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## SCHEDULES

### SCHEDULE 10

Section 330.

#### UNDERWRITERS

#### PART I

##### SPECIAL RESERVE FUNDS

- 1 If, in the case of Lloyd's or any approved association of underwriters—
- (a) arrangements are made for the setting up, in relation to each underwriting member who elects to take advantage of the arrangements, of such a special reserve fund as is referred to in this Part of this Schedule, and
  - (b) the arrangements comply with the requirements of this Part of this Schedule, are approved by the Commissioners of Inland Revenue and are certified by the Board of Trade to be in the public interest,
- then, subject to the provisions of paragraph 14 below relating to the cancellation by the said Commissioners or the Board of Trade of their approval or certificate, the provisions of this Part of this Schedule relating to taxation shall have effect in relation to any such underwriting member who duly elects as aforesaid.

##### *Adherence to, and withdrawal from, arrangements*

- 2 (1) The arrangements must provide that an underwriting member who wishes to elect to take advantage of the arrangements shall do so by giving notice in writing to the inspector and to such other persons as may be specified in the arrangements.
- (2) Any such notice as aforesaid is referred to in the following provisions of this Schedule as a notice of adherence, and, in the said provisions, " the underwriter " means an underwriting member who has given such a notice.
- 3 (1) The arrangements must enable the underwriter, if he thinks fit so to do, by giving notice in writing to the inspector and to such other persons as may be specified in the arrangements, to withdraw from the arrangements to the extent appearing from the following provisions of this Schedule.
- (2) Any such notice as aforesaid is referred to in the following provisions of this Schedule as a notice of withdrawal.
- 4 Where the underwriter has given a notice of withdrawal, he shall not be entitled to give another notice of adherence.

##### *Setting up and management of, and payments into and out of, special reserve funds*

- 5 The arrangements must provide for the setting up, in relation to the underwriter, of a special reserve fund vested in trustees who have control over it and power to invest the capital thereof and to vary the investments:

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Provided that where part of the business of the underwriter is carried on through an underwriting agent and part thereof is not so carried on, or where different parts of his business are carried on through different underwriting agents, the arrangements may provide for separate special reserve funds being constituted in relation to the different parts of his business.

- 6 The arrangements must provide for the income arising from the investments of the underwriter's special reserve fund or funds being held on trust for the underwriter, his personal representatives or assigns.
- 7 (1) The arrangements must be such as to secure that if, for an underwriting year corresponding to a year of assessment to which this paragraph applies, the underwriter makes a profit from his business, he has the right to make, into his special reserve fund or funds, payments the gross amount of which is not in the aggregate greater than £7,000 or 50 per cent. of that profit, whichever is the less, or such less sum as may be specified in the arrangements:

Provided that—

- (a) no such payment shall be made after the expiration of six months from the date as at which the accounts of the business for that underwriting year are deemed by the Commissioners of Inland Revenue for the purposes of the arrangements to be closed, or such longer period as those Commissioners may allow ;
  - (b) where the underwriter carries on his business during part only of that year of assessment, the maximum gross amount of the said payments shall be reduced by the application thereto of the proportion which the part of that year of assessment for which he is entitled to profits from the business bears to a full year.
- (2) Subject to the provisions of paragraph 14 of this Schedule (which relates to the effect of the cancellation by the Commissioners of Inland Revenue or the Board of Trade of their approval or certificate with respect to the arrangements), the years of assessment to which this paragraph applies are all years of assessment during the whole or any part of which the underwriter continues to carry on his business subsequent to the year of assessment during which the notice of adherence is given:

Provided that—

- (a) in no case shall this paragraph apply to the year of assessment in which the underwriter commences to carry on his business or to the year of assessment next following that year;
  - (b) where the underwriter gives a notice of withdrawal, the last year of assessment to which this paragraph applies shall, subject to the provisions of the said paragraph 14, be the year of assessment corresponding to the underwriting year the accounts for which are deemed by the Commissioners of Inland Revenue for the purposes of the arrangements to be closed as at a date falling within the year of assessment preceding that in which the notice of withdrawal is given.
- (3) In sub-paragraph (1) of this paragraph, " profit" means a profit computed in the manner in which the profits or gains of the business of the underwriting year in question would fall to be computed under Case I of Schedule D if—
- (a) income arising from the investments forming part of the premiums trust fund of the underwriter, his special reserve fund or funds and any other fund required or authorised by the rules of Lloyd's or the association in question,

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or required by the underwriting agent through whom the business or any part thereof is carried on, to be kept in connection with the business fell to be taken into account, and

- (b) all shares of the profits of the business and all charges related to those profits or to the said income, being shares and charges payable to persons other than the underwriter and not otherwise taken into account, fell to be deducted.

