



# Finance Act 2012

## 2012 CHAPTER 14

### PART 2

#### INSURANCE COMPANIES CARRYING ON LONG-TERM BUSINESS

### CHAPTER 3

#### THE I - E BASIS

#### *Definitions of expressions comprising “E”*

#### **76 Meaning of “adjusted BLAGAB management expenses”**

This section explains for the purposes of section 73 how to calculate the adjusted BLAGAB management expenses of the company for the accounting period.

##### *Step 1*

Calculate the ordinary BLAGAB management expenses of the company referable to the accounting period (see sections 77, 81 and 82).

In making the calculation ignore so much of those expenses as is deductible under other relevant rules (see section 78(2)).

If the company is an overseas life insurance company, see also section 96.

##### *Step 2*

If the expenses calculated in accordance with step 1 include acquisition expenses for the purposes of section 79, reduce the amount given by step 1 in accordance with the rules in that section (which, in the typical case, provide for six-sevenths of the adjusted amount of those expenses to be disallowed for the accounting period and relieved instead as deemed BLAGAB management expenses for the next six accounting periods).

##### *Step 3*

Calculate the total amount of any deemed BLAGAB management expenses for the accounting period (see section 78(3)).

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For this purpose ignore any amounts that have already been included in step 1.

*Step 4*

Find the basic amount by adding together the amount given by the calculation required by step 1 (adjusted, where relevant, in accordance with step 2) and the amount given by the calculation required by step 3.

Adjust the basic amount by deducting from it any expenses reversed in the accounting period (see section 78(4)) and any BLAGAB trade loss relieved for the accounting period (see section 78(5)).

*Step 5*

Add together any amounts carried forward as expenses from the previous accounting period to the accounting period as a result of section 73 or 93 to give the carried-forward amount.

Add the carried-forward amount to the basic amount or, as the case may be, the basic amount adjusted in accordance with step 4.

The resulting amount is the amount of adjusted BLAGAB management expenses of the company for the accounting period.

**77 Section 76: meaning of “ordinary BLAGAB management expenses” etc**

- (1) This section explains for the purposes of section 76 what is meant by the “ordinary BLAGAB management expenses of the company referable to the accounting period”.
- (2) Amounts are “ordinary BLAGAB management expenses” of the company if—
  - (a) they are, in accordance with generally accepted accounting practice, debited in accounts drawn up by the company for a period of account (but see subsection (3)),
  - (b) they are expenses of management of the company’s long-term business that are referable, in accordance with Chapter 4, to its basic life assurance and general annuity business, and
  - (c) they are not excluded amounts (see subsections (4) to (7)).
- (3) In a case where acquisition expenses (within the meaning of section 80) incurred in the accounting period fall to be debited in successive accounts drawn up for successive periods of account, those expenses are treated instead as if they were all debited in the accounts drawn up for the first of those periods of account.
- (4) The following are “excluded amounts”—
  - (a) amounts of a capital nature,
  - (b) re-insurance premiums,
  - (c) refunds of premiums,
  - (d) profit commissions and profit participations (however described),
  - (e) a liability of the company to pay an amount of commission or other expenses so far as exceeding the amount which it could reasonably be expected to pay if sections 68 and 69 were not applicable,
  - (f) non-commercial amounts payable by the company,
  - (g) amounts payable in connection with a policy or contract to a policyholder or annuitant under the policy or contract or to any other person entitled to receive benefits under the policy or contract.

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- (5) For the purposes of subsection (4)(f) expenses or other amounts are “non-commercial amounts” payable by the company so far as the company’s purpose in incurring the liability to make the payment is not a business or other commercial purpose of the company.
- (6) Amounts payable as mentioned in paragraph (g) of subsection (4) include—
  - (a) amounts payable to any person acting on behalf of a person within that paragraph, and
  - (b) amounts payable to the personal representatives of a deceased person who was (or acted on behalf of a person who was) within that paragraph.
- (7) Amounts payable as mentioned in subsection (4)(g) do not include amounts payable to an insurance company which is a policyholder under the policy.
- (8) In the case of ordinary BLAGAB management expenses in respect of a period of account which coincides with or falls wholly in an accounting period of the company, all of those expenses are “referable to” the accounting period.
- (9) In the case of ordinary BLAGAB management expenses in respect of any other period of account—
  - (a) those expenses are to be apportioned to the accounting period of the company in accordance with section 1172 of CTA 2010, and
  - (b) the apportioned amount of those expenses is “referable to” the accounting period.

