury held a range of calls and virtual meetings. These were with a securitisation industry consultative group and with participants acting on behalf of, or who were members of, the consultative group and organisations who had provided written responses.

10.3 The summary of responses was published on 30 November 2021 and is available at https://www.gov.uk/government/consultations/reform-of-the-taxation-of-securitisation-companies.

10.4 Respondents confirmed that an exemption for the transfer of the notes issued by note-issuing companies would increase certainty and reduce costs and complexity for securitisation and ILS arrangements. It would also make the UK a more attractive place to base these arrangements.

10.5 A draft statutory instrument was published on 30 November 2021 for comment by 10 January 2022.[The results of the consultation on the draft SI will be inserted].

11. Guidance

11.1 When the changes come into force updated guidance will be available and will be incorporated in HMRC's Stamp Taxes on Shares Manual at https://www.gov.uk/hmrc-internal-manuals/stamp-taxes-shares-manual.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 [A Tax Information and Impact Note covering this instrument was published on 30 November 2021 alongside the consultation draft of this instrument and is available on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.]

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was that the impact is beneficial, in that it reduces cost and complexity in relation to the regime.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that HMRC will monitor the changes to the regime through regular communication with affected taxpayer groups primarily through their professional representatives and the securitisation and ILS industry consultative groups.

14.2 These regulations do not include a statutory review clause because the legislation relates to taxes, duties, levies or other charges and falls within the exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Stephen Roberts at HMRC, email: sts.consultation@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Morris Graham, Deputy Director for Stamp Taxes Team in Business, Assets and International, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 [Final confirmation on standard to be included in final version]