STATUTORY INSTRUMENTS

2018 No. 538

CORPORATION TAX

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

Made - - - -	*26th April 2018*
Laid before the House of Commons - - - -	*30th April 2018*
Coming into force - -	*1st June 2018*

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(**1**):

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 1st June 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(**2**) of those policies or contracts which are referable to BLAGAB and 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;

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

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

Application to new re-insurance arrangements

3. These Regulations apply to any re-insurance arrangement which is entered into on or after 1st June 2018.

PART 2

Section 57 of the Act and excluded business

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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(**3**).

Excluded business: group companies in the UK

5.—(1) Subject to paragraphs (5) and (6), life assurance business being re-insured 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 and R are both 90% subsidiaries of the same body corporate.

(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 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(**4**) in respect of 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 is not excluded business by virtue of this regulation where condition 2 in regulation 8(3) is satisfied in relation to that business.

Excluded business: overseas companies

6.—(1) Life assurance business being re-insured is "excluded business" where conditions 1 and 2 are satisfied.

(**3**) 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.

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

(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 business being re-insured.

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

(a) is not overseas life assurance business(**5**) 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(**6**) 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

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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(**7**).

Excluded and non-excluded business

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

(2) Condition 1 is satisfied where the business being re-insured 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 re-insurer 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

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

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

(**7**) 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.

(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 in relation to the arrangement.

(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 and R are both 90% subsidiaries of the same body corporate.

(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(**8**).

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

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