

2003 No. []

INCOME TAX

The Non – resident Insurance Companies Regulations 2003

<i>Made</i> - - - -	2003
<i>Laid before the House of Commons</i>	2003
<i>Coming into force</i> - -	2003

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 11AA(5) of the Income and Corporation Taxes Act 1988(a) and section [148(6)] Finance Act 2003(b) hereby make the following Regulations:

1. These Regulations may be cited as the Non – resident Insurance Companies Regulations 2003 and shall have effect in respect of accounting periods of insurance companies beginning on or after 1st January 2003.

2. In these Regulations –

“insurance company” has the same meaning as it has in section 431(2) Income and Corporation Taxes Act 1988(c);

“free assets” means the amount by which the value of the assets of the permanent establishment is greater than the aggregate of the permanent establishment’s loan capital and technical provisions; and the assets of the permanent establishment do not include the reinsurer’s share of technical provisions;

“permanent establishment” has the same meaning as it has in section [147] Finance Act 2003(d);

“technical provisions” means the gross amount after deducting the reinsurance amount of any of the following –

- (a) provisions for claims outstanding;
- (b) provisions for unearned premiums;
- (c) provisions for unexpired risks;
- (d) long term business provisions;
- (e) technical provisions for linked liabilities;
- (f) provisions for bonuses and rebates;
- (g) deposits received from reinsurers;

(a) 1988 c.1. Section 11AA was inserted by section [148(2)] Finance Act 2003 (c.[]) with effect in relation to accounting periods beginning on or after 1st January 2003.

(b) 2003 c.[].

(c) 1988 c.1. This definition was amended by SI 2001/3629 with effect for periods of account ending on or after 1st December 2001.

(d) 2003 c.[].

and in this definition expressions which are used in Schedule 9A to the Companies Act 1985 have the same meanings as in that Schedule;

“value” means the amount that, at the time at which the value falls to be determined, a company would obtain from an independent person for the transfer of all the company’s rights in respect of an asset.

3. In applying section 11AA(2) of the Income and Corporation Taxes Act 1988, in relation to an insurance company, it shall be assumed that the permanent establishment has free assets of an amount not less than it would have in the circumstances specified in that subsection.

4. In accordance with the separate enterprise principle, profits from assets attributable, by virtue of regulation 3, to the permanent establishment of an insurance company are attributed to that establishment.

5. Section 11AA(3) of the Income and Corporation Taxes Act 1988 shall apply in relation to an insurance company.

Name

Date

Two of the Commissioners of Inland Revenue

The Non-resident Insurance Companies Regulations 2003

EXPLANATORY NOTE

Preamble

The draft regulations are made under the power contained in section 11AA(5) ICTA 1988 inserted by clause 148(2) of the Finance Bill published today.

Instead section 11AA(5) provides for the independent enterprise hypothesis in subsection (2) of clause 148 to be applied in a different way where an insurance company is concerned. This recognises that with such a company, it is not a question of determining what proportions of the given total capital of a permanent establishment ("PE") are equity and loan capital respectively, but more a question of determining, given a level of liabilities comprising in the main technical provisions, what amount and type of assets an independent enterprise would hold.

Where unusually an insurance company's PE has loan capital attributed to it, then section 11AA(3) will be applied to the PE's capital in the same way as it is for any other company, and here the credit rating requirement in section 11AA(3)(a) may be relevant.

Comments on the draft regulations should be sent to Richard Thomas, preferably by e-mail to richard.thomas@ir.gsi.gov.uk, or otherwise to Room 5W2, 22 Kingsway, London WC2B 6NR.

Regulation 1

This gives the effective date for the regulations. By virtue of the power in clause 148(6) of the Finance Bill, the regulations may have the same effective date as the primary legislation. This is so even though the regulations cannot be made and laid until Finance Bill 2003 receives Royal Assent and so puts section 11AA(5) on the statute book.

Regulation 2

This regulation gives definitions.

"Insurance company" is taken from section 431(2). This means that the only insurance companies to which the regulations apply are:

- Companies with their head and registered offices in another member state of the EEA (including for this purpose Gibraltar) which by virtue of the single passport arrangements or other treaty rights are treated as authorised to write insurance business in the UK and do so through a PE in the UK.
- All other companies with head offices outside the UK (and so are not resident in the UK) but which have a Part 4 FSMA permission to carry on insurance business in the UK and which do so through a PE in the UK.

It should be noted that the EEA insurers to which the regulations apply may include insurers who have notified their intention to provide services as well as to operate through a branch, if the arrangements in the UK amount to a PE within the meaning of clause 147 of the Finance Bill. See in this regard the European Commission document "Commission Interpretative Communication: Freedom to provide services and the general good in the insurance sector" C(1999)5046 of 2 February 2000.

"Technical provisions" means an insurance company's

- provisions for claims outstanding
- provisions for unearned premiums
- provisions for unexpired risks
- long term business provisions
- technical provisions for linked liabilities
- provisions for bonuses and rebates
- deposits received from reinsurers

after deducting any reinsurance amounts (irrespective of whether the reinsurance amounts are deducted from liabilities shown as assets in the balance sheet..

