

2007 No. 1031

CORPORATION TAX

**The Insurance Companies (Corporation Tax Acts) (Amendment)
Order 2007**

<i>Made</i>	- - - -	<i>26th March 2007</i>
<i>Laid before the House of Commons</i>		<i>27th March 2007</i>
<i>Coming into force</i>	- -	<i>17th April 2007</i>

The Treasury make the following Order in exercise of the powers conferred by section 431A(1), (2), (6) and (7) of the Income and Corporation Taxes Act 1988(a).

Citation, commencement and effect

1.—(1) This Order may be cited as the Insurance Companies (Corporation Tax Acts) (Amendment) Order 2007 and shall come into force on 17th April 2007.

(2) This Order has effect for periods of account ending on or after 31st December 2006 (whenever beginning).

Amendment of the Income and Corporation Taxes Act 1988

2. Amend the Income and Corporation Taxes Act 1988 as follows.

3.—(1) Amend section 432YA of the Income and Corporation Taxes Act 1988 (long-term business other than life assurance business – adjustment consequent on change in Insurance Prudential Sourcebook)(b) as follows.

(2) In subsection (1)—

- (a) for “(other than nil)” substitute “(“the relevant amount”);
- (b) for “the first” substitute “a”;
- (c) after “31st December 2006” insert “but before 1st January 2009 (a “relevant period of account”)”.

(3) For subsection (2) substitute—

“(2) In computing profits of long-term business which is not life assurance business in accordance with the provisions applicable to Case I of Schedule D—

- (a) X shall be added to the closing long term business provision of the company for the relevant period of account; and

(a) 1988 c. 1. Section 431A was inserted by paragraph 2 of Schedule 6 to the Finance Act 1990 (c. 29) and substituted by paragraph 3 of Schedule 9 to the Finance (No. 2) Act 2005 (c. 22). Subsection (7) is cited because of the definition it ascribes to “insurance company taxation provision”.

(b) Section 432YA was inserted by article 2 of S.I. 2006/3387.

- (b) XA shall be brought into account as a trading receipt of the company for each subsequent period of account until the total sum of the amounts so brought into account is equal to X (and if that total sum would otherwise exceed X, the excess shall be ignored).

(2A) In applying subsection (2)(b) above no account shall be taken of a period of account which is deemed to exist by virtue of section 444AA(3)(a).

(2B) X is—

- (a) where the relevant period of account ends before 1st April 2007, the whole of the relevant amount;
- (b) where the relevant period of account ends on or after 1st April 2007 but before 1st January 2008, two-thirds of the relevant amount;
- (c) where the relevant period of account ends on or after 1st January 2008, one-third of the relevant amount.

(2C) XA is the amount found by applying the following formula—

$$\frac{Y}{12} \times Z$$

Here—

Y is the number of months of the period of account in question (part of a month being counted as a month); and

Z is—

- (a) where X is the whole of the relevant amount, one-third of X;
- (b) where X is two thirds of the relevant amount, one-half of X;
- (c) where X is one third of the relevant amount, the whole of X.”.

(4) Omit subsections (3) and (4).

(5) After subsection (5) add—

“(6) This section is subject to sections 82E and 82F of the Finance Act 1989 (treatment of transferors and transferees under insurance business transfer schemes)(b) and those sections shall apply in relation to this section as if any reference in them to a provision of section 82D of that Act (treatment of profits: life assurance – adjustment consequent on change in Insurance Prudential Sourcebook)(c) were a reference to the corresponding provision of section 432YA.”.

4.—(1) Amend section 432A (apportionment of income and gains)(d) as follows.

(2) In subsection (6)—

- (a) in paragraph (a)(i) after “that category of business” insert “(but taking that mean to be nil if it would otherwise be below nil)”;
- (b) at the end insert “This is subject to subsection (6AA) below.”.

(3) In subsection (6A)—

- (a) in paragraph (a)(i) after “closing liabilities of the category” insert “(but taking that mean to be nil if it would otherwise be below nil)”;
- (b) at the end insert “This is subject to subsection (6AA) below.”

