

**2008 No. 1942**

**CORPORATION TAX**

**The Friendly Societies (Transfers of Other Business)  
(Modification of the Corporation Tax Acts) Regulations 2008**

<i>Made</i> - - - -	<i>22nd July 2008</i>
<i>Laid before House of Commons</i>	<i>22nd July 2008</i>
<i>Coming into force</i> - -	<i>12th August 2008</i>

The Treasury make the following Regulations in exercise of the powers conferred by section 461D(4) and (5) of the Income and Corporation Taxes Act 1988(a).

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Friendly Societies (Transfers of Other Business) (Modification of the Corporation Tax Acts) Regulations 2008 and shall come into force on 12th August 2008.

(2) These Regulations shall have effect in relation transfers of engagements and amalgamations taking place on or after 21st July 2008.

**Modification of the Corporation Tax Acts**

2. Where in any accounting period in which a friendly society carries on business other than life or endowment business—

- (a) any business of the society is exempt from corporation tax by virtue of section 461D(1) of the Income and Corporation Taxes Act 1988 (transfers of other business: exempt from tax), or
- (b) any business of the society is not exempt from corporation tax by virtue of section 461D(3) of the Income and Corporation Taxes Act 1988 (transfers of other business: not exempt from tax),

the Corporation Tax Acts shall have effect for the period as if they were subject to the following modifications.

**Modification of the Income and Corporation Taxes Act 1988**

3. Modify the Income and Corporation Taxes Act 1988 as follows.

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(a) 1988 c. 1; section 461D was inserted by paragraph 3 of Schedule 18 to the Finance Act 2008 (c. 9).

#### **Modification of section 432ZA (linked assets)**

- 4.—(1) Modify section 432ZA (linked assets)(a) as follows.
- (2) In subsection (1)—
- (a) after “Chapter” insert “and section 461F”, and
  - (b) after “insurance company” insert “or, as the case may be, a friendly society”.
- (3) In subsection (5), after “432E” insert “or, as the case may be, section 461F”.

#### **Modification of section 461 (taxation in respect of other business)**

- 5.—(1) Modify section 461 (taxation in respect of other business)(b) as follows.
- (2) In subsection (3) after “applies” insert “, or a transferee within subsection (3ZB) below,”.
- (3) After subsection (3) insert—
- “(3ZA) But where there has been a transfer of other business within section 461D(1), subsection (3) above shall not apply to a payment made by the transferee if—
- (a) the transferor was a society to which subsection (2) above did not apply, and
  - (b) the member to whom the payment is made was a member of the transferor.
- (3ZB) And where there has been a transfer of other business within section 461D(3), subsection (3) above shall apply to a payment made by the transferee if—
- (a) the transferor was a society to which subsection (2) above applied, and
  - (b) the member to whom the payment is made was a member of the transferor.
- (3ZC) Where subsection (3ZB) above applies, for the purposes of subsection (3) above—
- (a) any payment of sums by a member to the society by way of contributions or deposits shall be treated as including any payment to the transferor, and
  - (b) any payment or repayment of sums to a member by the society within subsection (3)(a) or (b) shall be treated as including any payment or repayment made by the transferor.
- (3ZD) In subsections (3) to (3ZD) above “transferee” and “transferor” shall be construed in accordance with section 461D.”.

#### **Modification of section 461B (taxation in respect of other business: incorporated friendly societies etc)**

- 6.—(1) Modify section 461B (taxation in respect of other business: incorporated friendly societies etc)(c) as follows.
- (2) In subsection (3) after “qualifying society” insert “, or a transferee within subsection (3B) below,”.
- (3) After subsection (3) insert—
- “(3A) But where there has been a transfer of other business within section 461D(1), subsection (3) above shall not apply to a payment made by the transferee if—
- (a) the transferor was a society to which subsection (2) above did not apply, and

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- (a) Section 432ZA was inserted by paragraph 11(2) of Schedule 8 to the Finance Act 1995 (c. 4) and relevantly amended by section 109(1) and (2) of the Finance Act 2000 (c. 17), paragraph 15(1) of Schedule 10 to the Finance Act 2007 (c. 11), article 52(2)(b) of S.I. 2001/3629 and article 4 of S.I. 2005/3465.
- (b) Section 461 was amended by paragraph 81 of Schedule 1 and Part 1 of Schedule 3 to the Income Tax Act 2007 (c. 3) paragraph 41 of Schedule 7, paragraph 4 of Schedule 12 and Part 2(7) of Schedule 27 to the Finance Act 2007 and article 33 of S.I. 2001/3629.
- (c) Section 461B(1) was inserted by paragraph 7 of Schedule 9 to the Finance (No 2) Act 1992 (c. 48) and amended by paragraph 82 of Schedule 1 to the Income Tax Act 2007, paragraph 42 of Schedule 7 and paragraph 5 of Schedule 12 to the Finance Act 2007 and article 35 of S.I. 2001/3629.