## **78 Section 76: meaning of other expressions**

- (1) This section explains for the purposes of section 76 what is meant by—
  - “other relevant rules”,
  - “deemed BLAGAB management expenses for the accounting period”,
  - “expenses reversed in the accounting period”, and
  - “BLAGAB trade loss relieved for the accounting period”.
- (2) An expense is deductible under another “relevant rule” if—
  - (a) it is deductible as a result of section 92(3),
  - (b) it is deductible in calculating, for corporation tax purposes, the profits of a property business, or
  - (c) it is deductible as a result of section 272 of CTA 2009 in calculating income from the letting of rights to work minerals in the United Kingdom.
- (3) An amount is a “deemed BLAGAB management expense for the accounting period” if it is treated as such for the purposes of section 76 as a result of—
  - section 79 or paragraph 33(2) of Schedule 17 (spreading of acquisition expenses),
  - section 83 (general annuity business),
  - section 87(3) (losses from property businesses where land held for purposes of long-term business),
  - section 88(6) (excess of debits in respect of intangible fixed assets),
  - section 89(2) (excess of miscellaneous losses),
  - paragraph 16(1) of Schedule 7 to FA 1991 (transitional relief for old general annuity contracts),

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section 256(2)(a) of CAA 2001 (allowances in respect of plant or machinery consisting of management asset),  
 section 391(3) of CTA 2009 (loan relationships: carry forward of surplus to next accounting period),  
 section 1080(2) of CTA 2009 (additional relief for expenditure on research and development),  
 section 1162 of CTA 2009 (additional relief for remediation of contaminated or derelict land), or  
 section 783(6), 785(4) or 791(6) of CTA 2010 (manufactured dividends).

- (4) “Expenses reversed in the accounting period” means the total amount of the expenses—
- (a) which were relieved in any previous accounting period in accordance with step 1 (as read with step 2) or step 3 of section 76, but
  - (b) which are subsequently reversed in the accounting period.
- (5) A “BLAGAB trade loss relieved for the accounting period” means so much of a BLAGAB trade loss of the company for the accounting period for which relief is given under—
- (a) section 37 of CTA 2010 (relief for trade losses against total income), as applied by section 123, or
  - (b) Chapter 4 of Part 5 of that Act (group relief), as applied by section 125.

## **79 Spreading of acquisition expenses**

- (1) This section applies if the ordinary BLAGAB management expenses of an insurance company referable to an accounting period for the purposes of section 76 include acquisition expenses (as defined by section 80) incurred in the accounting period.
- (2) In the case of the acquisition expenses—
- (a) a reduction is to be made at step 2 in section 76 so as to secure that only one-seventh of the adjusted amount of those expenses counts as ordinary BLAGAB management expenses of the company referable to the accounting period, and
  - (b) the remainder of that adjusted amount is to be relieved as deemed BLAGAB management expenses for succeeding accounting periods in accordance with the following provisions.
- (3) References in this section to the adjusted amount of the acquisition expenses are to—
- (a) the amount of those expenses calculated as mentioned in step 1 of section 76 (and see, in particular, section 77(3)), less
  - (b) any amount of re-insurance commission or any repayment or refund (in whole or in part) that forms part of an I - E receipt of the company for the accounting period as a result of section 92.
- (4) The remainder of the adjusted amount of the acquisition expenses is relieved as follows.
- (5) One-seventh of the adjusted amount of the acquisition expenses is treated for the purposes of section 76 as a deemed BLAGAB management expense for each succeeding accounting period.

- (6) But, if a succeeding accounting period is less than a year, the fraction of that amount to be relieved for that period is proportionately reduced.
- (7) The reliefs operate until the whole of the adjusted amount of the acquisition expenses has been used up (and, accordingly, the rules in subsections (5) and (6) have effect subject to this subsection).
- (8) The treatment of any part of the adjusted amount of the acquisition expenses as a deemed BLAGAB management expense for an accounting period (“the period concerned”) as set out in subsections (5) to (7) is subject to the following restriction.
- (9) If expenses are reversed in the period concerned or any preceding accounting period, any acquisition expenses included in those expenses are not to count as deemed BLAGAB management expenses for the period concerned.

