

2005 No. 3338

INCOME TAX

CORPORATION TAX

The Lloyd's Underwriters (Tax) Regulations 2005

Made - - - - *6th December 2005*

Laid before the House of Commons *6th December 2005*

Coming into force - - *27th December 2005*

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 182(1)(a) and (6) and 184(1) of the Finance Act 1993(a), sections 229(1)(a) and (2) and 230(1) of the Finance Act 1994(b), sections 132 and 133(2) of the Finance Act 1999(c) and section 45(11) and (12) of the Finance (No. 2) Act 2005(d), and now vested in them(e), make the following Regulations:

PART 1

General

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Lloyd's Underwriters (Tax) Regulations 2005 and shall come into force on 27th December 2005.

(2) These Regulations shall have effect—

- (a) in their application to members who are individuals, for the year 2006-07 (including any actions taken before 6th April 2006, in relation to the year 2006-07) and subsequent years of assessment; and
- (b) in their application to corporate members, for accounting periods ending after 31st December 2005 (but not in relation to profits and losses arising to corporate members which are mentioned in section 220(2) of the Finance Act 1994 and are declared in 2005).

Interpretation

2.—(1) In these Regulations—

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- (a) 1993 c. 34; section 182(1)(a) was relevantly amended (and subsection (6) added) by section 45(2) and (3) of the Finance (No. 2) Act 2005 (c. 22).
 - (b) 1994 c. 9; section 229(1)(a) was relevantly amended (and subsection (2) added) by section 45(6) and (7) of the Finance (No. 2) Act 2005.
 - (c) 1999 c. 16.
 - (d) 2005 c. 22.
 - (e) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11).

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“managing agent”, in relation to a syndicate and an underwriting year, means—

- (a) the person registered as a managing agent at Lloyd’s who is currently acting as such managing agent, or
- (b) such person who has previously acted as managing agent in relation to that syndicate and underwriting year, as the Commissioners may determine;”

“the Management Act” means the Taxes Management Act 1970(a);

“notice” has the meaning in section 832(1) of the Taxes Act(b);

“Schedule 18” means Schedule 18 to the Finance Act 1998(c);

“the Taxes Act” means the Income and Corporation Taxes Act 1988.

(2) In relation to members who are individuals, other expressions which are defined in Chapter 3 of Part 2 of the Finance Act 1993 have those defined meanings.

(3) In relation to corporate members, other expressions which are defined in Chapter 5 of Part 4 of the Finance Act 1994 have those defined meanings.

PART 2

Determination of a syndicate’s profit or loss

Preliminary

3. In this Part of these Regulations “profit or loss”, in relation to a syndicate, means the aggregate amount of such of the profits or losses of all the members of the syndicate (taken together) as arise—

- (a) directly from their membership of the syndicate, or
- (b) from assets forming part of premium trust funds,

and “profits” and “losses” shall be construed accordingly.

Returns by managing agent

4.—(1) An officer of Revenue and Customs may, by notice to a syndicate’s managing agent, require him to deliver a return (a “syndicate return”) of the syndicate’s profit or loss for an underwriting year (the amount of that profit or loss being referred to as a “syndicate determination”).

(2) A notice under paragraph (1) may be given—

- (a) at any time after the closing year for the underwriting year in question; and
- (b) more than once, (in particular where the syndicate continues after the end of its closing year).

(3) The return shall—

- (a) contain such information as may reasonably be required by the notice; and
- (b) be accompanied by such accounts, statements and reports as may reasonably be so required.

(4) The filing date for any syndicate return required by a notice under paragraph (1) is whichever is the later of—

- (a) 1st July in the underwriting year next following that closing year; and

(a) 1970 c. 9.
(b) 1988 c. 1.
(c) 1998 c. 36.

(b) the end of the period of three months beginning on the day following that on which the notice was served.

(5) If a syndicate's managing agent, having been required by a notice under paragraph (1) to deliver a return, fails to deliver the return on or before the filing date, he shall be liable to a flat-rate penalty equal to the prescribed amount multiplied by the number of days on which the failure continues.

(6) In paragraph (5) "the prescribed amount" means £60 for each fifty members of the syndicate (counting any number of members less than fifty, and any number left over, as fifty).