Each of these terms takes its meaning from Schedule 9A to the Companies Act 1985 – see in particular Liabilities Items C 1 to 4 and 6, D and F in the balance sheet format set out in section B of that Schedule, notes 20 to 23 and 25 to 27 to that Format.

A new concept in the regulations is the notion of “free assets”. For the purposes of the regulations this means the amount by which the fair value (the amount obtainable on a sale to an independent person) of a PE’s assets exceed the aggregate of the technical provisions and loan capital of the PE.

“Permanent establishment” in the regulations will have the same meaning as it has in clause 147 of the Finance Bill.

Regulation 3

This sets out the way that the independent enterprise hypothesis is to be applied to an insurance company. The hypothesis that the profits of the PE are those which an independent enterprise would have requires it to be assumed that the PE has free assets of the same amount that an independent enterprise engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the non-resident company, would have.

Regulation 4

This regulation corresponds to the rule in paragraph 9(1) of Schedule 25 to the Finance Bill which applies to banks. The effect of it is that if the PE’s actual free assets (which may be nil) are less than the free assets given by the section 11AA(2) hypothesis and the regulation 3 assumption, the company is to be treated as having additional profits in the shape of investment return from those excess assets. The excess assets attributed to the PE should be of a type and nature that an independent enterprise would hold, and should be assets that the company actually does hold even though not at, or directly attributable to, the PE.

Regulation 5

This specifies that the legislation at section 11AA(3) of the Taxes Act 1988 applies to insurance companies.

Guidance

The question arises how a company operating through a PE should satisfy itself, for the purposes of making its tax return, that its profits are such as to meet both the section 11AA(2) hypothesis and the requirements of these regulations.

Guidance on the operation of the regulations has been published in Chapter 10.131 onwards of the Inland Revenue’s General Insurance Manual (GIM), a new version of

which was published in March 2003 and is available on the Inland Revenue's website.

2003 No. []

INCOME TAX

The Overseas Life Insurance Companies Regulations 2003

<i>Made</i> - - - -	2003
<i>Laid before Parliament</i>	2003
<i>Coming into force</i> - -	2003

The Treasury, in exercise of the powers conferred upon them by section [155] of the Finance Act 2003(a) hereby make the following Regulations:

Citation, commencement and effect

6. These Regulations may be cited as the Overseas Life Insurance Companies Regulations 2003, shall come into force on [], and shall have effect in relation to overseas life insurance companies for accounting periods beginning on or after 1 January 2003.

Interpretation

7. In these Regulations –

“permanent establishment” has the same meaning as it has in section [147] of the Finance Act 2003.

“Taxes Act” means the Income and Corporation Taxes Act 1988(b)

Modifications to the Taxes Act

8.—(1) In its application to an overseas life insurance company the Taxes Act shall have effect with the following modifications.

(2) In section 431(2), in the definition of “overseas life insurance company”, and in relation to an overseas life insurance company, in the definition of “insurance company”, for “branch or agency” substitute “permanent establishment”.

(3) In Schedule 19AC –

(a) omit paragraph 3. In consequence the provisions treated as inserted in section 11 are omitted.

(b) omit paragraph 4. In consequences sections 11A, 11B, and 11C treated as inserted are omitted.

(c) in paragraph 4A –

(a) 2003 c.[].
(b) 1988 c.1.

- (i) in sub-paragraph (2), for “branch or agency” substitute “permanent establishment”, and for “Article 11 of the third life insurance Directive” substitute “Article 14 of the life insurance directive”;
- (ii) for sub-paragraph (3) substitute –
 - “(3) In sub-paragraph (2) above, “the life insurance directive” means Council Directive 2002/83/EC concerning life assurance.”.
- (d) in paragraph 5 –
 - (i) in sub-paragraph (1), in the section 76(6A)(a) treated as inserted, for “branch or agency” substitute “permanent establishment”;
 - (ii) omit sub-paragraph (1A).
- (e) omit paragraph 5A.
- (f) omit paragraph 5B.
- (g) in paragraph 5C(1), for “branch or agency” substitute “permanent establishment”.
- (h) in paragraph 6, in the definition of “investment reserve” treated as substituted in section 431(2) –
 - (i) for paragraph (a) substitute –
 - “(a) relevant assets are such assets of the company’s long-term insurance fund as are by virtue of section 11AA(a) attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business; and”;
 - (ii) in paragraph (b), for “branch or agency” substitute “permanent establishment”;
 - (iii) omit the words from “and in a case where section 11C applies” to the end.
- (i) in paragraph 6A, in the words treated as inserted in section 431D(1), for “branch or agency” substitute “permanent establishment”.
- (j) for paragraph 7 substitute –
 - “7. Section 432A has effect as if –
 - (a) the references in subsections (3) and (6) to assets were to such of the assets concerned as are by virtue of section 11AA attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business; and
 - (b) the reference in subsection (6) to liabilities were to such of the liabilities concerned as are attributable to the permanent establishment.”.
- (k) in paragraph 8(3), for “branch or agency” substitute “permanent establishment”.
- (l) omit paragraph 9. In consequence the subsections treated as inserted in section 434 are omitted.
- (m) in paragraph 10B –
 - (i) in sub-paragraph 2(b), in respect of the paragraphs treated as inserted in section 440(4), omit paragraph (g), and in paragraph (h), for ‘non-UK assets’ substitute ‘assets of the company which are not UK assets’;
 - (ii) in sub-paragraph (3), for the subsection (7) treated as inserted in section 440 substitute –
 - “(7) For the purposes of this section UK assets are assets which by virtue of section 11AA are attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”
- (n) in paragraph 10C –
 - (i) in sub-paragraph (1), for the section 440B(3) treated as substituted, substitute –

