

LIFE INSURANCE COMPANIES – TRANSFERS OF BUSINESS

DRAFT CLAUSES & EXPLANATORY NOTES

6 DECEMBER 2006

1 Insurance companies: transfers etc

Schedule 1 contains provision about transfers by insurance companies and related matters.

SCHEDULES

SCHEDULE 1

Section 1

INSURANCE COMPANIES: TRANSFERS ETC

Transfer schemes: accounting periods and deemed periods of account

- 1 In section 12(7C) of ICTA (insurance business transfer schemes: alignment of accounting periods with deemed periods of account) –
 - (a) after “corporation tax” (in both places) insert “(apart from the purposes of sections 444BA to 444BD)”,
 - (b) for “the last” substitute “a”, and
 - (c) for “the transfer” (in both places) and “the time of the transfer” substitute “the relevant transfer time”.

Transfer schemes: expenses, losses etc.

- 2 (1) In section 444A of ICTA (transfers of business: expenses, losses and section 432F(2) excesses) is amended as follows.
 - (2) In subsection (1), omit “Subject to subsection (7) below,”.
 - (3) Omit –
 - (a) subsection (7) (section not to apply if transfer is not for bona fide commercial reasons or forms part of avoidance scheme), and
 - (b) subsection (8) (clearance procedure as to non-application of subsection (7)).
 - (4) Insert at the end –
 - “(9) In this section “insurance business transfer scheme” includes a scheme which would fall within section 105 of the Financial Services and Markets Act 2000 but for subsection (1)(b) of that section.”

Transfer schemes: deemed periodical returns

- 3 (1) Section 444AA of ICTA (transfers of business: deemed periodical returns) is amended as follows.
 - (2) In subsection (1), for the words after “where” substitute “the whole, or substantially the whole, of the long-term business of a person (“the transferor”) is transferred from that person by one or more insurance business transfer schemes.”
 - (3) In subsection (2) –
 - (a) for “the last period covered by a periodical return of the transferor ends otherwise than” substitute “(apart from this subsection) there

- would not be a periodical return of the transferor covering a period ending”, and
- (b) for “transfer” (in each place) substitute “relevant transfer time”.
- (4) In subsection (3) –
- (a) for the words from the beginning to “purpose to” substitute “There is to be deemed for the purposes of corporation tax to”,
- (b) for “time of the transfer” (in each place) substitute “relevant transfer time”, and
- (c) for “transferor for the relevant purpose.” substitute “transferor.”
- (5) For subsections (4) to (7) substitute –
- (4) Where the transferor continues to carry on long-term business after the relevant transfer time –
- (a) any periodical return covering a period which includes the relevant transfer time is to be ignored for the purposes of corporation tax, but
- (b) there is to be deemed for the purposes of corporation tax to be a periodical return of the transferor covering the immediate post-transfer period containing such entries as would have been included in an actual periodical return covering that period (and so making that period a period of account of the transferor for those purposes).
- (5) In subsection (4) above “the immediate post-transfer period” means the period beginning immediately after the relevant transfer time and ending –
- (a) at the end of the period covered by the periodical return mentioned in paragraph (a) of that subsection (if there is one), or
- (b) (if there is not) at the end of the period covered by the accounts of the company prepared in accordance with generally accepted accounting practice which includes the relevant transfer time.
- (6) In this section “insurance business transfer scheme” includes a scheme which would fall within section 105 of the Financial Services and Markets Act 2000 but for subsection (1)(b) of that section.
- (7) In this section “the relevant transfer time” means –
- (a) the time that is the transfer time in relation to the insurance business transfer scheme by which the whole, or substantially the whole, of the long-term business is transferred, or
- (b) if it is transferred by more than one insurance business transfer scheme, the earliest time that is the transfer time in relation to any of them.
- (8) In this section and sections 444AB to 444AED “the transfer time”, in relation to an insurance business transfer scheme, means –
- (a) if an order is made in relation to the insurance business transfer scheme, the time (or earliest time) at which property is transferred by the order, or

- (b) in the case of a scheme which is an insurance business transfer scheme by virtue of subsection (6) above and in relation to which no order is made, the time (or earliest time) at which property is transferred by the insurance business transfer scheme.”

Transfer schemes: taxing the transferor

4 For sections 444AB and 444ABA of ICTA substitute –

“444AB Transfer schemes: 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”) and either or both of conditions A and B are met.
- (2) Condition A is met if any of the assets of the transferor’s long-term insurance fund which are transferred from the transferor to the transferee by the insurance business transfer scheme are not, immediately after their transfer, assets of the transferee’s long-term insurance fund (“non long-term fund transferred assets”).
- (3) Condition B is met if, immediately after the transfer time, the transferor –
 - (a) does not carry on long-term business, but
 - (b) holds any assets which, immediately before the transfer time, were assets of its long-term insurance fund (“retained assets”).
- (4) If there are non long-term fund transferred assets or retained assets (or both) the relevant amount in relation to them (see subsection (4) below) is to be taken into account under section 83(2) of the Finance Act 1989 as an increase in value of the assets of the long-term insurance fund of the transferor for the relevant period of account (see subsection (6) below).
- (5) Section 444ABA makes provision for the calculation of the relevant amount in relation to non long-term fund transferred assets; and section 444ABB makes provision for its calculation in relation to retained assets.
- (6) In this section and sections 444ABA to 444AEB “the relevant period of account” means –
 - (a) if a period of account of the transferor ends (or is treated by section 444AA as ending) immediately before the transfer time, that period of account, and
 - (b) otherwise, the period of account of the transferor including the transfer time.
- (7) See section 444AA for the meaning of “the transfer time” in this section.
- (8) In this section “insurance business transfer scheme” includes a scheme which would fall within section 105 of the Financial Services and Markets Act 2000 but for subsection (1)(b) of that section.

444ABA Non long-term fund transferred assets

- (1) For the purposes of section 444AB the relevant amount in relation to assets that are non long-term fund transferred assets is –

$$FVA - RVA$$

where –

FVA is the fair value of the assets at the transfer time, and
RVA is the recognised value of the assets.

- (2) For the purposes of this section and section 444ABB the fair value of any assets is the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount.
- (3) For the purposes of this section and section 444ABB –
- (a) the recognised value of any assets which, immediately before the transfer time, are held by the transferor in a non-profit fund which is not a Form 14 line 51 fund is the relevant Form 13 value of those assets, and
 - (b) the recognised value of any other assets is the appropriate fraction of the relevant Form 13 value of those assets.
- (4) In subsection (3) above “non-profit fund” has the same meaning as in the Insurance Prudential Sourcebook.
- (5) For the purposes of subsection (3) above a non-profit fund is a Form 14 line 51 fund if an amount in respect of the fund is shown (or treated as shown) in line 51 of Form 14 in the periodical return of the transferor covering the relevant period of account.
- (6) For the purposes of subsection (3) above the relevant Form 13 value of any assets is the value which is shown (or treated as shown) in respect of the assets in Form 13 in the periodical return of the transferor covering the relevant period of account.
- (7) For the purposes of subsection (3) above the appropriate fraction is –

$$1 - \frac{A}{B}$$

where –

A is the amount shown (or treated as shown) in line 51 of Form 14 in the periodical return of the transferor covering the relevant period of account in respect of the fund in which, immediately before the transfer time, the assets are held by the transferor, and

B is the amount shown (or treated as shown) in line 89 of Form 13 in that periodical return in respect of that fund.

