

Regulations made by the Treasury, laid before the House of Commons under section 357YW(7) of the Corporation Tax Act 2010, for approval by resolution of the House of Commons within twenty-eight days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2017 No. 364

CORPORATION TAX

The Corporation Tax Act 2010 (Part 8C) (Amendment) Regulations 2017

Made	- - - -	at 11.00 a.m. on 13th March 2017
Laid before the House of Commons	- - - -	at 3.30 p.m. on 13th March 2017
Coming into force	- -	14th March 2017

The Treasury make the following Regulations in exercise of the power conferred by sections 357YW(1), (3) and (6) of the Corporation Tax Act 2010(1).

PART 1

GENERAL

Citation, commencement and effect

1. These Regulations may be cited as the Corporation Tax Act 2010 (Part 8C) (Amendment) Regulations 2017 and come into force on 14th March 2017.
2. The amendments made by Part 2 of these Regulations have effect from 21 October 2015.
3. The amendments made by Part 3 of these Regulations have effect from 14th March 2017.

Amendment of Part 8C of the Corporation Tax Act 2010

4. Part 8C of the Corporation Tax Act 2010(2) is amended as follows.

(1) 2010 c. 4; section 357YW was inserted by section 38(3) of the Finance (No. 2) Act 2015 (c. 33).
(2) Part 8C was inserted by section 38(3) of the Finance (No. 2) Act 2015.

PART 2

CHARITABLE COMPANIES, LIFE INSURANCE COMPANIES, ANTI-AVOIDANCE AND TREATMENT OF AMOUNTS DEDUCTED

Charitable companies

5. In section 357YA (charge to corporation tax on restitution interest)—
 - (a) the existing text becomes subsection (1), and
 - (b) after subsection (1) insert—
 - “(2) In subsection (1) the reference to a company does not include a charitable company.”.
6. In section 357YB (restitution interest chargeable as income), after subsection (1) insert—
 - “(1A) In subsection (1) the reference to a company does not include a charitable company.”.

Meaning of “restitution interest”

7. In section 357YC (meaning of “restitution interest”)—
 - (a) in subsection (2) for “a claim by the company for restitution” substitute “a company’s right (or possible right) to restitution”, and
 - (b) for subsection (3)(b) substitute—
 - “(b) the Commissioners have in final settlement of a claim in respect of the right (or possible right) mentioned in subsection (2) entered into an agreement under which a person is entitled to be paid, or is to retain, the interest.”.

Life insurance companies

8. After section 357YD (further provision about amounts included, or not included, in “restitution interest”) insert—

“Life insurance companies: amounts representing policyholder income

357YDA.—(1) This section applies if—

- (a) an amount of interest paid or payable by the Commissioners for Her Majesty’s Revenue and Customs would (but for this section) be restitution interest arising to a company, and
- (b) were this Part not to have effect, that amount would be taken into account under section 73 of FA 2012 (the I-E basis) as income chargeable for an accounting period of the company that is referable to its basic life assurance and general annuity business.

(2) So much (if any) of the amount as represents policyholder income is to be treated for the purposes of this Part as if it were not restitution interest.

(3) To determine how much (if any) of the amount mentioned in subsection (1) (amount “A”) represents policyholder income, take the following steps—

Step 1

Take so much of amount A as consists of non-ACT interest (“the non-ACT amount”).

Determine how much (in total) of the non-ACT amount is to be assigned to with-profits funds (one or more) of the company.

Call this total amount “P”.

In this step “non-ACT interest” means interest which is not interest in respect of advance corporation tax.

Step 2

Determine how much of P is to be assigned to each of the with-profits funds concerned.

This is the “assignable amount” in the case of each fund.

Step 3

In the case of each fund mentioned in step 2, determine in what proportions profits of the fund concerned are to be divided between policyholders and shareholders under the distribution policy for the fund.

Step 4

Express the policyholders’ proportion (as determined under step 3) as a percentage of the whole.

This is the “policyholder percentage” for the fund.

Step 5

Multiply each assignable amount by the policyholder percentage for the fund in question.

The result is the “policyholder amount” in the case of each fund.

Step 6

Amount A “represents policyholder income” so far as it does not exceed the total policyholder amounts found under step 5.

(4) For the purposes of subsection (3) “the distribution policy for the fund” means the basis on which the company has decided profits of the fund are to be divided between policyholders and shareholders.

(5) The distribution policy for a with-profits fund is to be determined as at the time when the interest arises, and with particular reference to—

- (a) any relevant information in the company’s articles of association, and
- (b) any relevant information or document published by the company in connection with obligations under the FCA Handbook.