(7) If a syndicate's managing agent fraudulently or negligently delivers an incorrect return under paragraph (1), he shall be liable to a penalty not exceeding £3,000 multiplied by the number of members of the syndicate.

(8) In relation to a return required by a notice under paragraph (1)—

(a) any reference in paragraph (4) or (5) to the filing date for, or delivery of, a return is a reference to its delivery together with the accompanying documents referred to in paragraph (3)(b); and

(b) the reference in paragraph (7) to the return being incorrect includes a reference to any of those documents being incorrect.

Amendment of syndicate determinations and HMRC enquiries

5.—(1) In relation to both members who are individuals and corporate members, the like provisions as are contained in paragraphs 15, 16, 24, 25, 27 to 29 and 31 to 34 of Schedule 18(a) shall apply with the modifications in paragraphs (2) to (6).

(2) For references to—

(a) the company substitute references to the syndicate's managing agent;

(b) the company tax return substitute references to the syndicate return;

(c) the company's self-assessment, tax payable or tax liability, substitute references to the syndicate determination;

(d) an accounting period (or periods) substitute references to the underwriting year to which the syndicate return relates (or would relate); and

(e) the Inland Revenue substitute references to Her Majesty's Revenue and Customs.

(3) In paragraph 15(4) for "twelve" substitute "six".

(4) In paragraph 16(3) for "nine" substitute "three".

(5) In paragraph 24(2) for "twelve" substitute "six".

(6) Omit paragraphs 32(2) and (3) and 34(1)(a)(ii), (2)(a)(ii) and (5).

(7) The giving of a notice of enquiry to a syndicate's managing agent under the like provisions as are contained in paragraph 24 of Schedule 18 shall be deemed to include the giving of notice of enquiry—

(a) under section 9A(1) of the Management Act (b) to each member of the syndicate who is an individual, and who at that time has made a return under section 8 or 8A of that Act or at any subsequent time makes such a return; and

(b) under paragraph 24 of Schedule 18 to each member of the syndicate who at that time has made a company tax return or at any subsequent time makes such a return.

(a) Paragraph 27 was relevantly amended and paragraphs 31A to 31D were inserted by paragraphs 7 and 38 of Schedule 29 to the Finance Act 2001 (c. 9).

(b) Section 9A was substituted by paragraph 4(1) of Schedule 29 to the Finance Act 2001.

HMRC determinations

6.—(1) In relation to both members who are individuals and corporate members, the like provisions as are contained in paragraphs 36 and 40 of Schedule 18 shall apply with the modifications in paragraphs (2) and (3).

(2) For references to—

- (a) the company substitute references to the syndicate’s managing agent;
- (b) the company tax return substitute references to the syndicate return;
- (c) the company’s self-assessment or tax payable, substitute references to the syndicate determination;
- (d) an accounting period (or periods) substitute references to the underwriting year to which the syndicate return relates (or would relate); and
- (e) the Inland Revenue substitute references to Her Majesty’s Revenue and Customs.

(3) Omit paragraphs 36(3) and (6)(a) and 40(1)(b) and (2).

Discovery determinations

7.—(1) In relation to both members who are individuals and corporate members, the like provisions as are contained in paragraphs 41(2) to 44 and 46 to 49 of Schedule 18 (as they apply to discovery determinations) shall apply with the modifications in paragraphs (2) and (3).

(2) Except in paragraph 49 of Schedule 18, for references to—

- (a) the company substitute references to the syndicate’s managing agent;
- (b) the company tax return substitute references to the syndicate return;
- (c) the company’s self-assessment or tax payable, substitute references to the syndicate determination;
- (d) an accounting period (or periods) substitute references to the underwriting year to which the syndicate return relates (or would relate); and
- (e) the Inland Revenue substitute references to Her Majesty’s Revenue and Customs.

(3) In paragraph 41(2) of Schedule 18, omit—

- (a) “for another accounting period” in paragraph (a), and
- (b) paragraph (b).

Relief in case of mistake in syndicate return

8.—(1) In relation to both members who are individuals and corporate members, the like provisions as are contained in paragraph 51 of Schedule 18 shall apply with the modifications in paragraph (2).