- (4) In sub-paragraph (3)(a) above the reference to income arising from the investments forming part of the funds mentioned in the said sub-paragraph (3)(a) shall include the amount of the gains chargeable to tax under Case VII of Schedule D which accrue in the underwriting year in question from the acquisition and disposal of any such investments, after deducting from those gains losses accruing before the end of that year from any chargeable acquisition and disposal (within the meaning of Case VII of Schedule D) of any such investments so far as those losses are not under this sub-paragraph deductible from gains accruing in a previous underwriting year.

- 8 (1) The arrangements must be such as to secure that, if it is certified that the underwriter has sustained a loss in his business for an underwriting year subsequent to that which corresponds to the first year of assessment to which paragraph 7 of this Schedule applies, there shall be made into his premiums trust fund, out of the capital of his special reserve fund or funds, payments the gross amount of which is equal in the aggregate to the certified amount of the loss:

Provided that if the capital of his special reserve fund or funds, reduced by so much thereof as represents sums paid into it or them as a consequence of a profit for a year later than the year of the loss, is less than the net amount of the payments required to be made by this sub-paragraph, the said payments shall be reduced so that the net amount thereof is equal to the capital of the said fund or funds as so reduced.

- (2) In this paragraph, "loss" means a loss computed in the manner in which the profits or gains of the business of the underwriting year in question would fall to be computed under paragraph 7(3) above:

Provided that where, under any arrangement between the underwriter and another person which provides for the sharing of losses, any amount is paid to the underwriter by that person as that person's share of a loss for that year, the loss, as computed for the purposes of this paragraph, shall be reduced by that amount.

- (3) In this paragraph, "certified" means certified by a certificate of the inspector:

Provided that—

- (a) no certificate shall be given by the inspector until thirty days have elapsed from the date on which he has given to the underwriter or his personal representatives notice in writing stating his intention to give a certificate and stating the amount which he proposes to specify therein as the amount of the loss ;
- (b) the underwriter or his personal representatives may, on giving notice in writing to the inspector within the said thirty days, appeal to the Special Commissioners ;
- (c) where notice is so given by the underwriter or his personal representatives, the inspector shall not without the consent of the underwriter or his personal representatives give any certificate until after the hearing of the appeal; and

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- (d) on the hearing of the appeal, the Special Commissioners may direct the inspector not to give a certificate or to give it with such an amount specified therein as the amount of the loss as may be specified in the direction.
- 9 (1) The arrangements may authorise the making of payments pursuant to paragraph 8(1) above on a provisional basis before the amount of the loss has been finally ascertained and certified by the inspector.
- (2) The amount so withdrawn shall not exceed such proportion of the estimated loss as may be specified in the arrangements.
- (3) When the amount of the loss has been certified by the inspector such adjustments shall be made by repayment to the underwriter's special reserve fund or funds, or by further withdrawal of sums for payment into the underwriter's premiums trust fund, as will secure that the net amount withdrawn from the underwriter's special reserve fund or funds in respect of the loss is that required pursuant to paragraph 8(1) above ; and no tax consequences shall ensue on the withdrawal of sums in respect of a loss until the amount of the loss has been so certified and any such adjustments have been made.
- 10 The arrangements must provide that, on the underwriter ceasing to carry on his business, the capital of his special reserve fund or funds, so far as not required for giving effect to the requirements of paragraph 8 above, shall be paid over to the underwriter or his personal representatives or assigns.