(6) In this section—

“the FCA Handbook” means the Handbook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000, and

“interest” has the same meaning as in section 357YC.”.

9. In section 357YV (relationship of Part with other corporation tax provisions), after “provision” insert “(including Part 2 of FA 2012: but see also section 357YDA)”.

Transfer of rights

10. In section 357YM (assignment of rights to person not chargeable to corporation tax)—

(a) in subsection (1), for paragraph (a) substitute—

“(a) a chargeable company (“the transferor”) transfers to a person who either—

- (i) is not a company, or
 - (ii) is a non-qualifying company,

a right in respect of a claim, or possible claim, for restitution,”,
- (b) in subsection (3), for “is not within the charge to corporation tax under this Part” substitute “either—
 - (a) is not a company, or
 - (b) is a non-qualifying company.”, and
- (c) for subsection (5) substitute—

“(5) For the purposes of this section a company is a “chargeable company” if it meets the first and second conditions.

The first condition is that the company is UK resident or carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

The second condition is that the company is not a charitable company and would not be exempt from corporation tax on restitution interest (were such interest to arise to it).

(5A) For the purposes of this section a company is a “non-qualifying company” if—

 - (a) it is non-UK resident, or
 - (b) it is a charitable company, or would be exempt from corporation tax on restitution interest (were such interest to arise to it).”.

11. After section 357YN (migration of company with claim to restitution interest) insert—

“Transfer of rights: restitution interest arising after a winding up or dissolution

357YNA.—(1) Subsection (2) applies if an amount of restitution interest which is paid or payable to a person would be treated under section 357YM(4) as arising to a company (“the transferor”) but for the fact that the company no longer exists at the time when the restitution interest arises.

(2) If an officer of Revenue and Customs gives a related company a notice under this subsection in respect of the restitution interest, the restitution interest is treated for corporation tax purposes as restitution interest arising to that company.

(3) Subsection (4) applies if an amount of restitution interest which is paid or payable to a person would apart from this section be treated by virtue of section 357YM(4) as arising to a company which has been wound up (“the transferor”).

(4) If an officer of Revenue and Customs gives a related company a notice under this subsection in respect of the restitution interest, the restitution interest is treated for corporation tax purposes as restitution interest arising not to the transferor but to that company.

(5) A notice under subsection (2) or (4) must specify—

- (a) the amount of the restitution interest, and
- (b) the date on which it is paid or payable.

(6) A notice under subsection (2) or (4) in respect of an amount of restitution interest must be given by the later of—

- (a) the date on which the amount is paid or payable, or
- (b) the time when any notice under section 357YQ(2) in respect of the amount is given to the related company.

Meaning of “related company”

357YNB.—(1) A company is a “related company” for the purposes of section 357YNA(2) if at any time in the relevant period (see subsection (5)) that company was a member of the same group as the transferor (see section 357YNA(1)).

(2) A company is a “related company” for the purposes of section 357YNA(4) if at any time in the relevant period (see subsection (6)) that company was a member of the same group as the transferor (see section 357YNA(3)).

(3) For the purposes of this section two companies are members of the same group if—

- (a) one is a 51% subsidiary of the other, or
- (b) both are 51% subsidiaries of a third company.

(4) In subsection (1) “the relevant period” means the period which—

- (a) begins—
 - (i) if the transferor was not wound up before it was dissolved, at the beginning of the 12 months ending with the date on which the company is dissolved,
 - (ii) if the transferor was wound up before it was dissolved, at the beginning of the 12 months before the commencement of the winding up, and
- (b) ends when the amount mentioned in section 357YNA(1) is paid or becomes payable (whichever is later).

(5) In subsection (2) the “relevant period” means the period which—

- (a) begins at the beginning of the 12 months before the commencement of the winding up of the transferor, and
- (b) ends when the amount mentioned in section 357YNA(3) is paid or becomes payable (whichever is later).”.

Calculation of tax payable

12. In section 357YP (treatment of amounts deducted under section 357YO), in subsection (1)—

- (a) the text from “is treated” to the end becomes paragraph (a) of that subsection, and
- (b) after paragraph (a) insert—
 - “, and
 - (b) is accordingly to be treated for corporation tax purposes as going towards the discharging of the company’s liability to pay, for the accounting period concerned, tax charged under this Part (as calculated under paragraph 2 of the fifth step of paragraph 8(1) of Schedule 18 to FA 1998).”.