(4) After subsection (6A) insert—

(a) Section 444AA was inserted by paragraph 19 of Schedule 33 to the Finance Act 2003 (c. 26).

(b) 1989 c. 26.

(c) Section 82D was inserted by articles 3 and 5 of S.I. 2006/3387.

(d) Section 432A, together with sections 432B to 432E, was inserted by paragraph 4 of Schedule 6 to the Finance Act 1990, and was relevantly amended by section 109(3) and (4) of the Finance Act 2000 (c. 17) and article 5(1) to (3) and (5) of S.I. 2005/3465.

“(6AA) If the denominator found in accordance with either subsection (6)(b) or (6A)(b) above is nil then, for the purposes of subsection (5) above, “the relevant fraction” in relation to a category of business is such fraction as is just and reasonable.”.

(5) In subsection (8)—

- (a) in paragraph (a)(i), in the definition of A, after “business in question” insert “(but taking that amount to be nil if it would otherwise be below nil)”;
- (b) at the end insert “This is subject to subsection (8ZA) below.”

(6) After subsection (8) insert—

“(8ZA) If for the purposes of subsection (8)(a) above either B or D is nil then, in subsections (6) and (6A) above, “appropriate part”, in relation to the free assets amount, means the part of that amount which bears to the whole such proportion as is just and reasonable.”.

5.—(1) Amend section 432C (section 432B apportionment: income of non-participating funds)(a) as follows.

(2) In subsection (4)—

- (a) in paragraph (a) after “so far as referable to the category” insert “(but taking that mean to be nil if it would otherwise be below nil)”;
- (b) at the end insert “This is subject to subsection (4A) below.”.

(3) After subsection (4) insert—

“(4A) If the denominator found in accordance with subsection (4)(b) above is nil then, for the purposes of subsection (3) above, “the relevant fraction” in relation to a category of business is such fraction as is just and reasonable.”.

6.—(1) Amend section 432D (section 432B apportionment: value of non-participating funds)(b) as follows.

(2) In subsection (3)—

- (a) in paragraph (a) after “so far as referable to the category” insert “(but taking that mean to be nil if it would otherwise be below nil)”;
- (b) at the end insert “This is subject to subsection (3A) below.”

(3) After subsection (3) insert—

“(3A) If the denominator found in accordance with subsection (3)(b) above is nil then, for the purposes of subsection (2) above, “the relevant fraction” in relation to a category of business is such fraction as is just and reasonable.”.

7.—(1) Amend section 432E (section 432B apportionment: participating funds)(c) as follows.

(2) In subsection (3)(a) after “the category of business concerned” insert “(but taking that mean to be nil if it would otherwise be below nil)”.

(3) In subsection (4) for “For” substitute “Subject to subsection (4A) below, for”.

(4) After subsection (4) insert—

“(4A) If the mean of the opening and closing liabilities of the relevant business reduced by the opening and closing values of any assets of the relevant business which are linked assets is nil then, for the purposes of subsection (3) above, “the applicable percentage” is such percentage as is just and reasonable.”.

8.—(1) Amend section 432G (section 432B: apportionment of business transfer-in)(d) as follows.

(a) Section 432C was relevantly amended by section 109(3) and (4) of the Finance Act 2000 (c. 17).

(b) Section 432D was relevantly amended by paragraph 15(4) of Schedule 8 to the Finance Act 1995 (c. 4) and section 109(3) and (4) of the Finance Act 2000.

(c) Section 432E was relevantly amended by paragraph 12(1)(a) of Schedule 8 to the Finance Act 1995.

(d) Section 432G was inserted by article 4 of S.I. 2004/3266.

