

## SCHEDULES

### SCHEDULE 13

Section 36

#### COMPANY GAINS FROM INVESTMENT LIFE INSURANCE CONTRACTS

##### *Definitions*

- 1 (1) In this Schedule—
- “investment life insurance contract” means—
- (a) a policy of life insurance which has, or is capable of acquiring, a surrender value,
  - (b) a contract for a purchased life annuity, or
  - (c) a capital redemption policy,
- other than a relevant excluded contract,
- “relevant company” means a company which is not a life insurance company, and
- “relevant excluded contract” means—
- (a) an investment life insurance contract under, or purchased with sums or assets held for the purposes of, a registered pension scheme, or
  - (b) (subject to sub-paragraph (3)) a policy of life insurance issued in respect of an insurance made before 14 March 1989.
- (2) In sub-paragraph (1)—
- “capital redemption policy” means a contract made in the course of capital redemption business (as defined in section 431(2ZF) of ICTA),
- “life insurance company” means—
- (a) an insurance company (as defined in subsection (2) of section 431 of ICTA) which carries on long-term business (as defined in that subsection), or
  - (b) a friendly society which would be such an insurance company but for the words “(other than a friendly society)” in the definition of “insurance company” in that subsection, and
- “purchased life annuity” means an annuity—
- (a) granted for consideration in money or money’s worth in the ordinary course of a business of granting annuities on human life, and
  - (b) payable for a term ending at a time ascertainable only by reference to the end of a human life (whether or not it may in some circumstances end before or after the life).
- (3) A policy of life insurance issued in respect of an insurance made before 14 March 1989 is to be treated for the purposes of this Schedule as issued in respect of one made on or after that date if it is varied on or after that date so as to—
- (a) increase the benefits secured, or
  - (b) extend the term of the insurance;

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and any exercise of rights conferred by the policy is to be regarded for this purpose as a variation.

(4) In this Schedule—

“fair value accounting” has the same meaning as in Chapter 2 of Part 4 of FA 1996 (see section 103(1) of that Act),

“non-trading credit” has the same meaning as in that Chapter (see section 82(3) of that Act),

“registered pension scheme” has the same meaning as in Part 4 of FA 2004, and

“related transaction” has the same meaning as in Chapter 2 of Part 4 of FA 1996 (see section 84(5) and (6) of that Act).

*Contract to be loan relationship*

2 (1) If a relevant company is a party to an investment life insurance contract, for the purposes of Chapter 2 of Part 4 of FA 1996 the contract is, in relation to the company, a loan relationship of the company (as a creditor relationship).

(2) But if—

(a) the amount or value of a lump sum payable under an investment life insurance contract by reason of death or the onset of critical illness, exceeds

(b) the surrender value of the contract immediately before the time when the lump sum becomes payable,

the excess is not to be brought into account as a credit under that Chapter representing a profit from a related transaction arising by reason of the lump sum becoming payable.

*Increased non-trading credits*

3 (1) This paragraph applies where—

(a) by virtue of paragraph 2 the relevant company is required to bring into account for an accounting period a non-trading credit representing a profit from a related transaction, and

(b) the investment life insurance contract is a BLAGAB contract, or a contract which is subject to a relevant comparable EEA tax charge.

(2) The non-trading credit (“NTC”) is to be treated as increased by the relevant amount and the relevant amount is to be set off against corporation tax assessable on the company for the accounting period.

(3) The relevant amount is—

$$\frac{AR}{100 - AR} \times NTC$$

where AR is the appropriate rate for the accounting period, that is—

(a) if a single rate of tax under section 88(1) of FA 1989 (lower corporation tax rate on certain insurance company profits) is applicable in relation to the accounting period, that rate, and

(b) if more than one such rate of tax is applicable in relation to the accounting period, the average of those rates over the accounting period.

