



# Finance Act 2012

## 2012 CHAPTER 14

### PART 1

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 3

#### CORPORATION TAX: GENERAL

#### *Insurance*

#### **25 Corporate members of Lloyd's: stop-loss insurance and quota share contracts**

- (1) In section 225 of FA 1994 (corporate members of Lloyd's: stop-loss and quota share insurance), after subsection (3B) insert—

“(3C) Subsection (3D) applies to any premium which is payable by a corporate member under a stop-loss insurance taken out in respect of its underwriting business and in relation to which section 220(2)(a) does not apply.

- (3D) The premium is to be treated for the purposes of the Corporation Tax Acts—
- (a) as an amount that arises to the member directly from its membership of the syndicate or syndicates in relation to the activities of which the stop-loss insurance was taken out, and
  - (b) as if it were payable in the underwriting year in which the profits or losses arising to the member directly from its membership of the syndicate or syndicates concerned are declared.

(3E) If a premium is payable under a stop-loss insurance in respect of two or more underwriting years, the amount of the premium treated, as a result of subsection (3D)(b), as payable in each of those years is to be determined on a just and reasonable basis.

(3F) If—

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- (a) a corporate member enters into a quota share contract, and
- (b) the main purpose, or one of the main purposes, of entering into it was to secure that amounts payable by the member under the contract were not dealt with on the basis set out in subsection (3G),

the contract is treated for the purposes of subsections (3C) to (3E) as if it were a stop-loss insurance (and, accordingly, the amounts payable under it are treated for those purposes as premiums).

(3G) Amounts are dealt with on the basis set out in this subsection if they are treated as payable in the underwriting year in which the profits or losses arising to a corporate member directly from its membership of one or more syndicates are declared.”

- (2) The amendment made by this section has effect in relation to—
  - (a) any stop-loss insurance (as defined by section 230(1) of FA 1994) taken out on or after 6 December 2011, or
  - (b) any quota share contract (as defined by section 225(4) of FA 1994) entered into on or after that date.
- (3) If before 6 December 2011 a corporate member enters into a multi-year contract—
  - (a) insurance is to be regarded for the purposes of subsection (2)(a) as taken out on the anniversary date of the contract which falls on or after the day on which this Act is passed, and
  - (b) premiums payable under the insurance in respect of an underwriting year beginning on or after that day are premiums falling to be dealt with in accordance with the amendment made by this section.
- (4) For this purpose—
  - “multi-year contract” means a contract which (unless cancelled) operates in respect of successive underwriting years, and
  - “the anniversary date of the contract” means the date which is the anniversary of the date on which the contract was entered into.
- (5) If—
  - (a) before 6 December 2011 a corporate member enters into a contract for insurance in respect of an underwriting year, and
  - (b) on or after 6 December 2011 the contract is renewed in respect of a further underwriting year (whether as a result of the exercise of an option conferred by the contract or otherwise),

insurance is to be regarded for the purposes of subsection (2)(a) as taken out on the date of the renewal.

## **26 Abolition of relief for equalisation reserves: general insurers**

- (1) Sections 444BA to 444BD of ICTA (equalisation reserves) are repealed.
- (2) In consequence of the repeal of those sections, omit—
  - (a) in TMA 1970, in the second column of the table in section 98, the entry relating to regulations under section 444BB of ICTA and the entry relating to regulations under section 444BD of ICTA,
  - (b) in FA 1996, section 166 and Schedule 32,
  - (c) in FA 2003, in section 153(1)(a), the reference “444BB(3)(b),”