(a) Section 11AA is inserted into the Taxes Act by section [148(2)] of the Finance Act 2003 (c.[])

- “(3) Section 440(1) and (2) have effect as if the only categories specified in subsection (4) of that section were –
- (a) UK assets of the long-term insurance fund,
 - (b) other UK assets, and
 - (c) assets of the company which are not UK assets,
- and UK assets has the meaning given by section 440(7).”;
- (ii) in sub-paragraph (2), in the section 440B(4) treated as substituted; in paragraph (b), for “,” substitute “;and”; and omit paragraph (c).
- (o) in paragraph 11 –
- (i) in sub-paragraph (4), omit the paragraph (f) treated as inserted in section 440A(2);
 - (ii) in sub-paragraph (5), for the subsection 6A treated as inserted in section 440A substitute –
- “(6A) For the purposes of this section –
- (a) UK securities are such securities as are assets which, by virtue of section 11AA, are attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business; and
 - (b) non-UK securities are securities which are not UK securities.”.
- (p) in paragraph 11B, in the subsection (7) treated as inserted in section 442A, for “section 11(2)” substitute “section 11”.
- (q) omit paragraph 13. In consequence the subsection (4) treated as inserted in section 794 is omitted.
- (r) omit paragraph 14. In consequence the words treated as substituted or inserted in section 811 are omitted.
- (s) in paragraph 14A, in the paragraph 6 treated as inserted in Schedule 19AA –
- (i) for sub-paragraph (a) substitute –
- “(a) the references in paragraphs 2 and 3 to assets of the long-term insurance fund were to such of the assets as are by virtue of section 11AA attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”;
- (ii) in sub-paragraphs (b) and (c) for ‘branch or agency’, wherever occurring, substitute ‘permanent establishment’. Omit the words “and any expression used” to the end of the paragraph.

Modifications to Schedule 8A to the Finance Act 1989

- 9.**—(1) Schedule 8A to the Finance Act 1989(a) shall be modified as follows.
- (2) Omit paragraph 1(2).
 - (3) In paragraph 1A –
- (a) in sub-paragraph (1), for “branch or agency” substitute “permanent establishment”;
 - (b) for sub-paragraph (2) substitute –
- “(2) The reference to assets in section 83(2)(b) (as it applies apart from subsection (3) of that section) shall be construed as a reference to such of the assets as are by virtue of section 11AA of the Taxes Act 1988 attributable to the permanent establishment.”;
- (c) for sub-paragraph (3) substitute –
- “(3) In determining for the purposes of section 83(2) (as it applies apart from subsection (3) of that section) whether there has been any increase or reduction in the value (whether

(a) 1989 c.26.

realised or not) of assets, no regard shall be had to any period of time during which an asset held by the company does not fall within sub-paragraph (2) above.”; and

(d) in sub-paragraph (4), for “branch or agency” substitute “permanent establishment”.

(4) In paragraph 2 –

(a) in sub-paragraph (1), omit from “;and ” to “Schedule 19AC to that Act”;

(b) omit sub-paragraph (2);

(c) in sub-paragraph (3), for “branch or agency” substitute “permanent establishment”;

(d) for sub-paragraph (4) substitute –

“(4) The reference in subsection (5)(b) to assets shall be construed as a reference to such of the assets as are by virtue of section 11AA of the Taxes Act 1988 attributable to the permanent establishment.”;

(e) in sub-paragraph (5), for “branch or agency” substitute “permanent establishment”;

(f) for sub-paragraph (7) substitute –

“(7) In determining for the purposes of subsection (5) whether there has been any increase or reduction in the value (whether realised or not) of assets, no regard shall be had to any period of time during which an asset does not fall within sub-paragraph (4) above.”; and

(g) omit sub-paragraph (7A).

Modifications to the Taxation of Chargeable Gains Act 1992

10.—(1) The Taxation of Chargeable Gains Act 1992(a) shall be modified as follows.

(2) Omit section 211(2A).

(3) In Schedule 7B –

(a) after paragraph 1 insert –

“**1A.** In section 10B(1)(b) (b) the words “situated in the United Kingdom and” are omitted.”;

(b) omit paragraphs 2, 3, 4, 5, 6, 6A, 6B, and 7A;

(c) for paragraph 8 substitute –

“**8.** In section 185(4) –

(a) in paragraph (a), omit “are situated in the United Kingdom and”;

(b) in paragraph (b), omit “are so situated and”.”

and, in consequence, the words treated as inserted in section 185 by paragraph 8 are omitted;

(d) omit paragraph 9;

(e) in paragraph 10 –

(i) in sub-paragraph (1), for the section 212(5A) treated as inserted, substitute –

“(5A) In its application to an overseas life insurance company, this section shall have effect as if the references in subsections (1) and (2) to assets were to such of the assets as are, by virtue of section 11AA of the Taxes Act, attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”;

(ii) omit sub-paragraph (2);

(f) in paragraph 11 –

(a) 1992 c.12.

