

2008 No. 381

CORPORATION TAX

The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008

Made - - - - *18th February 2008*

Coming into force - - *19th February 2008*

The Treasury make the following Order in exercise of the powers conferred by paragraph 16 of Schedule 9 to the Finance Act 2007(a).

A draft of this instrument has been laid before the House of Commons in accordance with subparagraph (5) of that paragraph and approved by a resolution of that House.

Citation, commencement and effect

1.—(1) This Order may be cited as the Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 and shall come into force on the day after this Order is made.

(2) Articles 3, 5, 7, 8, 10, 16, 25, 27 to 29 and 31 have effect in relation to transfers of business taking place on or after the date on which this Order comes into force.

(3) Article 4 has effect in relation to transfers of business taking place in periods of account current when this Order is made.

(4) Articles 6, 11 to 15, 17 to 23 and 26 have effect in relation to transfers of business taking place on or after 1st July 2008.

(5) Articles 9 and 30 have effect in relation to transfers of business taking place on or after 1st January 2007 (but do not have any effect in relation to periods of account other than those which are current when this Order is made).

Amendment of the Income and Corporation Taxes Act 1988

2. The Income and Corporation Taxes Act 1988(b) is amended as follows.

Amendment of section 12

3. In section 12 (basis of, and periods of, assessment)(c), omit subsections (7A) and (7C).

(a) 2007 c. 11.

(b) 1988 c. 1.

(c) Section 12 was relevantly amended by paragraph 3 of Schedule 9 to the Finance Act 1990 (c. 29), S.I. 2001/3629, paragraph 1(6) of Schedule 41 to the Finance Act 2003 (c. 14), paragraph 20(2) and (3) of Schedule 9 to the Finance (No. 2) Act 2005 (c. 22) and paragraph 3(2) of Schedule 9 to the Finance Act 2007.

Amendment of section 431

4. In section 431(2) (interpretative provisions relating to insurance companies)(a), in paragraph (a) of the definition of “insurance business transfer scheme”, for “or 4” substitute “, 4 or 5(b)”.

Amendment of section 432YA

5. In section 432YA (long-term business other than life assurance business – adjustment consequent on change in Insurance Prudential Sourcebook)(c), omit subsection (2A).

Amendment of section 432E

6. In section 432E(2A) (apportionments: participating funds)(d)—

- (a) omit “444ABC,”,
- (b) after “444AEA,” insert “444AECA,”,
- (c) in paragraph (aa), omit “or 444ABC”, and
- (d) in paragraph (ab), after “444AEA” insert “or 444AECA”.

Amendment of section 440B

7. In section 440B(4B) (modifications where tax charged under Case I of Schedule D)(e), after “apply” insert “in relation to assets which are referable to the life assurance business of the transferor”.

Amendment of section 444A

8.—(1) Section 444A (transfers of business)(f) is amended as follows.

(2) In subsections (2), (3) and (3A), for “assuming the transferor had continued to carry on the business transferred after the transfer” substitute “making the assumptions in subsection (3B) below”.

(3) After subsection (3A) insert—

“(3B) The assumptions referred to in subsections (2), (3) and (3A) above are—

- (a) that the transferor had continued to carry on the business transferred after the transfer, and
- (b) where there is no accounting period of the transferor ending with the transfer date, that there was such an accounting period.”

(4) Omit subsection (3ZA).

Insertion of sections 444AZA and 444AZB

9. After section 444A insert—

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- (a) Section 431(2) was relevantly amended by paragraph 1(1) of Schedule 9 to the Finance Act 2007.
 - (b) Case 5 was inserted in section 105(3) of the Financial Services and Markets Act 2000 (c. 8) by S.I. 2007/3253.
 - (c) Section 432YA was inserted by S.I. 2006/3387 and relevantly amended by S.I. 2007/1031 and paragraph 3(3)(a) of Schedule 9 to the Finance Act 2007.
 - (d) Section 432E was inserted by paragraph 4 of Schedule 6 to the Finance Act 1990. Subsection (2A) of that section was inserted by paragraph 10(4) of Schedule 33 to the Finance Act 2003 and relevantly amended by paragraph 2(2) of Schedule 11 to the Finance Act 2006 (c. 25) and paragraphs 4(2) and 8(2) of Schedule 9 to the Finance Act 2007.
 - (e) Section 440A was inserted by paragraph 28(1) of Schedule 8 to the Finance Act 1995 (c. 4) and subsection (4B) of that section was inserted section by paragraph 8(4) of Schedule 8 to the Finance Act 2007.
 - (f) Section 444A was inserted by paragraph 4 of Schedule 9 to the Finance Act 1990 and relevantly amended by paragraphs 17(4) and 27(2) of Schedule 8, and paragraph 1(2)(b) of Schedule 9, to the Finance Act 1995, paragraph 24 of Schedule 33 of the Finance Act 2003, paragraph 1 of Schedule 7 to the Finance Act 2004 (c. 12), S.I. 2004/2310 and paragraph 19(2) of Schedule 9 to the Finance (No. 2) Act 2005.