## **80 Section 79: meaning of “acquisition expenses”**

- (1) This section explains for the purposes of section 79 what is meant by “acquisition expenses”.
- (2) The following are “acquisition expenses”—
  - (a) commissions (however described) other than commissions for persons who collect premiums from house to house,
  - (b) any other expenses payable solely for the purpose of the acquisition of business, and
  - (c) so much of any other expenses payable partly for that purpose, and partly for other purposes, as are properly attributable to the acquisition of business.
- (3) The exclusion from paragraph (a) of subsection (2) of commissions for persons who collect premiums from house to house does not prevent their counting as expenses under another paragraph of that subsection.
- (4) For the purposes of that subsection “the acquisition of business” includes—
  - (a) the securing of the payment of increased or additional premiums in respect of a policy of insurance issued in respect of an insurance already made, and
  - (b) the securing of the payment of increased or additional consideration in respect of an annuity contract already made.

## **81 Amounts treated as ordinary BLAGAB management expenses**

- (1) This section applies in relation to amounts which meet the conditions in section 77(2) (a) and (b).
- (2) The relevant permissive rules apply for the purpose of treating the amounts as ordinary BLAGAB management expenses for the purposes of section 76 as they apply for the purpose of treating amounts as expenses of management for the purposes of Chapter 2 of Part 16 of CTA 2009 (companies with investment business).
- (3) The following provisions of CTA 2009 are “relevant permissive rules”—
  - (a) section 1000 (costs of setting up employee share ownership trust),
  - (b) section 1234 (payments for restrictive undertakings),
  - (c) section 1235 (employees seconded to charities and educational establishments),

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- (d) section 1237 (counselling and other outplacement expenses),
  - (e) section 1238(1) to (3) (retraining courses),
  - (f) sections 1239 to 1242 (redundancy payments and approved contractual payments),
  - (g) section 1243 (payments made by the Government), and
  - (h) section 1244 (contributions to local enterprise organisations or urban regeneration companies).
- (4) If—
- (a) an employer’s liability to corporation tax for an accounting period is determined on the assumption that a deduction for expenditure is allowed as a result of the application by this section of section 1238(1) to (3) of CTA 2009, and
  - (b) the deduction would not otherwise have been allowed,
- section 75(2) to (4) of CTA 2009 (retraining courses: recovery of tax) apply.
- (5) If—
- (a) an amount is treated as an ordinary BLAGAB management expense as a result of the application by this section of section 1242 of CTA 2009, and
  - (b) the amount would otherwise be regarded as an acquisition expense for the purposes of section 79,
- the expense is not to be so regarded.
- (6) Section 1253 of CTA 2009 (contributions to local enterprise organisations or urban regeneration companies: disqualifying benefits) applies in the case of amounts treated, as a result of the application by this section of section 1244 of that Act, as ordinary BLAGAB management expenses as it applies in the case of amounts for which a deduction has been made under section 1219 of that Act as a result of section 1244 of that Act.
- (7) For the purposes of this section—
- (a) references in any relevant permissive rule to a company carrying on business that consists wholly or partly of making investments or to a company with investment business are to be read as references to a company carrying on basic life assurance and general annuity business,
  - (b) references in any relevant permissive rule to an amount being deductible under section 1219 of CTA 2009 are to be read as references to an amount being deductible as an ordinary BLAGAB management expense,
  - (c) section 1239 of CTA 2009 is to be treated as having effect with the omission of subsection (1)(c),
  - (d) the reference in section 1240(4) of CTA 2009 to sections 1224 to 1227 of that Act is to be read as a reference to section 77(8) and (9) of this Act, and
  - (e) section 1243 of CTA 2009 is to be treated as having effect with the omission of subsection (1)(c).
- (8) An amount is treated as an ordinary BLAGAB management expense as a result of this section only so far as it would not otherwise be regarded as an ordinary BLAGAB management expense.