(b) inserted by section [148(4)] of the Finance Act 2003 c.[].

- (i) in sub-paragraph (1), in the words treated as inserted in section 213(4), for “branch or agency” substitute “permanent establishment”;
- (ii) omit sub-paragraph (2);
- (g) omit paragraph 12 and, in consequence, the subsection treated as inserted in section 214 is omitted;
- (h) omit paragraph 13 and, in consequence, the words treated as inserted in section 214A are omitted;
- (i) omit paragraph 14;
- (j) in paragraph 15 –
 - (i) omit sub-paragraph (1);
 - (ii) in sub-paragraph (2), for “In that paragraph” substitute “In Schedule 7A, in paragraph 1”;
- (k) omit paragraph 16.

Modifications to the Finance (No 2) Act 1992

- 11.**—(1) The Finance (No 2) Act 1992(a) shall be modified as follows.
 (2) Section 65(2)(ab) is omitted.

Modifications to the Capital Allowances Act 2001

- 12.**—(1) The Capital Allowances Act 2001(b) shall be modified as follows.
 (2) In section 255(2), for “branch or agency” substitute “permanent establishment”.

Modifications to the Finance Act 2002

- 13.**—(1) The Finance Act 2002(c) shall be modified as follows.
 (2) In section 66 –
 - (a) in sub-section (6) –
 - (i) for “branch or agency” substitute “permanent establishment”;
 - (ii) for “Article 11 of the third life insurance directive” substitute “Article 14 of the life insurance directive”;
 - (b) in sub-section (7), for the definition of “the third life insurance directive” substitute –

““the life insurance directive” means Council Directive 2002/83/EC concerning life assurance; and”.
- (3) In Schedule 22, in paragraph 10 –
 - (a) in sub-paragraph (5)(a) –
 - (i) for “branch or agency” substitute “permanent establishment”;
 - (ii) for “Article 11 of the third life insurance directive” substitute “Article 14 of the life insurance directive”;
 - (b) in sub-paragraph (6), for the definition of “the third life insurance directive” substitute –

““the life insurance directive” means Council Directive 2002/83/EC concerning life assurance; and”.

(a) 1992 c.48.
 (b) 2001 c.2.
 (c) 2002 c.23.

Modifications to the Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995

14.—(1) The Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995(a) shall be modified as follows.

(2) In paragraph 2(1), in the definition of “relevant business”, for “branch or agency” substitute “permanent establishment”.

(a) S.I. 1995/3237.

The draft Overseas Life Insurance Regulations 2003

EXPLANATORY NOTE

Introduction

The Finance Bill 2003 published on 16 April 2003 contains a number of sections (147 to 155) concerned with non-resident companies with permanent establishments ("PEs") in the United Kingdom. It contains a power at clause 155 to modify that legislation in the case of an overseas life insurance company ("OLIC"). It also contains a power to modify, including by repeal, the existing legislation applying to OLICs. The draft regulations now exposed illustrate what modifications and repeals are proposed.

Note that the regulations do not yet cater for all the changes proposed in Schedule 33 of the Bill in relation to the taxation of life assurance companies. But there is in each of the notes on regulations 3 to 5 an indication of what modifications might need to be made to that legislation to make it apply appropriately to OLICs. Also included below is a consolidated version of Schedules 19AC ICTA, 8A FA 1989 and 7B TCGA 1992, showing how those Schedules would look if these regulations as exposed were to have effect.

Comments on the draft regulations should be sent to Richard Thomas, preferably by e-mail to richard.thomas@ir.gsi.gov.uk, or otherwise to Room 5W2, 22 Kingsway, London WC2B 6NR.

The regulations

1.Preamble and regulation 1

It is proposed that the regulations will be made as soon as the Finance Act 2003 receives Royal Assent and that they will have effect for accounting periods beginning on or after 1 January 2003.

2.Regulation 2: Interpretation

"Permanent establishment" in the regulations will have the same meaning as it has in clause 147 of the Finance Bill.

"Taxes Act" means ICTA 1988

Regulation 3: Modifications to the Taxes Act.

The detailed regulations here have three main objects:

- They repeal the complex "under-funding" rules in paragraphs 3 and 4 Schedule 19AC (inserting paragraphs into section 11 ICTA and inserting sections 11A to 11C ICTA) - see regulation 3(3)(a) and (b). In future OLICs will be charged to tax in the same way as any other non-resident company, and the question whether assets or income is attributable to the UK permanent establishment of an OLIC will be determined by reference to clause 148 of the Finance Bill legislation and to the Non-resident Insurance Companies Regulations 2003.

In consequence, there will only be one class of asset which an OLIC has and a UK resident company does not, namely non-UK assets – those which are not attributable to the UK PE. Regulation 3(3)(h)(i) and (iii), (j), (m), (n), (o) and (s) are concerned with this issue. In particular they ensure that there are references either to assets attributable to a UK PE of an OLIC by virtue of the new section 11AA ICTA or to assets which are not such assets.