- (2) In subsection (2)—
- (a) after “each of those categories” insert “(but taking that amount to be nil if it would otherwise be below nil)”;
 - (b) at the end insert “This is subject to subsection (3) below.”.
- (3) After subsection (2) add—
- “(3) If the whole of the liabilities transferred is nil then the business transfer-in shall be apportioned to the categories of business of the transferee in such proportions as are just and reasonable.”.
- 9.—**(1) Amend paragraph 4 of Schedule 19AA (overseas life assurance fund: determination of the amount of fund)(a) as follows.
- (2) In sub-paragraph (1) at the end insert “This is subject to sub-paragraph (1A) below.”.
 - (3) After sub-paragraph (1) insert—
- “(1A) If for the purposes of sub-paragraph (1) above A is below nil then the amount referred to in paragraph 3 above shall be nil.”.
- (4) In sub-paragraph (2)—
- (a) in paragraph (b), in the definition of A, after “period of account” insert “(but taking that amount to be nil if it would otherwise be below nil)”;
 - (b) at the end insert “This is subject to sub-paragraph (2A) below.”.
- (5) After sub-paragraph (2) insert—
- “(2A) If for the purposes of sub-paragraph (2) above B is nil then, in sub-paragraph (1) above, in B, the “appropriate part” of the company’s free assets amount, at the end of the period of account, or of any liabilities of its long-term insurance fund at that time which represents a money debt, means the part which bears to the whole such proportion as is just and reasonable.”.

Amendment of the Finance Act 1989

10. Amend the Finance Act 1989 as follows.

11. In section 82(1) (calculation of profits: bonuses etc)(b) for “82D” substitute “82F”.

12.—(1) Amend section 82D (treatment of profits: life assurance – adjustment consequent on change in Insurance Prudential Sourcebook) as follows.

- (2) In subsection (1)—
- (a) for “(other than nil)” substitute “(“the relevant amount”)”;
 - (b) for “the first” substitute “a”;
 - (c) after “31st December 2006” insert “but before 1st January 2009 (a “relevant period of account”)”.
- (3) For subsection (2) substitute—
- “(2) In computing profits for the purposes of the Taxes Act 1988 in accordance with the provisions applicable to Case I of Schedule D—
- (a) X shall be added to the closing liabilities of the company for the relevant period of account; and
 - (b) XA shall be brought into account as a trading receipt of the company for each subsequent period of account until the total sum of the amounts so brought into

(a) Schedule 19AA was inserted by paragraph 6 of Schedule 7 to the Finance Act 1990. Paragraph 4(2) was amended by article 3(3) of S.I. 2000/2188, article 52(1)(k)(iii) and (2)(m)(ii) of S.I. 2001/3629, and article 7(3) of S.I. 2005/3465.

(b) Section 82 was substituted by paragraph 1 of Schedule 33 to the Finance Act 2003 and subsection (1) was amended by paragraph 5(1) of Schedule 7 to the Finance Act 2004 (c. 12) and articles 3 and 4 of S.I. 2006/3387.

account is equal to X (and if that total sum would otherwise exceed X, the excess shall be ignored).

(2A) In applying subsection (2)(b) above no account shall be taken of a period of account which is deemed to exist by virtue of section 444AA(3) of the Taxes Act 1988.

(2B) X is—

- (a) where the relevant period of account ends before 1st April 2007, the whole of the relevant amount;
- (b) where the relevant period of account ends on or after 1st April 2007 but before 1st January 2008, two-thirds of the relevant amount;
- (c) where the relevant period of account ends on or after 1st January 2008, one-third of the relevant amount.

(2C) XA is the amount found by the applying the following formula—

$$\frac{Y}{12} \times Z$$

Here—

Y is the number of months in the period of account in question (part of a month being counted as a month); and

Z is—

- (a) where X is the whole of the relevant amount, one-third of X;
- (b) where X is two thirds of the relevant amount, one-half of X;
- (c) where X is one third of the relevant amount, the whole of X.”.

(4) Omit subsection (3).

(5) For subsection (4) substitute—

“(4) In a case falling within subsection (1)(b) above, the relevant amount shall be reduced (but not below nil) by so much (if any) of the amount shown in paragraph 4(12) of Appendix 9.4 to the periodical return as is reflected in column 1 of line 51 of the Form 14 for that period of account relating to the non-profit fund in question.”.

(6) After subsection (5) add—

“(6) This section is subject to sections 82E and 82F below.”.

13. After section 82D insert—

“Section 82D: treatment of transferors under insurance business transfer schemes

82E.—(1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to another (“the transferee”).

