

SCHEDULES

SCHEDULE 31

Section 163.

LIFE ASSURANCE BUSINESS LOSSES

Expenses of management

1 In section 76 of the Taxes Act 1988 (expenses of management: insurance companies) in subsection (1) (which applies section 75 of that Act with specified exceptions) before paragraph (a) there shall be inserted—

“(aa) where the whole or any part of a loss arising to the company in respect of its life assurance business in an accounting period is set off under section 393A or 403(1), there shall be deducted from the amount treated as the expenses of management for that period an amount equal to so much of the loss as, in the aggregate, is so set off, reduced by the amounts by which any losses for that period under section 436, 439B or 441 fall to be reduced under section 434A(2) (b); and

(ab) section 75(1) shall have effect with the substitution for “in computing profits apart from this section” of—

“(a) in computing income for the purposes of Schedule A, or

(b) by virtue of section 121(3) in computing income from the letting of rights to work minerals in the United Kingdom”; and”.

Computation of losses and limitation on relief

2 (1) In relation to accounting periods beginning on or after 1st January 1996 and ending after 31st March 1996, section 434A of the Taxes Act 1988 (life assurance business: computation of losses and limitation on relief) shall be amended as follows—

(a) for subsection (2) there shall be substituted the subsection (2) set out in sub-paragraph (2) below; and

(b) in subsection (2A) (which is inserted by paragraph 23(2) of Schedule 14 to this Act) for “(2)(c)” there shall be substituted “(2)(a)(ii)”.

(2) The subsection (2) set out in this sub-paragraph is as follows—

“(2) Where for any accounting period the loss arising to an insurance company from its life assurance business falls to be computed in accordance with the provisions of this Act applicable to Case I of Schedule D—

(a) the loss resulting from the computation shall be reduced (but not below nil) by the aggregate of—

(i) the aggregate amount treated as a charge on income in computing for the period, otherwise than in accordance with

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- those provisions, the profits or losses of the company's life assurance business; and
- (ii) any relevant non-trading deficit for that period on the company's debtor relationships; and
- (b) if the whole or any part of that loss as so reduced is set off—
- (i) under section 393A, or
- (ii) under section 403(1),
- any losses for that period under section 436, 439B or 441 shall be reduced to nil, unless the aggregate of those losses exceeds the total of the amounts set off as mentioned in sub-paragraphs (i) and (ii) above, in which case each of those losses shall be reduced by an amount which bears to that total the proportion which the loss in question bears to that aggregate.”
- (3) In relation to accounting periods beginning on or after 1st January 1996 and ending on or before 31st March 1996, for subsection (2) of section 434A of the Taxes Act 1988 there shall be substituted the subsection (2) set out in sub-paragraph (2) above, but with the following amendments to paragraph (a), that is to say—
- (a) in the words preceding sub-paragraph (i), the words “the aggregate of” shall be omitted;
- (b) in sub-paragraph (i), for “aggregate amount treated as a charge on income” there shall be substituted “amount of interest and annuities treated as charges on income”; and
- (c) sub-paragraph (ii) shall be omitted.

Spreading of relief for acquisition expenses

- 3 (1) In section 86 of the Finance Act 1989 (spreading of relief for acquisition expenses) in subsection (1), for the words from “less any such repayments” to the end there shall be substituted—
- “reduced by the items specified in subsection (1A) below.”
- (2) After that subsection there shall be inserted—
- “(1A) Those items are—
- (a) the appropriate portion of any deduction falling to be made under paragraph (aa) of subsection (1) of section 76 of the Taxes Act 1988 for the period in question;
- (b) any such repayments or refunds falling within paragraph (c) of that subsection as are received in that period;
- (c) any reinsurance commissions falling within paragraph (ca) of that subsection.
- (1B) For the purposes of paragraph (a) of subsection (1A) above, “the appropriate portion” of the deduction there mentioned is the amount which bears to the whole of that deduction the proportion which the acquisition expenses, without making the reduction required by subsection (1) above, would bear to the whole of the expenses of management, without making the deductions required by paragraphs (aa), (a), (c) and (ca) of section 76(1) of the Taxes Act 1988.”

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Ascertainment of losses

4 In section 83 of the Finance Act 1989 (receipts to be brought into account) for subsection (3) (ascertainment of losses) there shall be substituted—

“(3) In ascertaining whether or to what extent a company has incurred a loss in respect of that business in a case where an amount is added to the company’s long term business fund as part of or in connection with—

- (a) a transfer of business to the company, or
- (b) a demutualisation of the company not involving a transfer of business,

that amount shall (subject to subsection (4) below) be taken into account, for the period for which it is brought into account, as an increase in value of the assets of that fund within subsection (2)(b) above.

