

AVOIDANCE OF CORPORATION TAX

Draft Legislation and Explanatory Statement

These notes include, supplement and explain the details of the draft legislation

The Government has announced at PBR that it plans to introduce legislation in the 2007 Finance Bill to tackle avoidance of corporation tax. The legislation will in each case take effect from 6th December 2006.

A draft Schedule and regulations have now been prepared and are published below. This note also provides an explanatory commentary and sets out the background to the changes. Representations on the draft Schedule are welcome and should be directed to:

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AVOIDANCE OF CORPORATION TAX

Annual payments not forming part of a company's income

1 (1) ICTA is amended as follows.

(2) In section 347A(1) (annual payments: general rule), as it had effect before ITA 2007, omit paragraph (b) together with the "and" before it (payment to which section applies does not form part of income of any company for corporation tax purposes).

(3) The amendment made by sub-paragraph (2) has effect in relation to payments made on or after 6th December 2006 but before 6th April 2007.

(4) Omit section 347A (as amended by ITA 2007).

(5) The amendment made by sub-paragraph (4) has effect in relation to payments made on or after 6th April 2007.

Manufactured payments under arrangements having an unallowable purpose

2 (1) In paragraph 7A(10) of Schedule 23A to ICTA (manufactured payments under arrangements having an unallowable purpose), in the definition of “manufactured payment”, after paragraph (c) insert.

“(d) any payment which by virtue of paragraph 7(1) constitutes a fee;”.

(2) The amendment made by this paragraph has effect in relation to payments made (or treated as made) on or after 6th December 2006.

(3) But, in the case of any payment made (or treated as made) by a company in pursuance of old arrangements, the amendment made by this paragraph has no effect in relation to so much of the payment as (on such just and reasonable apportionments as may be necessary) represents any old taxable income or gains arising or accruing to the company as a result of those arrangements.

(4) For this purpose-“old arrangements” means arrangements in pursuance of which (or of any part of which) a transaction has taken place before 6th December 2006, and “old taxable income or gains arising or accruing” means income or gains within the charge to corporation tax arising or accruing (or treated as arising or accruing) before that date.

Exchange gains and losses where loan not on arm’s length terms

3 (1) In paragraph 11A of Schedule 9 to FA 1996 (exchange gains and losses where loan not on arm’s length terms), insert at the end

“(7) Where-

(a) a company would be treated as having a debtor relationship in any accounting period if a claim were made under paragraph 6D(2) of Schedule 28AA to the Taxes Act 1988 in relation to that period, and

(b) for that period there is a connection between that company and the company which would have the corresponding creditor relationship,

it shall be assumed that such a claim is made for the purpose of determining the debits or credits to be brought into account for the purposes of this Chapter in respect of any exchange gains or losses arising in that period in respect of the liability representing that debtor relationship.

(8) Section 87(3) and (4) (connection between a company and another person) apply for the purposes of sub-paragraph (7)(b) above as they apply for the purposes of section 87.

(9) Where, by virtue of any claim made (or assumed by virtue of subparagraph (7) above to be made) under paragraph 6D(2) of Schedule 28AA to the Taxes Act 1988,

more than one company is treated for any purpose as having a debtor relationship represented by the same liability.

- (a) the total debtor exchange gains must not exceed the total creditor exchange losses, and
- (b) the total debtor exchange losses must not exceed the total creditor exchange gains.

(10) For the purposes of sub-paragraph (9) above-

- (a) any reference to the total debtor exchange gains is to the total amount of the credits brought into account for the purposes of this Chapter in respect of exchange gains from those debtor relationships,
- (b) any reference to the total debtor exchange losses is to the total amount of the debits brought into account for those purposes in respect of exchange losses from those debtor relationships,
- (c) any reference to the total creditor exchange gains is to the total amount of the credits brought into account for those purposes in respect of exchange gains from the corresponding creditor relationship, and
- (d) any reference to the total creditor exchange losses is to the total amount of the debits brought into account for those purposes in respect of exchange losses from that relationship.”.

(2) The amendment made by this paragraph has effect in relation to loan relationships of any company in accounting periods ending on or after 6th December 2006.

(3) But, in relation to an accounting period of any company beginning before that date, the amendment made by this paragraph has no effect if the company ceases to be a party to the loan relationship before that date.