- (8) See section 444AA for the meaning of “the transfer time”, and section 444AB for the meaning of “the relevant period of account”, in this section.

444ABB Retained assets

- (1) For the purposes of section 444AB the relevant amount in relation to assets that are retained assets is –

$$FVA - RVA - VRL$$

where –

FVA is the fair value of the assets at the transfer time (see section 444ABA(2)),

RVA is the recognised value of the assets (see section 444ABA(3) to (7)), and

VRL is the value of the retained liabilities.

- (2) In this section “the retained liabilities” means the liabilities of the transferor shown (or treated as shown) in lines 14 and 49 of Form 14 in the periodical return of the transferor covering the relevant period of account.
- (3) For the purposes of this section the value of the retained liabilities is the value which is, or would have been, shown in those lines.
- (4) See section 444AA for the meaning of “the transfer time”, and section 444AB for the meaning of “the relevant period of account”, in this section.”

Transfer schemes: taxing the transferee

5 For section 444AC of ICTA substitute –

“444AC Transfer schemes: reduction in income of transferee

- (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”) and conditions A to C are met.
- (2) Condition A is that all of the assets of the transferor’s long-term insurance fund which are transferred from the transferor to the transferee by the insurance business transfer scheme are, immediately after the transfer, assets of the transferee’s long-term insurance fund.
- (3) Condition B is that the transferor did not carry on life assurance business that is mutual business during the relevant period of account.
- (4) Condition C is that an the amount is shown (or treated as shown) in line 13 of Form 14 in the periodical return of the transferor covering the relevant period of account.
- (5) The amount which (apart from this section) would be regarded as other income of the transferee for the purposes of section 83(2)(e) of the Finance Act 1989 for the period of account of the transferee which includes the transfer time is to be reduced by an amount equal to the adjusted surplus.
- (6) In subsection (5) above “the adjusted surplus” means –
 - (a) the amount shown (or treated as shown) in line 13 of Form 14 in the periodical return of the transferor covering the relevant period of account, less
 - (b) any relevant capital additions.
- (7) In subsection (6) above “relevant capital additions” means amounts –

- (a) which are brought into account as part of total income, or as a transfer from non-technical account, in any of the periodical returns of the transferor covering a period of account beginning not more than three years before the transfer time and ending before that time, but
 - (b) which are neither taken into account in a computation of the profits of the transferor's life assurance business or gross roll-up business in accordance with the provisions applicable to Case I of Schedule D, nor fall within section 83(2A)(a) of the Finance Act 1989 (notional income), for such a period of account.
- (8) See section 444AA for the meaning of “the transfer time”, and section 444AB for the meaning of “the relevant period of account”, in this section.
- (9) In this section “insurance business transfer scheme” includes a scheme which would fall within section 105 of the Financial Services and Markets Act 2000 but for subsection (1)(b) of that section.

444ACZA Transfer schemes: increase in income of transferee

- (1) This section applies where –
- (a) an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to another (“the transferee”), and
 - (b) the amount of the relevant liabilities exceeds the element of the line 31 figure representing the transferor's long-term insurance fund.
- (2) In subsection (1) above “the amount of the relevant liabilities” means the amount of the liabilities to policy holders and annuitants transferred from the transferor to the transferee by the insurance business transfer scheme.
- (3) In subsection (1) above “the element of the line 31 figure representing the transferor's long-term insurance fund” means the amount which is brought into account by the transferee in line 31 of Form 40 in relation to the insurance business transfer scheme.
- (4) An amount equal to the excess mentioned in subsection (1)(b) above is to be taken into account under section 83(2) of the Finance Act 1989 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 which includes the transfer time.
- (5) See section 444AA for the meaning of “the transfer time” in this section.”
- 6 In section 83(2A) of FA 1989 (receipts not to be taken into account), omit paragraph (b).

Transfer schemes: transferor shares as assets of transferee's long-term insurance fund

- 7 (1) Section 444ACA of ICTA (transferor shares are assets of transferee's long-term insurance fund) is amended as follows.
- (2) In subsections (1) and (2)(b), omit “(see section 444AC(11))”.

(3) After subsection (5) insert –

- “(6) In subsection (2) above “fair value”, in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount.
- (7) In this section “insurance business transfer scheme” includes a scheme which would fall within section 105 of the Financial Services and Markets Act 2000 but for subsection (1)(b) of that section.”

Transfers: repeal of modification of section 83(2B) FA 1989

- 8 In ICTA, omit section 444AD (transfers of business: modification of section 83(2B) of FA 1989).

Transfer schemes: anti-avoidance

- 9 After section 444AE of ICTA insert –

“444AEA Transfer schemes: anti-avoidance rule

- (1) This section applies where –
 - (a) as a result 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 of the whole or any part of the transfer scheme arrangements is the obtaining of that Case I advantage.
- (2) In subsection (1) above “transfer scheme arrangements” means an insurance business transfer scheme (“the relevant transfer scheme”) together with any relevant associated operations.
- (3) If a Case I advantage is obtained by the transferor (see subsection (1) of section 444AEB), the amount of the transferor’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 transferor for the relevant period of account.
- (4) If a Case I advantage is obtained by the transferee (see subsection (1) of section 444AEC), 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 first period of account of the transferee ending after the transfer time.
- (5) In this section “relevant associated operations”, in relation to the relevant transfer scheme, means –
 - (a) any other insurance business transfer scheme,
 - (b) any contract of reinsurance,
 - (c) any reconstruction or amalgamation involving the transferor, a dependent of the transferor which is an insurance undertaking or the transferee, or
 - (d) any surplus-increasing transfer of assets, which is connected with the relevant transfer scheme.

- (6) In subsection (5) above –
 - “dependent” and “insurance undertaking” have the same meaning as in the Insurance Prudential Sourcebook, and
 - “surplus-increasing transfer of assets” means a transfer of assets of the transferor’s long-term insurance fund to the transferee which is not brought into account for any period of account of the transferee but increases the amount of total surplus shown in line 39 of Form 58 in any periodical return of the transferee.
- (7) See section 444AA for the meaning of “the transfer time”, and section 444AB for the meaning of “the relevant period of account”, in this section.
- (8) In this section “insurance business transfer scheme” includes a scheme which would fall within section 105 of the Financial Services and Markets Act 2000 but for subsection (1)(b) of that section.

444AEB 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 relevant pre-transfer period of account are less than they would be but for the transfer scheme arrangements, or
 - (b) Case I losses of its life assurance business for a relevant pre-transfer period of account are greater than they would be but for the transfer scheme arrangements.
- (2) 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 relevant pre-transfer period of account are less than they would be but for the transfer scheme arrangements, and
 - (b) the amounts (if any) by which Case I losses for each relevant pre-transfer period of account are greater than they would be but for the transfer scheme arrangements.
- (3) For the purposes of this section a period of account is a “relevant pre-transfer period of account” if it is –
 - (a) the relevant period of account, or
 - (b) any earlier period of account of the transferor.
- (4) In this section and section 444AEC “Case I profits” and “Case I losses” means profits and losses computed in accordance with the provisions applicable to Case I of Schedule D.
- (5) See section 444AB for the meaning of “the relevant period of account” in this section.

