



Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 2

CORPORATION TAX: GENERAL

Expenses of companies with investment business and insurance companies

^{F1}38 Expenses of management: companies with investment business

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Textual Amendments

- F1** S. 38 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009](#) (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

^{F2}39 Accounting period to which expenses of management are referable

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Textual Amendments

- F2** S. 39 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009](#) (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

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40 Expenses of insurance companies

- (1) For section 76 of the Taxes Act 1988 (expenses of management of insurance companies) substitute—

“76 Expenses of insurance companies

- (1) In computing for the purposes of corporation tax the profits for any accounting period of a company—
- (a) which carries on life assurance business, and
 - (b) which is not charged to tax in respect of that business under Case I of Schedule D,

section 75 is not to apply in computing the profits of that business, but a deduction for expenses payable (the “expenses deduction”) is to be allowed in accordance with the following provisions of this section.

See also subsection (14) below for the application of this section in relation to a company which carries on capital redemption business.

- (2) The expenses deduction is to be made from so much of the income and gains of the accounting period referable to basic life assurance and general annuity business as remains after any deduction falling to be made by virtue of paragraph 4(2) of Schedule 11 to the Finance Act 1996 (non-trading deficits on loan relationships).
- (3) For the purposes of this section “expenses payable” means expenses brought into account in line 12, 22 or 25 of Form 40 (the revenue account) in the periodical return of the company for a period of account, but does not include any of the amounts falling within subsection (4), (5) or (6) below.
- (4) The amounts falling within this subsection are the following—
- (a) reinsurance premiums,
 - (b) refunds of premiums,
 - (c) profit commissions and profit participations (however described),
 - (d) expenses or other amounts payable, to the extent that the company’s purpose in incurring the liability to make the payment is not a business or other commercial purpose of the company.

For the purposes of paragraph (d) above, it is not one of the business or commercial purposes of a company to incur a liability to pay an amount of commission or other expenses which exceeds the amount which it could reasonably be expected to pay if the company were charged to tax under Case I of Schedule D in respect of its life assurance business.

- (5) The amounts falling within this subsection are any amounts payable in connection with a policy or contract to—
- (a) a policy holder or annuitant under the policy or contract (except where the policy holder is an insurance company),
 - (b) any other person who is entitled to receive benefits under the policy or contract,
 - (c) any person acting on behalf of a person falling within paragraph (a) or (b) above,

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(d) the personal representatives of a deceased person who fell within paragraphs (a) to (c) above.

(6) The amounts falling within this subsection are expenses of a capital nature.

But this subsection does not apply in the case of an amount which, by virtue of any provision of the Tax Acts other than this section, falls to be treated for the purposes of this section as expenses payable which fall to be brought into account at Step 1 in subsection (7) below (the reference to Step 1 being express in the provision).

(7) The amount of the expenses deduction for an accounting period is found by taking the following steps—

Step 1

Find so much of the expenses payable as are—

- (a) attributable to basic life assurance and general annuity business (see subsection (8) below), and
- (b) referable to the accounting period (see subsection (9) below).

Step 2

Reduce each of the amounts found at Step 1 by excluding so much of the amount as is—

- (a) deductible in computing income for the purposes of Schedule A,
- (b) deductible by virtue of section 85(2B) of the Finance Act 1989, or
- (c) deductible by virtue of section 121(3) in computing income from the letting of rights to work minerals in the United Kingdom.

Step 3

Find the amounts (so far as not included at Step 1) which fall to be treated for the purposes of this section as expenses payable for the accounting period by virtue of any of the following provisions—

section 432AB(3) (Schedule A loss or an overseas property business loss referable to basic life assurance and general annuity business);

section 437(1A) (relief for income element of new annuities);

section 587B(8)(b)(i) (relief for company carrying on life assurance business in relation to gifts of shares and securities);

paragraph 16(1) of Schedule 7 to the Finance Act 1991 (transitional relief for old annuities);

paragraph 4(4)(b) of Schedule 11 to the Finance Act 1996 (carried forward non-trading deficit on loan relationships produced by separate computation for basic life assurance and general annuity business);

section 256(2)(a) of the Capital Allowances Act (capital allowances on plant and machinery used in the management of life assurance business);

paragraph 23 of Schedule 22 to the Finance Act 2001 (150% relief in respect of the remediation expenditure on contaminated land owned by a company carrying on life assurance business and acquired to be a management asset);

paragraph 13(2) of Schedule 12 to the Finance Act 2002 (125% of relevant expenditure on R&D in the case of a life assurance company);

paragraph 23(2) of Schedule 13 to the Finance Act 2002 (150% of relevant expenditure on research into vaccines in the case of a life assurance company);

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paragraph 36(3) of Schedule 29 to the Finance Act 2002 (relief for non-trading loss on intangible fixed assets).