- They replace references to branches with references to PEs. This is done in regulation 3(2), 3(3)(c)(i), (d)(i), (g), (h)(ii), (i), (k) and (s)(ii) as well as incidentally in other paragraphs.
- They omit provisions of Schedule 19AC concerned with “UK distribution income” as a consequence of changes made in Schedule 33 to the Finance Bill. This is done by regulation 3(3)(d)(ii), (e), (f) and (l).

And other redundant material is removed from, and other minor changes are made to, Schedule 19AC by regulation 3(3)(p), (q) and (r).

Other modifications include updating the reference to EC Insurance Directives in paragraph 4A Schedule 19AC (“qualifying overseas transfers”) - regulation 3(3)(c)(i) and (ii).

In connection with Schedule 33 there will need to be references to sections 431(2ZA), 444AA, 444AB, 444AC, 444AD and 444AE ICTA which will need to be modified where the transfer concerned is a qualifying overseas transfer.

In the definition of investment reserve, substituted by regulation 3(3)(h), further amendment will be required as a consequence of paragraph 23 Schedule 33 to the Finance Bill.

There will also need to be transitional provisions following the omission of section 440(4)(g) ICTA by regulation 3(3)(m), that prevents a charge arising under section 440.

Regulation 4: Modifications to Schedule 8A of the Finance Act 1989

This regulation makes similar amendments to Schedule 8A as are made to Schedule 19AC. Given the extensive changes being made to sections 82 to 89 FA 1989 by Schedule 33 to the Bill, it is likely that further modifications will be needed.

Regulation 4(3)(a) and (d) and 4(4)(c) and (d) replace references to “branch or agency” by references to PEs in paragraphs 1A and 2 Schedule 8A FA 1989.

As there will only be one class of asset which an OLIC has and a UK resident company does not, namely non-UK assets – those which are not attributable to the UK PE. Regulation 4(3)(b) and (c) and 4(4)(d) and (f) are concerned with this issue. In particular they ensure that there are references either to assets attributable to a UK PE of an OLIC by virtue of the new section 11AA ICTA or to assets which are not such assets.

Regulation 4(4)(b) omits paragraph 2(2) Schedule 8A FA 1989 as it is a provision concerned with “UK distribution income”. This is a consequence of changes made in paragraph 11 Schedule 33 to the Finance Bill.

Regulation 4(2) and 4(4)(g) make incidental changes

Regulation 5: Modifications to Schedule 7B TCGA 1992

New paragraph 1A Schedule 7B (inserted by regulation 5(3)(a)) will modify the new rule in section 10B (inserted by clause 148(4) of the Finance Bill) so that subsection (1)(b) does not exempt assets not situated in the UK, so long as they are assets attributable to the UK PE of an OLIC. The various paragraphs of Schedule 7B which modified individual parts of the TCGA legislation are accordingly repealed by regulation 5(2) and 5(3)(b), (d), (i) and (k).

Other minor changes are made by regulation 5(3)(c) and (e) as a result of the repeal of paragraphs 3 and 4 of Schedule 19AC -.

Paragraphs 11(2), 12 and 13 Schedule 7B are now spent and so are repealed by regulation 5(3)(f)(ii), (h) and (i).

A reference to “branch or agency” is replaced by a reference to PE in regulation 5(3)(f)(i) and incidentally in other places.

Modifications of the sections 210A, 210B and 211ZA TCGA 1992 inserted by Schedule 33 to the Finance Bill may be required.

Regulation 6: Modifications to the Finance (No. 2) Act 1992

This omits section 65(2)(ab) of the Act as it is a provision concerned with “UK distribution income”. This is a consequence of changes made in paragraph 11 Schedule 33 to the Finance Bill.

Regulation 7: Modifications to the Capital Allowances Act 2001

This replaces a reference to “branch or agency” with a reference to PE in section 255(2). The Finance Bill makes a similar replacement in section 560 in clause 152(1)(d).

Regulation 8: Modifications to the Finance Act 2002

Regulation 8(2)(a)(i) and 8(3)(a)(i) replace references to “branch or agency” by references to PEs in section 66(6) of, and paragraph 10(5)(a) Schedule 22 to, the Act. The Finance Bill makes a similar replacement in paragraph 10(1)(b)(ii) section 560 in clause 152(1)(e).

Other modifications include updating the reference to EC Insurance Directives in section 66(6) and (7) of, and paragraph 10(5)(a) and (6) Schedule 22 to, the Act. (“qualifying overseas transfers”) - regulation 8(2)(a)(ii) and (b) and 8(3)(a)(ii) and (b).

Regulation 9: Modifications to the Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995 (SI 1995/3237)

This replaces a reference to “branch or agency” with a reference to PE in regulation 2(1). But all other references to branches in the regulations remain as they are, as the concept of branch in the distinction drawn between branch and services business in the case of an insurance company is not quite the same as that of a permanent establishment as defined in clause 147 of the Finance Bill.

SCHEDULE 19AC ICTA 1988

1— In its application to an overseas life insurance company this Act shall have effect with the following modifications.

4A—(1) In section 12(7A), the reference to an insurance business transfer scheme shall be treated as including a reference to a qualifying overseas transfer.