444AEC 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 relevant post-transfer period of account are less than they would be but for the transfer scheme arrangements, or

- (b) Case I losses of its life assurance business for a relevant post-transfer period of account are greater than they would be but for the transfer scheme arrangements.
- (2) 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 relevant post-transfer period of account of the transferee are less than they would be but for the transfer scheme arrangements, or
 - (b) the amount by which Case I losses for each relevant post-transfer period of account are greater than they would be but for the transfer scheme arrangements.
 - (3) For the purposes of this section a period of account is a “relevant post-transfer period of account” if it is –
 - (a) the first period of account of the transferee ending after the transfer time, or
 - (b) any subsequent period of account of the transferee ending not later than two years after that period of account.
 - (4) See section 444AA for the meaning of “the transfer time”, and see section 444AEB for the meaning of “Case I profits” and “Case I losses”, in this section.

444AED Claim on ground of corresponding tax disadvantage

- (1) Where the transferor and the transferee are members of the same group of companies, they may claim that there is no advantage to the group arising from any Case I advantage obtained by the transferor or by the transferee.
- (2) If a claim under this section is allowed, section 444AEA does not apply in relation to the transfer scheme arrangements.
- (3) For the purposes of this section there is no advantage to a group arising from any Case I advantage obtained by the transferor or by the transferee if –
 - (a) as a result of transfer scheme arrangements, there is an increase in the liability to corporation tax of one or more companies which are members of the group of companies, and
 - (b) the amount (or aggregate amount) of that increase is the same, or almost the same, as the reduction in the liability to corporation tax of the transferor or the transferee (or both) arising from the obtaining of the Case I advantage.
- (4) A claim under this section must be made by the transferor and the transferee jointly.
- (5) A claim under this section must be made before the end of the first period of account of the transferee ending after the transfer time.
- (6) The Commissioners for Her Majesty’s Revenue and Customs (“the HMRC Commissioners”) may by notice require either or both of the persons by whom a claim under this section is made to provide further particulars in order to enable them to determine the claim.

- (7) A requirement may be imposed under subsection (6) above within 30 days of the receipt of the claim or of any further particulars required under that subsection.
- (8) If a notice under subsection (6) above is not complied with within 30 days or such longer period as the HMRC Commissioners may allow, they need not proceed further on the claim.
- (9) The HMRC Commissioners must give notice of their decision on a claim under this section to the claimants within 30 days of receiving the claim or, if they give a notice under subsection (6) above, within 30 days of that notice being complied with.
- (10) If the HMRC Commissioners –
 - (a) give notice under subsection (9) above that they are not allowing the claim, or
 - (b) do not comply with subsection (9) above,the claimants may appeal to the Special Commissioners.
- (11) Paragraphs 54 to 60 of the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to a claim under this section.
- (12) For the purposes of this section two companies are members of the same group of companies if they are for the purposes of Chapter 4 of Part 10 (group relief).
- (13) See section 444AA for the meaning of “the transfer time” in this section.

444AEE Anti-avoidance: clearance

- (1) Section 444AEA does not apply in relation to the transferor or the transferee if, on an application under this section, the Commissioners for Her Majesty’s Revenue and Customs (“the HMRC Commissioners”) have given a notice under subsection (2) below.
- (2) A notice under this subsection is a notice stating that the HMRC Commissioners are satisfied that the obtaining of a Case I advantage by the applicant is not the sole or main purpose of the whole or any part of the transfer scheme arrangements.
- (3) An application under this section must be in writing and contain particulars of the transfer scheme arrangements.
- (4) The HMRC Commissioners may by notice require the applicant to provide further particulars in order to enable them to determine the application.
- (5) A requirement may be imposed under subsection (4) above within 30 days of the receipt of the application or of any further particulars required under that subsection.
- (6) If a notice under subsection (4) above is not complied with within 30 days or such longer period as the HMRC Commissioners may allow, they need not proceed further on the application.
- (7) The HMRC Commissioners must give notice of their decision on an application under this section to the applicant within 30 days of

receiving the application or, if they give a notice under subsection (4) above, within 30 days of that notice being complied with.

- (8) If the HMRC Commissioners –
 - (a) give notice to the applicant under subsection (7) above that they are not satisfied as mentioned in subsection (2) above, or
 - (b) do not comply with subsection (7) above,
 the applicant may require them to transmit the application to the Special Commissioners.
- (9) A requirement under subsection (8) above must be imposed within 30 days of the giving of the notice or the failure to comply and must be accompanied by any notice given (and further particulars provided) under subsection (4) above.
- (10) Any notice given by the Special Commissioners has effect for the purposes of subsection (1) above as if it were given by the HMRC Commissioners.
- (11) If any particulars provided under this section do not fully and accurately disclose all facts and considerations material for the decision of the HMRC Commissioners or the Special Commissioners, any resulting notice that they are satisfied as mentioned in subsection (2) above is void.”

Relevant financial reinsurance contracts

- 10 (1) FA 1989 is amended as follows.
 - (2) In section 82(1) (calculation of profits: bonuses etc), for “to 82C” substitute “and 82B”.
 - (3) Omit section 82C (relevant financial reinsurance contracts).

Transfers: receipts to be taken into account

- 11 (1) Section 83 of FA 1989 (receipts to be taken into account) is amended as follows.
 - (2) In the first sentence of subsection (2B), for the words from “but the transfer” to “the time of the transfer” substitute “the fair value of the assets at the time of the transfer, reduced by any amount brought into account in respect of them (for the period of account in which the transfer takes place or any earlier period of account) as part of total expenditure or as a business transfer-out,”.
 - (3) In that sentence (as amended by sub-paragraph (2)) –
 - (a) omit “or as a business transfer-out”, and
 - (b) for the words after “value of the assets of that fund” substitute “except to the extent that any of the exclusions in subsections (2C) to (2E) below apply.”
 - (4) Omit the second sentence of subsection (2B).
 - (5) For subsection (2E) substitute –

“(2E) Assets transferred by an insurance business transfer scheme, or a scheme which would fall within section 105 of the Financial Services

and Markets Act 2000 but for subsection (1)(b) of that section, are excluded from subsection (2B) above.”

Transfers and demutualisations: losses where assets added to long-term insurance fund

- 12 (1) FA 1989 is amended as follows.
- (2) Omit—
- (a) in section 83, subsections (3) to (7) and, in subsection (8), the definitions of “add”, “demutualisation” and “total reinsurance” (which relate to losses where assets added to long-term insurance fund),
 - (b) section 83AA (amounts added to long-term insurance fund in excess of loss), and
 - (c) section 83AB (treatment of surplus where there is subsequent transfer from company etc).
- (3) In section 83A(1) (meaning of “brought into account”), for “83AB” substitute “83ZA”.
- (4) In section 83B(3) (changes in recognised accounts: attribution of amounts carried forward), for “83AB” substitute “83ZA”.
- 13 In section 436A(3) of ICTA (gross roll-up business), for “83AB” substitute “83ZA”.

