EXPLANATORY MEMORANDUM TO

THE INSURANCE COMPANIES (AMENDMENT TO SCHEDULE 17 TO THE FINANCE ACT 2012 (TRANSITIONAL PROVISIONS)) REGULATIONS 2013

2013 No. 2244

1. This explanatory memorandum has been prepared by HM Revenue and Customs "HMRC" and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends Paragraph 22, Schedule17 to the Finance Act 2012 ("FA 12"), to correct a mismatch between the transitional rules to the new corporate tax regime for life insurance companies and the transfers of insurance business rules, thus ensuring that excluded items that are not tax effective on transition do not become tax effective following a transfer of business.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 FA 2012 introduced from 1 January 2013 a new corporate tax regime for life insurance companies and friendly societies. Under this new regime, among other changes, life companies are now taxed in the same way as other companies on the basis of their accounting profits, and not, as used to be the case, by reference to their regulatory returns.

4.2 Schedule 17 to FA12 set out the framework for the transition from the old regime to the new regime. The transitional arrangements are based on a comparison, at the transitional date (31 December 2012) of balances shown in a company's regulatory FSA return with equivalent balances in the company's accounts. The general aim is to ensure that, overall, taxable items are either taxed or relieved fully once and once only, and there is a general rule designed to achieve this.

4.3 In addition to the primary legislation there are further transitional regulations that came into force on 31 December 2012 (the Insurance Companies (Transitional Provisions) Regulations 2012, S.I. 2012/3009). These regulations provide:

- the specific comparisons that are to be made;
- which differences are to be treated as tax effective;

- how the taxable differences are to be allocated between the categories of business carried on by life companies; and
- the period over which the taxable differences are to be spread.

4.4 Amounts that are not tax effective are excluded from the transitional difference. Excluded items are defined in paragraph 7 of Schedule 17 to FA 2012 and set out in that paragraph and in the Regulations.

4.5 When business is transferred between one insurance company and another, legislation at Part 2 of FA12 sets out detailed rules as to which accounting entries are tax effective.

4.6 Schedule 17 of FA 2012 contains a power to make regulations to make further transitional provisions in connection with bringing into force the new regime.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 A mismatch has been identified between the transitional rules to the new corporate tax regime for life insurance companies and the transfers of insurance business rules. This mismatch would allow an excluded item that is not tax effective in the transferor company on transition to become tax effective in the transferee company following such a transfer of business. This may mean that an amount is either taxed twice, or relieved twice. It may also mean that relief is available to the transferee company for an amount which would never have been relievable in the transferor. These regulations prevent such a mismatch from occurring.

8. Consultation outcome

8.1 A consultation paper including proposals for draft regulations was published, on HMRC's website on 9 August 2013. Insurers that are affected by the introduction of the regulations and their representative bodies were invited to comment. The consultation closed on 30 August 2013. The consultation was shorter then usual to ensure that the regulations were put in place before any transfer of business took place.

8.2 Respondents supported the proposed regulations and suggested some small drafting amendments to ensure that the regulations work as intended. These have been incorporated into the final regulations.

9. Guidance

9.1 Comprehensive guidance on the new life tax regime will be provided in due course. In the meantime, HMRC has published interim standalone guidance on those aspects which are most likely to be of immediate interest. These include guidance on the operation of the transitional provisions and transfers of long term business.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is expected to be minimal.

10.3 A Tax Information and Impact Note covering this instrument was published on 6 December 2011 alongside draft clauses for the 2012 Finance Bill and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 HMRC will monitor and review transfers of business to ensure that this measure works as intended.

13. Contact

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