Plant or machinery subject to a lease and finance leaseback

4 (1) Chapter 17 of Part 2 of CAA 2001 (plant and machinery allowances: anti-avoidance) is amended as follows.

(2) In section 228A(2) (application of sections 228B to 228D in case of a lease and finance leaseback), for ”Sections 228B to 228D” substitute ”Sections 228B and 228C”.

(3) In section 228F (lease and finance leaseback)-

- (a) in subsection (1), for “Sections 228B, 228C and 228D” substitute “Sections 228B and 228C”,
- (b) omit subsection (4), and
- (c) in subsection (8), for ”sections 228B to 228D” substitute ”sections 228B and 228C”, and omit paragraph (b) (together with the “and” before it).

(4) In section 774E(5)(b) of ICTA (structured finance arrangements: exceptions), for “sections 228B to 228D” substitute “sections 228B and 228C”.

(5) The amendments made by this paragraph have effect in relation to post-commencement rentals that fall to be taken into account in calculating for tax purposes the income or profits for any post-commencement period of account.

(6) In this paragraph “post-commencement period of account” means any period of account ending on or after 6th December 2006, and
“post-commencement rental” means-

- (a) any amount receivable on or after 6th December 2006 in respect of any period beginning on or after that date, or
- (b) the appropriate fraction of any amount receivable on or after that date in respect of any period beginning before, and ending on or after, that date, but does not include any amount received before that date.

(7) For this purpose the “appropriate fraction”, in relation to any amount received in respect of any period, means the fraction-

$$\frac{\text{PCP}}{\text{WP}}$$

Where-

“PCP” means the number of days in the part of the period falling on or after 6th December 2006, and

“WP” means the number of days in the whole of the period.

(8) Sub-paragraph (9) applies if the amounts that, in accordance with section 228D of CAA 2001 as applied by section 228F of that Act, fall to be taken into account in calculating for tax purposes the income or profits for any post-commencement period of account comprise both post-commencement rentals and other amounts.

(9) For the purposes of section 228D of CAA 2001 as applied by section 228F of that Act, the amount of the gross earnings is taken to be so much of the gross earnings as, on a just and reasonable basis, relates to those other amounts.

“Gross earnings” has the meaning given by section 228D(5) of CAA 2001.

Paragraph 5: Schemes etc designed to increase double taxation relief

(1) Section 804ZA of ICTA (schemes and arrangements designed to increase relief) is amended as follows.

(2) In subsection (8)(c), omit “resident in a territory outside the United Kingdom”.

(3) After subsection (11) insert-

“(11A) In this section “foreign tax” includes any tax which for the purpose of allowing credit under any arrangements against corporation tax is treated by section 801 as if it were tax payable under the law of any territory outside the United Kingdom.”

(4) The amendments made by this section have effect in relation to a credit for foreign tax which relates to-

- (a) a payment of foreign tax on or after 6th December 2006, or
 - (b) income received on or after that date in respect of which foreign tax has been deducted at source,
- but see also subsections (6) and (7).

(5) In subsection (4)-

(a) references to foreign tax are to be construed in accordance with section 804ZA(11A) of ICTA (as inserted by subsection (3) above), and
(b) the reference to tax deducted at source is to tax deducted (or treated as deducted) from income or treated as paid in respect of income.

(6) The DTR anti-avoidance provisions have effect in relation to any action (or failure to act) that occurs under any scheme or arrangement on or after 6th December 2006 (as well as in relation to the cases mentioned in section 87(3) of FA 2005 or subsection (4) above).

(7) “The DTR anti-avoidance provisions” means section 804ZA of ICTA (as amended by this section),

The Authorised Investment Funds (Tax) (Amendment) Regulations 2006

Laid before the House of Commons 6th December 2006

Coming into force - - - 7th December 2006

The Treasury make the following Regulations in exercise of the powers conferred by sections 17(3) and 18 of the Finance (No. 2) Act 2005.

Citation and commencement

1. These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment) Regulations 2006 and shall come into force on 7th December 2006.

Amendment of the Authorised Investment Funds (Tax) Regulations 2006

2. The Authorised Investment Funds (Amendment) Regulations 2006(1) shall be amended by inserting the following regulation after regulation 52—

“Banks and other financial traders: treatment of certain amounts of tax as foreign tax

52A.—(1) This regulation applies if conditions A to D are met.