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- (4) In sub-paragraph (1) “BLAGAB contract” means a contract forming part of basic life assurance and general annuity business of an insurance company but not part of business which is exempt from corporation tax under section 460 of ICTA (friendly society business and former friendly society business).
- (5) For the purposes of sub-paragraph (1) the contract is subject to a relevant comparable EEA tax charge if the contract forms part of the business of a company (other than the relevant company) to which a relevant comparable EEA tax charge has applied.
- (6) For the purposes of sub-paragraph (5) a relevant comparable EEA tax charge has applied to a company if—
- (a) a charge to tax has applied to the company under the laws of a territory outside the United Kingdom that is within the European Economic Area,
  - (b) the charge has applied to the company—
    - (i) as a body deriving its status as a company from those laws,
    - (ii) as a company with its place of management there, or
    - (iii) as a company falling under those laws to be regarded for any other reason as resident or domiciled there,
  - (c) the charge applies at a rate of at least 20% in relation to the amounts subject to tax in the company’s hands, other than amounts arising or accruing in respect of investments of a description for which a special relief or exemption is generally available, and
  - (d) the charge is made otherwise than by reference to the company’s profits.
- 4 (1) Where the relevant company brings into account credits and debits in respect of the investment life insurance contract on the basis of fair value accounting, the relevant amount under paragraph 3 is determined as if for “NTC” in the formula in sub-paragraph (3) of that paragraph there were substituted “PC”.
- (2) For this purpose “PC” is the profit from the contract, that is any amount by which—
- (a) the amount payable as a result of the related transaction, exceeds
  - (b) the fair value of the contract when the contract was made or, if the contract was made before the beginning of the first accounting period of the company beginning on or after 1 April 2008, at the beginning of that period.
- (3) If the related transaction is an assignment (or, in Scotland, assignation) or surrender of only part of the rights conferred by the contract, sub-paragraph (2) has effect as if paragraph (b) of that sub-paragraph referred to the relevant fraction of the fair value of the contract when the contract was made or, if the contract was made before the beginning of the first accounting period of the company beginning on or after 1 April 2008, at the beginning of that period.
- (4) For this purpose the relevant fraction is—

$$\frac{C}{FVC}$$

where—

C is the amount payable as a result of the related transaction, and  
FVC is the fair value of the contract immediately before the related transaction.

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### *Commencement*

- 5 This Schedule has effect for accounting periods beginning on or after 1 April 2008.
- 6 (1) Where the relevant company was a party to an investment life insurance contract immediately before the beginning of the first accounting period of the company beginning on or after that date, the company is to be treated for the purposes of Chapter 2 of Part 13 of ICTA (life policies etc) as having surrendered all the rights under the contract immediately before that date for an amount equal to the carrying value of the contract at that time as recognised for accounting purposes.
- (2) Any gain arising under Chapter 2 of Part 13 of ICTA by reason of that deemed surrender (“the Chapter 2 gain”)—
- (a) is not income of the company for the accounting period in which it arises, but
  - (b) is instead to be brought into account as a non-trading credit for the accounting period in which there is a related transaction.
- (3) If, immediately after the related transaction, the company is still a party to the investment life insurance contract, only the relevant fraction of the Chapter 2 gain is brought into account as mentioned in sub-paragraph (2)(b).
- (4) “The relevant fraction” is—

$$\frac{P}{SAR}$$

where—

P is the amount payable as a result of the related transaction, and  
 SAR is the amount that would have been payable on a surrender of all of the rights under the contract immediately before the related transaction.

- 7 (1) This paragraph applies where—
- (a) the relevant company was a party to an investment life insurance contract immediately before the beginning of the first accounting period of the company beginning on or after 1 April 2008,
  - (b) at all times since the contract was made the rights conferred by the contract have been in the beneficial ownership of the company,
  - (c) the company brings into account credits and debits in respect of the contract on the basis of fair value accounting, and
  - (d) the relevant amount exceeds the fair value of the contract immediately before the beginning of that accounting period.
- (2) In sub-paragraph (1)(d) “the relevant amount” means—
- (a) where section 541 of ICTA applies on the deemed surrender under paragraph 6(1), the amount specified in sub-paragraph (i) of subsection (1)(b) of that section less the amount or value of any relevant capital payments (as defined in subsection (5)(a) of that section), or
  - (b) where section 543 of that Act applies on that deemed surrender, the amount specified in sub-paragraph (i) of subsection (1)(a) of that section less the amount or value of any relevant capital payments (as defined in subsection (3) of that section).
- (3) No amount is to be brought into account as a credit by virtue of paragraph 2 in relation to the contract except to the extent that the aggregate of—

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- (a) the amount of the credit, and
  - (b) the total of any other credits which have previously arisen in relation to the contract by virtue of that paragraph,is greater than the excess mentioned in sub-paragraph (1)(d).
- 8 (1) This paragraph applies where—
  - (a) the relevant company was a party to an investment life insurance contract immediately before the beginning of the first accounting period of the company beginning on or after 1 April 2008,
  - (b) the company brings into account credits and debits in respect of the contract otherwise than on the basis of fair value accounting, and
  - (c) the carrying value of the contract as recognised for accounting purposes immediately before the beginning of that first accounting period exceeds the fair value of the contract at that time.
- (2) No amount is to be brought into account as a debit by virtue of paragraph 2 in relation to the contract except to the extent that the aggregate of—
  - (a) the amount of the debit, and
  - (b) the total of any other debits which have previously arisen in relation to the contract by virtue of that paragraph,is greater than the excess mentioned in sub-paragraph (1)(c).