“444AZA Transfers of life assurance business: Case VI losses of the transferor

(1) This section applies where—

- (a) an insurance business transfer scheme has effect to transfer life assurance business from one person (“the transferor”) to another (“the transferee”),
- (b) assuming the transferor had continued to carry on the business transferred after the transfer, the amount of any profits would have been charged to tax in respect of that business under the I minus E basis,
- (c) the profits in respect of the business transferred for the first period of account of the transferee ending after the date on which the transfer takes effect are charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3)(a), and
- (d) the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to a transfer).

(2) Any loss which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been available to be set off against profits chargeable under section 436A(b) (a “Case VI loss”) shall instead be treated as a loss of the transferee (a “Case I loss”) available to be set off against GRBP in relation to a period of account.

(3) For the purposes of subsection (2) above “GRBP”, in relation to a period of account, is—

$$P \times \frac{GRBTL}{TL}$$

where—

P is the amount of such profits of the transferee’s life assurance business for the period of account as relate to the business transferred (that amount being determined in accordance with section 343(9) and (10), where applicable),

GRBTL is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account, and

TL is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

(4) Where the transfer is of part only of the transferor’s long-term business, subsection (2) above shall apply only to such part of any Case VI loss to which it would otherwise apply as is appropriate.

(5) Any question arising as to the operation of subsection (4) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing.

444AZB Transfers of life assurance business: Case I losses of the transferor

(1) This section applies where—

- (a) an insurance business transfer scheme has effect to transfer life assurance business from one person (“the transferor”) to another (“the transferee”),
- (b) assuming the transferor had continued to carry on the business transferred after the transfer, the amount of any profits would have been charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3),

(a) Section 431G was substituted by paragraph 4 of Schedule 8 to the Finance Act 2007.
(b) Section 436A was inserted by paragraph 25 of Schedule 7, and amended by paragraph 12 of Schedule 9, to the Finance Act 2007.

- (c) the profits in respect of the business transferred for the first period of account of the transferee ending after the date on which the transfer takes effect are charged to tax under the I minus E basis, and
- (d) the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to a transfer).

(2) The relevant fraction of any loss which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been available to be set off against profits of that business (a “Case I loss”) shall instead be treated as a loss of the transferee (a “Case VI loss”) available to be set off against the amount of such profits chargeable under section 436A for a period of account as relate to the business transferred (that amount being determined in accordance with section 343(9) and (10), where applicable).

(3) For the purposes of subsection (2) above “the relevant fraction”, in relation to a period of account, is—

$$\frac{GRBTL}{TL}$$

where—

GRBTL is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account, and

TL is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

(4) Where the transfer is of part only of the transferor’s long-term business, subsection (2) above shall apply only to such part of the amount of any Case I loss to which it would otherwise apply as is appropriate.

(5) Any question arising as to the operation of subsection (4) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing.”

Substitution of section 444AA

10. For section 444AA (transfers of business: deemed periodical return)(a) substitute—

“444AA Transfers of business: deemed periodical returns

(1) This section applies where the whole of the long-term business of a person (“the transferor”) is transferred from that person—

- (a) by one insurance business transfer scheme, or
- (b) by two or more insurance business transfer schemes which take effect on the same date.

(2) Where (apart from this subsection) there would not be a periodical return of the transferor covering a period ending immediately before the transfer date, there is to be deemed for the purposes of corporation tax to be a periodical return of the transferor covering the period—

- (a) beginning immediately after the last period ending before the transfer date which is covered by a periodical return of the transferor, and
- (b) ending immediately before the transfer date.

(a) Section 444AA was inserted by paragraph 18 of Schedule 33 to the Finance Act 2003 (c. 14) and substituted by paragraph 3 of Schedule 9 to the Finance Act 2007 (c. 11).

(3) The periodical return deemed to exist by subsection (2) above is to be deemed to contain—

- (a) such entries as would be included in an actual periodical return of the transferor covering the period mentioned in subsection (2) above, and
- (b) such entries as would be included in an actual periodical return of the transferor covering the period—
 - (i) beginning immediately after the end of the period mentioned in subsection (2) above, and
 - (ii) ending immediately before the transfer had effect,

and the period mentioned in subsection (2) above is to be deemed to be a period of account (but not an accounting period) of the transferor.

(4) There is to be deemed for the purposes of corporation tax to be a periodical return of the transferor—

- (a) covering the transfer date, and
- (b) containing the appropriate entries.

(5) In subsection (4) above “appropriate entries” means such entries as would be included in an actual periodical return covering the transfer date—

- (a) in line 32 of Form 40, and
- (b) in line 11 of Form 14, in both columns (treating references in that form to “current year” as references to the time immediately after the transfer date and to “previous year” as references to the time immediately before the transfer date).

(6) A transfer date covered by a periodical return deemed to exist by subsection (4) above is to be deemed to be a period of account of the transferor only for the purpose of taking into account profits under section 444ABD(a).

(7) Where—

- (a) a periodical return deemed to exist by subsection (4) above is preceded by an actual periodical return of the transferor covering the period immediately before the transfer date, and
- (b) profits are to be taken into account under section 444ABD in the period of account deemed to exist by subsection (6) above,

those profits are to be deemed for the purposes of corporation tax to be profits arising on the last day of the period of account covered by the actual periodical return.

(8) Any actual periodical return of the transferor covering a period which includes the transfer date is to be ignored for the purposes of corporation tax.

(9) In this section and sections 444AB to 444AECC(b) “the transfer date”, in relation to an insurance business transfer scheme, means the date on which it takes effect.”