(2) Condition A is that an authorised investment fund makes a dividend distribution to which regulation 48(2)(b) applies.

(3) Condition B is that there is some foreign tax suffered by the authorised investment fund in respect of which relief is given or falls to be given in accordance with any arrangements having effect by virtue of section 788 of ICTA (relief by agreement with other territories) or by way of a credit under section 790(1) of that Act (unilateral relief).

(4) Condition C is that the dividend distribution is made to a participant carrying on—

- (a) a banking business, or
- (b) any other business where a distribution from an authorised investment fund is treated as a trading receipt.

(5) Condition D is that the participant, either alone or together with connected persons (and otherwise than as a nominee or bare trustee), owns units which represent rights to 50% or more of the net asset value of the authorised investment fund.

(6) But rights in an authorised investment fund held as assets of a company's long-term insurance fund are not treated as held by the participant (either alone or together with connected persons) for the purposes of determining whether the participant owns units which represent rights to 50% or more of the net asset value of the authorised investment fund.

(7) Section 839 of ICTA⁽²⁾ (connected persons) applies for the purposes of this regulation.

(8) For the purposes of the specified provisions, an amount of tax equal to the participant's portion of the foreign tax mentioned in subsection (3) is treated as foreign tax and not as United Kingdom tax.

(9) For the purposes of paragraph (8) the participant's portion shall be determined by reference to the proportions in which participants have rights in the authorised investment fund in the distribution period in question.

(10) In paragraph (8) "the specified provisions" means—

- (a) section 798A of ICTA⁽³⁾ (limits for credit on foreign tax: corporation tax on trade income), and
- (b) section 804C of ICTA⁽⁴⁾ (insurance companies: allocation of expenses etc. in computations under Case I of Schedule D) to the extent that it applies to business of a company which is not long-term business.

(11) In this regulation "long-term business" and "long-term insurance fund" have the same meanings as in Chapter 1 of Part 12 of ICTA (insurance companies etc.)."

Paragraph 1: annual payments not forming part of a company's income.

DETAIL

Paragraph 1 amends section 347A Income and Corporation tax Act 1988 ("ICTA") which is about annual payments made, or treated as made, by individuals: sub-paragraph (1) introduces the changes.

Paragraph 1(2) omits subsection (1)(b) of section 347A which provides that an annual payment that meets the other conditions set out in section 347A does not form part of income of any company for corporation tax purposes.

(2) Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4) and by paragraph 340 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(3) Section 798A was substituted by section 86(1) of the Finance Act 2005 (c. 7).

(4) Section 804C was inserted by paragraph 18(1) of Schedule 30 to the Finance Act 2000 (c. 17) and amended by paragraph 11(2) to (4) of Schedule 33 to the Finance Act 2003 (c. 14).

Paragraph 1(3) provides that this change applies in relation to annual payments made on or after 6 December 2006, but before 6 April 2007.

Paragraph 1(4) and 1(5) provide that the change applies to annual payments made or after 6 April 2007. This is done by the repeal of section 347A-which from 6 April 2007 was to have been confined to the proposition that the payments shall not be the income of any person for corporation tax purposes.

BACKGROUND

Section 347A(1)(b) provides that certain types of annual payment are not within the charge to corporation tax. This provision has been exploited by financial traders who have purchased the rights to receive such payments. Arguing that such an acquisition is in the course of a financial trade, the financial trader will claim to deduct the cost in a computation of profits under Case I of Schedule D, but will also claim that the corresponding receipts are exempt. Thus the scheme seeks to create purported tax losses where there is no economic loss. HMRC will contest any losses claimed in transactions entered into before 6 December 2006.

Paragraph 1(4) and (5) are necessary because under the Income Tax Bill (the 4th Tax Law Rewrite Bill) to be introduced in Parliament in this session and expected to become law before 6 April 2007 section 347A is amended: the current provisions about denying relief to individuals making annual payments will be rewritten.

Paragraph 2: manufactured payments made under arrangements having an unallowable purpose.

DETAIL

Paragraph 2 amends paragraph 7A of Schedule 23A to ICTA by inserting new paragraph 7A(10)(d). This provides that any manufactured dividend that is treated by paragraph 7 of Schedule 23A as a fee will now come within the scope of the manufactured payment unallowable purpose rule.

