

EXPLANATORY MEMORANDUM TO
THE LLOYD'S UNDERWRITERS (CONVERSION OF PARTNERSHIPS TO
UNDERWRITING THROUGH SUCCESSOR COMPANIES) (TAX) REGULATIONS
2014

2014 No. 3133

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

2. Purpose of the instrument

This instrument allows a relief to individual partners in partnerships underwriting at Lloyd's when those partnerships convert to underwriting through a successor company. Where a partner receives shares in the company in return for certain partnership or individual assets which relate to the underwriting activity then, subject to certain conditions, the instrument defers the taxation of the capital gains arising on the disposal of the assets until the partner disposes of the shares.

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

None

4. Legislative Context

4.1 The instrument is being made to address the tax consequences that arise from a change in the rules of Lloyd's. It aims to provide capital gains tax relief for individual partners in partnerships that underwrite at Lloyd's.

4.2 As from 1 January 2015 changes to the rules of Lloyd's require all participants in underwriting to be UK resident in order to continue underwriting. The only viable option for most non-residents to continue to participate in underwriting is to convert to underwriting through a UK resident company, but the disposal of certain assets to the company may give rise to a capital gains tax charge on the individual partners.

4.3 This instrument allows a capital gains tax relief to individual partners in a Lloyd's partnership that converts to underwriting through a successor company. A similar relief is already available to individual underwriters at Lloyd's who convert to underwriting through successor companies, and outside of the Lloyd's context to individual partners in a partnership that transfers its business to a company.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Commissioners for Her Majesty's Revenue and Customs have made the following statement regarding Human Rights:

“In our view the provisions of The Lloyd's Underwriters (Conversion of Partnerships to Underwriting through Successor Companies) (Tax) Regulations 2014 are compatible with the Convention rights.”

7. Policy background

- 7.1 Under Lloyd's rules individual members and partnership members can transfer their underwriting businesses to companies that are also members of Lloyd's. This is normally referred to as “conversion”. For disposals of certain assets on conversion after 5 April 2004, Schedule 20A to Finance Act 1993 allows individual members to claim a capital gains tax relief. This relief was introduced to support individuals converting from unlimited liability underwriting to limited liability underwriting through partnership or company successors. At the time the relief was introduced it was only made available to individuals although a power was provided in order to reconsider the scope of the relief as Lloyd's rules evolved.
- 7.2 On 1 January 2015 changes in the rules of Lloyd's will require all non-residents who participate in underwriting at Lloyd's to become UK resident in order to continue underwriting. For non-resident partners in Lloyd's partnerships, conversion of the partnership into a UK resident company is the only viable way to continue underwriting.
- 7.3 This instrument therefore amends Schedule 20A to the Finance Act 1993 to make available to all individual partners in Lloyd's partnership members that convert the same capital gains tax reliefs that individual members can claim on conversion. Provided stated conditions are met relief is available on the individual partner's share of any gain arising from disposal of the partnership's right to underwrite on a particular syndicate (the syndicate capacity). Relief is also available on the subsequent disposal of certain assets held either by the individual or the partnership which are required to support the successor company's underwriting (the ancillary trust fund). Each disposal must only be for shares in the successor company and the deferred gains will be brought back into charge on the later disposal of those shares.

7.4 Outside of the Lloyd's context section 162 of the Taxation of Chargeable Gains Act 1992 allows a capital gains tax relief to partners in partnerships that convert to trading through a successor company. Because Lloyd's partnerships cannot transfer pre-conversion liabilities to company successors the relief is not available to partners in Lloyd's partnerships. By providing a capital gains tax relief for individuals who are partners in Lloyd's partnerships that convert to underwriting through a successor company this instrument puts such individuals on a par with individuals in partnerships outside of Lloyd's where the partnership converts to a company.

8. Consultation outcome

8.1 The Lloyd's tax department, the members' agents (who between them represent all of the partnership members at Lloyd's) and certain other stakeholders were informally consulted on the proposed changes.

8.2 Draft regulations were shared and responses and comments showed 100% support for the proposal.

8.3 The drafting of this instrument reflects the comments made by respondents to this informal consultation.

9. Guidance

Guidance will be published in the HMRC Lloyd's Manual.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This instrument provides a relief from capital gains tax to individuals who are partners in Lloyd's partnerships. It does not give rise to any specific requirements for small businesses.

11.3 The basis for the final decision on what action to take to assist small business was taken following consultation with members' agents who represent all of the partnerships currently underwriting at Lloyds.

12. Monitoring & review

12.1 The success criterion for this instrument is that tax is not a barrier to the structure under which individuals underwrite at Lloyd's. The outcome will be kept under review through regular communication with the taxpayer groups affected.

13. Contact

Darryl Wall at HMRC – telephone 03000 585977 or email darryl.wall@hmrc.gsi.gov.uk
- can answer any queries regarding the instrument.