Amendment of section 444AB

11.—(1) Section 444AB (transfer schemes transferring whole of business: transferor) is amended as follows.

(2) For subsection (1) substitute—

“(1) This section applies where—

(a) Section 444ABD was inserted by paragraph 5 of Schedule 9 to the Finance Act 2007.
(b) Sections 444AB to 444AED were relevantly amended as follows: sections 444AB to 444ABC were substituted for sections 444AB and 444ABA by paragraph 4 of Schedule 9 to the Finance Act 2007; section 444ABD was inserted by paragraph 5 of that Schedule; sections 444AC and 444ACZA were substituted for section 444AC by paragraph 6 of that Schedule; section 444AD was repealed by paragraph 7 of that Schedule; and sections 444AEA to 444AED were inserted by paragraph 8 of that Schedule. Sections 444AB to 444AED are amended by articles 11 to 21 and 23 of this Order and sections 444AECA to 444AECC are inserted by article 22 of this Order.

- (a) an insurance business transfer scheme has effect to transfer long-term business of a person (“the transferor”) to another person (“the transferee”), and
 - (b) condition A or condition B is met.”
- (3) In subsection (2)—
- (a) omit the words “from the transferor to the transferee”, and
 - (b) in paragraph (b), for “, assets of a with-profits fund of the transferee” substitute “or a friendly society, assets of a fund of the transferee which would be a with-profits fund if the transferee were an insurance company”.
- (4) After subsection (5) insert—
- “(5A) In this section references to assets held by the transferor after the transfer do not include—
- (a) assets held on trust for the transferee, or
 - (b) assets held to meet liabilities which have been wholly reinsured and which are intended to be transferred under an insurance business transfer scheme to the reinsurer.”
- (5) For subsection (6) substitute—
- “(6) In this section and sections 444ABA to 444AC “the relevant period of account” means—
- (a) the period of account of the transferor treated by section 444AA(2) as ending immediately before the transfer date, or
 - (b) where there is no such period, the period of account of the transferor including the transfer date.”
- (6) The heading accordingly becomes “Transfer schemes: transferor”.

Amendment of section 444ABA

12.—(1) Section 444ABA (relevant non-transferred assets) is amended as follows.

- (2) In subsection (1)—
- (a) in the formula, for “RVA” substitute “BTO”, and
 - (b) for the definition of RVA substitute—
 - “BTO is the lesser of ABTO and AL13, where—
 - (a) ABTO is any amount brought into account in respect of the assets as a business transfer-out and shown (or treated as shown) in line 32 of Form 40 in the periodical return of the transferor for the period of account of the transferor including the transfer date, and
 - (b) AL13 is any positive amount shown (or treated as shown) in line 13 of Form 14 in the periodical return for the last period of account of the transferor ending before the transfer date.”
- (3) Omit subsections (2) to (6).
- (4) In subsection (7), omit “, and section 444AB for the meaning of “the relevant period of account,”.

Amendment of section 444ABB

13.—(1) Section 444ABB (retained assets) is amended as follows.

- (2) In subsection (1), for the words from “is the lesser” to the end substitute—

“is—

FVA – ABDP – RL13 – RRL

where—

FVA is the fair value of the assets on the transfer date,

ABDP is the amount of the profits to be taken into account as profits under section 444ABD,

RL13 is the amount by which AL13 exceeds VE, and

RRL is the value of any relevant retained liabilities immediately after the transfer date.

But the relevant amount is nil if it would otherwise be below nil.”

(3) After subsection (1) insert—

“(1A) For the purposes of subsection (1) above—

- (a) AL13 is any positive amount shown (or treated as shown) in line 13 of Form 14 in the periodical return for the last period of account of the transferor ending before the transfer date;
- (b) VE is the amount (if any) by which VL32 exceeds VTL where—
 - (i) VL32 is the value of the assets shown (or treated as shown) in line 32 of Form 40 in the periodical return of the transferor covering (or treated as covering) the transfer date, and
 - (ii) VTL means the amount of the liabilities transferred by the insurance business transfer scheme; and
- (c) relevant retained liabilities are any liabilities of the company’s long-term business which are owed by the company immediately after the transfer date and are shown (or treated as shown) in any of lines 17, 21 to 23 and 31 to 38 in Form 14 in a periodical return for the period of account ending (or treated as ending by section 444AA) immediately before the transfer date.”

Insertion of section 444ABBA

14. After section 444ABB (retained assets) insert—

“444ABBA Transfers of business: election for transferee to pay tax of transferor

(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) If the transferor and the transferee jointly elect, the transferee (and not the transferor) is chargeable to any amount of additional corporation tax to which the transferor would otherwise be chargeable by virtue of section 444AB(4) in relation to relevant non-transferred assets.

(3) An election under subsection (2) above—

- (a) is to be 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 90 days beginning with the day following the transfer date,

and a copy of the notice containing the election must accompany the tax return of the transferee for the first accounting period ending after the transfer.

Paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to such an election.

(4) Where an election under subsection (2) above has been made, the transferor must inform the transferee of—

- (a) the amount of any additional corporation tax to which the transferor considers the election to apply, and
- (b) the day on which that tax is due and payable,

no later than the end of the period of 8 months beginning with the day following the transfer date.