## **82 Restrictions in relation to ordinary BLAGAB management expenses**

- (1) This section applies in relation to an amount which is (or, but for this section, would be) regarded for the purposes of section 76 as an ordinary BLAGAB management expense of an insurance company.
- (2) Section 1249(1) and (2) of CTA 2009 (unpaid remuneration) apply for the purpose of determining the period of account for which the amount is debited in the accounts of the company for the purposes of section 77; but this subsection is subject to the operation of section 79.
- (3) Section 1249(1) and (3) of CTA 2009 apply for the purpose of determining whether the amount is to be regarded as an ordinary BLAGAB management expense of the company.
- (4) Section 1251(1) and (2) of CTA 2009 (car hire) apply for the purpose of determining the amount of the ordinary BLAGAB management expense of the company.
- (5) For the purposes of subsections (2) to (4)—
  - (a) references in section 1249 or 1251 of CTA 2009 to a company with investment business are to be read as references to a company carrying on basic life assurance and general annuity business (and, accordingly, the reference in section 1251(1) to total profits is to be read as a reference to profits of basic life assurance and general annuity business), and
  - (b) references in section 1249 or 1251 of CTA 2009 to an amount being deductible under section 1219 of CTA 2009 are to be read as references to an amount being deductible as an ordinary BLAGAB management expense.
- (6) If—
  - (a) an amount is reduced as a result of subsection (4) or a corresponding rule,
  - (b) subsequently there is a rebate (however described) of the hire charges, and
  - (c) an amount representing the rebate is deductible as a reversed expense or taken into account in calculating the amount of an I - E receipt under section 92,the amount that would otherwise be so deductible or taken into account is reduced by 15%.
- (7) If—
  - (a) an amount is reduced as a result of subsection (4) or a corresponding rule,
  - (b) subsequently a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency arrangement, and
  - (c) an amount representing the release is deductible as a reversed expense,the amount that would otherwise be so deductible is reduced by 15%.
- (8) For the purposes of subsections (6) and (7)—

“corresponding rule” means section 56(2) or 1251(2) of CTA 2009 or section 48(2) of ITTOIA 2005,

“deductible as a reversed expense” means deductible at step 4 in section 76 as an expense reversed in an accounting period, and

“statutory insolvency arrangement” has the meaning given by section 1319(1) of CTA 2009.

### **83 General annuity business**

- (1) This section applies if an insurance company pays qualifying BLAGAB annuities in an accounting period.
- (2) An amount equal to the difference between—
  - (a) the total amount of those annuities paid by the company in the accounting period, and
  - (b) the total of the amounts exempt under section 717 of ITTOIA 2005 (exemption for part of purchased life annuity payments) contained in those annuities so paid,
 is treated for the purposes of section 76 as a deemed BLAGAB management expense for the accounting period.
- (3) An annuity is a “qualifying BLAGAB annuity” if—
  - (a) it is referable to the company’s basic life assurance and general annuity business, and
  - (b) it is paid under a contract made by the company in an accounting period beginning on or after 1 January 1992 (but see section 85).
- (4) For the purposes of this section the amounts exempt under section 717 of ITTOIA 2005 are so much of the payments under the qualifying BLAGAB annuities as would be within the exemption under that section if—
  - (a) section 718 of ITTOIA 2005 were omitted, and
  - (b) the exemption under section 717 of ITTOIA 2005 applied in relation to companies as well as individuals.
- (5) If a qualifying BLAGAB annuity (“the actual annuity”) is a steep-reduction annuity, the calculations required by subsection (2)(a) and (b) are to be made as if—
  - (a) the contract for the actual annuity provided instead for the annuities identified below (“the deemed annuities”), and
  - (b) the consideration for each of the deemed annuities were equal to an apportionment of the consideration for the actual annuity on a just and reasonable basis.
- (6) The deemed annuities are—
  - (a) an annuity the payments in respect of which are confined to payments in respect of the actual annuity that fall to be made at the earliest time for the making in respect of that annuity of a reduced payment within section 84(1)(c), and
  - (b) an annuity the payments in respect of which are all the payments in respect of the actual annuity other than those mentioned in paragraph (a).
- (7) If a deemed annuity within subsection (6)(b) (“the later annuity”) would itself be a steep-reduction annuity, the deemed annuities—
  - (a) do not include the later annuity, but
  - (b) include instead the annuities which would be identified by subsection (6) (with as many further applications of this subsection as may be necessary for securing that none of the deemed annuities is a steep-reduction annuity) if references in that subsection to the actual annuity were to the later annuity.
- (8) This section needs to be read with section 84 (meaning of “steep-reduction annuity” etc).