(2) In this paragraph ‘a qualifying overseas transfer’ means so much of any transfer of the whole or any part of the business of an overseas life insurance company carried on through a permanent establishment in the United Kingdom as takes place in accordance with any authorisation granted outside the United Kingdom for the purposes of **Article 14 of the life insurance Directive**.

(3) In sub-paragraph (2) above, “the life assurance directive” means Council Directive 2002/83/EC concerning life assurance.

5—(1) In section 76, the following subsections shall be treated as inserted after subsection (6)—

“(6A) In its application to an overseas life insurance company this section shall have effect as if—

- (a) the reference in subsection (1)(ca) to any reinsurance commission were to any such reinsurance commission concerned as is attributable to the **permanent establishment** in the United Kingdom through which the company carries on life assurance business or capital redemption business;
- (b) the references in subsection (1) to income and gains were to such income and gains concerned as are so attributable.

5C—(1) This paragraph applies to income from the investments of an overseas life insurance company attributable to the basic life assurance and general annuity business of the **permanent establishment** in the United Kingdom through which the company carries on life assurance business.

(2) Where, in computing the income to which this paragraph applies, any profits and gains arising from a FOTRA security, or from any loan relationship represented by it, are excluded by virtue of the tax exemption condition of that security, the amount which by virtue of section 76 is to be deductible by way of management expenses shall be reduced in accordance with sub-paragraph (3) below.

(3) That amount shall be reduced so that it bears to the amount which would be deductible apart from this sub-paragraph the same proportion as the amount of the income to which this paragraph applies (after applying the provisions of section 154(2) to (7) of the Finance Act 1996) bears to what would be the amount of that income if the tax exemption condition were disregarded.

(4) Subsection (8) of section 154 of the Finance Act 1996 (meaning of “FOTRA security” and “tax exemption condition”) shall apply for the purposes of this paragraph as it applies for the purposes of that section.

6—(1) In subsection (2) of section 431, the following definition shall be treated as substituted for the definition of “investment reserve”—

“‘investment reserve’, in relation to an overseas life insurance company, means the excess of the value of the relevant assets over the relevant liabilities, and for the purposes of this definition—

- (a) relevant assets are such assets of the company’s long-term insurance fund as are by virtue of section 11AA attributable to the**

permanent establishment in the United Kingdom through which the company carries on life assurance business; and

(b) relevant liabilities are such liabilities of the long-term business as are attributable to the **permanent establishment**;

(2) In that subsection, the following definition shall be treated as substituted for the definition of “liabilities”—

“‘liabilities’, where the company concerned is an overseas life insurance company, does not include excluded liabilities and (subject to that) means—

- (a) liabilities as estimated for the purposes of the company’s periodical return, or
- (b) in the case of liabilities not estimated for the purposes of such a periodical return, liabilities as estimated for the purposes of any return equivalent to a periodical return and required to be made by the company under the law of the territory in which the company is resident, or
- (c) in the case of liabilities not estimated for the purposes of such a periodical return or equivalent return, liabilities as found from the company’s records;

and excluded liabilities are any liabilities that have fallen due or been reinsured and any not arising under or in connection with policies or contracts effected as part of the company’s insurance business;”.

(5) In that subsection, the following definition shall be treated as substituted for the definition of “value”—

“‘value’, in relation to assets and where the company concerned is an overseas life insurance company, means—

- (a) their value as taken into account for the purposes of the company’s periodical return, or
- (b) where their value is not taken into account for the purposes of such a periodical return, their value as taken into account for the purposes of any return equivalent to a periodical return and required to be made by the company under the law of the territory in which the company is resident, or
- (c) where their value is not taken into account for the purposes of such a periodical return or equivalent return, their value as found from the company’s records;

and the reference in paragraph (c) above to the value of assets as found from the company’s records is a reference to the market value as so found or, where applicable, the current value (within the meaning of the Directive of the Council of the European Communities dated 19th December 1991 No 91/674/EEC (directive on the annual accounts and consolidated accounts of insurance undertakings)) as so found;”

6A—In section 431D(1), the words “carried on through a **permanent establishment** in the United Kingdom by an overseas life insurance company” shall be treated as inserted after the words “means life assurance business”.

7—Section 432A has effect as if –

(a) the references in subsections (3) and (6) to assets were to such of the assets concerned as are by virtue of section 11AA attributable to the **permanent establishment in the United Kingdom through which the company carries on life assurance business; and**

(b) the reference in subsection (6) to liabilities were to such of the liabilities concerned as are attributable to the permanent establishment.

8—(1) In subsection (1) of section 432B, the words “or treated as brought into account by virtue of paragraph 1C of Schedule 8A to the Finance Act 1989” shall be treated as inserted after the words “brought into account, within the meaning of that section,”.

(2) The following words shall be treated as inserted at the end of subsection (2) of that section “; but this subsection shall not apply for a period of account in relation to which any provision of paragraph 1C of Schedule 8A to the Finance Act 1989 applies.”

(3) Subsection (3) of section 432B shall have effect as if after the words “with which an account is concerned” there were inserted the words “or in respect of which items are treated as brought into account by virtue of paragraph 1C of Schedule 8A to the Finance Act 1989”; and that subsection and sections 432C to 432E shall have effect as if the reference to relevant business were to relevant business of the permanent establishment in the United Kingdom through which the company carries on life assurance business.