(b) the member to whom the payment is made was a member of the transferor.

(3B) And where there has been a transfer of other business within section 461D(3), subsection (3) above shall apply to a payment made by the transferee if—

(a) the transferor was a society to which subsection (2) above applied, and

(b) the member to whom the payment is made was a member of the transferor.

(3C) Where subsection (3B) above applies, for the purposes of subsection (3) above—

(a) any payment of sums by a member to the society by way of contributions or deposits shall be treated as including any payment to the transferor, and

(b) any payment or repayment of sums to a member by the society within subsection (3)(a) or (b) shall be treated as including any payment or repayment made by the transferor.

(3D) In subsections (3) to (3D) above “transferee” and “transferor” shall be construed in accordance with section 461D.”.

### **Insertion of regulations 461E to 461G (apportionment)**

7. After section 461D insert—

#### **“Apportionments following transfer of other business**

**461E.**—(1) Where a friendly society carries on tax exempt other business and taxable other business sections 461F and 461G shall apply.

(2) In subsection (1)—

“tax exempt other business” means any business, other than long-term business, the profits arising from which are exempt from corporation tax by virtue of section 461(1), 461B(1) or 461D(1);

“taxable other business” means any business, other than long-term business, the profits arising from which are not exempt from corporation tax by virtue of section 461(1), 461B(1) or 461D(1).

#### **Apportionment of income and gains**

**461F.**—(1) This section has effect for determining for the purposes of the Corporation Tax Acts what parts of—

(a) income or losses arising from the assets of the friendly society, or

(b) gains or losses accruing on the disposal of such assets in accordance with the provisions of the Taxation of Chargeable Gains Act 1992(a),

are referable to each category of business referred to in section 461E.

(2) In subsection (1)(a)—

“income” has the meaning given in subsection (1ZA) of section 432A (apportionment of income and gains)(b), and

“losses” has the meaning given in subsection (1ZB) of that section.

(3) Income and losses arising from, and gains and losses accruing on the disposal of, assets linked (“linked assets”) to either category of business are referable to that category of business.

(4) For the purposes of subsection (3), “linked assets” shall be construed in accordance with section 432ZA.

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(a) 1992 c. 12.

(b) Section 432A was inserted by paragraph 4 of Schedule 6 to the Finance Act 1990 (c. 29) and subsections (1ZA) and (1ZB) were inserted by paragraph 17 of Schedule 17 to the Finance Act 2008.

(5) There is referable to each category of business the relevant fraction of any income and losses referred to in paragraph (a) of subsection (1), and any gains and losses referred to in paragraph (b) of that subsection, not directly referable to the other category of business.

(6) For the purposes of subsection (5), “the relevant fraction” in relation to each category of business is—

$$\frac{A}{A + B}$$

where—

A is the mean of the opening and closing liabilities of that category of business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets directly referable to that category of business; and

B is the mean of the opening and closing liabilities of the other category of business which is carried on by the society (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets directly referable to that category of business.

(7) But if the denominator found in accordance with subsection (6) is nil the relevant fraction for the purpose of subsection (5) in relation to each category of business is such fraction as is just and reasonable.

(8) In subsection (6) “liabilities” means the technical provisions determined in accordance with Part 6 of Schedule 6 to the Friendly Societies (Accounts and Related Provisions) Regulations 1994(a).

(9) In subsection (8) “the Insurance Prudential Sourcebook” has the same meaning as in section 431(2)(b).

### **Apportionment of expenses**

**461G.**—(1) This section has effect for determining for the purposes of the Corporation Tax Acts the deduction for expenses in relation to each category of business referred to in section 461E.

(2) In subsection (1) “the deduction for expenses” means either—

- (a) a deduction for expenses in computing profits in accordance with the provisions of Case I of Schedule D, or
- (b) a deduction for management expenses under section 75(c).

(3) The expenses attributable to each category of business are the expenses attributable to that business in accordance with proper internal accounting practice.