*Income tax consequences*

- 11 (1) Where such a payment as is mentioned in paragraph 7(1) above is made into a special reserve fund of an underwriter by reason of the making by him of a profit for an underwriting year—
- (a) the payment shall be deemed for all income tax purposes to be an annual payment chargeable to income tax by way of deduction and payable and paid in the year of assessment corresponding to that underwriting year ; and
- (b) the sum actually paid shall be deemed for the purposes of this Part of this Schedule and for all income tax purposes to be a net amount corresponding to a gross amount from which income tax has been duly deducted at the standard rate for that year of assessment.
- (2) Where such a payment as is mentioned in paragraph 8(1) above is made out of a special reserve fund of an underwriter into a premiums trust fund of his by reason that he has sustained a loss for an underwriting year then, subject to paragraph 9(3) above—
- (a) the payment shall be deemed for all income tax purposes—
- (i) to be an annual payment chargeable to income tax by way of deduction and paid out of profits or gains brought into charge to income tax ; and
- (ii) to have been payable and paid to the underwriter ; and
- (iii) to have been payable and paid to him on the last day of the year of assessment which immediately preceded the year of assessment corresponding to that underwriting year or, if he ceased to carry on his business before that day, on the last day on which he carried on his business ; and

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- (b) the sum actually paid shall be deemed for the purposes of this Part of this Schedule and for all income tax purposes to be a net amount corresponding to a gross amount from which income tax has been duly deducted at the standard rate for the year of assessment in which the payment is deemed as aforesaid to have been payable and paid.
  - (3) Where the underwriter ceases to carry on his business before his death and, under so much of the arrangements as gives effect to paragraph 10 of this Schedule, a sum is paid to him or his personal representatives or assigns—
    - (a) the payment shall be deemed for all income tax purposes—
      - (i) to be an annual payment chargeable to income tax by way of deduction and paid out of profits or gains brought into charge to income tax ; and
      - (ii) to have been payable and paid to the underwriter ; and
      - (iii) to have been payable and paid to him on the last day on which he carried on his business ; and
    - (b) the sum actually paid shall be deemed for the purposes of this Part of this Schedule and for all income tax purposes to be a net amount corresponding to a gross amount from which income tax has been duly deducted at the standard rate for the year of assessment in which the payment is deemed as aforesaid to have been payable and paid.
  - (4) Neither the arrangements, nor any disposition, trust, covenant, agreement or arrangement entered into for the purposes thereof, shall be treated as included in the expression " settlement" for the purposes of Chapter LTI or Chapter IV of Part XVI of this Act, and nothing in section 31 of this Act (surtax relief where income for a period exceeding a year is received in a year) shall be construed as applying to the payments referred to in sub-paragraphs (2) and (3) of this paragraph.
- 12 (1) In this paragraph "the lower limit" means the limit which would be imposed by paragraph 7(1) above if the words " £5,000 or 35 per cent. of that profit, whichever is the less " stood in that sub-paragraph in place of the words " £7,000 or 50 per cent. of that profit, whichever is the less ".
- (2) Where an underwriter dies while carrying on his business and, after giving effect to the requirements of paragraph 8 above, his special reserve fund or funds include an amount which represents an excess in the payments made into the fund or funds for any underwriting year over the lower limit—
    - (a) he shall be deemed for all income tax purposes to have received in the year of assessment corresponding to the said underwriting year a payment of the said amount—
      - (i) which was an annual payment chargeable to income tax by way of deduction and paid out of profits or gains brought into charge to income tax, and
      - (ii) which was payable in the year of assessment in which it is deemed to have been paid, and
    - (b) the payment (to the said actual amount) shall be deemed for the purposes of this Part of this Schedule and for all income tax purposes to be a net amount corresponding to a gross amount from which tax has been duly deducted at the standard rate for the year of assessment in which the amount is deemed as aforesaid to have been payable and paid.

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- (3) Where, to give effect to the requirements of the said paragraph 8 as to the meeting of a loss, any withdrawal was made at any time from the capital of the underwriter's special reserve fund or funds, the amount withdrawn shall be regarded for the purposes of sub-paragraph (2) above—
- (a) as having been met out of payments made into the fund or funds for underwriting years before that in which the loss was incurred, and as having been met before any withdrawal to meet a loss for a later underwriting year, and
  - (b) as having been met out of so much of the payments made for any underwriting year as was not in excess of the lower limit, rather than out of such part of the payments made for any underwriting year as was in excess of the lower limit, and
  - (c) subject to that, as having been met out of payments in excess of the lower limit for a later year rather than out of payments in excess of the lower limit for an earlier year,
- and, where payments have been made into the underwriter's special reserve fund or funds for any underwriting year in excess of the lower limit, his fund or funds shall be deemed at all subsequent times to include an amount representing that excess except to the extent that any withdrawal is, under the provisions of this sub-paragraph, to be regarded as having been met out of that amount.
- (4) Any tax chargeable by virtue of this paragraph shall be assessed and charged upon the underwriter's personal representatives and tax so charged shall be a debt due from and payable out of his estate; and, notwithstanding section 34(1) of the Taxes Management Act 1970 (which requires assessments to be made not later than six years after the end of the year to which they relate), assessments in respect of tax so chargeable may be made at any time not later than three years after the end of the year of assessment in which the underwriter died.
- (5) References in this paragraph to payments made into a special reserve fund or funds for any underwriting year are references to payments made, as described in paragraph 7(1) above, by reference to the profits made for that underwriting year.