(2) Where the last period of account of the transferor ending before the transfer ends otherwise than immediately before the transfer, there is to be deemed for the purposes of this section and section 82D above to be—

- (a) a period of account of the transferor beginning immediately after the last period of account ending before the transfer and ending immediately before the transfer;
- (b) a period of account of the transferor beginning immediately after the transfer.

(3) In applying section 82D above and this section, where subsection (2) above applies, no account shall be taken of a period of account of the transferor which includes the time of the transfer.

(4) Where the transfer is of the whole, or substantially the whole, of the long-term business of the transferor, the transferor may make an election under this subsection.

(5) An election under subsection (4) above—

- (a) is irrevocable; and
- (b) is to be made by notice to an officer of Revenue and Customs no later than the end of the period of 28 days beginning with the day following that on which the transfer takes place.

(6) Where the transferor makes an election under subsection (4) above then in computing profits for the purposes of the Taxes Act 1988 in accordance with the provisions applicable to Case I of Schedule D—

- (a) the aggregate of all the amounts that would have been brought into account under section 82D(2)(b) above for periods of account of the transferor subsequent to the transfer if the transfer had not taken place shall be brought into account as a trading receipt of the transferor for the period of account ending immediately before the transfer; and
- (b) section 82D(2)(b) above shall have no effect in relation to subsequent periods of account of the transferor.

(7) Where the transferor does not make an election under subsection (4) above then for any period of account of the transferor ending on or after the transfer—

- (a) in the case of a transfer of the whole of the long-term business, no amount shall be brought into account under section 82D(2)(b) above;
- (b) in the case of a transfer of part of the long-term business, the amount to be so brought into account shall be reduced by the appropriate amount mentioned in section 82F(4) below.

Section 82D: treatment of transferees under insurance business transfer schemes

82F.—(1) This section applies where—

- (a) an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to another (“the transferee”); and
- (b) the transferor does not make an election under section 82E(4) above.

(2) For the purposes of this section and section 82D above, where the first period of account of the transferee ending after the transfer began before the transfer, it shall be treated as beginning immediately after the transfer.

(3) Section 82D above shall apply as if—

- (a) the reference in subsection (2)(b) of that section to subsequent periods of account included a reference to periods of account of the transferee ending on or after the transfer; and
- (b) the reference in that subsection to the company included a reference to the transferee.

(4) The amount to be brought into account as a trading receipt of a transferee (or, if there is more than one transferee, all the transferees) for a period of account by virtue of this section shall not exceed the appropriate amount.

(5) Where there is more than one transferee, the amount to be brought into account as a trading receipt of each transferee for a period of account by virtue of this section shall be the relevant fraction of the appropriate amount.

(6) The appropriate amount is the amount which bears to XA for the period of account in question “the relevant proportion”.

Here—

XA has the meaning given by section 82D(2C) above; and

“the relevant proportion”, in relation to a transferee, is the proportion that the liabilities of the transferor to policy holders and annuitants transferred to the transferee bear to such liabilities of the transferor immediately before the transfer.

(7) The relevant fraction, in relation to a transferee, is the fraction of which—

- (a) the numerator is the liabilities of the transferor to policy holders and annuitants transferred to the transferee; and
- (b) the denominator is the liabilities of the transferor to policy holders and annuitants transferred to all the transferees.”.

Amendment of Schedule 7 to the Finance Act 1991

14.—(1) Amend Schedule 7 to the Finance Act 1991 (basic life assurance and general annuity business)(a) as follows.

(2) In paragraph 16(2) (transitional relief for old general annuity contracts), in the definition of R1 and in the definition of R2, after “old annuity contracts” insert “but taking that amount as nil if it would otherwise be below nil”.

(3) In paragraph 17(4) (transitional provisions for chargeable gains and unrelieved general annuity losses)—

- (a) after “old annuity contracts” insert “(but taking that mean to be nil if it would otherwise be below nil)”;
- (b) at the end insert “This is subject to sub-paragraph (4A).”.

(4) After paragraph 17(4) insert—

“(4A) If for the purposes of sub-paragraph (4) above Z is nil or below nil then, for the purposes of this paragraph, the relevant part of the chargeable gains arising to a company in an accounting period shall be such part as is just and reasonable.”.