Transfer schemes: old annuity contracts

- 14 (1) Paragraph 16 of Schedule 7 to FA 1991 (transitional relief for old general annuity contracts) is amended as follows.
- (2) In sub-paragraph (7), in the definition of “old annuity contract”, insert at the end “(including one forming part of the business transferred to another insurance company by an insurance business transfer scheme)”.
- (3) After that sub-paragraph insert—
- “(8) Where—
- (a) business is transferred to an insurance company by an insurance business transfer scheme during an accounting period of the company, and
 - (b) the business transferred consists of or includes old annuity contracts (“the transferred contracts”),
- the reference in the definition of R1 in sub-paragraph (2) above to the company’s opening liabilities for the accounting period is, in relation to the transferred contracts, a reference to the company’s liabilities in respect of the transferred contracts immediately after the transfer.”

Transfer schemes: no gain/no loss

- 15 (1) Section 211 of TCGA 1992 (application of section 139) is amended as follows.
- (2) For subsections (2) and (2A) substitute—
- “(2) Where this section applies the transferor and the transferee are treated for the purposes of corporation tax on chargeable gains as if

any assets included in the transfer which, immediately before they were acquired by the transferee, were assets of the transferor's long-term insurance fund were acquired for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the transferor on the disposal.

(3) For the purposes of Schedule 2 the transferee shall be treated as if the transferor's acquisition of the assets had been the transferee's acquisition of them.

(4) Subsection (2) above is subject to section 212."

(3) Omit subsection (2A).

(4) In section 440(3) of ICTA (transfers of assets etc), for "or 173" substitute ", 173 or 211".

Transfer schemes: old reinsurance business

16 In paragraph 57 of Schedule 8 to FA 1995 (application of provisions made by that Schedule), after sub-paragraph (2) (which disapplies section 442A of ICTA in relation to the reinsurance of policies and contracts made and reinsured before 29th November 1994) insert –

“(3) Where business consisting of or including an arrangement for the reinsurance of a policy or contract made before 29th November 1994 which was effected before that date has been transferred by an insurance business transfer scheme sub-paragraph (2) has effect in relation to the transferee.”

Commencement

- 17 (1) The amendment made by paragraph 11(2) has effect in relation to transfers taking place on or after 6th December 2006.
- (2) The other amendments made by that paragraph have effect in relation to transfers taking place on or after 1st January 2007.
- (3) The amendments made by paragraphs 1 to 4 and 14 to 16 have effect in relation to insurance business transfer schemes taking place on or after that date.
- (4) The amendments made by paragraphs 5 and 7 to 9 have effect in relation to insurance business transfer schemes taking place on or after that 1st November 2007.
- (5) The amendments made by paragraph 6 have effect in relation to transfers taking place on or after that date.
- (6) The amendments made by paragraph 10 have effect in relation to reinsurance contracts entered into on or after that date.
- (7) The amendments made by paragraphs 12 and 13 have effect in relation to transfers made, and demutualisations taking place, on or after that date.

SCHEDULE 2

Section

REPEALS

INSURANCE COMPANIES: TRANSFERS ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 444A – (a) in subsection (1) the words “Subject to subsection (7) below,” and (b) subsections (7) and (8). In section 444ACA(1) and (2)(b), the words “(see section 444AC(1))”. Section 444AD.
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 212(2A). In Schedule 10, paragraph 14(25).
Finance Act 1989 (c. 26)	Section 82C. In section 83 – (a) subsection (2A)(b), (b) in subsection (2B), the words “, or as a business transfer-out,” and the second sentence, (c) subsections (3) to (7), and (d) in subsection (8), the definitions of “add”, “demutualisation” and “total reinsurance”. Section 83AA. Section 83AB.
Finance Act 1996 (c. 8)	In Schedule 31 – (a) paragraph 5, (b) paragraph 9, and (c) in paragraph 10(2), the words “Subject to paragraph 9 above,”.
Finance Act 2000 (c. 17)	In Schedule 29, paragraph 30.
Finance Act 2002 (c. 23)	In Schedule 9, paragraph 5(11).
Finance Act 2003 (c. 14)	In Schedule 33 – (a) paragraph 2(3), (4) and (6), (b) paragraph 5(b), (c) paragraph 19, and (d) paragraph 20(4).
Finance Act 2004 (c. 12)	In Schedule 7, paragraphs 2 to 5.
Finance (No.2) Act 2005 (c. 22)	In Schedule 9 – (a) paragraph 6, (b) paragraph 7, (c) paragraph 11, (d) paragraph 12(4) and (6), and (e) paragraph 20(4) and (5).

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2006 (c. 25)	In Schedule 11 – (a) paragraph 3, (b) paragraph 4, and (c) paragraph 6(2).

These repeals have effect in accordance with Schedule 1.

Explanatory Notes

Life Assurance Companies: Transfers of Business

Summary

1. This clause and Schedule clarify and simplify the corporation tax law relating to the transfer of long-term business by one life assurance company to another.

Details

2. Clause 1 merely introduces the Schedule.

3. These notes do not follow the chronological order of the Schedule but consider:

- first, those provisions relating to Case I of Schedule D (the profits of a trade) applicable where a calculation is made of the profits of a company's life assurance business, and where a Case VI of Schedule D charge is imposed on the profits of the company's gross roll-up business. (For details of the concept of "gross roll-up" business, see the draft clause and Schedule and explanatory notes under the heading "Amalgamation of categories: five into one".)
- second, provisions which relate exclusively to the I minus E basis of taxation.
- third, provisions common to both I minus E and Case I and commencement.

Case I provisions: the transferor

4. Paragraph 4 of the Schedule replaces the existing sections 444AB and 444ABA of the Income and Corporation Taxes Act 1988 ("ICTA") and subsumes part of the operation of section 83(2B) Finance Act ("FA") 1989, that is, so far as that subsection applies to transfers of business. They are replaced by three new sections of ICTA, sections 444AB, 444ABA and section 444ABB.

5. Section 444AB deals with the transferor and prevents loss of tax where assets are transferred for their fair value in the course of an insurance business transfer scheme ("IBTS") but are not transferred so as to become long-term assets of the transferee.

6. Subsection (1) shows the scope, that it applies where there is an IBTS under which long-term business is transferred from a person, labelled the "transferor", to another person, labelled the "transferee", and where one or other of two conditions are met.

7. The section applies whether or not the whole of a company's long-term business is transferred and applies however many transferees there are of the business.

8. Subsection (2) sets out the first condition, Condition A, which is met if any assets of the transferor's long-term insurance fund ("LTIF") do not become assets of the transferee's LTIF. These assets are labelled "non long-term fund transferred assets" and this provision will apply in particular where assets are transferred to the "shareholders' fund" of the transferee. This condition replaces section 83(2B) FA 1989.

9. Subsection (3) describes the second condition, Condition B, and that applies if, immediately after the time of the transfer, the transferor no longer carries on any long-term business (because it has transferred the whole of its long-term business) but continues to hold assets which before the transfer were assets of its LTIF. These assets are named "retained assets". This condition replaces section 444AB as it currently stands.