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- (d) in CTA 2009, paragraphs 155 and 156 of Schedule 1, and
  - (e) in TIOPA 2010, paragraph 9 of Schedule 8.
- (3) The amendments made by this section have effect in relation to accounting periods ending on or after such day (“the specified day”) as is specified in an order made by the Treasury (and different days may be specified for different cases).
- (4) In the case of an insurance company’s existing equalisation or equivalent reserve—
- (a) an amount equal to one-sixth of the amount of the reserve is to be treated as a receipt of the company’s business in the calendar year in which the specified day falls, and
  - (b) an amount equal to one-sixth of the amount of the reserve is to be treated as a receipt of the company’s business in each of the next five calendar years.
- (5) If there are different accounting periods falling in a calendar year, a receipt arising as a result of subsection (4) is apportioned between those periods in proportion to the number of days of the calendar year falling in those periods.
- (6) If—
- (a) the company ceases to carry on the business in a calendar year, and
  - (b) an amount would otherwise have been treated as a result of subsection (4) as a receipt of the company’s business in a later calendar year,
- any amount within paragraph (b) is treated instead as a receipt of the company’s business in the accounting period in which the company ceased to carry on the business.
- (7) For the purposes of this section—
- (a) “equalisation reserve”, in relation to an insurance company, means the equalisation reserve in respect of a business which the company was required, by virtue of equalisation reserves rules (within the meaning of section 444BA of ICTA), to maintain,
  - (b) “equivalent reserve” means an equivalent reserve (within the meaning of section 444BD of ICTA) in relation to which section 444BA of ICTA applied,
  - (c) a company’s “existing” equalisation or equivalent reserve means the equalisation or equivalent reserve as it stood immediately before the first accounting period of the company (“the relevant accounting period”) in relation to which the amendments made by this section have effect (but see subsection (8)), and
  - (d) references in this section to the company’s business are to the business in respect of which the equalisation or equivalent reserve was maintained.
- (8) If—
- (a) an insurance company has made an election under section 444BA(4) of ICTA in relation to an accounting period ending before the specified day, and
  - (b) an amount would, but for this section, have been carried forward to the relevant accounting period of the company as a deductible amount,
- that amount is not to be carried forward to that period as a deductible amount but is instead to be deducted from the amount of the equalisation or equivalent reserve as it stood immediately before that period.
- (9) References in this section to section 444BA of ICTA include that section as modified by regulations made under section 444BB or 444BC of that Act.

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## 27 Election to accelerate receipts under s.26(4)

- (1) An insurance company may make an election in relation to a calendar year (“the relevant year”) for all of the amounts that would, as a result of section 26(4), otherwise be treated as arising in later calendar years as receipts of a business carried on by the company to be treated instead as receipts of the business arising in the relevant year.
- (2) An election under this section—
  - (a) must be made by notice to an officer of Revenue and Customs within 2 years from the end of the relevant year, and
  - (b) is irrevocable.
- (3) A company which makes an election under section 29 as the transferor or the transferee may make an election under this section but not in relation to the calendar year in which the transfer takes place.

## 28 Deemed receipts under s.26(4): double taxation relief

- (1) This section applies if—
  - (a) a receipt is treated as arising to an insurance company’s business in an accounting period as a result of section 26(4),
  - (b) the company carries on business through a permanent establishment outside the United Kingdom by reference to which double taxation relief is afforded in respect of any income or gains, and
  - (c) the permanent establishment is one in relation to which regulation 10(2) of the Insurance Companies (Reserves) (Tax) Regulations 1996 previously applied.
- (2) For the purpose of calculating the profits or losses by reference to which double taxation relief is afforded for the accounting period, only the appropriate proportion (if any) of the receipt is to be taken into account.
- (3) The appropriate proportion of the receipt is—
  - (a) equal to the mean of each proportion found for each relevant period (if any), or
  - (b) equal to such other proportion as the company may determine on a just and reasonable basis.
- (4) For the purposes of subsection (3)(a) a proportion for a relevant period is the proportion which the PE’s premium income for the period bears to the company’s premium income for the period.
- (5) For the purposes of subsections (3)(a) and (4)—
 

“the company’s premium income”, in relation to a relevant period, means the amount of net premiums written by reference to which the calculation under section 444BA(2)(a) or (b) of ICTA was made for the period,

“the PE’s premium income”, in relation to a relevant period, means so much of the company’s premium income for the period as is attributable to the permanent establishment, and

a “relevant period” means an accounting period of the company in relation to which each of the following conditions is met—

  - (a) section 444BA of ICTA has applied in relation to the accounting period,
  - (b) the business mentioned in subsection (1)(a) has been carried on through the permanent establishment in the accounting period, and

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- (c) the accounting period is the company's last accounting period in relation to which section 444BA of ICTA applied or is one that falls wholly or partly in the period of six years ending with the day on which that last accounting period ended.
- (6) In subsection (5)—
- (a) “net premiums written” means gross premiums written net of reinsurance premiums payable under reinsurance ceded, and
  - (b) references to section 444BA of ICTA include that section as modified by regulations made under that Act.