- (5) Tax chargeable on the transferee by virtue of an election under subsection (2) above—
 - (a) is due in accordance with section 59D of the Management Act(a) on the day on which it would have been due if no election had been made, and
 - (b) for the purposes of that section, is to be treated as tax payable by the transferor (and not as tax payable by the transferee).
- (6) See section 444AA for the meaning of “the transfer date” in this section.”

Omission of section 444ABC

- 15. Omit section 444ABC (transfer scheme transferring part of business: transferor).

Amendment of section 444ABD

16.—(1) Section 444ABD (transferor’s period of account including transfer) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), for “value” substitute “amount”,
- (b) in paragraph (b), after “line 32” insert “of Form 40”, and
- (c) at the end insert “in accordance with subsections (1A) and (1C) below”.

(3) After subsection (1) insert—

“(1A) Where the profits of the life assurance business of the transferor for a period of account are charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3)(b), the appropriate fraction of the amount of the profits to which subsection (1) above applies is to be taken into account as profits of that period of account chargeable to tax in accordance with Case I of Schedule D (and not otherwise).

(1B) For the purposes of subsection (1A) above “the appropriate fraction” is the appropriate fraction for the purposes of section 432G(1)(c).

(1C) Where the profits of the life assurance business of the transferor for a period of account are charged to tax under the I minus E basis, the relevant fraction of the amount of the profits to which subsection (1) above applies is to be taken into account as profits of that period of account chargeable to tax under section 436A(d) (and not otherwise).

(1D) For the purposes of subsection (1C) above “the relevant fraction” is the relevant fraction for the purposes of section 432G(4).

(1E) Where the value mentioned in paragraph (b) of subsection (1) above exceeds the amount mentioned in paragraph (a) of that subsection, the amount of the excess is not to be taken into account as a loss of the transferor.”

Amendment of section 444AC

17.—(1) Section 444AC (transfer schemes transferring whole of business: reduction in income of transferee) is amended as follows.

(2) In subsection (1)—

- (a) omit “the whole, or substantially the whole, of the”, and

(a) 1970 c. 7; section 59D was substituted by paragraph 29(2) of Schedule 19 to the Finance Act 1998 and amended by paragraph 2 of Schedule 12 to the Finance Act 2004 (c. 12).
(b) Section 431G was substituted by paragraph 4 of Schedule 8 to the Finance Act 2007.
(c) Section 432G was inserted by S.I. 2004/3266 and substituted by paragraph 21 of Schedule 7 to the Finance Act 2007.
(d) Section 436A was inserted by paragraph 25 of Schedule 7, and amended by paragraph 12 of Schedule 9, to the Finance Act 2007.

- (b) for “conditions A and B are” substitute “the condition in subsection (2) below is”.
- (3) In subsection (2), for “Condition A” substitute “The condition”.
- (4) Omit subsection (3).
- (5) In subsection (4), for “the transferred surplus” substitute “lesser of the transferred surplus and any positive amount shown (or treated as shown) in line 13 of Form 14 in the periodical return for the last period of account of the transferor ending before the transfer date”.
- (6) In subsection (5), for the words from “means” to the end substitute—
 - “is VE – RBTO where—
 - (a) VE has the same meaning as in section 444ABB, and
 - (b) RBTO means so much of BTO as relates to relevant non-transferred assets transferred to the transferee where—
 - (i) BTO has the same meaning as in section 444ABA, and
 - (ii) “relevant non-transferred assets” has the same meaning as in section 444AB.”
- (7) After subsection (5) insert—
 - “(5A) Where the transfer is to more than one transferee, the amount of any reduction to be made in accordance with subsection (4) above is to be apportioned to each transferee on a just and reasonable basis.”
- (8) The heading accordingly becomes “Transfer schemes: reduction of income of transferee”.

Omission of section 444ACZA

18. Omit section 444ACZA (transfer schemes transferring part of business: reduction in income of transferee).

Amendment of section 444AEA

- 19.—**(1) Section 444AEA (transfer schemes: anti-avoidance rule) is amended as follows.
- (2) In subsection (1), in paragraphs (a) and (b), omit “or any part”.
 - (3) In subsection (3), for the words from “long-term insurance fund” to the end substitute—
 - “long-term insurance fund of the transferor—
 - (a) to the extent that the advantage is obtained by the transferor in the period of account covering the transfer date or any earlier period of account—
 - (i) for the period of account of the transferor ending (or treated as ending) immediately before the transfer date, or
 - (ii) where there is no such period, for the period of account of the transferor including the transfer date, and
 - (b) to the extent that the advantage is obtained by the transferor in any later period of account of the transferor in which any relevant associated operations are effected, for that later period of account.”
 - (4) In subsection (4), for the words from “first period of account” to the end substitute “period of account of the transferee in which the advantage is obtained by the transferee”.
 - (5) In subsection (5), for “and 444AEC” substitute “to 444AECC”.

