

2008 No. 3096

CORPORATION TAX

**The Insurance Companies (Corporation Tax Acts) (Amendment)
(No. 2) Order 2008**

Made - - - - *3rd December 2008*
Laid before the House of Commons *3rd December 2008*
Coming into force - - *27th December 2008*

The Treasury make the following Order in exercise of the powers conferred by section 431A(1) and (6) 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) (No. 2) Order 2008 and shall come into force on 27th December 2008.

(2) This Order has effect in relation to transfers of long-term business made on or after that date.

Amendment of section 432YA of the Income and Corporation Taxes Act 1988

2.—(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 (2), for “long-term business which is not life assurance business” substitute “PHI business”.

(3) For subsection (6) substitute—

“(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)(c) and those sections shall apply in relation to this section as if—

(a) 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) were a reference to the corresponding provision of this section, and

(b) the reference to life assurance business in section 82E was a reference to PHI business.”.

(4) In the heading, for “long-term business other than life assurance business” substitute “PHI business”.

(a) 1988 c. 1; section 431A was inserted by paragraph 2 of Schedule 6 to the Finance Act 1990 (c. 29), substituted by paragraph 3 of Schedule 9 to the Finance (No. 2) Act 2005 (c. 22) and amended by paragraph 12 of Schedule 10 to the Finance Act 2007 (c. 11).

(b) Section 432YA(6) was added by article 3 of S.I. 2007/1031.

(c) 1989 c. 26; section 82E was inserted by article 13 of S.I. 2007/1031, and amended by S.I. 2008/1905 and section 82F was inserted by article 2 of S.I. 2008/1905.

Amendment of section 82E of the Finance Act 1989

3.—(1) Amend section 82E of the Finance Act 1989 (section 82D: treatment of transferors under insurance business transfer schemes) as follows.

(2) For subsection (4) substitute—

“(4) The transferor may make an election under this subsection if—

- (a) the transferee is a company which is a non-profit company, or
- (b) the transfer is to a non-profit fund of a company which is not a non-profit company,

and (in either case) the transferee carries on life assurance business otherwise than on a mutual basis in the period of account of the transferee in which the transfer takes place and the profits of that business for that period are charged to tax under the I minus E basis.”.

(3) For subsections (6) and (7) substitute—

“(6) Where the transferor makes 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.

(7) Where the transferor does not make 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) in the case of a transfer of the whole of the long-term business—
 - (i) 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
 - (ii) in relation to periods of account of the transferor subsequent to the transfer, section 82D(2)(b) above shall have no effect;
- (b) in the case of a transfer of part of the long-term business—
 - (i) the transferor’s relevant proportion of the aggregate referred to in paragraph (a)(i) above shall be brought into account as a trading receipt of the transferor for the period of account ending immediately before the transfer, and
 - (ii) in relation to periods of account of the transferor subsequent to the transfer, the amount to be brought into account under section 82D(2)(b) above shall be reduced by the transferor’s relevant proportion.”.

(4) After subsection (7) add—

“(8) The transferor’s relevant proportion referred to in subsection (7) above is that proportion which the total amount of the liabilities of the transferor to policy holders and annuitants transferred to the transferee or the transferees bears to the total of such liabilities of the transferor immediately before the transfer.

(9) But in the case of a transfer where the total amount of the liabilities of the transferor so transferred is below nil, the transferor’s relevant proportion is such proportion of the aggregate referred to in subsection (7)(a)(i) above as is just and reasonable.”.

Amendment of section 82F of the Finance Act 1989

4.—(1) Amend section 82F of the Finance Act 1989 (section 82D: treatment of transferees under insurance business schemes)(a) as follows.

(2) In subsection (1)(b), for “does not make” substitute “makes”.

(3) In subsection (5A), for “negative” substitute “below nil”.

(4) In subsection (6), after “transferred to the transferee” insert “(or if more than one, all of the transferees)”.

(5) After subsection (6) insert—

“(6A) But where the total amount of the liabilities of the long-term business of the transferor transferred to all the transferees is below nil, the appropriate amount is such proportion of XA as is just and reasonable to attribute to all the transferees.”.

Frank Roy

Tony Cunningham

3rd December 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends sections 82E and 82F of the Finance Act 1989 (“FA 1989”) and section 432YA of the Income and Corporation Taxes Act 1988 (“ICTA”). Sections 82E and 82F were inserted into FA 1989 by S.I. 2007/1031 in consequence of changes of rules in the Prudential Sourcebook for Insurers made by the Financial Services Authority under the Financial Services and Markets Act 2000 (c.8).

Section 82D of FA 1989 and section 432YA of ICTA provide that amounts released from reserves (which arise as a consequence of changes made to the Prudential Sourcebook for Insurers) in the cases specified in those sections are to be brought into account over three years as trading receipts in computing profits in accordance with the provisions of Case I of Schedule D of ICTA. Sections 82E and 82F of FA 1989 deal with the case where the insurance business to which section 82D applies is transferred. Section 82E deals with the position of the transferor in a case where there has been a transfer of insurance business. It provides that the amounts remaining to be brought into account by the transferor at the time of the transfer are instead to be brought into account by the transferee (or transferees) unless the transferor elects to bring the amounts into account, in which case all the remaining amounts are brought into account by the transferor in the accounting period ending immediately before the transfer. Section 82F makes equivalent provision dealing with position of the transferee (or transferees).

The amendments made by this Order reverse the effect of section 82E so that the transferee brings into account the remaining amounts under section 82D only if the transferor elects for that treatment. The amendments also limit the circumstances in which the election can be made because section 82F does not operate correctly where the transferee conducts its trade on a mutual basis. The Order also corrects the operation of section 82F(6) to deal with a case where the amount of liabilities transferred to a transferee is negative.

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

Article 2 amends section 432YA(6) by providing that references in that section to section 82E to life assurance business are to be read as references to PHI business. It also substitutes references in section 432YA to “PHI business” for “long-term business which is not life assurance business”.

Article 3 amends section 82E by substituting new subsections (4), (6) and (7) and inserts new subsections (8) and (9). New subsections (4) and (6) apply where there is a transfer of long-term business and provides that the transferor may elect that the balance of any reserves are brought

(a) 1989 c. 26; section 82F was inserted by article 13 of S.I. 2007/1031.

into account by the transferees after the transfer but only where the transferee is a non-profit company or the transfer is to a non-profit fund of a company which is not a non-profit company and provided that the transferee does not carry on its business on a mutual basis. New subsection (7) applies if there is no such election and provides that the balance of any reserves is brought into account as a trading receipt of the transferor immediately before the transfer. New subsection (8) and (9) are consequential amendments and define the amount the transferor is required to bring into account under section 82D after a part transfer of the transferor's long-term business.

Article 4 makes consequential amendments to section 82F to deal with the treatment of a transferee where the transferor makes an election under section 82E(4) and inserts new subsection (6A) which deals with the case where the liabilities transferred are negative so that it is not possible to determine the appropriate amount. Subsection (6A) provides for a just and reasonable apportionment between the business transferred and business retained. A clarifying amendment is also made to subsection (6).

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.