(2) For references to—

- (a) the company substitute references to the syndicate’s managing agent;
- (b) the payment of tax, an assessment or the profits of the company for corporation tax purposes substitute references to the syndicate determination;
- (c) the liability of the claimant or claimant company, treat them as including references to the liability of the members of the syndicate;
- (d) an accounting period (or periods) substitute references to the underwriting year to which the syndicate return relates (or would relate); and
- (e) the Inland Revenue substitute references to Her Majesty’s Revenue and Customs.

Apportionments of syndicate's profit or loss

9.—(1) Where a determination of a syndicate's profit or loss for an underwriting year is made, amended or corrected (whether under the foregoing provisions of these Regulations or on appeal), the officer may, by notice in writing to the syndicate's managing agent, require him to make to the officer, within the specified period, a return apportioning, between the members of the syndicate, the syndicate's profit or loss as stated in the determination as so made, amended or corrected.

(2) If a syndicate's managing agent, having been required by a notice under paragraph (1) to deliver a return within the specified period, fails to deliver the return within that period, he shall be liable to a penalty equal to the prescribed amount multiplied by the number of days on which the failure continues.

(3) In paragraph (2) "the prescribed amount" means £5 for each fifty members of the syndicate (counting any number of members less than fifty, and any number left over, as fifty).

(4) In this regulation "the specified period" means such period, not being less than thirty days and beginning with the day following the date of the notice under paragraph (1), as may be specified in that notice.

Effect of determinations on members

10.—(1) A determination of a syndicate's profit or loss for an underwriting year (whether as originally made or as amended or corrected) and any apportionment under regulation 9 shall, for the purpose of determining the liability to tax of each member of the syndicate, be conclusive against that member that the syndicate's profit or loss for that year, or the member's share of it, as the case may be, is as there stated.

(2) Where a determination of a syndicate's profit or loss for an underwriting year is amended or corrected at any time after the issue of a notice of assessment assessing any member of the syndicate to tax—

(a) (i) in relation to members who are individuals, section 31A of the Management Act (a) (notice of appeal) and section 55 of that Act (recovery of tax not postponed), and

(ii) in relation to corporate members, paragraph 48 of Schedule 18,

shall have effect, in relation to that member, as if any reference to the date of the notice of assessment, or the date of the issue of the notice of assessment, were a reference to the date of the amendment or correction; and

(b) in the case of an amendment, an assessment which gives effect to the determination as amended shall not be out of time if it is made within one year of the date of the amendment.

(3) Paragraph (2)(b) shall not apply in the case of an HMRC amendment under regulation 6 which is made later than six years after the end of the last year during which, or during any part of which, the syndicate continues.

Assessment of individual members: time limits

11. For the purposes of sections 36 and 40(b) of the Management Act and paragraph 46(2) of Schedule 18 (extension of time in cases of fraudulent or negligent conduct) anything done or omitted to be done by a syndicate's managing agent shall be deemed to have been done or omitted to be done by each member of the syndicate.

Non-delivery of return – reasonable excuse

12.—(1) For the purposes of these Regulations, a managing agent shall be deemed not to have failed to deliver—

(a) 1970 c. 9; section 31A was inserted by paragraph 11 of Schedule 29 to the Finance Act 2001 (c. 9).

(b) Section 36 was substituted by section 149 of the Finance Act 1989 (c. 26).

- (a) a syndicate return by the filing date referred to in regulation 4(4), or
- (b) a return apportioning a syndicate profit or loss within the period referred to in regulation 9(4),

if he delivered it within such further time, if any, as the officer of Revenue and Customs may have allowed.

(2) Where a managing agent had a reasonable excuse for not delivering a return mentioned in paragraph (1), he shall be deemed not to have failed to deliver it—

- (a) unless the excuse had ceased, and
- (b) if, after the excuse ceased, he delivered it without unreasonable delay.

Determinations and notices of determinations

13. The like provisions as are contained in section 113(1B) of the Management Act(a) shall apply to a determination or notice of a determination under regulations 6 or 7 as if the determination were an assessment and the notice of a determination were a notice of an assessment.