Amendment of section 444AEB

- 20.—**(1) Section 444AEB (Case I advantage: transferor) is amended as follows.
- (2) In subsection (1)—
 - (a) in paragraph (a), for the words from “are less” to “any part” substitute “are, or at the relevant time are expected to be, less than they would be but for the whole”, and

- (b) in paragraph (b), for the words from “are greater” to “any part” substitute “are, or at the relevant time are expected to be, greater than they would be but for the whole”.
- (3) In subsection (2)—
 - (a) in paragraph (a), for the words from “are less” to “or part” substitute “are, or at the relevant time are expected to be, less than they would be but for the whole of the transfer scheme arrangements”, and
 - (b) in paragraph (b), for the words from “are greater” to the end substitute “are, or at the relevant time are expected to be, greater than they would be but for the whole of the transfer scheme arrangements”.
- (4) For subsection (4) substitute—
 - “(4) In this section and sections 444AEC, 444AECB and 444AECC(a)—
 - “Case I profits” and “Case I losses” means profits and losses computed in accordance with the provisions of Case I of Schedule D, and
 - “the relevant time” is the time at which any application under section 444AED(b) is made, or, if no such application is made, the transfer date.”

Amendment of section 444AEC

- 21.**—(1) Section 444AEC (Case I advantage: transferee) is amended as follows.
- (2) In subsection (1)—
 - (a) in paragraph (a), for the words from “are less” to “any part” substitute “are, or at the relevant time are expected to be, less than they would be but for the whole”, and
 - (b) in paragraph (b), for the words from “are greater” to “any part” substitute “are, or at the relevant time are expected to be, greater than they would be but for the whole”.
 - (3) In subsection (2)—
 - (a) in paragraph (a), for the words from “are less” to “or part” substitute “are, or at the relevant time are expected to be, less than they would be but for the whole of the transfer scheme arrangements”, and
 - (b) in paragraph (b), for the words from “are greater” to the end substitute “are, or at the relevant time are expected to be, greater than they would be but for the whole of the transfer scheme arrangements”.
 - (4) In subsection (4), after ““Case I losses”” insert “and “the relevant time””.

Insertion of sections 444AECA, 444AECB and 444AECC

- 22.** After section 444AEC insert—

“444AECA Parts of transfer scheme arrangements: anti-avoidance rule

- (1) This section applies where—
 - (a) as a result of any part of transfer scheme arrangements involving the transfer of long-term business from one person (“the transferor”) to another (“the transferee”) a Case I advantage is obtained by the transferor or the transferee (or by both), and
 - (b) the sole or main purpose, or one of the main purposes, of that part of the transfer scheme arrangements is the obtaining of that Case I advantage.
- (2) In subsection (1) above “transfer scheme arrangements” has the same meaning as in section 444AEA.

(a) Section 444AEC was inserted by paragraph 8 of Schedule 9 to the Finance Act 2007 (c. 11) and is amended by article 21 of this Order. Sections 444AECB and 444AECC are inserted by article 22 of this Order.

(b) Section 444AED is inserted by paragraph 8 of Schedule 9 to the Finance Act 2007 and is amended by article 23 of this Order.

(3) If a Case I advantage is obtained by the transferor (see subsection (1) of section 444AECB), the amount of the transferor's Case I advantage (see subsection (3) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferor—

- (a) to the extent that the advantage is obtained by the transferor in the period of account covering the transfer date or any earlier period of account—
 - (i) for the period of account of the transferor ending (or treated as ending) immediately before the transfer date, or
 - (ii) where there is no such period, for the period of account of the transferor including the transfer date, and
- (b) to the extent that the advantage is obtained by the transferor in any later period of account of the transferor in which any relevant associated operations are effected, for that later period of account.

(4) If a Case I advantage is obtained by the transferee (see subsection (1) of section 444AECC), the amount of the transferee's Case I advantage (see subsection (2) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferee for the period of account of the transferee in which the advantage is obtained by the transferee.

(5) See section 444AA(a) for the meaning of “the transfer date”, and section 444AEA(b) for the meaning of “relevant associated operations”, in this section.

444AECB Parts of transfer scheme arrangements: Case I advantage transferor

(1) A Case I advantage is obtained by the transferor if—

- (a) Case I profits of its life assurance business for a period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for any part of the transfer scheme arrangements, or
- (b) Case I losses of its life assurance business for such a period of account are, or at the relevant time are expected to be, greater than they would be but for any part of the transfer scheme arrangements.

(2) But if any of the relevant associated operations would, by itself, cause the Case I profits to be greater or the Case I losses to be less than they would be but for that operation, the amount by which those profits would be greater or those losses would be less shall be taken into account in determining whether a Case I advantage is obtained by the transferor.

(3) If a Case I advantage is obtained by the transferor, the amount of the Case I advantage is the aggregate of—

- (a) the amounts (if any) by which Case I profits for each period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for the relevant part of the arrangements, and
- (b) the amounts (if any) by which Case I losses for each such period of account are, or at the relevant time are expected to be, greater than they would be but for the relevant part of the arrangements.

(4) This section applies to a period of account if it is—

- (a) the period of account of the transferor covering the transfer date,
- (b) any earlier period of account of the transferor, or
- (c) where any relevant associated operations are effected in any later period of account, that period of account.

(a) Section 444AA was inserted by paragraph 18 of Schedule 33 to the Finance Act 2003 (c. 14) and is substituted by article 10 of this Order.

(b) Section 444AEA was inserted by paragraph 8 of Schedule 9 to the Finance Act 2007 and is amended by article 19 of this Order.

(5) In this section and section 444AECC “the relevant part of the arrangements” means, in relation to a Case I advantage, the part of the transfer scheme arrangements as a result of which the Case I advantage is obtained.