Paragraph 2(2) gives the commencement which is that the provision applies in relation to payments made or treated as made on or after 6 December 2006, but this is subject to paragraph 2(3).

Paragraph 2(3) provides that where arrangements are “old arrangements” then the amendment will apply only to the extent that taxable income or gains have not already arisen to the company.

Paragraph 2(4) provides that “old arrangements” are arrangements in pursuance of which a transaction took place before 6 December 2006.

BACKGROUND

Paragraph 7A of Schedule 23A to ICTA provides that corporation tax relief may be restricted for manufactured payments made, or treated as made, in pursuance of

arrangements having a tax avoidance purpose. But where a manufactured payment exceeds the payment that it represents then paragraph 7(1) of Schedule 23A treats the excess as a fee and not as a manufactured payment.

This provision has been exploited in a scheme which artificially generates such an excess with the object of preventing the manufactured payment unallowable purpose rule from applying. The amendment ensures that these amounts are brought within the unallowable purpose rule with effect from 6 December. HMRC will contest any deductions claimed in transactions entered into before 6 December 2006.

Paragraph 3: exchange gains and losses where loan not at arm's length

DETAIL

Paragraph 3(1) inserts new subparagraphs (7) to (10) into paragraph 11A of Schedule 9 to Finance Act ("FA") 1996.

New paragraph 11A(7) provides that a company ("guarantor company") is deemed to have made a claim under paragraph 6D(2) of Schedule 28AA ICTA (transfer pricing: compensating adjustment for guarantor company where loan made on non-arm's length terms) in any case where it would be treated as having a debtor loan relationship if an actual claim had been made and the guarantor company is connected with the company with the creditor relationship that corresponds to that debtor relationship.

New paragraph 11A(8) provides that "connected company" has the same meaning as in section 87 FA 1996.

New paragraph 11A(9) deals with the case where there is more than one guarantor company with the result that more than one company is treated as having the debtor relationship represented by a particular liability and provides that the total debtor exchange gains or losses must not exceed the total creditor exchange losses or gains. This rule is similar to that in paragraph 6D(3) Schedule 28AA.

New paragraph 11A(10) sets out what is meant by "total debtor exchange gains", "total debtor exchange losses", "total creditor exchange loss" and "total creditor exchange gain". Total debtor exchange gains or losses are the total credits or debits brought into account from the debtor relationships, while total creditor exchange losses or gains are the debits or credits brought into account as respects the corresponding creditor relationship. This ensures that where a paragraph 6D claim treats more than one company as the debtor, total gains or losses cannot exceed the corresponding amounts brought into account on the creditor.

Paragraph 3(2) and 3(3) gives the commencement rule. The new rules will apply in any case where the company's accounting period ends on or after 6 December 2006, except in relation to loan relationships to which it has ceased to be party before that date.

BACKGROUND

Schedule 28AA to ICTA deals with transfer pricing where there are loans made between associated persons otherwise than on an arm's length basis (whether as to the amount of the loan, or its terms, or both)

Schedule 28AA does not however deal with exchange gains and losses on such loans: this is the function of paragraph 11A Schedule 9 FA 1996. That paragraph provides in general that exchange gains or losses are disregarded to the same extent that interest on the loans is disallowed.

Paragraph 3 deals with a scheme disclosed under Part 7 FA 2004 which attempts to obtain tax relief for exchange losses in circumstances where if an exchange gain arose the gain would not be taxable.

The scheme involves the lending of money ("Internal Loan") by Parent Co to a Subsidiary Co that would have been unable to borrow any money on arm's length terms, but supported by a guarantee from a third group company that would have been able to borrow the money. The loan by Parent Co is in turn funded by a loan from a third party lender ("External Loan"). Each loan is made in overseas currency to hedge Subsidiary Co's exchange exposure on a shareholding in a subsidiary company whose shares are denominated in that currency.

In these circumstances it is possible, but not obligatory, for a claim to be made under paragraph 6D of Schedule 28AA ICTA for the guarantor company to be treated as the issuer of the Internal Loan so that debits for which relief is denied by Schedule 28AA (the transfer pricing legislation) in the case of the actual issuer are allowed instead to the guarantor company. Such claims are made year by year. So where in a year the overseas currency strengthens (so that an allowable exchange loss arises to Parent Co on External Loan, but no exchange gain on the Internal Loan because on arm's length terms the loan would not have been made) no claim will be made under paragraph 6D, while if it weakens (so that there would be a taxable exchange gain arising to Parent Co on External Loan there will be such a claim (so that relief becomes available for Parent Co's corresponding exchange loss on the Internal Loan).