(4) In subsection (3) “proper internal accounting practice” means the practice of friendly societies in allocating all the expenses of the society to each category of business in accordance with any applicable requirements of—

- (a) generally accepted accounting practice,
- (b) the Prudential Sourcebook (Friendly Societies), or
- (c) the Insurance Prudential Sourcebook.

(5) In subsection (4)—

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(a) S.I. 1994/1983.

(b) The definition of “the Insurance Prudential Sourcebook” was inserted by article 4 of S.I. 2006/3270.

(c) Section 75 was substituted by section 38(1) of the Finance Act 2004 (c. 12) and amended by section 28 of the Finance Act 2007 (c. 11).

“the Prudential Sourcebook (Friendly Societies)” means the Interim Prudential Sourcebook for Friendly Societies made by the Financial Services Authority under the Financial Services and Markets Act 2000(a);

“the Insurance Prudential Sourcebook” has the same meaning as in section 431(2).”.

### **Modification of the Capital Allowances Act 2001**

8.—(1) Modify the Capital Allowances Act 2001(b) as follows.

(2) After section 257 insert—

*“Friendly societies*

#### **Apportionment of allowances and charges**

**257A.**—(1) Where a friendly society carries on tax exempt other business and taxable other business and is entitled or liable to any allowance or charge for a chargeable period in respect of plant or machinery provided for use, or used, for the management of that business, that allowance or charge must be apportioned between each category of business in accordance with this section.

(2) There shall be apportioned to each category of business the relevant fraction of any allowance or charge.

(3) For the purposes of subsection (2) “the relevant fraction” in relation to each category of business is—

$$\frac{A}{A + B}$$

where—

A is the mean of the opening and closing liabilities of that category of business (but taking that mean to be nil if it would otherwise be below nil); and

B is the mean of the opening and closing liabilities of the other category of business which is carried on by the society (but taking that mean to be nil if it would otherwise be below nil).

(4) But if the denominator found in accordance with subsection (3) is nil the relevant fraction for the purpose of subsection (2) in relation to each category of business is such fraction as is just and reasonable.

(5) For the purposes of this section, the management of a business, or a category of business, consists of pursuing those purposes expenditure on which falls to be regarded as expenses payable for the purposes of section 461G of ICTA.

(6) In this section—

“friendly society” has the same meaning as in section 466(2) of ICTA(c);

“the Insurance Prudential Sourcebook” has the same meaning as in section 431(2) of ICTA;

“liabilities” means the technical provisions determined in accordance with Part 6 of Schedule 6 to the Friendly Societies (Accounts and Related Provisions) Regulations 1994;

“long-term business” shall be construed in accordance with section 431(2) of ICTA(d);

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(a) 2000 c. 8.

(b) 2001 c. 2.

(c) The definition of “friendly society” was inserted by paragraph 14 of Schedule 9 to the Finance (No. 2) Act 1992 (c. 48).

(d) The definition of “long-term business” was substituted by article 26(5) of S.I. 2001/3629.

“tax exempt other business” and “taxable other business” have the same meanings as in section 461E of ICTA.”.

*Claire Ward*  
*Dave Watts*

22nd July 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Schedule 18 to the Finance Act 2008 amends Chapter 2 of Part 12 of the Income and Corporation Tax Act 1988 (friendly societies etc) in relation to transfers of business, other than life or endowment business, between friendly societies. The amendments will permit friendly societies to carry on two types of business: business the profits arising from which are exempt from corporation tax and business the profits arising from which are not exempt from corporation tax. These Regulations modify provisions in primary legislation to provide for the apportionment of the income, gains, losses, expenses and capital allowances of the society as a whole between these two types of business and ensure that payments made following a transfer are not treated as qualifying distributions if they would not have been so treated if made by the transferor society.

Regulation 1 provides for citation, commencement and effect. Authority for the Regulations to have effect in relation to transfers taking place on or after 21st July 2008 is contained in section 461D(5)(c) of the Income and Corporation Taxes Act 1988 (which is inserted by paragraph 3(1) of Schedule 18 to the Finance Act 2008).

Regulation 2 sets out the cases where the Regulations apply.

Regulations 3 to 7 modify the Income and Corporation Taxes Act 1988. Regulations 3, 4 and 7 insert provisions providing for the apportionment of income, losses, gains and losses and expenses. Regulations 5 and 6 insert provisions in relation to qualifying distributions.

Regulation 8 modifies the Capital Allowances Act 2001 to insert provisions providing for the apportionment of capital allowances and charges.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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