10. Subsection (4) provides the operative rule which is that if there are either non long-term fund transferred assets or retained assets or both then what is known as the relevant amount in relation to them falls to be treated as an increase in the value

of the assets of the company's LTIF and so falls within section 83(2) FA 1989 as an additional trading receipt of what is labelled the "relevant period of account".

11. That period of account is defined in subsection (6) to mean the period of account of the transferor which ends immediately before the transfer time or, if there is no such period of account, the period of account that includes the transfer time.

12. Where the transfer is of the company's whole long-term business then a period of account will end immediately before the transfer time either because that is the period to which the company draws up its periodical return or it is deemed to so do by section 444AA(2) ICTA.

13. Subsection (6), defining "relevant period of account" also applies for the purposes of section 444ABA to 444AEB. Subsection (7) provides that "the transfer time" for the purposes of subsection (6) and other provisions of the section has the same meaning as it has in section 444AA (see paragraph 118 below).

14. The relevant amount differs according to whether there are non long-term fund transferred assets or retained assets and subsection (5) provides that the first relevant amount is given by section 444ABA and the second by section 444ABB.

15. Subsection (8) provides that in section 444AB IBTS includes a non-EEA scheme, that is one which is not covered by Part 7 of the Financial Services and Markets Act 2000.

16. Section 444ABA(1) sets out that the relevant amount for non long-term fund transferred assets is calculated as

FVA less RVA, where

FVA means the fair value of the assets at the transfer time, and

RVA is their recognised value.

17. Subsection (2) defines fair value in a standard way for the insurance provisions as the amount which would be obtained from an independent person purchasing them if they are not money assets, or if they are money, its actual amount.

18. Subsection (3) defines "recognised value" (RVA) and that depends on whether the LTIF, or any recognised smaller fund in which the assets are held before the transfer, is one in which there is an entry in line 51 of Form 14 (difference between the company's book value of its assets and their admissible value) of the company's periodical return to the Financial Services Authority, or is a non-profit fund without such an entry.

19. There will be an entry in all with-profit funds, but in relation to most non-profit funds (defined in subsection (4) to have the same meaning as in the Prudential Sourcebook for Insurers (INSPRU)) there are a few funds which also have a line 51 entry (and which are the subject of section 83YA FA 1989).

20. In the case of a non-profit fund which does not have such a line 51 entry then the RVA is simply the value shown in Form 13 for the assets – subsection (3)(a). Form 13 is the list of the assets side of the balance sheet of the long-term insurance fund and shows assets at their "admissible value", which, in general, is equal to their Companies Act value, which in turn is usually fair value. But in certain cases admissible value can be reduced below fair value, particularly in the case of holdings in dependent companies which carry on insurance business themselves.

21. In the case of a fund which does have a line 51 entry then the RVA is the appropriate fraction of the value shown in Form 13 for the assets – subsection (3)(b).

22. Subsection (7) determines what the appropriate fraction of the Form 13 value of assets is in a case where there is line 51 entry. The fraction is $1 - A/B$ and in this

fraction, the numerator, A, is the total entry in line 51 of Form 14 in the relevant periodical return and the denominator, B, is the entry in line 89 of Form 13 which is the total admissible value of the assets of the long-term insurance fund. This fraction assumes that the write down from admissible value to book value is the same percentage for all the assets of the LTIF, and assumption made in the absence of any other way to find the relevant book value. **HMRC would welcome any suggestions about how finding the appropriate fraction could be made more accurate.**

23. Subsection (8) signposts that the meaning of “transfer time” is taken from section 444AA and “the relevant period of account” from section 444AB.

24. Section 444ABB(1) provides for the relevant amount in relation to retained assets to be

FVA less RVA less VRL.

In this section, FVA and RVA have the same meanings as they do in section 444ABA (see paragraphs 20 and 21 above) while VRL, the value of retained liabilities, is defined in subsection (2) to mean the liabilities of the transferor which are shown in lines 14 (mathematical reserves) and 49 (other liabilities of the LTIF) on Form 14 for the relevant period. Subsection (3) provides that value here means the value which is shown on those lines. This will be the actuarial value of the liabilities determined in accordance with the rules in INSPRU.

25. Subsection (4) repeats the signposts also given in section 444ABA(8).

Case I provisions: the transferee

26. Paragraph 5 inserts two new section, sections 444AC and 444ACZA into ICTA, to replace the existing section 444AC.

27. Section 444AC(1) again sets out the scope in similar terms to section 444AB(1), that there must be an IBTS which transfers long-term business from a transferor to a transferee and there are three conditions which must be met.

28. Subsection (2), Condition A, is that all the assets of the transferor’s LTIF must become assets of the transferee’s LTIF. In other words, there must be no transfer of LTIF assets to the transferee’s shareholders fund if this section is to apply (the assumption being made that if there are such transfers, they must be of surplus in priority to a transfer of surplus to the LTIF).

29. Subsection (3), Condition B, is that the transferor’s business up to the final period of account was not mutual business. This is because the relief that is given by subsection (4) is predicated on the basis that there is an amount of surplus of the transferor transferred to the transferee which has already been brought into account for tax purposes. This will not be the case in mutual business.

30. Subsection (4), Condition C, is that there is an amount shown in line 13 of Form 14 (representing surplus) in the periodical return of the transferor for the period covering the relevant period of account.

31. Subsection (5) is the operative rule and excludes from the amount in section 83(2)(e) (business transfer-in) which is brought into account as a trading receipt of the transferee the “adjusted surplus”.

32. Subsection (6) provides that that term means the amount which is shown as surplus in line 13 of Form 14 of the transferor for the period of account ending with the time of the transfer as reduced by any “relevant capital additions”.

33. Subsection (7) defines relevant capital additions as being any amounts brought into account in the periodical return of the transferor as part of total income (i.e. in lines 11 to 15) or as transfer from non-technical account, in a period of account that

began not more than three years before the transfer time and ends before that time, so long as those additions were not taken into account in computing the transferee's Case I profits for the period of account in which the transfer takes place.

34. Subsection (8) again has signposts in the same manner as section 444ABA(8) and 444ABB(4).

35. This section effectively replaces section 444AC(2) ICTA as it currently stands but provides a more accurate measure of the taxed surplus to be excluded in the hands of the transferee.

36. Section 444ACZA effectively replaces section 444AC(2A) to (11) ICTA and applies in accordance with subsection (1) where there is an IBTS and the amount of the transferee's "relevant liabilities" exceeds the amount in line 31 of Form 40 that represents the transferor's LTIF.

37. Subsection (2) defines the amount of the relevant liabilities as meaning the amount of the liabilities to policy holders and annuitants that are transferred in the IBTS. This is the same formulation as in section 444AC(2A)(a) at present.

38. Subsection (3) defines the relevant line 31 amount as being the amount brought into account on line 31 that applies to the particular IBTS concerned. This rule is necessary because a particular company may have a line 31 entry in a period that relates to more than one IBTS transferring business to it, particularly if there is a complex reorganisation. Subsection (3) effectively mirrors section 444AC(2A)(b).

39. Subsection (4) is the operative rules and provides that the difference between the two amounts mentioned in subsection (1) is treated as a trading receipt for the purposes of section 83(2) and is brought into account in the case of the transferee for the period of account which includes the time of the transfer.