*Supplemental*

- 13 The arrangements may from time to time be varied with the consent of the Commissioners of Inland Revenue and the Board of Trade.
- 14 If, after giving notice in writing of their intention so to do to the Committee of Lloyd's or the managing body of whatever other association of underwriters is in question, the Commissioners of Inland Revenue or the Board of Trade cancel the approval or certificate which they have given with respect to the arrangements—
- (a) no underwriting member may give a notice of adherence to the arrangements after the date of the cancellation ; and
  - (b) paragraph 7 of this Schedule shall not apply, in the case of any underwriter, to any year of assessment after the year of assessment in which the approval or certificate is cancelled.

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## PART II

### SHORT TERM CAPITAL GAINS

- 15 (1) An underwriting member of Lloyd's or of an approved association of underwriters shall be treated for the purposes of Chapter VIII of Part VI of this Act, and in particular of section 163(1) of this Act (persons absolutely entitled to assets held by nominees or trustees), as absolutely entitled as against the trustees to the investments of his premiums trust fund, his special reserve fund (if any) and any other trust fund required or authorised by the rules of Lloyd's or the association in question, or required by the underwriting agent through whom his business or any part of it is carried on, to be kept in connection with the business.
- (2) The trustees of any such fund shall (subject to sub-paragraph (3) below) be assessed and charged to income tax at the standard rate as if sub-paragraph (1) above had not been passed, and may, notwithstanding anything in any enactment or in the trusts of the fund, out of any gain accruing from the acquisition and disposal of an investment of the fund make good to the underwriting member any increase in the surtax borne by him which is attributable to that gain.
- (3) The assessment to be made on the trustees of a fund by virtue of this paragraph for any year of assessment shall not take account of losses accruing in any previous year of assessment, and if for that or any other reason the tax paid on behalf of an underwriting member for any year of assessment by virtue of assessments so made exceeds the tax for which he is liable, the excess shall be repaid on a claim being made by him.

## PART III

### INTERPRETATION

- 16 (1) In this Schedule—
- " approved association of underwriters " means an association of underwriters approved by the Board of Trade for the purposes of Part II of the Companies Act 1967 or by the Ministry of Commerce for Northern Ireland for the purposes of section 3 of the Insurance Companies Act (Northern Ireland) 1968,
- " business ", in relation to an underwriter, means his underwriting business as a member of Lloyd's or of whatever other association of underwriters is in question, whether carried on personally or through an underwriting agent, and does not include any other business carried on by him, and in particular, where he is himself an underwriting agent, does not include his business as such an agent,
- " net amount " and " gross amount ", in relation to any payment, mean respectively the sum actually paid and the sum which, after deduction of income tax, is equal to the sum actually paid,
- " premiums trust fund " means such a trust fund as is referred to in paragraph 1 of Schedule 1 to the Insurance Companies Act 1958, or paragraph 1 of Schedule 1 to the Insurance Companies Act (Northern Ireland) 1968,
- " underwriting year " means, in relation to the business of an underwriter as a member of Lloyd's the calendar year, and, in relation to the business of an underwriter as a member of any other association of underwriters, the period

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of twelve months for which, under the rules or practice of that association, the accounts of the business of the underwriter fall to be made up.

- (2) For the purpose of construing any reference in this Schedule to the year of assessment which corresponds to an underwriting year or to the underwriting year which corresponds to a year of assessment, an underwriting year and a year of assessment shall be deemed to correspond to each other in the case of an underwriter if, assuming that there were no question arising in connection with the commencement or cessation of the business of that underwriter, that underwriting year is the period on the profits or gains of which income tax for that year of assessment would fall to be computed under Case I of Schedule D in respect of that business.