(4) Subsection (3) above does not apply where, or to the extent that, the amount concerned—

- (a) would fall to be taken into account as a receipt apart from this section,
- (b) is taken into account under subsection (2) above otherwise than by virtue of subsection (3) above, or
- (c) is specifically exempted from tax.

(5) Any amount which is to be taken into account pursuant to subsection (3) above for a period of account shall be so taken into account—

- (a) after the making of any reduction under subsection (6) of section 83AA below in relation to that period, but
- (b) before the making of any reduction under subsection (3) of that section in relation to an accounting period of the company ending in or with that period.

(6) In subsection (3) above “transfer of business” means—

- (a) a transfer of the whole or part of the long term business of an insurance company in accordance with a scheme sanctioned by a court under Part I of Schedule 2C to the Insurance Companies Act 1982;
- (b) a qualifying overseas transfer, within the meaning of paragraph 4A of Schedule 19AC to the Taxes Act 1988; or
- (c) the making of a contract of reinsurance which, in whole or in part, constitutes or forms part of a total reinsurance by the reinsured, unless the reinsurer under the contract falls within section 439A of the Taxes Act 1988 (pure reinsurance).

(7) For the purposes of subsection (3)(a) above, a transfer of business falling within subsection (6)(c) above shall be treated as a transfer of business to the company which is the reinsurer under the contract of reinsurance.

(8) In this section—

“add”, in relation to an amount and a company’s long term business fund, includes transfer (whether from other assets of the company or otherwise);

“demutualisation” means the conversion, under the law of any territory, of a company which has been carrying on insurance

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business without having a share capital into a company with a share capital, without any change of legal personality;

“total reinsurance” means the reinsurance (whether effected by a single contract of reinsurance or by two or more such contracts, taken together, whether or not made with the same reinsurer) of the whole, or substantially the whole, of the reinsured’s risk—

- (a) under policies of a particular description issued in respect of insurances made in the course of carrying on life assurance business before the making of the contract of reinsurance (or, in a case where there are two or more contracts of reinsurance, the last of them); or
- (b) under contracts of a particular description so made.”

Application of surplus in reduction of certain losses

5 After section 83 of the Finance Act 1989 there shall be inserted—

“83AA Amounts added to long term business fund of a company in excess of that company’s loss

(1) If one or more relevant amounts are brought into account for a period of account of a company and either—

- (a) the aggregate of those amounts exceeds the loss which, after the making of any reduction under subsection (6) below but before any application of section 83(3) above in relation to that period, would have arisen to the company in that period in respect of its life assurance business, or
- (b) no such loss would have so arisen,

the surplus for that period shall be applied in accordance with the following provisions of this section and section 83AB below.

(2) In this section—

“relevant amount” means so much of any amount which is added to the long term business fund of a company as mentioned in subsection (3) of section 83 above as does not fall within any of the paragraphs of subsection (4) of that section;

“surplus”, in relation to a period of account of a company, means (subject to section 83AB(2) below)—

- (a) if the aggregate of the relevant amounts brought into account for that period exceeds the amount of any loss which, after the making of any reduction under subsection (6) below but before any application of section 83(3) above in relation to that period, would have arisen to the company in that period in respect of its life assurance business, the amount of the excess; or
- (b) if no such loss would have so arisen, the aggregate of the relevant amounts brought into account for that period.

(3) Where, apart from section 83AB(2) below, there is a surplus for a period of account of a company for which there are brought into account one or more relevant amounts which were added to the company’s long term business fund as part of, or in connection with, a particular transfer of business, the

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appropriate portion of the surplus for that period shall be treated as reducing (but not below nil) so much of any loss arising to the transferor company in the relevant accounting period as, on a just and reasonable apportionment of the loss, is referable to the business which is the subject of that particular transfer.

- (4) For the purposes of subsection (3) above, the appropriate portion of the surplus for a period of account of a company is, in the case of any particular transfer of business, the amount which bears to that surplus (apart from any additions by virtue of section 83AB(2) below) the proportion which A bears to B, where—

A is the aggregate of such of the relevant amounts added to the company's long term business fund as part of, or in connection with, that particular transfer of business as are brought into account for that period, and

B is the aggregate of the relevant amounts brought into account for that period.

- (5) Any reduction pursuant to subsection (3) above of the loss arising to the transferor company in the relevant accounting period shall be made after—

- (a) the making of any reduction under subsection (6) below, and
- (b) any application of section 83(3) above,

in relation to the period of account of that company in which falls the date of the particular transfer of business in question.

- (6) Any loss arising to a company in respect of its life assurance business in a period of account subsequent to one for which there is a surplus shall be reduced (but not below nil) by so much of that surplus as cannot be applied—

- (a) under subsection (3) above;
- (b) under this subsection, in the reduction of a loss arising to the company in an earlier period of account; or
- (c) under section 83AB below, in relation to a transfer of business from the company in that or any earlier period of account.