PART 3

MINOR AMENDMENTS

13. In section 357YC (meaning of “restitution interest”), in subsection (2), in the words before paragraph (a), after “Commissioners” insert “for Her Majesty’s Revenue and Customs”.

14. In section 357YH (countering effect of avoidance arrangements)—

- (a) in subsection (1), omit “restitution-related”, and
- (b) in subsection (3), for ““restitution-related tax advantage”” substitute ““tax advantage””.

15. In section 357YJ (examples of results that may indicate exclusion not available)—

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- (a) the existing text becomes subsection (1),
- (b) in subsection (1), in the words before paragraph (a), omit “restitution-related”, and
- (c) after subsection (1) insert—

“(2) In this section “arrangements” and “tax advantage” have the meaning given by section 357YI.”.

16. In section 357YP (treatment of amounts deducted under section 357YO), in subsection (2) (a), after “Commissioners” insert “for Her Majesty’s Revenue and Customs”.

17. In section 357YR (interest on excessive amounts withheld), in subsection (1) after “Commissioners” insert “for Her Majesty’s Revenue and Customs”.

18. In section 357YS (appeal against deduction), in subsection (2), in the words before paragraph (a), after “given” insert “to Her Majesty’s Revenue and Customs”.

David Evennett

Robert Syms

Two of the Lords Commissioners of Her
Majesty’s Treasury

At 11.00 a.m. on 13th March 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations amend Part 8C of the Corporation Tax Act 2010 (c. 4) (“CTA 2010”) which was inserted into the CTA 2010 by section 38(3) of Finance (No. 2) Act 2015 (c. 33). Part 8C applies a corporation tax rate of 45% to payments of restitution interest made by the Commissioners for Her Majesty’s Revenue and Customs (“HMRC”).

Part 2 of the Regulations (consisting of Regulations 5 to 12) amends the anti-avoidance provisions and excludes from the charge certain categories of claimant who, under statute, were historically either fully or partially exempt from tax on their investment income. Regulation 2 provides that these changes have effect from 21 October 2015. Authority for the retrospective effect is provided by section 357YW(3) of the CTA 2010.

Regulations 5 and 6 provide that Part 8C of the CTA 2010 does not apply to charitable companies as defined for the purposes of CTA 2010 by Schedule 4 of that Act.

Regulation 7 modifies section 357YC CTA 2010 to ensure that a claim for restitution made by a company where the restitution interest is passed through to another company without being recognised under generally accepted accounting principles by the first company falls within Condition A.

Regulations 8 and 9 provide that the part of the restitution interest which represents income of policyholders of with-profits funds does not fall within the scope of Part 8C of the CTA 2010. The part which is attributable to a claim made in respect of alleged unlawful tax paid or collected which is attributable to shareholder profits remains within the scope.

Regulation 10 extends the provisions of section 357YM CTA 2010 to include the assignment of rights by a non-resident company where that company carries on a trade through a permanent establishment in the United Kingdom.

Regulation 11 inserts, after section 357YN CTA 2010, new section 357YNA CTA 2010 and new section 357YNB CTA 2010 which deal with the consequences of the assignment of rights under section 357YM CTA 2010 where the transferor is subsequently wound up and/or dissolved.

New section 357YNA CTA 2010 includes subsections (1) to (6) which apply when the transferor company within section 357YM CTA 2010 has subsequently been wound up or dissolved after it had assigned its rights (or possible rights) to restitution interest to a person not chargeable to corporation tax.

In that situation a notice may be given to a related company providing that the restitution interest which had been treated as arising to the transferor company within section 357YM CTA 2010 will be treated as arising to the related company instead.

The notice will specify the amount of restitution interest and the date on which it is paid or payable and must be given at the time of the withholding obligation under section 357YO CTA 2010 or, if later, at the time an assessment is made under section 357YQ CTA 2010.

New section 357YNB CTA 2010 includes subsections (1) to (5) which define the meaning of a related company in the relevant period. A company will be related to the transferor company if it is a member of the same group as the transferor. The relevant period will begin 12 months before the commencement of the winding up, or, if not wound up, from 12 months prior to the date of dissolution and will end when the restitution interest is paid or becomes payable (whichever is later).

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Regulation 12 modifies section 357YP CTA 2010 to make clear that in computing the amount of tax payable in relation to restitution interest, subsection (1) of section 357YP CTA 2010 provides that tax withheld under section 357YO CTA 2010 can go towards discharging the company's liability to corporation tax on the restitution interest.

Part 3 of the Regulations (consisting of Regulations 13 to 18) makes minor amendments to Part 8C. Regulation 3 provides that these amendments have effect from 14th March 2017

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.