(6) See section 444AA for the meaning of “the transfer date”, section 444AEA for the meaning of “relevant associated operations” and section 444AEB(a) for the meaning of “Case I profits” and “Case I losses” and “the relevant time”, in this section.

444AECC Parts of transfer scheme arrangements: Case I advantage transferee

(1) A Case I advantage is obtained by the transferee if—

- (a) Case I profits of its life assurance business for a period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for any part of the transfer scheme arrangements, or
- (b) Case I losses of its life assurance business for such a period of account are, or at the relevant time are expected to be, greater than they would be but for the any part of the transfer scheme arrangements.

(2) But if any of the relevant associated operations would, by itself, cause the Case I profits to be greater, or the Case I losses to be less, than they would be but for that operation, the amount by which those profits would be greater or those losses would be less shall be taken into account in determining whether a Case I advantage is obtained by the transferor.

(3) If a Case I advantage is obtained by the transferee, the amount of the Case I advantage is—

- (a) the amount by which Case I profits for each period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for the relevant part of the arrangements, or
- (b) the amount by which Case I losses for each such period of account are, or at the relevant time are expected to be, greater than they would be but for the relevant part of the arrangements.

(4) This section applies to a period of account if it is—

- (a) the first period of account of the transferee ending after the transfer date or after the effecting of the first of any relevant associated operations (if that occurs before the transfer date),
- (b) the second period of account of the transferee ending after the transfer date or after the effecting of the last of any relevant associated operations (if that occurs after the transfer date), or
- (c) any intervening period of account.

(5) See section 444AA for the meaning of “the transfer date”, section 444AEA for the meaning of “relevant associated operations”, section 444AEB for the meaning of “Case I profits” and “Case I losses” and “the relevant time” and section 444AECB for the meaning of “the relevant part of the arrangements”, in this section.”

Amendment of section 444AED

23. In section 444AED(1) (clearance: no avoidance or group advantage), for “Section 444AEA does” substitute “Sections 444AEA and 444AECA do”.

(a) Section 444AEB was inserted by paragraph 8 of Schedule 9 to the Finance Act 2007 and is amended by article 20 of this Order.

Amendment of the Finance Act 1989

24. The Finance Act 1989(a) is amended as follows.

Amendment of section 82D

25. In section 82D (treatment of profits: life assurance – adjustment consequent on change in Insurance Prudential Sourcebook)(b), omit subsection (2A).

Amendment of section 83YA

26.—(1) Section 83YA (changes in value of assets brought into account: non-profit companies)(c) is amended as follows.

(2) In subsection (7)(a)—

(a) for “fair” substitute “admissible”, and

(b) for “the transferor’s long-term insurance fund” substitute “a non-profit fund of the transferor”

(3) In subsection (11), before the definition of “amount” insert—

““admissible value” has the meaning given by section 83XA(9)(d);”.

Amendment of the Taxation of Chargeable Gains Act 1992

27. The Taxation of Chargeable Gains Act 1992(e) is amended as follows.

Amendment of section 211ZA

28.—(1) Section 211ZA (transfers of business: transfer of unused losses)(f) is amended as follows.

(2) After subsection (2) insert—

“(2A) For the purposes of subsection (2) above, where there is no accounting period of the transferor ending with the day of the transfer—

(a) there is deemed to be such an accounting period,

(b) BLAGAB allowable losses which would have accrued to the transferor in that accounting period are deemed to have accrued to the transferor in that accounting period, and

(c) if those BLAGAB allowable losses would not have been deducted from chargeable gains accruing to the transferor in that accounting period, they are deemed to be relevant unused losses.”

(3) In subsection (3)(a), after “accounting period” insert “ending”.

(a) 1989 c. 26.

(b) Section 82D was inserted by S.I. 2006/3387 and relevantly amended by S.I. 2007/1031.

(c) Section 83YA was inserted by paragraph 7(1) of Schedule 11 to the Finance Act 2006 (c. 25) and relevantly amended by paragraph 7(2) of Schedule 9, and paragraph 8(2)(c) of Schedule 10, to the Finance Act 2007.

(d) Section 83XA was inserted by paragraph 2(1) of Schedule 10 to the Finance Act 2007.

(e) 1992 c. 12.

(f) Section 211ZA was inserted by paragraph 21 of Schedule 33 to the Finance Act 2003.

Amendment of section 213

29.—(1) Section 213 (spreading of gains and losses under section 212)(a) is amended as follows.

(2) In subsection (5), for “assuming the transferor had continued to carry on the business transferred after the transfer” substitute “making the assumptions in subsection (5ZA) below”.

(3) After subsection (5) insert—

“(5ZA) The assumptions referred to in subsection (5) above are—

- (a) that the transferor had continued to carry on the business transferred after the transfer, and
- (b) where there is no accounting period of the transferor ending with the day of the transfer, that for the purposes of section 212 and this section, there was such an accounting period.”

(4) In subsection (8A)—

- (a) omit paragraph (a); and
- (b) in paragraphs (c) and (d), before “net amount” insert “transferred assets”.

(5) In subsection (8B), before “net amounts” insert “transferred assets”.

(6) In subsection (8F)(a) before “net amount” insert “transferred assets”.