The result is that if the overseas currency strengthens the group will recognise an exchange loss on the External Loan but will not bring into account a corresponding exchange gain on the Internal Loan, whereas if it weakens the group claims to be flat in tax terms.

The amendments ensure that exchange gains and losses are treated in the same way by deeming a claim under paragraph 6D to be made where there is no actual claim.

Paragraph 4: Plant or machinery subject to a lease and finance leaseback

DETAIL

Paragraph 4 amends Chapter 17 of Part 2 of the Capital Allowances Act 2001 ('CAA') which contains anti-avoidance provisions. The changes result in section 228D CAA no longer applying to lease and finance leaseback transactions. Sub-paragraph (1) introduces the changes.

Sub-paragraph (2) amends section 228A(2) CAA so that it no longer refers to section 228D CAA applying to lease and finance leaseback transactions. Thus in future it will apply only to sale and leaseback transactions.

Sub-paragraph (3) removes references to section 228D from section 228F CAA (lease and finance leasebacks)

Sub-paragraph (4) makes a consequential amendment so that section 774E(5)(b) ICTA (Structured finance arrangement not to include certain leases) no longer refers to section 228D in the context of a reference to a lease and finance leaseback.

Sub-paragraph (5) sets out the main commencement rule which is that the amendments only apply to “post-commencement rentals” that are taken into account in calculating income or profits for any “post-commencement period of account”.

Sub-paragraph (6) defines “post-commencement period of account” and post-commencement rentals”. Post commencement period of account is any period ending on or after 6 December 2006, while post commencement rentals is the amount receivable in respect of periods that commence on or after that date, or, where a period straddles that date, the appropriate fraction of the amount receivable. In addition, the post commencement rental does not include any amount received before 6 December.

Sub-paragraph (7) provides a statutory method for apportioning rents receivable in respect of any accounting period that straddles or ends on 6 December.

Sub-paragraphs (8) and (9) explain that where it is necessary to calculate the gross earnings for the purpose of calculating income or profits attributable to rents other than post-commencement rentals is to be carried out on a just and reasonable basis. In practice, this may mean that it will be appropriate to identify the start of the period to which the post-commencement rentals refer and include gross earnings for the period up to that date (whether or not accounts have been prepared to that date)

The effect of the commencement rules in sub-paragraphs (5) to (9) is to ensure that the amendments do not affect the taxation of rents paid before 6 December 2006. They also ensure that the amendments do not affect rents that are paid on or after PBR to the extent they refer to periods before PBR.

BACKGROUND

Paragraph 4 counters avoidance schemes disclosed to HM Revenue and Customs under the disclosure rules introduced in Finance Act 2004.

The arrangements involve a business (probably a company) entering into a broadly matching lease and lease back of plant or machinery. The rents under the head lease are paid in advance and the company hopes to obtain a tax deduction for those rents even though they may, in substance, amount to the making of a loan. The company also hopes that the rentals receivable under the sub-lease, which may in substance

amount to the repayment of the loan at interest, are not taxable in full because section 228D CAA restricts the taxable amount to the gross earnings under the sub-lease.

The Government does not accept that the arrangements disclosed to HMRC work as intended by the participants. These amendments serve, however, to put the matter beyond doubt.

Paragraph 5: Schemes etc designed to increase double taxation relief

DETAIL

Subsection (1) provides for amendments to be made to S804ZA which was originally introduced by section 87 Finance Act 2005.

Subsection (2) amends subsection (8) (c) of section 804ZA to remove any doubt there might otherwise be that a notice under section 804ZA may specify a UK company whose tax might be relevant to a claim involving underlying tax as well as a non-UK one.

Subsection (3) similarly removes any doubt there might otherwise be that section 804ZA applies to claims to double taxation relief involving UK tax as well as those involving tax under the laws of another territory.

Subsection (4) provides the commencement rules for the amendments to apply from 6 December 2006.