PART 3

Repayment of tax deducted etc. from investment income

14.—(1) In relation to an underwriting year, a syndicate's managing agent may, by notice in writing at any time during the period of six years beginning with the 1st March next following the end of the closing year for that year, make a claim to an officer of Revenue and Customs for the repayment of tax suffered by way of deduction on such of the syndicate's investment income as is allocated to that year in accordance with the rules or practice of Lloyd's.

(2) The syndicate's managing agent shall provide such information in support of the claim as the officer may reasonably require.

(3) Where an amount is repaid to a syndicate's managing agent under this regulation, he shall—

- (a) apportion that amount between the members of the syndicate in proportion to their interests in that part of the syndicate's investment income which has suffered tax by way of deduction; and
- (b) except in so far as it is required to meet a share of a loss of the syndicate, pay the amount so apportioned to each member, within 90 days of the repayment, to the members' agent of that member.

(4) The provisions of section 824 of the Taxes Act (repayment supplements: individuals and others) shall not apply to any repayment of tax made under this regulation.

(5) In this regulation "investment income", in relation to a syndicate, means the aggregate amount of the profits arising to all the members of the syndicate (taken together) from assets forming part of premium trust funds.

(6) In its application to a corporate member, this regulation shall have effect as if—

- (a) in paragraph (3)(b), the reference to the members' agent of each member were a reference to each corporate member itself; and
- (b) in paragraph (4), the reference to section 824 of the Taxes Act were a reference to section 826 of that Act (interest on tax overpaid).

(a) Section 113(1B) was inserted by paragraph 10 of Schedule 4 to the Finance Act 1970 (c. 4).

PART 4

Electronic communications, consequential provisions and repeals

Amendment to the Income and Corporation Taxes (Electronic Communications) Regulations 2003

15. In regulation 2(1)(a) of the Income and Corporation Taxes (Electronic Communications) Regulations 2003(a), after paragraph (ii) insert—

“(iii) the Lloyd’s Underwriters (Tax) Regulations 2005.”.

Consequential provisions and repeals

16. In section 184(1) of the Finance Act 1993(b), in the definition of “members’ agent”, for “Part II of Schedule 19 to this Act” substitute “the Lloyd’s Underwriters (Tax) Regulations 2005”.

17. In Schedule 1 to the Income Tax (Trading and Other Income) Act 2005(c) omit paragraph 465.

18. Regulations 3, 7 and 8 of the Lloyd’s Underwriters (Tax) Regulations 1995(d) are hereby revoked.

Steve Lamey
David Varney

6th December 2005

Two of the Commissioners for Her Majesty’s Revenue and Customs

(a) S.I. 2003/282.
(b) 1993 c. 34.
(c) 2005 c. 5.
(d) S.I. 1995/351.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide administrative machinery for Lloyd's managing agents to make returns of syndicates' profits and losses for tax purposes, and for assessment and collection of tax (replacing and modernising the provisions of Schedule 19 to the Finance Act 1993). The regulations apply for and in relation to the tax year 2006-07 for individual members of Lloyd's, and for accounting periods beginning after 31st December 2005 for Lloyd's corporate members.

Regulation 1 provides for citation, commencement and effect, and regulation 2 for interpretation.

Regulation 3 defines a syndicate's profit or loss for the purposes of the Regulations.

Regulation 4 provides for managing agents to deliver returns of syndicates' profit or loss (a "syndicate determination"), to H.M. Revenue and Customs, and for penalties for failure to do so.

Regulation 5 makes provision for amendment of syndicate determinations by managing agents, and for HMRC enquiries into returns.

Regulation 6 makes provision for HMRC determinations of a syndicate's profit or loss (in the absence of a return), and regulation 7 makes provision for "discovery determinations."

Regulation 8 makes provision in connection with relief where there has been a mistake in a return.

Regulation 9 makes provision for apportionment of a syndicate's profit or loss between its members, and Regulation 10 provides for syndicate determinations and apportionments to be binding on the members. Regulations 11 to 13 make technical provision in connection with assessment of tax, and Regulation 14 for repayment of tax deducted from investment income.

Regulation 15 provides that managing agents may make returns to H.M. Revenue and Customs electronically. Regulations 16 to 18 make amendments and repeals as a consequence of these Regulations.

A Regulatory Impact Assessment has not been published for this instrument as it has no impact (exceeding the de minimis level) on business, charities or voluntary bodies.

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