9B—The following section shall be treated as inserted after section 434A—

“434AA Treatment of annuities

An overseas life insurance company shall not be entitled to treat as paid out of profits or gains brought into charge to income tax any part of the annuities paid by the company which is referable to its life assurance business.”.

10AA—In section 440(2)(a), the reference to an insurance business transfer scheme shall be treated as including a reference to a qualifying overseas transfer (within the meaning of paragraph 4A above).

10B—(1) Where the company mentioned in section 440(1) is an overseas life insurance company, section 440 has effect with the following modifications.

(2) Subsection (4) shall be treated as if—

(a) in paragraphs (a), (b), (d), (e) and (f) the words “UK assets” were substituted for the words “assets”; and

(b) at the end there were inserted—

“(h) assets of the company which are not UK assets.”.

(2A) The following subsection shall be treated as inserted after subsection (4)—

“(4AA) Section 13 of the Capital Allowances Act (use for qualifying activity of plant or machinery provided for other purposes) shall apply in relation to any case in which an asset or part of an asset held by an overseas life insurance company—

(a) ceases to be within the category set out in paragraph (h) of subsection (4) above; and

(b) at the same time comes within another of the categories set out in that subsection.”.

(3) The following subsection shall be treated as inserted at the end of the section—

“(7) For the purposes of this section UK assets are assets which by virtue of section 11AA are attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business”

(4) Where one of the companies mentioned in section 440(2) is an overseas life insurance company, section 440(2)(b) shall have effect as if for the words “is within another of those categories” there were substituted “is not within the corresponding category”.

(5) Where the transferor company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regards the time immediately before the acquisition, with the modifications in sub-paragraphs (2) and (3) above.

(6) Where the acquiring company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regard the time immediately after the acquisition, with the modifications in sub-paragraphs (2) and (3) above.

10C—(1) In section 440B the following subsection shall be treated as substituted for subsection (3)—

“(3) Section 440(1) and (2) have effect as if the only categories specified in subsection (4) of that section were –

(a) UK assets of the long-term insurance fund,

(b) other UK assets, and

(c) assets of the company which are not UK assets,

and UK assets has the meaning given by section 440(7).”.

(2) The following subsection shall be treated as substituted for subsection (4) of that section—

“(4) Section 440A applies as if for paragraphs (a) to (e) of subsection (2) there were substituted—

(a) so many of the UK securities as are identified in the company’s records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of long-term business, shall be treated for the purposes of corporation tax as a separate holding linked solely to that business,

(b) any remaining UK securities shall be treated for those purposes as a separate holding which is not of the description mentioned in the preceding paragraph; **and**

(c)

(d) the non-UK securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs.”.

11—(1) In section 440A(2), in paragraph (a) the words “UK securities” shall be treated as substituted for the word “securities” in the first place where it occurs.

(3) In paragraphs (d) and (e) of that subsection, the words “UK securities” shall be treated as substituted for the word “securities”.

(4) The following paragraphs shall be treated as inserted at the end of that subsection—

“(g) the non-UK securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs.”

(5) The following subsection shall be treated as inserted after subsection (6) of that section—

“(6A) For the purposes of this section

(a) UK assets are assets which by virtue of section 11AA are attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business, and

(b) non-UK securities are securities which are not UK securities.

11B—In section 442A the following subsection shall be treated as inserted after subsection (6)—

“(7) In the case of an overseas life insurance company, the investment return treated as accruing under this section in any accounting period in relation to a policy or contract shall be treated as chargeable profits within section 11 of the Taxes Act 1988 where the policy or contract is one which in that accounting period gives rise, or but for the reinsurance arrangement would give rise, to such profits.”.

11C—In sections 444A(1) and 460(10A), the references to an insurance business transfer scheme shall be treated as including references to a qualifying overseas transfer (within the meaning of paragraph 4A above).

14A—(1) In Schedule 19AA, paragraph 5(5)(c) (and the reference to it in paragraph 2(3) of that Schedule) shall be treated as omitted.

(2) The following paragraph shall be treated as inserted at the end of that Schedule—

“6 In its application to an overseas life insurance company this Schedule shall have effect as if—

(a) the references in paragraphs 2 and 3 to assets of the long-term insurance fund were to such of the assets as are by virtue of section 11AA attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business;

(b) the references in paragraphs 2 and 4 to the liabilities of the company’s long-term business were to such of those liabilities as are attributable to the permanent establishment; and

(c) the references in paragraph 4 to any liabilities of the company’s long-term insurance fund which represent a money debt were to any such of those liabilities as are attributable to the permanent establishment.”

15—(3) In paragraph 3(1C) of Schedule 19AB, for paragraph (a) there shall be substituted—

“(a) section 11(3).”.

SCHEDULE 8A FA 1989

1—(1) In their application to an overseas life insurance company sections 83 to 83A of this Act shall have effect with the modifications specified in paragraphs 1A to 1C below.

1A—(1) The reference in section 83(2)(a) to investment income shall be construed as a reference to such of the income concerned as is attributable to the **permanent establishment** in the United Kingdom through which the company carries on life assurance business.

