Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VI U.K.

COMPANIES, OIL, INSURANCE ETC.

CHAPTER III U.K.

INSURANCE

214 Transitional provisions. U.K.

(1) In this section—

(a) "section 212 assets" means rights under authorised unit trusts and relevant interests in offshore funds which are assets of a company's long term business fund;

(b) "linked section 212 assets" means section 212 assets which are linked assets;

(c) "relevant linked liabilities", in relation to a company, means such of the liabilities of its basic life assurance and general annuity business as are liabilities in respect of benefits under pre-commencement policies or contracts, being benefits to be determined by reference to the value of linked assets;

(d) "pre-commencement policies or contracts" means—

(i) policies issued in respect of insurances made before 1st April 1990, and

(ii) annuity contracts made before that date,

but excluding policies or annuity contracts varied on or after that date so as to increase the benefits secured or to extend the term of the insurance or annuity (any exercise of rights conferred by a policy or annuity contract being regarded for this purpose as a variation);

(e) "basic life assurance and general annuity business" means life assurance business, other than pension business and overseas life assurance business.

(2) The assets which are to be regarded for the purposes of this section as linked solely to an insurance company's basic life assurance and general annuity business at any time before the first accounting period of the company which begins on or after 1st January 1992 are all the assets which at that time—

(a) are or were linked solely to the company's basic life assurance business or general annuity business, or

(b) although not falling within paragraph (a) above, would be, or would have been, regarded as linked solely to the company's basic life assurance business, were its general annuity business treated as forming, or having at all times formed, part of its basic life assurance business and as not being a separate category of business.

(3) Where within 2 years after the end of an accounting period an insurance company makes a claim for the purpose in relation to the period, section 212(1) shall not apply at the end of the period to so much of any class of linked assets as it would otherwise apply to and as represents relevant linked liabilities.

(4) For the purposes of subsection (3) above assets of any class shall be taken to represent relevant linked liabilities only to the extent that their value does not exceed the fraction set out in subsection (5) below of such of the company's relevant linked liabilities as are liabilities in respect of benefits to be determined by reference to the value of assets of that class.

(5) The fraction referred to in subsection (4) above is—

$$\frac{AyCy110}{ByDy100}$$

where—

A is the amount at the end of 1989 of such of the company's relevant linked liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked section 212 assets;

B is the amount of the company's relevant linked liabilities at that time;

C is the amount of the company's relevant linked liabilities at the end of the accounting period for which the claim is made;

D is the amount at the end of that period of such of the company's relevant linked liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked section 212 assets.

(6) Subject to subsection (7) below, subsection (9) below applies where—

(a) after the end of 1989 an insurance company exchanges section 212 assets ("the old assets") for other assets ("the new assets") to be held as assets of the long term business fund,

(b) the new assets are not section 212 assets but are assets on the disposal of which any gains accruing would be chargeable gains,

(c) both the old assets and the new assets are linked solely to basic life assurance and general annuity business, or both are neither linked solely to basic life assurance and general annuity business or pension business nor assets of the overseas life assurance fund, and

(d) the company makes a claim for the purpose within 2 years after the end of the accounting period in which the exchange occurs.

(7) Subsection (6) above shall have effect in relation to old assets only to the extent that their amount, when added to the amount of any assets to which subsection (9) below has already applied and which are assets of the same class, does not exceed the aggregate of—

(a) the amount of the assets of the same class included in the long term business fund at the beginning of 1990, other than assets linked solely to pension business and assets of the overseas life assurance fund, and

(b) 110 per cent. of the amount of the assets of that class which represents any subsequent increases in the company's relevant linked liabilities in respect of benefits to be determined by reference to the value of assets of that class.

(8) The reference in subsection (7)(b) above to a subsequent increase in liabilities is a reference to any amount by which the liabilities at the end of an accounting period ending after 31st December 1989 exceed those at the beginning of the period (or at the end of 1989 if that is later); and for the purposes of that provision the amount of assets which represents an increase in liabilities is the excess of—

(a) the amount of assets whose value at the later time is equivalent to the liabilities at that time, over

(b) the amount of assets whose value at the earlier time is equivalent to the liabilities at that time.

(9) Where this subsection applies, the insurance company (but not any other party to the exchange) shall be treated for the purposes of corporation tax on capital gains as if the exchange had not involved a disposal of the old assets or an acquisition of the new, but as if the old and the new assets were the same assets acquired as the old assets were acquired.

(10) References in subsections (6) to (9) above to the exchange of assets include references to the case where the consideration obtained for the disposal of assets (otherwise than by way of an exchange within subsection (6)) is applied in acquiring other assets within 6 months after the disposal; and for the purposes of those subsections the time when an exchange occurs shall be taken to be the time when the old assets are disposed of.

(11) Where at any time after the end of 1989 there is a transfer of long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under section 49 of the [M1]Insurance Companies Act 1982—

(a) if the transfer is of the whole of the long term business of the transferor, subsections (1) to (10) above shall have effect in relation to the assets of the transferee as if that business had at all material times been carried on by him;

(b) if the transfer is of part of the long term business of the transferor, those subsections shall have effect in relation to assets of the transferor and the transferee to such extent as is appropriate;

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

Marginal Citations

M1 1982 c. 50.