## 29 Transfer of whole or part of the business

- (1) If—
- (a) an insurance company carries on a business,
  - (b) amounts fall to be treated as receipts of the business as a result of section 26(4) (“deemed receipts”), and
  - (c) under an insurance business transfer scheme there is a transfer of the whole or part of the business to another insurance company within the charge to corporation tax,
- the transferor and the transferee may jointly make an election for those deemed receipts to be allocated between them in accordance with the following provisions.
- (2) If the transfer is a transfer of the whole of the business or substantially the whole of the business—
- (a) section 26(6) does not apply in relation to the transferor (if it would otherwise have applied),
  - (b) the deemed receipt which, on the assumption that there had been no transfer, would have arisen in the transfer year is apportioned between the transferor and the transferee in accordance with subsection (5), and
  - (c) the remaining deemed receipts (if any) which, on that assumption, would have arisen in subsequent calendar years are treated as receipts of the transferee (and not as receipts of the transferor).
- (3) If the transfer is a transfer of a part of the business and subsection (2) does not apply—
- (a) the appropriate portion of the deemed receipt arising in the transfer year is apportioned between the transferor and the transferee in accordance with subsection (5), and
  - (b) the appropriate portions of the remaining deemed receipts (if any) are treated as receipts of the transferee (and the receipts of the transferor are reduced accordingly).
- (4) The appropriate portion of a deemed receipt is to be determined on a just and reasonable basis.
- (5) An apportionment under subsection (2)(b) or (3)(a) is to be made in proportion to the number of days of the calendar year falling before the day of the transfer and the number of days of the calendar year falling on or after the day of transfer.
- (6) A deemed receipt which is treated as a receipt of the transferee as a result of this section is treated as a receipt of the business of the transferee which consists of or includes the transferred business, and, accordingly, section 26(4) and (6) have effect in relation to the transferee—

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- (a) as if references to the company were references to the transferee, and
  - (b) as if references to the business were references to the business of the transferee which consists of or includes the transferred business.
- (7) An election under this section—
- (a) must be made by notice to an officer of Revenue and Customs within 28 days from the end of the day on which the transfer takes place,
  - (b) must be accompanied by an explanation as to the way in which the transferor and the transferee have determined any issue falling to be determined for the purposes of this section, and
  - (c) is irrevocable.
- (8) In this section—
- “the transferred business” means so much of the business as is transferred to the transferee, and
  - “the transfer year” means the calendar year in which the transfer takes place.
- (9) If a company makes an election under this section as the transferee, this section has effect for the purposes of any subsequent elections made by the company under this section as the transferor as if references to the business were references to the activities in respect of which deemed receipts are treated as arising to it.

### **30 Abolition of relief for equalisation reserves: Lloyd’s corporate members etc**

- (1) Regulations made by the Treasury under section 47 of FA 2009 (equalisation reserves for Lloyd’s corporate and partnership members) that revoke previous regulations made under that section may include provision corresponding to the provision made by sections 26(4) to (8) and 27, subject to such modifications as may be made in the regulations.
- (2) Section 47 of FA 2009 is repealed.
- (3) That repeal has effect in relation to accounting periods ending on or after such day (“the specified day”) as is specified in an order made by the Treasury (and different days may be specified for different cases).
- (4) Subsections (2) and (3) are not to affect the operation of any transitional or saving provision included (whether as a result of this section or otherwise) in regulations made under section 47 of FA 2009 that revoke previous regulations made under that section so far as the provision remains capable of having effect in relation to times falling on or after the specified day.