40. Subsection (5) has signposts in the same manner as section 444ABA(8) and 444ABB(4).

41. Paragraph 6 makes a consequential amendment to section 83(2A) FA 1989 omitting paragraph (b) which currently excludes from section 83 amounts falling within section 444AD which is repealed.

Targeted Anti-avoidance Rule

42. Paragraph 9 inserts sections 444AEA to 444AEE into ICTA which contain a new targeted anti-avoidance rule (TAAR) and also the clearance procedure associated with it.

43. Section 444AEA(1) sets out the scope of the TAAR. It applies where there is an IBTS and where, as a result of "transfer scheme arrangements" that include the IBTS, a Case I advantage is obtained by the transferor or the transferee or both of them, and the sole or main purpose of either the whole of the transfer scheme arrangements or any part of them was the obtaining of that advantage.

44. Subsection (2) defines "transfer scheme arrangements" as meaning an IBTS, i.e. the relevant transfer scheme, and any "relevant associated operations".

45. Subsection (5) defines relevant associated operations to mean

- any other IBTS.
- any contract of reinsurance.
- any reconstruction or amalgamation that involves the transferor, the transferee or a dependent of the transferor which is an insurance undertaking, or
- any surplus-increasing transfer of assets (see subsection (6) of the LTIF of the transferee of the transferee without being taken into account for tax purpose.

46. To be a relevant associated operation however the types of transaction listed above must be connected with the relevant IBTS.

47. Subsection (6) provides that dependent and insurance undertaking have the same meaning as in INSPRU, and also defines a “surplus-increasing transfer of assets” as meaning on which is not brought into account in a revenue account (Form 40) of the transferee but which contributes to the figure of Total Surplus in line 39 of Form 58.

48. Subsections (3) and (4) set out the operative rule for the transferor and transferee respectively. In the case of the transferor, the amount of any Case I advantage is treated as an increase in value of the assets of the LTIF under section 83(2) for the relevant period of account (defined in subsection (7) by reference to section 444AB as the period of account ending with the transfer); and in the case of the transferee, the amount of the Case I advantage is to be taken into account in the first period of account of the transferee ending after the transfer time.

49. Subsection (7) also borrows from section 444AA for the meaning of “the transfer time”.

50. Subsection (8) provides that IBTS here includes a non EEA scheme.

51. Section 444AEB defines Case I advantage for the **transferor**. (See section 444AEC for the transferee)

52. In order to see if there is a Case I advantage, subsection (1) provides that it is necessary to calculate the Case I profits of the transferor’s life assurance business for all the “relevant pre-transfer periods” to see if they are less than they would be if the transfer scheme arrangements were not in place, or if its Case I losses for any period are greater than they would be but for those arrangements.

53. Subsection (2) provides that the amount of the Case I advantage is the aggregate of the differences found by the subsection (1) exercise.

54. Subsection (3) defines “relevant pre-transfer period of account” to be the period of account ending immediately before the transfer and any earlier period of account of the transferor. It follows however that there must have been some part of the transfer scheme arrangements in place in a period of account for it to be relevant to the calculation.

55. Subsection (4) defines “Case I profits” and “Case I losses” as meaning profits and losses computed in accordance with the provisions applicable to Case I of Schedule D. It will include therefore both a computation of profits for the purposes of Case I of Schedule D, for example for the purposes of section 89 FA 1989, section 76 ICTA or in the calculation of a Case I loss to be surrendered etc. under section 434A ICTA, and it will also include a calculation of the profits of gross roll-up business under section 436A.

56. Subsection (5) is another signpost to section 444AB for the meaning of “the relevant period of account”.

57. Section 444AEC deals with the calculation of a Case I advantage for the transferee.

58. Essentially, the calculation is the same as in section 444AEB except that the period concerned is a “relevant post-transfer period” and subsection (3) defines that as meaning the period of account in which the transfer takes place and any subsequent period of account ending no later than two years after that period.

59. The operation of this rule will be monitored and if there are attempts to take advantage of it then the length of the relevant post transfer period may be revisited.

60. Subsection (4) provides that terms which are defined in section 444AEB apply in section 444AEC.

61. Section 444AED allows a claim, in certain circumstances, that section 444AEA should not apply.

62. Subsection (1) gives the scope. It applies only where transferor and transferee are both members of the same group of companies (which means they are members for the purposes of group relief – subsection (12)) and the claim is that there is no advantage to the group as a whole arising from the Case I advantage that is obtained by either the transferor or the transferee.

63. If the claim succeeds subsection (2) provides that section 444AEA does not apply.

64. Subsection (3) sets out what is meant by there being no advantage to a group. There is no such advantage if notwithstanding an increase in the liability to corporation tax of one or more companies in the group there is also a reduction of the same, or practically the same, amount in the liability to corporation tax of either the transferor or the transferee obtained from the Case I advantage.

65. Subsection (4) to (11) deal with the mechanics of the claim and these follow very closely the mechanics of the clearance application under section 444AEE (see below). Subsection (13) again points to section 444AA for the meaning of “the transfer time”.

66. Section 444AEE is the clearance provision in relation to the operation of section 444AEA. Subsection (1) provides for the Commissioners of Her Majesty’s Revenue & Customs to give a notice if there is an application under the section.

67. The notice is one that says that the Commissions are satisfied that the obtaining of a Case I is not the sole or main purpose of the whole or any part of the transfer scheme arrangements.

68. Subsections (3) to (11) set out the mechanics. They are borrowed to a substantial degree from section 138 TCGA 1992 which currently applies to an application for clearance under section 211 of that Act and under section 444A ICTA.

69. The application must be in writing and contain particulars of the arrangements (subsection 3).

70. The Commissioners can require further particulars to enable them to determine the application and the Commissioners have 30 days to request further information and that request must allow at least 30 days for a reply. Subsequent requests may be made for further particulars within the same 30 day period (subsection (5)) but if any information is not provided within the stipulated period the Commissioners are not obliged to consider the application further.

71. Subsection (7) puts the onus on the Commissioners to give a notice of their decision within 30 days of receiving the application or within 30 days of a notice under subsection (4) for further particulars being complied with.

72. Subsection (8) provides for the applicant to require the Commissions to send the application to the Special Commissioners, if the HMRC Commissioners turn it down under subsection (7) or do not give any response under subsection (7).

73. Subsection (9) allows the Commissioners 30 days to forward the application and any further particulars that have been provided to the Special Commissioners.

74. If the Special Commissioners give a notice that they are satisfied that the obtaining of a Case I advantaged was not the sole or main purpose that is treated as if it had been given by the HMRC Commissioners – subsection (10).

75. Subsection (11) provides, as usual, that if any particulars provided are not fully full or accurate that any notice that has relied on them is void.

76. In practice, the function of the Commissioners under this section will be exercised by an Assistant Director in the Insurance Group of HMRC CT & VAT and it will be expected that if HMRC has any doubts about the application that they will be discussed in meetings etc. and that the object will be to negotiate an amendment of the transfer scheme arrangements rather than to refuse the application if at all possible.

Case I provisions: other amendments

77. Paragraph 7 makes some consequential amendments to section 444ACA ICTA which applies where the shares of the transferor are held as assets of the transferee's LTIF.