- (7) Any reduction pursuant to subsection (6) above of a loss arising to a company in a period of account shall be made—

- (a) before any application of section 83(3) above in relation to that period, and
- (b) if the company is also the transferor company in relation to a particular transfer of business, before the making of any reduction under subsection (3) above in relation to that one of its accounting periods which is the relevant accounting period in relation to that transfer.

- (8) A surplus in respect of an earlier period of account shall be applied under subsection (6) above before a surplus in respect of a later period of account.

- (9) All such adjustments to the liability to tax of any person shall be made, whether by assessment or otherwise, as may be required to give effect to this section.

- (10) In this section—

“add” has the same meaning as in section 83 above;

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“the relevant accounting period” means the accounting period of the transferor company which—

- (a) ends on the date of the transfer of business mentioned in subsection (3) above, or
- (b) if that transfer of business falls within section 83(6)(c) above and no accounting period of the transferor company ends on that date, ends next after that date;

“transfer of business” has the same meaning as in section 83(3) above;

“the transferor company” means the company from which the transfer of business mentioned in subsection (3) above is effected.

- (11) A transfer of business falling within section 83(6)(c) above shall be treated for the purposes of this section as a transfer of business from the company which is the reinsured under the contract of reinsurance.

83AB Treatment of surplus where there is a subsequent transfer of business from the company etc

- (1) If an amount is added to the long term business fund of a company as part of or in connection with a transfer of business to the company, or a demutualisation of the company not involving a transfer of business, and—
 - (a) there is a surplus for the period of account of the company for which that amount is brought into account,
 - (b) at any time after the transfer of business or demutualisation, there is a transfer of business from the company (the “subsequent transfer”), and
 - (c) at the end of the relevant period of account there remains at least some of the surplus mentioned in paragraph (a) above which cannot be applied—
 - (i) under subsection (3) of section 83AA above,
 - (ii) under subsection (6) of that section, in the reduction of a loss arising to the company in an earlier period of account, or
 - (iii) under this section, in relation to an earlier subsequent transfer,
 so much of the surplus falling within paragraph (c) above as, on a just and reasonable apportionment, is referable to business which is the subject of the subsequent transfer shall be applied under this section.
- (2) An amount of surplus which is to be applied under this section shall be so applied by being treated as an amount of surplus (additional to any other amounts of surplus) for the period of account of the transferee company which last precedes the period of account of that company in which the subsequent transfer is effected, whether or not there is in fact any such preceding period of account.
- (3) If, in a case where an amount is treated under subsection (2) above as an amount of surplus for a period of account of a company, the period is not one for which there is brought into account an amount added to the company’s long term business fund in connection with the subsequent transfer, subsection (1) above shall have effect in relation to any transfer of

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business from the company subsequent to that transfer as if an amount had been so added and had been brought into account for that period.

- (4) Any question as to what is a just and reasonable apportionment in any case for the purposes of subsection (1) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but any person affected by the apportionment shall be entitled to appear and be heard or make representations in writing.
- (5) A surplus in respect of an earlier period of account shall be applied under this section before a surplus in respect of a later period of account.
- (6) All such adjustments to the liability to tax of any person shall be made, whether by assessment or otherwise, as may be required to give effect to this section.
- (7) In this section—
 - “add” has the same meaning as in section 83 above;
 - “demutualisation” has the same meaning as in section 83 above;
 - “the relevant period of account” means the period of account of the company from which the subsequent transfer is effected which consists of or includes the accounting period of that company which—
 - (a) ends with the day on which the subsequent transfer is effected;
 - or
 - (b) if the subsequent transfer is a transfer of business falling within section 83(6)(c) above and no accounting period of the company ends on that day, ends next after that day;
 - “surplus” has the same meaning as in section 83AA above;
 - “transfer of business” has the same meaning as in section 83(3) above;
 - “transferee company” means the company to which the subsequent transfer of business is effected.
- (8) Where it is necessary for any purpose of this section to identify the time at which a demutualisation of a company takes place, that time shall be taken to be the time when the company first issues shares.
- (9) A transfer of business falling within section 83(6)(c) above shall be treated for the purposes of this section as a transfer of business from the company which is the reinsured under the contract of reinsurance to the company which is the reinsurer under that contract.”

Meaning of “brought into account” in sections 83AA and 83AB

- 6 (1) In section 83A of the Finance Act 1989, in subsection (1) (meaning of “brought into account” in section 83)—
 - (a) for “In section 83” there shall be substituted “In sections 83 to 83AB”; and
 - (b) for “that section” there shall be substituted “those sections”.
- (2) In subsection (2) of that section (the accounts which are recognised for the purposes of that section) for “that section” there shall be substituted “those sections”.