(2) The reference to assets in section 83(2)(b) (as it applies apart from subsection (3) of that section) shall be construed as a reference to such of the assets as are by virtue of section 11AA of the Taxes Act 1988 attributable to the permanent establishment

(3) In determining for the purposes of section 83(2) (as it applies apart from subsection (3) of that section) whether there has been any increase or reduction in the value (whether realised or not) of assets no regard shall be had to any period of time during which an asset held by the company does not fall within sub-paragraph (2) above.

(4) For the reference in section 83(3) to any amount being added to the company's long-term insurance fund, there shall be substituted a reference to assets becoming assets of the long-term insurance fund used or held for the purposes of the company's United Kingdom **permanent establishment**, having immediately previously been held by the company otherwise than as assets of that fund or used or held otherwise than for those purposes.

The amount of the increase in value under section 83(2)(b), as it applies in relation to such an addition, shall be taken to be an amount equal to the value of the assets added.

(5) Any reference in section 83AA(2), (3) or (4) or 83AB(1) or (3) to an amount being added to the relevant company's long-term insurance fund shall be construed in accordance with sub-paragraph (4) above.

1B—(1) The references in section 83A to the company's long-term business shall be construed as references to the whole of that business or to the whole of that business other than business in respect of which preparation of a revenue account for the purposes of Chapter 9 of the Prudential Sourcebook (Insurers) is not required.

(2) In sub-paragraph (1) "the Prudential Sourcebook (Insurers)" means the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under the Financial Services and Markets Act 2000 .

1C—(1) Where for a period of account any investment income referred to in section 83(2)(a) is not otherwise brought into account within the meaning of that section, it shall be treated as brought into account for the period if it arises in the period.

(2) Where for a period of account any increase in value referred to in section 83(2)(b) (as it applies apart from subsection (3) of that section) is not otherwise brought into account within the meaning of that section, it shall be treated as brought into account for the period if it is shown in the company's records as available to fund one or both of the following for the period, namely, bonuses to policy holders and dividends to shareholders.

(3) Where for a period of account any reduction in value referred to in section 83(2) (as it applies apart from subsection (3) of that section) is not otherwise brought into account within the meaning of that section, it shall be treated as brought into account for the period if it is shown in the company's records as reducing sums available to

fund one or both of the following for the period, namely bonuses to policy holders and dividends to shareholders.

(4) Where in any period of account any such addition is made as is mentioned in section 83(3) which is not otherwise brought into account within the meaning of that section, it shall be treated as brought into account for the period in which it is made.

2—(1) In its application to an overseas life insurance company section 89 of this Act shall have effect with the following modifications.

(3) Any reference in subsection (5)(a) to income shall be construed as a reference to such of the income concerned as is attributable to the **permanent establishment** in the United Kingdom through which the company carries on life assurance business.

(4) The reference in subsection (5)(b) to assets shall be construed as a reference to such of the assets concerned as are assets which by virtue of section 11AA of the Taxes Act 1988 are attributed to the **permanent establishment**.

(5) In subsection (5)(c) the reference to expenses shall be construed as a reference to such of the expenses concerned as are attributable to the permanent establishment.

(6) In subsection (5)(d) the reference to interest shall be construed as reference to such of the interest concerned as is so attributable.

(7) In determining for the purposes of subsection (5) whether there has been any increase or reduction in the value (whether realised or not) of assets no regard shall be had to any period of time during which an asset does not fall within paragraph (a) of sub-paragraph (4) above.

(8) Where for a period of account any item consisting of income, expenses or interest referred to in subsection (5) is not brought into account within the meaning given by subsection (6) it shall be treated as brought into account for the period if it arises in the period.

(9) Where for a period of account any increase in value referred to in subsection (5) is not brought into account within the meaning given by subsection (6) it shall be treated as brought into account for the period if it is shown in the company's records as available to fund one or both of the following for the period, namely, bonuses to policy holders and dividends to shareholders.

(10) Where for a period of account any reduction in value referred to in subsection (5) is not brought into account within the meaning given by subsection (6) it shall be treated as brought into account for the period if it is shown in the company's records as reducing sums available to fund one or both of the following for the period, namely, bonuses to policy holders and dividends to shareholders

SCHEDULE 7B TCGA 1992

1—In its application to an overseas life insurance company (as defined in section 431(2) of the Taxes Act) this Act shall have effect with the following modifications; and in those modifications any reference to the Taxes Act is a reference to that Act as it has effect in relation to such a company by virtue of

1A—In section 10B(1)(b) the words “situated in the United Kingdom and” are omitted.

8—In section 185(4) –

(a) in paragraph (a), omit “are situated in the United Kingdom and”;

(b) in paragraph (b), omit “are so situated and”.

9A—In section 211(1), the reference to an insurance business transfer scheme shall be treated as including a reference to any qualifying overseas transfer (within the meaning of paragraph 4A of Schedule 19AC to the Taxes Act).

10—(1) In section 212, the following subsection shall be treated as inserted after subsection (5)—

“(5A) In its application to an overseas life insurance company, this section shall have effect as if the references in subsections (1) and (2) to assets were to such of the assets as are, by virtue of section 11AA of the Taxes Act, attributable to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”

11—(1) In section 213(4), the words "in the United Kingdom through a **permanent establishment**" shall be treated as inserted after the words "long term business".