78. Sub-paragraph (2) leaves out references to section 444AC(11) which is repealed.

79. Sub-paragraph (3) inserts two new subsections ((6) and (7)) into section 444ACA giving, respectively, definitions of "fair value" and of IBTS (as including a non EEA-scheme), where previously section 444ACA borrowed these definitions from section 444AC(11) which is being repealed.

80. Paragraph 8 then omits section 444AD ICTA which allows an election where assets of the transferor's LTIF are transferred to the transferee's LTIF and prevents section 83(2B) FA 1989 from operating. This section has become unnecessary since neither section 83(2B) nor section 444AB, which replaces it in relation to transfers, will apply where assets are transferred from one LTIF to another.

81. Paragraph 10 leaves out section 82C FA 1989 which deals with relevant financial reinsurance contracts as the circumstances in section 82C are now covered by the new provisions.

82. Sub-paragraph (2) makes a consequential amendment to section 82(1) to remove the reference to section 82C.

83. Paragraph 11 amends section 83 Finance Act 1989 as provided by sub-paragraph (1).

84. Sub-paragraph (2) amends subsection (2B) in relation to any transfer of assets taking place **on or after 6 December 2006**. The meaning of section 83(2B) has given rise to differences of opinion between HM Revenue & Customs on the one hand and some companies and their advisers on the other. The point at issue is whether a case where the fair value of assets transferred is greater than the value brought into account in that part of a revenue account in Form 40 which relates to total expenditure, is one that falls within subsection (2B) as to the excess or whether the presence of any amount in the relevant lines in Form 40 is sufficient to mean that subsection (2B) does not apply at all.

85. It is HMRC's view that subsection (2B) has the first meaning and to put the point beyond doubt subsection (2B) is amended to specifically state that what is brought into account is the fair value of the assets at the time of their transfer as reduced by any amount brought into account in Form 40.

86. This amendment is aimed at transfers of assets other than those that take place in an IBTS, for example by way of a distribution of surplus in specie. But because of the complexities of drafting and because HMRC is currently unaware of any IBTS where there are features which might cause section 83(2B) to be in point that are due to take place before the end of 2006, this amendment does not expressly address the position of IBTS. But if there is an IBTS which is due to take place before the end of 2006 and which would, in the view of the company concerned, be

affected by this change, details should be notified to HMRC CT & VAT (Insurance Group).

87. Subparagraph (3) provides for a further amendment of section 83(2B) applying from 1 January 2007 to exclude all IBTS matters from it.

88. Subparagraph (4) leaves out the second sentence of section 83(2B).

89. Paragraph 12 removes from the statute book the provisions of section 83(3) FA 1989 which provides for a restriction of losses where there is an addition to the transferee's long-term insurance fund in connection with an IBTS or what is described as a total reinsurance. In addition sub-paragraph (2) provides for a consequential repeal of subsections (4) to (7), of certain definitions in subsection (8) and of sections 83AA and 83AB.

90. Sub-paragraphs (3) and (4) make consequential changes to other provisions as a result, as does paragraph 13 in relation to section 436A(3).

Provisions relating to I minus E basis computations

91. Paragraph 1 makes some amendments to section 12(7C) ICTA which defines when an accounting period ends in the case of an IBTS. These changes are consequential upon changes made by section 444AA in paragraph 3 (see paragraph 112 below).

92. Section 444A ICTA deals with the transfer between two companies of long-term business and allows the carryover from one to another of certain losses, including unused expenses.

93. Paragraph 2(1) of the schedule provides for the section to be amended.

94. Sub-paragraph (3) omits section 444A(7) which prevent a carry-over of losses etc. if the IBTS is not for bona fide commercial reasons or forms part of an avoidance scheme and in consequence subsection (8) which provides a clearance procedure for companies to discover whether or not the section will apply. Subsection (7) has been somewhat anomalous because there are many other types of carryover which are not subject to an anti-avoidance filter or clearance procedure and these include the main areas where some companies have sought to exploit the existing rules, namely the Case I provisions where the TAAR is being introduced

95. Sub-paragraph (2) makes a consequential amendment to section 444A(1) omitting a reference to subsection (7).

96. Sub-paragraph (4) inserts a new subsection (9) which provides that section 444A applies to an IBTS where the successor to the business is a company whose main place of establishment is outside the European Economic Area. The draft Schedule relating to Amalgamation of Categories also removes from section 444A the special rule relating to transfers of overseas life assurance business which applies to non-EEA transfers as well as to transfers of business to an EEA based successor and the new subsection (9) replaces in part those provisions.

97. Paragraph 14 amends paragraph 16 of Schedule 7 FA 1991 which grandfathers "old general annuity contracts".

98. In the course of an IBTS a company will often seek an informal comfort from HMRC that the transfer does not affect the status of old general annuity contracts, notwithstanding that they are transferred to a new provider.

99. The position is that the transfer does not affect the status of such contracts, but to put the point beyond doubt and clearly in legislation, sub-paragraph (3) inserts a new sub-paragraph (8) into paragraph 16 to explicitly provide that the transfer does not affect their status.

100. Paragraph 16 makes a similar clear statement. Paragraph 57 of Schedule 8 to the Finance Act 1995 grandfathers certain existing reinsurance contracts taken out before 29 November 1994 from the operation of section 442A ICTA. Paragraph 16 inserts a new sub-paragraph (3) to ensure that a subsequent transfer under an IBTS of such pre 29/11/94 arrangements does not affect their status.

101. Paragraph 16 makes a substantial change to the treatment of capital gains on an IBTS.

102. Before the amendments, section 211 TCGA 1992 provided that section 139 TCGA applied. The effect of section 139 was that there was no disposal and the transferee was treated as the same company as the transferor with the same tax basis for the assets and tax history of them. Because section 139 was pleaded into, the anti-avoidance provisions in section 138 applied and a clearance was required under that section.

103. Paragraph 15 substantially amends section 211 to remove the application of section 139 and therefore the anti-avoidance provisions in section 138.

104. Sub-paragraph (2) inserts a new subsection (2) into section 211 which provides that in the case of an IBTS there is treated as being a transfer for a consideration which gives neither a gain nor a loss. In other words the rule is the same as that in section 171 TCGA 1992.

105. New subsection (3) provides that for the purposes of Schedule 2 TCGA (assets held on 6 April 1965) the transferee is treated as if the transferor's acquisition of the assets (i.e. before 6 April 1965) had been the transferee's own acquisition.

106. New subsection (4) makes the rule that there is a no gain, no loss transfer in section 211(2), subject to section 212 which provides for a deemed disposal at market value of holdings in certain collective investment schemes. It is implicit currently that section 212 has priority over section 211 but this is now made explicit.

107. Sub-paragraph (3) omits section 211(2A) which should have been amended by FA 2003 and as a rule applying only to overseas life insurance companies should have been omitted by Overseas Life Insurance Companies Regulations.

108. Sub-paragraph (4) ensures that section 440(3) ICTA is not affected by section 211 and continues to operate to provide for a deemed disposal at fair value, in the circumstances set out in the subsection.

Provisions applying to both I minus E basis computations and Case I computations.

109. The relevant provision here is section 444AA ICTA which determines when a period of account ends in the case of an IBTS.