## **84 General annuity business: meaning of “steep-reduction annuity” etc**

- (1) For the purposes of section 83 an annuity is a “steep-reduction annuity” if—
  - (a) the amount of any payment in respect of it (but not its term) depends on a contingency other than the duration of a human life or lives,
  - (b) the annuitant is entitled to payments of different amounts at different times, and
  - (c) the payments include a payment (“a reduced payment”) of an amount which is substantially smaller than the amount of at least one of the earlier payments.
- (2) If there are different intervals between the payments, it is to be assumed for the purposes of subsection (1)(b) and (c)—
  - (a) that the annuitant’s entitlement, after the first payment, to payments is an entitlement to payments at yearly intervals on the anniversary of the first payment, and
  - (b) that the amount to which the annuitant is assumed to be entitled is equal to the annuitant’s assumed entitlement for the year ending with the anniversary in question.
- (3) For this purpose the annuitant’s assumed entitlement for a year is determined as follows—
  - (a) the annuitant’s entitlement to each payment is taken to accrue at a constant rate during the interval between the previous payment and that payment, and
  - (b) the annuitant’s assumed entitlement for a year is taken to be equal to the total amount which, in accordance with paragraph (a), is treated as accruing in the year.
- (4) In the case of an annuity to which subsection (2) applies, the reference in section 83(6)(a) to the making of a reduced payment is to be read as a reference to the making of a payment which (applying subsection (3)(a)) is taken to accrue at a rate that is substantially less than the rate at which at least one of the earlier payments is taken to accrue.
- (5) If—
  - (a) a question arises whether a payment is substantially smaller than, or accrues at a rate substantially less than, an earlier payment, and
  - (b) the annuitant or (as the case may be) every annuitant is an individual who is beneficially entitled to all the rights conferred on him or her as such an annuitant,the question is determined without regard to so much of the difference between the amounts or rates as is referable to a reduction falling to be made as a result of a death.
- (6) If the amount of any one or more of the payments depends on a contingency, the annuitant’s entitlement to the payments is determined for the purposes of section 83 and this section according to whatever is the most likely outcome in relation to the contingency (applying any relevant actuarial principles).
- (7) If an agreement or other arrangement has effect for varying the rights of the annuitant in relation to a payment, the payment is taken for the purposes of section 83 and this section to be a payment of the amount to which the annuitant is entitled in accordance with the agreement or other arrangement.
- (8) For the purposes of this section references to a contingency include a contingency consisting wholly or partly in the exercise of an option.

## **85 General annuity business: payments made in pre-1992 accounting periods**

(1) If—

- (a) a payment in respect of an annuity is made by an insurance company under a group annuity contract made in a pre-1992 accounting period, and
- (b) the company's liabilities first include an amount in respect of that annuity in a post-1992 accounting period,

the payment is treated for the purposes of section 83(3)(b) as if the contract had been made in a post-1992 accounting period.

(2) If—

- (a) a payment in respect of an annuity is made by a re-insurer under a re-insurance treaty made in a pre-1992 accounting period, and
- (b) the re-insurer's liabilities first include an amount in respect of that annuity in a post-1992 accounting period,

the payment is, as respects the re-insurer, treated for the purposes of section 83(3)(b) as if the treaty had been made in a post-1992 accounting period.

(3) In this section—

“a pre-1992 accounting period” means an accounting period beginning before 1 January 1992,

“a post-1992 accounting period” means an accounting period beginning on or after 1 January 1992,

“group annuity contract” means a contract under which the insurance company undertakes to become liable to pay annuities to or in respect of persons who may subsequently be specified or otherwise ascertained under or in accordance with the contract (whether or not annuities under the contract are also payable to or in respect of persons who are specified or ascertained at the time the contract is made), and

“re-insurance treaty” means a contract under which one insurance company is obliged to cede, and another (referred to in this section as a “re-insurer”) to accept, the whole or part of a risk of a class or description to which the contract relates.