(7) In subsection (8H), for “Subsections (3) and (8A) and (8B) above have” substitute “Subsection (3) above has”.

(8) After subsection (8H) insert—

“(8HA) Subsections (8A) and (8B) above have effect where the company, or the transferee, in question joins a group of companies in the accounting period for which the transferred assets net amount represents an excess of losses over gains as if a claim or election could not be made in respect of that net amount except to the extent (if any) that the transferred assets net amount would still arise even if losses accruing after the date on which the company or transferee joined the group of companies were disregarded.”

(9) After subsection (8I) insert—

“(8J) “Transferred assets net amount” means a net amount ascertained in accordance with section 213(1)(a) but only in relation to those assets referred to in section 212(1) which are transferred by the insurance business transfer scheme from the transferor to the transferee.”

(10) Omit subsection (10).

Amendment of Schedule 7 to the Finance Act 2007

30. At the end of Part 2 of Schedule 7 to the Finance Act 2007 (insurance business: transitional provisions) add—

“Section 444AZA Case I losses

85.—(1) This paragraph applies where a loss (a “Case VI loss”) is treated by virtue of section 444AZA of ICTA as a loss of the transferee (a “Case I loss”).

(2) Where any Case VI losses would (assuming the transferor had continued to carry on the business transferred after the transfer) have been losses to which paragraph 81(1) would have applied, the amount of such losses to be treated as Case I losses in any period of account must not exceed—

(a) Section 213 was relevantly amended by paragraph 16 of Schedule 33 to the Finance Act 2003, paragraph 20(6) of Schedule 9 to the Finance (No. 2) Act 2005 (c. 22), section 70(5) of the Finance Act 2006 and paragraph 3(4) of Schedule 9 to the Finance Act 2007.

$$GRBP \times \frac{PBTB}{GRBTL}$$

where—

“*GRBP*” has the same meaning as in section 444AZA(2) of ICTA,

“*PBTB*” is the mean of the opening and closing liabilities of the transferred pension business for the period of account, and

“*GRBTL*” is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account.

Section 444AZB Case VI losses

86.—(1) This paragraph applies where section 444AZB of ICTA has effect in relation to a transferee and the circumstances specified in sub-paragraph (2) or (3) below apply.

(2) The circumstances are that—

(a) the profits of the life assurance business of the transferee for the period of account immediately preceding the first period of account beginning on or after 1st January 2007 were chargeable to tax in accordance with Case I of Schedule D by virtue of section 439A of ICTA(a), and

(b) in that period, the transferee carried on pension business.

(3) The circumstances are that—

(a) paragraph 29 of Schedule 8 applies in relation to the transferee, and

(b) the transferee has an unused pension business loss within the meaning given by paragraph 81(4).

(4) The appropriate fraction of any amount treated by virtue of section 444AZB(2) of ICTA as a loss of the transferee (a “Case VI loss”) available to be set off against profits chargeable under section 436A of ICTA(b) is to be treated for the purposes of paragraph 81 as an unused pension business loss.

(5) The relevant fraction of any Case VI loss is to be treated for the purposes of paragraph 82 as an unused non-pension business loss.

(6) In this paragraph “the appropriate fraction”, in relation to a period of account, is—

$$\frac{PBTB}{TL}$$

where—

“*PBTB*” is the mean of the opening and closing liabilities of the transferred pension business for the period of account, and

“*TL*” is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

(7) In this paragraph the “the relevant fraction”, in relation to a period of account, is—

$$\frac{NPBTB}{TL}$$

where—

(a) Section 439A was inserted by paragraph 26 of Schedule 8 to the Finance Act 1995 (c. 4) and repealed by paragraph 7 of Schedule 8 to the Finance Act 2007 (c. 11).

(b) Section 436A was inserted by paragraph 25 of Schedule 7, and amended by paragraph 12 of Schedule 9, to the Finance Act 2007.

“*NPBTL*” is the mean of the opening and closing liabilities of the transferred gross roll-up business which is not pension business for the period of account, and

“*TL*” is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.”

Repeals and revocations

31.—(1) The enactments specified in Part 1 of the Schedule are repealed to the extent specified.

(2) The instruments specified in Part 2 of the Schedule are revoked to the extent specified.

*Frank Roy
Dave Watts*

18th February 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE

Article 31

Repeals and revocations

PART 1

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1990 (c. 14)	In Schedule 9, paragraph 3.
Finance Act 2003 (c. 14)	In Schedule 41, paragraph 1(6).
	In Schedule 33, paragraph 24(3).
Finance Act 2004 (c. 12)	In Schedule 7, paragraph 1.
Finance (No. 2) Act 2005 (c. 22)	In Schedule 9, paragraph 20(2), (3) and (6).
Finance Act 2007 (c. 11)	In Schedule 9, paragraph 3(2) and (3)(a).

PART 2

<i>Title and number</i>	<i>Extent of revocation</i>
The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629)	Article 14.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to insurance business transfer schemes by amending provisions of the Corporation Tax Acts.

Article 1 provides for citation, commencement and effect. Authority for the Order having effect in relation to periods of account current when it is made is contained in paragraph 16(4) of Schedule 9 to the Finance Act 2007 (c. 11: “FA 2007”).

Article 2 introduces the amendments to the Income and Corporation Taxes Act 1988 (c. 1: ICTA) contained in articles 3 to 23.