Amendment of the Capital Allowances Act 2001

15.—(1) Amend section 255 of the Capital Allowances Act 2001 (life assurance business: apportionment of allowances and charges)(b) as follows.

(2) In subsection (1)—

- (a) in the definition of B after “life assurance concerned” insert “(but taking that mean to be nil if it would otherwise be below nil)”;
- (b) at the end insert “This is subject to subsection (1A).”.

(3) After subsection (1) insert—

“(1A) If for the purposes of subsection (1) C is nil or below nil then, except where subsection (3) applies, the allowances or charges must be apportioned between the different categories of life assurance business carried on by the company, using such formula as is just and reasonable.”.

Frank Roy
Kevin Brennan

26th March 2007

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) 1991 c. 31.
(b) 2001 c. 2.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Income and Corporation Taxes Act 1988 (c. 1: “ICTA”), the Finance Act 1989 (c. 26: “FA 89”), the Finance Act 1991 (c. 31: “FA 91”) and the Capital Allowances Act 2001 (c. 2: “CAA 01”). The amendments are in consequence of changes of rules in the Prudential Sourcebook for Insurers made by the Financial Services Authority (“the FSA”) under the Financial Services and Markets Act 2000 (c. 8).

The amendments made by articles 3 and 10 to 13 of this Order adjust the additional amounts to be brought into account in computing an insurance company’s closing liabilities (in the case of life assurance business) and long term business provision (in the case of long-term business which is not life assurance business). Those additional amounts are then brought back into account as trading receipts of the insurance company in subsequent periods of account.

The changes of rules made by the FSA result also in the possibilities of elements of an insurer’s mathematical reserves (i.e. its liabilities to policy holders in respect of their policies) being negative and of those reserves being reduced to nil, thus producing inappropriate tax results. The other amendments made by this Order correct that by treating any negative elements as nil and, in addition, providing for a just and reasonable apportionment in appropriate cases.

The amendments have effect for periods of account ending on or after 31st December 2006. Authority for the retrospective provision made by this Order is contained in section 431A(2) of ICTA.

Article 1 provides for the citation, commencement and effect of the Order.

Article 2 introduces the amendments to ICTA contained in articles 3 to 9.

Article 3 amends section 432YA of ICTA so as to adjust the additional amounts to be brought into account in computing an insurance company’s provision in respect of long-term business which is not life assurance business and to provide for the bringing back into account of those amounts as trading receipts of the company in subsequent periods of account. It also repeals subsection (4) of section 432YA which is not needed in relation to long-term business which is not life assurance business.

Article 4 amends section 432A of that Act (apportionment of income and gains).

Article 5 amends section 432C of that Act (section 432B apportionment: income of non-participating funds).

Article 6 amends section 432D of that Act (section 432B apportionment: value of non-participating funds).

Article 7 amends section 432E of that Act (section 432B apportionment: participating funds).

Article 8 amends section 432G of that Act (section 432B: apportionment of business transfer-in).

Article 9 amends paragraph 4 of Schedule 19AA to that Act (overseas life assurance fund: determination of the amount of fund).

Article 10 introduces the amendments to FA 89 contained in articles 11 to 13.

Article 11 amends section 82 of that Act so as to reflect the insertion of new sections 82E and 82F by article 13 and to make other minor amendments.

Article 12 amends section 82D of that Act so as to adjust the additional amounts to be brought into account in computing an insurance company’s provision in respect of life assurance business and to provide for the bringing back into account of those amounts as trading receipts of the company in subsequent periods of account.

Article 13 inserts new sections 82E and 82F into that Act. These new sections alter the effect of section 82D (and also section 432YA of ICTA) where an insurance business transfer scheme has effect to transfer long-term business. Section 82E deals with the treatment of the transferor and section 82F with the treatment of the transferee.

Article 14 amends Schedule 7 to FA 91 (basic life assurance and general annuity business), in particular the transitional provisions contained in paragraphs 16 and 17 of that Schedule.

Article 15 amends section 255 of CAA 01 (life assurance business: apportionment of allowances and charges).

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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CORPORATION TAX

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Order 2007**

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