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Enactments disapplying section 83(3) of the Finance Act 1989

- 7 (1) The following provisions of the Taxes Act 1988 (each of which provides for section 83(3) of the Finance Act 1989 not to apply in certain cases) shall cease to have effect—
- (a) section 436(3)(aa);
 - (b) section 439B(3)(b); and
 - (c) section 441(4)(aa).
- (2) In consequence of sub-paragraph (1)(b) and (c) above, the word “and” shall be added at the end of section 439B(3)(a) and section 441(4)(a) of the Taxes Act 1988.

Overseas life insurance companies

- 8 (1) Schedule 8A to the Finance Act 1989 (modifications of sections 83 and 89 in relation to overseas life insurance companies) shall be amended in accordance with the following provisions of this paragraph.
- (2) In the Heading “Modifications of sections 83 and 89 in relation to overseas life insurance companies” after “83” there shall be inserted “to 83A”.
- (3) In paragraph 1(1), for “sections 83 and 83A” there shall be substituted “sections 83 to 83A”.
- (4) In paragraph 1A, in sub-paragraph (4)—
- (a) for the words from “being transferred” to “added to that fund” there shall be substituted “being added to the company’s long term business fund”; and
 - (b) in the second sentence, for “a transfer” and “transferred” there shall be substituted respectively “an addition” and “added”.
- (5) After that sub-paragraph there shall be added—
- “(5) Any reference in section 83AA(2), (3) or (4) or 83AB(1) or (3) to an amount being added to the relevant company’s long term business fund shall be construed in accordance with sub-paragraph (4) above.”
- (6) In paragraph 1C(4), for “transfer” there shall be substituted “addition”.

Transitional provisions

- 9 (1) In the application of section 83AA or 83AB of the Finance Act 1989 in a case where one or more relevant amounts added to a company’s long term business fund on or before 25th March 1996 are brought into account for a period of account beginning on or after 1st January 1996—
- (a) the amount of any loss which, before any application of section 83(3) of that Act in relation to that period, would have arisen to the company in that period shall be treated as reduced (but not below nil) by the aggregate of those relevant amounts; and
 - (b) except as provided by paragraph (a) above, those relevant amounts shall be disregarded.
- (2) In the application of sub-paragraph (1) above in relation to an overseas life insurance company, any reference to an amount added to a company’s long term business fund shall be taken as a reference to any assets which became assets of the long term business fund of an overseas life insurance company used or held for the purposes of

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the company's United Kingdom branch or agency, having immediately previously been—

- (a) held by the company otherwise than as assets of that fund, or
- (b) used or held otherwise than for those purposes.

(3) If the relevant accounting period mentioned in subsection (3) of section 83AA of the Finance Act 1989 is a period beginning before 1st January 1996, only the appropriate portion of the eligible loss shall be reduced pursuant to that subsection; and for the purposes of this sub-paragraph—

- (a) “the eligible loss” means so much of the loss arising to the transferor company in the relevant accounting period as, on a just and reasonable apportionment of the loss for the purposes of that subsection, is referable to the business which is the subject of the particular transfer of business in question; and
- (b) “the appropriate portion” of the eligible loss is the amount which bears to the eligible loss the proportion which A bears to B where—
 - A is the number of days in the relevant accounting period which fall on or after 1st January 1996; and
 - B is the total number of days in the relevant accounting period.

(4) Paragraph 10(2) below shall not prevent—

- (a) an amount of surplus for a period of account of a company beginning on or after 1st January 1996, or
- (b) an amount of surplus for any period of account of a company which, by virtue of the operation of this sub-paragraph, derives from an amount of surplus falling within paragraph (a) above,

from being treated by virtue of section 83AB of the Finance Act 1989 as an amount of surplus for the period of account of another company last preceding its earliest period of account ending on or after 1st January 1996 (whenever beginning) or from being applied accordingly under section 83AA(6) or 83AB of that Act.

(5) In this paragraph—

- “add” has the same meaning as in section 83 of the Finance Act 1989;
- “brought into account” has the same meaning as it has in sections 83 to 83AB of that Act by virtue of section 83A of that Act;
- “relevant amount” has the same meaning as in section 83AA of that Act;
- “surplus” has the same meaning as in sections 83AA and 83AB of that Act.

Commencement

- 10 (1) Subject to paragraph 2(1) and (3) above, paragraphs 1 to 3 above have effect in relation to accounting periods beginning on or after 1st January 1996.
- (2) Subject to paragraph 9 above, paragraphs 4 to 8 above have effect in relation to periods of account beginning on or after 1st January 1996.