EXPLANATORY MEMORANDUM TO

THE TAXATION OF SECURITISATION COMPANIES (AMENDMENT) REGULATIONS 2022

2022 No. 465

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 relates to the taxation of securitisation companies, to which a specific tax regime applies. It addresses uncertainty and complexity in the application of the securitisation tax regime to a certain type of securitisation arrangements, 'retained' securitisation arrangements, by amending one of the qualification conditions. It widens access to the securitisation tax regime by reducing the level of a threshold required by another qualification condition.

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 These regulations amend the Taxation of Securitisation Companies Regulations 2006 (SI 2006/3296), 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 that they retain from their participation in the transactions) rather than the profit or loss shown in their statutory accounts.

6.2 These regulations address an area of uncertainty and complexity, and widen access to the regime.

6.3 Amendments are also being made in respect of the application of the Stamp Duty loan capital exemption as it applies to securitisations and to insurance-linked securities (ILS) in the Securitisation Companies and Qualifying Transformer Vehicles (Exemption from Stamp Duties) Regulations 2022 (SI 2022/464) which are also being laid on 26 April 2022.

7. Policy background

What is being done and why?

7.1 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.

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

7.3 Before 1 January 2005 accounting profits would largely reflect the cash profit, and corporation tax would therefore be chargeable 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.

7.4 Special corporation tax rules were therefore introduced in order to enable the securitisation market to continue to function effectively. These include a number of conditions which must be met by the note-issuing SPV.

7.5 One of the conditions which the note-issuing SPV must meet is that it must issue its securities wholly or mainly to independent persons. Retained securitisations, where more than 50% of the securities are not issued to third parties but are acquired and 'retained' by the originator, are an increasingly key component of the commercial securitisation market. The current test of independence is a difficult and complex one, and there is some uncertainty as to the way in which it applies to retained securitisations. Under the revised test, independence will be tested by reference to control of an entity's affairs through the holding of shares, possession of voting rights, or powers given by articles of association. The amendments change the test of independence to make it simpler and easier to apply. This is expected to enhance the competitiveness of the United Kingdom as a location for securitisations and for financial services.

7.6 Another condition which the note-issuing SPV must meet is that each note issuance arrangement must exceed £10 million at the point of issue. The government understands that this unduly restricts access to the regime, in particular for charities and other social impact organisations, and for other sectors such as small to medium-sized enterprises and the specialist non-bank lenders who lend to them. The threshold will be reduced to £5 million. Setting the threshold at this level balances access to the regime against risks that taxpayers may inadvertently fall within it. A lower threshold might encourage the use of these relatively complex arrangements to raise comparatively small amounts of finance, giving rise to an increased risk of non-compliance with significant regulatory as well as tax requirements.

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', available at https://www.gov.uk/government/consultations/reform-of-the-taxation-of-securitisation-companies, was issued on 23 March 2021, for responses by 3 June 2021. This covered whether to clarify or reform the TSCR as regards retained securitisations, the operation of the note issuance threshold for the note-issuing SPV, and the types of assets which can be securitised. It also covered whether to clarify or reform certain aspects of the Stamp Duty loan capital exemption as it applies to securitisations and to ILS.

10.2 Written responses were received from industry representative bodies, charities, and firms of advisers. 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 the organisations which 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 changes would clarify and reduce complexity in relation to the requirement to issue securities wholly or mainly to independent persons, and would increase access through the reduction of the note issuance threshold. A range of options were discussed. There was support for the changes to be made in the instrument.

10.5 A draft of this statutory instrument was published on 30 November 2021 for comment by 10 January 2022. No comments were received.

10.6 Respondents to the March 2021 consultation also confirmed that change would be beneficial in relation to the assets which can be securitised, and suggested a range of options. Suggestions were also made, within and outside the formal consultation process, for wider review of the scope of the securitisation tax regime. Officials are consulting further on these issues.

11. Guidance

11.1 When the changes come into force updated guidance will be available and will be incorporated in HMRC's Corporate Finance Manual at https://www.gov.uk/hmrc-internal-manuals/corporate-finance-manual/cfm72000.

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 the Taxation of Securitisation Companies (Amendment) Regulations 2022 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 increases access to the regime, which the charity and social impact organisation sector in particular has supported.

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 industry consultative group.

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 Alex Bosinceanu and Helen Maddaford at HMRC, email: financialproductsbai@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Richard Thomas, Deputy Director for the Financial Products and Services Team in Business, Assets and International, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen, MP, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.