Article 3 amends section 12 (basis of, and periods of, assessment). The purpose of the amendment, taken with that made by article 10, is to reduce the number of occasions which give rise to the end of an accounting period or period of account.

Article 4 amends the definition of “insurance business transfer scheme” in section 431(2). The amendment is to reflect amendments made to the Financial Services and Market Act 2000 (c. 8) in consequence of the implementation of the Reinsurance Directive (2005/68/EC).

Articles 5 amends section 432YA (long-term business other than life assurance business – adjustment consequent on changes to the Insurance Prudential Sourcebook). The amendment is in consequence of the amendments made by article 10.

Article 6 amends section 432E (apportionments: participating funds). The amendments are in consequence of the amendments made by articles 15 and 22.

Article 7 amends section 440B (modifications where tax charged under Case I of Schedule D). The amendment clarifies the operation of subsection (4B) of that section by limiting its application explicitly to life assurance business.

Article 8 amends section 444A (transfers of business). The amendments are in consequence of the amendment made by article 5 and, more generally, simplify the operation of the section.

Article 9 inserts new sections 444AZA and 444AZB. The purpose of the new sections is to enable the transferee, in certain circumstances, to utilise losses which would have been available to set off against the profits of the transferor but which would not otherwise be available to set off against the profits of the transferee.

Article 10 substitutes section 444AA (transfers of business: deemed periodical returns). The purpose of the substitution, taken together with the amendment made by article 5, is to reduce the number of occasions which give rise to the end of a period of account.

Article 11 amends section 444AB (transfer schemes transferring whole of business: transferor). The amendments provide for the application of the section, in certain circumstances, in the case of a transfer of part of business, as well as more generally clarifying the operation of the section and taking into account the amendment made by article 10.

Article 12 amends section 444ABA (relevant non-transferred assets) which makes provision for the purposes of section 444AB. The amendments simplify the operation of section 444ABA by rewriting substantially subsection (1) and omitting subsections (2) to (6).

Article 13 amends section 444ABB (retained asserts). The amendments make changes of a technical nature, in particular to the formula for calculating the relevant amount for the purposes of section 444AB.

Article 14 inserts a new section 444ABBA. The purpose of the new section is to enable the transferor and transferee to elect, in certain circumstances, that the transferee will bear additional corporation tax to which the transferor would otherwise be chargeable.

Article 15 omits section 444ABC (transfer scheme transferring part of business: transferor). This amendment is in consequence of the amendments made by article 11 providing for the application of section 444ABA, in certain circumstances, in the case of both transfers of the whole of business and transfers of part of business.

Article 16 amends section 444ABD (transferor's period of account including transfer). The amendments amplify how profits to which subsection (1) of the section applies are to be taken into account as profits of the transferor. They also make it clear that no loss arises where the amount given by subsection (1)(b) exceeds that given by subsection (1)(a) of the section.

Article 17 amends section 444AC (transfer schemes transferring whole of business: reduction in income of transferee) so that its application is no longer limited to transfers of the whole or substantially the whole of business. Article 18 omits section 444ACZA (transfer schemes transferring part of business: reduction in income of transferee) in consequence.

Articles 19 to 21 amend sections 444AEA to 444AEC (transfer schemes: anti-avoidance rule). The main purpose of the amendments is to provide that the sections apply in relation only to the whole of transfer scheme arrangements. Article 22 inserts new sections 444AECA to 444AECC to make similar provision applying in relation to separate parts of transfer scheme arrangements. Article 23 amends section 444AED (clearance: no avoidance or group advantage) in consequence.

Article 24 introduces the amendments to the Finance Act 1989 (c. 26) contained in articles 25 and 26. Article 25 makes an amendment to section 82D (treatment of profits: life assurance – adjustment consequent on change in Insurance Prudential Sourcebook) which is consequential on the amendment made by article 10. Article 26 makes amendments of a technical nature to section 83YA (changes in value of assets brought into account: non-profit companies).

Article 27 introduces the amendments to the Taxation of Chargeable Gains Act 1992 (c. 12) contained in articles 28 and 29. The purpose of these amendments, which are in consequence of the amendment made by article 3, is to ensure that section 211ZA (transfers of business: transfer of unused losses) and section 213 (spreading of gains and losses under section 212) of that Act continue to work as intended. In addition, article 29 amends section 213 so as to allow, in certain circumstances, losses to be carried back to a pre-transfer period of account of the transferor even though the transferee immediately before the transfer was carrying on long-term business.

Article 30 amends Part 2 of Schedule 7 to FA 2007 (insurance business: transitional provisions). The purpose of the amendments is to make transitional provisions for cases where section 444AZA or 444AZB of ICTA (inserted by article 9) applies.

Article 31 and the Schedule make consequential repeals and revocations.

This Order, together with the relevant legislation in FA 2007, is part of the outcome of a continuing consultation process. A draft regulatory impact assessment was included as part of a consultation document, “Life Assurance Company Taxation – A Technical Consultative Document”, which was published by Her Majesty's Revenue and Customs in May 2006. This is available at www.hmrc.gov.uk/life-assurance/consultation.htm.

STATUTORY INSTRUMENTS

2008 No. 381

CORPORATION TAX

The Insurance Business Transfer Schemes (Amendment of the
Corporation Tax Acts) Order 2008

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