Subsection (5) ensures that the clarification made by subsection (3) applies equally to the subsection (4) commencement rules and that those rules mirror those for section 87 Finance Act 2005.

Subsection (6) makes it clear that S804ZA (and the associated legislation introduced with it by section 87 Finance Act 2005) applies to schemes or arrangements where any action under them occurs on or after 6 December 2006.

Subsection (7) specifies the legislation associated with S804ZA that was introduced with it by section 87 Finance Act 2005.

BACKGROUND

Section 804ZA ICTA is anti-avoidance legislation aimed at schemes and arrangements designed to increase double taxation relief (DTR) in respect of foreign tax.

HMRC have received disclosures with regards to certain schemes which purport to avoid the effects of the legislation on the basis that the tax in respect of which DTR is being claimed is UK tax rather than foreign tax. The amendments put it beyond doubt that “foreign tax” in this context includes UK tax.

The Authorised Investment Funds (Tax) (Amendment) Regulations 2006

DETAIL

These regulations insert a new regulation 52A into the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964).

Paragraph (1) of regulation 52A provides for its application if each of four conditions is met, set out in paragraphs (2) to (5).

Condition A, in paragraph (2) is that an authorised investment fund (an OEIC or an authorised unit trust) makes a distribution which is a dividend distribution (and so not an interest distribution under regulation 18(3)) and the distribution is one to which regulation 48(2)(b) applies. That regulation treats the unfranked part of a dividend distribution received by a person within the charge to CT as an annual payment of an amount from which income tax at 20% is treated as deducted. This notional deduction is intended to reflect the fact that the AIF will have been charged to tax at 20% (see sections 468 and 468A ICTA). An annual payment is within the charge to tax under Case III of Schedule D in the hands of a company – section 18 (3) ICTA.

Condition B, in paragraph (3) is that the AIF has suffered foreign tax eligible for double taxation relief under section 788 (relief by agreement with other territories) or 790(1) (unilateral relief) of ICTA.

Condition C, in paragraph (4) concerns the nature of the participant holding the interest in the AIF. The regulation only applies if the participant is carrying on a banking business or other financial business where a distribution from an AIF is a trading receipt.

Condition D, in paragraph (5), requires that the AIF be in effect a “captive” AIF. The participant carrying on a banking business etc must be entitled, by itself or with connected persons’ holding being accounted in (“connected person” having the usual section 839 ICTA meaning – paragraph (7)), to 50% or more of the total interests.

Paragraph (6) excludes holdings in an AIF that are assets of an insurance company’s long-term insurance fund form being counted towards the 50% or more test.

Paragraph (8) is the operative rule. Where conditions A to D are met, an amount of tax equal to the participant’s portion of the foreign tax mentioned in Condition B is treated as foreign tax, not UK income tax, but only for the purposes of the “specified provisions”. Those provisions, set out in paragraph (10) are section 798A ICTA and section 804C ICTA.

Paragraph (9) provides that the participant’s portion of the foreign tax is calculated using the participant’s fractional share in the rights of the AIF.

Section 798A ICTA applies to any trader other than an insurance company. It limits the amount of foreign tax which may be set against CT by requiring expenses to be set against the income before the UK CT (the upper measure of relief for foreign tax) on

the income is calculated. Although section 798A applies to any trader, the effect of Condition C is that only a banker or other financial trader will be affected.

Section 804C does a similar job to section 798A for insurance companies. But in this case regulation 52A only has effect where the business is general insurance business (business which is not long-term business)

Paragraph (11) defines “long-term business” and “long-term insurance fund” – they have the same meaning as in Chapter 1 of Part 12 of ICTA (section 431(2)).

The regulation comes into force on 6 December

BACKGROUND

Disclosures under Part 7 FA 2004 show that attempts are being made by financial traders to circumvent the restrictions in section 798A ICTA by interpolating an authorised investment fund between a holding of foreign equities and the trader. The intention is to convert foreign tax into deemed UK income tax, which although not repayable is freely available for set off against CT on domestic income.

The regulations prevent any arguments that such an attempt would be successful. They apply to all financial traders except insurance companies carrying on life assurance business. This is because, unlike other financial traders, a company carrying on life assurance business may invest substantially in AIFs for commercial reasons. But there will be discussions with the insurance industry to gauge the extent to which, if at all, the approach of regulation 52A might be appropriate in relation to life assurance business.