110. Paragraph 3(2) amends section 444AA(1) so that it applies not only where the whole of the long-term business of a person is transferred but also where substantially the whole is transferred under one or more IBTS. This is to cater for the case where a small part of the business may be carried on after a major transfer because, for example, the business cannot be transferred under the main IBTS, possibly pending a further transfer in a non-EEA Scheme.

111. Paragraph 3(3) amends section 444AA(2) to remove the reference to "the last period". This is a consequence, among other things, of the changes to subsection (1) which permits some continuing long-term business so that the period of account given by subsection (2) will not necessarily be related to the company's last periodical return.

112. References to the "the transfer" have been made explicit references to "the relevant transfer time".

113. Sub-paragraph (4) amends section 444AA(3). The amendments reflect the fact that section 83(2B) (“the relevant purpose” in subsection (3)) no longer affects IBTS.

114. Sub-paragraph (5) substitutes the new set of subsections in place of the existing subsections (4) to (7) and deals with periods of account where the company continues to carry on long-term business after the relevant transfer time and provides that where there is a periodical return covering the transfer time that is ignored but there is to be a deemed period of account for the period starting immediately after the transfer time and ending either with the actual ending of the periodical return or, if there is not a periodical return for the post-transfer period, at the end of the period for which accounts are prepared – new subsection (5).

115. New subsection (6) defines IBTS to include a non-EEA Scheme and new subsection (7) defines “relevant transfer time”. It means in a straightforward case where there is one IBTS the “transfer time” in relation to that IBTS, and that in turn is defined in new subsection (8) as, in a case where an order is made by a Court etc. in relation to the IBTS as being the time, or the earliest time if there is more than one, at which property is transferred by the order, and in a case where there is no such order the time or the earliest time at which property is transferred by the scheme.

116. Subsection (7)(b) covers the case where there is more than one IBTS and in that case the relevant transfer time means the earliest time that is a transfer time for any of the IBTS.

Commencement

117. The amended version of section 83(2B) given by paragraph 11(2) applies on or after 6 December 2006 – paragraph 17(1)

118. The rest of paragraph 11 (amendments to section 83), the I minus E provisions and the transferor provisions in section 444AB to 444ABB apply from 1st January 2007 – paragraph 17(2) and (3).

119. The transferee provisions in section 444AC and 444ACZA and the TAAR in sections 444AEA to 444AEE apply from 1 November 2007 – paragraph 17(4) to (7)

1 Friendly societies: transfers of exempt business to insurance companies etc

- (1) Section 460 of ICTA (friendly societies: exemption from tax in respect of life or endowment business) is amended as follows.
- (2) In subsection (11) (conversion), for “thereafter continue to be tax exempt life or endowment business for the purposes of this Chapter.” substitute “continue to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.”
- (3) For subsection (12) substitute –
 - “(12) Where at any time an insurance company acquires by way of transfer of engagements from a friendly society any life or endowment business consisting of business which –
 - (a) relates to contracts made before that time; and
 - (b) immediately before that time was tax exempt life or endowment business,that business shall continue to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.
 - (13) But if any contracts constituting or forming part of the business of a company covered by subsection (11) or (12) are varied during an accounting period of the company so as to increase the premiums payable under them, the business relating to those contracts is not exempt from corporation tax for that or any subsequent accounting period.
 - (14) For the purposes of the Corporation Tax Acts any part of a company’s business which is exempt from corporation tax by virtue of subsection (11) or (12) above shall be treated as a separate business from any other business carried on by the company.”
- (4) Insert at the end –
 - “(15) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax by virtue of subsection (11) or (12) above, the Corporation Tax Acts have effect subject to such modifications (or exceptions) as the Treasury consider appropriate.
 - (16) Regulations under subsection (15) above –
 - (a) may make different provision for different cases,
 - (b) may include any incidental, supplementary, consequential or transitional provisions which the Treasury consider appropriate, and
 - (c) may include retrospective provision.”

- (5) The amendment made by subsection (2) is deemed always to have had effect; and the amendment made by subsection (3) has effect in relation to transfers of engagements and conversions taking place on or after 1st November 2007.

EXPLANATORY NOTES

FRIENDLY SOCIETIES: TRANSFERS OF TAX EXEMPT LIFE OR ENDOWMENT BUSINESS

SUMMARY

1. This clause allows a friendly society to transfer tax exempt life or endowment business to a life insurance company which is not a friendly society while preserving the tax exemption for tax exempt life or endowment business which was in force at the time of the transfer. This measure will apply to transfers of business taking place on or after 1 November 2007.
2. This clause also rewrites the existing provisions which allow tax exempt life or endowment business written by a friendly society to retain tax exempt status if the friendly society which wrote the business subsequently converts to a company. The rewrite does not change the law but clarifies its application, and is deemed always to have effect.
3. The clause also provides that if any tax exempt contracts transferred from a friendly society to a life insurance company are varied to increase the premiums within the tax exempt limit after transfer, tax exemption is lost in respect of the contracts which are so varied. This mirrors the position which already applies where a friendly society converts to a company.

Details of the Clause

4. Subsection (1) provides for the amendment of section 460 Income and Corporation Tax Act 1988 (“ICTA”), the section which provides for the exemption from tax in respect of life or endowment business.
5. Subsection (2) rewrites section 460(11) by providing that business which was tax exempt life or endowment business written by a friendly society remains exempt from corporation tax if the friendly society which wrote the business subsequently converts to a company. This does not change the effect of the law. However couching the exemption in terms of corporation tax on income or chargeable gains is more logical than deeming the transferred business to retain its status as tax exempt life or endowment business, which is otherwise a concept relevant only to friendly societies.
6. Subsection (3) inserts new subsections (12) to (14).
7. New section 460(12) provides that where tax exempt life or endowment business written by a friendly society is transferred to a company, which of necessity will be a life insurance company, the transferred business continues to be exempt from corporation tax on income or chargeable gains, subject to the new subsection (13).
8. New section 460(13) provides that if any of the premiums for transferred former tax exempt life or endowment business contracts are increased after the transfer, then the corporation tax exemption is lost for those contracts for the accounting period in which the variation takes place and for all subsequent accounting periods. Subsection (13) also applies to the business

of a converted friendly society which retains its tax exemption under subsection (11)

9. New section 460(14) provides that any former tax exempt life or endowment business benefiting from exemption from corporation tax under subsections (11) or (12) is treated as a separate business from any other business carried on by the company.

10. Subsection (4) inserts new section 460(15) and (16).

11. New section 460(15) inserts a Treasury power to make regulations to modify the Corporation Tax Acts to deal with the separate business created by subsection (14). For example at present there are no rules to set out how an insurance company apportions income between taxable basic life assurance and general annuity business ("BLAGAB") and tax exempt BLAGAB, as the Friendly Societies (Modification of Corporation Tax Acts) Regulations 2005 which do this for a friendly society do not apply to an insurance company.

12. New section 460(16) sets out the extent of the Treasury power provided by subsection (15).

13. Subsection (5) sets out the commencement rule. The rewritten section 460(11) is deemed always to have had effect; the new section 460(12) to (14) will have effect in relation to transfers of engagements and transfers taking place on or after 1 November 2007. The Treasury powers will have effect from Royal Assent.