Step 4

Give effect to the provisions specified in Step 3 by adding together—

- (a) so much of the amounts found at Step 1 as remains after making any reductions at Step 2, and
- (b) the amounts found at Step 3,

and then deduct the amount of any reversal (wherever brought into account) of an expense included at Step 1 in a previous period,

to give Subtotal 1.

Step 5

If the whole or any part of a loss arising to the company in respect of its life assurance business in the accounting period is set off under section 393A or 403(1)—

- (a) find the amount (“amount L”) that is equal to so much of the loss as, in the aggregate, is so set off,
- (b) find the sum (“amount S”) of the amounts by which any losses for that period under section 436 or 439B fall to be reduced under section 434A(2)(b),
- (c) from amount L deduct amount S, to give the adjusted loss deduction,

then reduce Subtotal 1 by deducting from it the adjusted loss deduction, to give Subtotal 2.

Step 6

Give effect to subsection (6) of section 86 of the Finance Act 1989 (spreading of acquisition expenses) by—

- (a) finding the amount that is equal to six-sevenths of the adjusted amount of the acquisition expenses (within the meaning of that section) for the accounting period, and
- (b) deducting that amount from Subtotal 2,

to give Subtotal 3.

Step 7

Add together the following amounts—

- (a) Subtotal 3, and
- (b) any amounts carried forward to the accounting period under subsection (12) or (13) below (unrelieved excesses from earlier accounting periods),

to give Subtotal 4.

Step 8

Give effect to subsections (8) and (9) of section 86 of the Finance Act 1989 (fraction of adjusted amount of acquisition expenses for earlier accounting periods) by adding together—

- (a) Subtotal 4, and
- (b) any amounts which are to be relieved under this section by virtue of those subsections,

to give the basic deduction.

Step 9

If—

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- (a) amount D1 (see subsection (10) below), exceeds
 - (b) amount R (see subsection (11) below),
- deduct an amount equal to the excess from the basic deduction.

Step 10: the amount of the expenses deduction

The amount of the expenses deduction is so much of the basic deduction (see Step 8) as remains after making any deduction required at Step 9.

- (8) For the purposes of Step 1, the expenses that are attributable to basic life assurance and general annuity business are the expenses which are attributable to that business in accordance with proper internal accounting practice.

In this subsection “proper internal accounting practice” means the practice of insurance companies in allocating all the expenses of the company to particular categories of business in accordance with any applicable requirements of—

- (a) generally accepted accounting practice, or
- (b) the Prudential Sourcebook (Insurers).

- (9) The following rules have effect for determining for the purposes of Step 1 the expenses that are referable to an accounting period.

Rule A

Where a period of account coincides with an accounting period, the expenses brought into account for the period of account are the expenses referable to the accounting period.

Rule B

Where—

- (a) two or more accounting periods fall within the same period of account, and
- (b) that period of account is longer than 12 months,

section 834(4) (apportionment on time basis) is to apply.

Rule C

In any other case where two or more accounting periods fall within the same period of account, the expenses referable to any of those accounting periods are the expenses that would have been referable to that accounting period if—

- (a) the accounting period had coincided with a period of account, and
- (b) a separate periodical return had been made for that period of account,

and section 834(4) (apportionment on time basis) is not to apply.

Rule D

Rules A to C are subject to any provision of the Corporation Tax Acts which provides for an amount to be treated as expenses payable for, or referable to, a particular period.

- (10) The amount D1 in Step 9 is the amount that would be the profits of the company’s life assurance business for the accounting period if—

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- (a) computed in accordance with the provisions applicable to Case I of Schedule D, and
- (b) adjusted in respect of losses.

The adjustment in respect of losses is a deduction of the amount which, disregarding sections 434A(2) and 440B, would fall to be set off under section 393 against the company's income for that period if the company had always been charged to tax under Case I of Schedule D in respect of its life assurance business.

- (11) The amount R in Step 9 (which may be a negative amount) is found for the accounting period by—
- (a) taking the company's relevant income, and
 - (b) deducting from it the relevant aggregate.

The "relevant income" is the sum of—

- (a) the income and gains referable by virtue of section 432A to the company's basic life assurance and general annuity business;
- (b) distributions received by the company from companies resident in the United Kingdom which are referable by virtue of section 432A to its basic life assurance and general annuity business;
- (c) profits chargeable under Case VI of Schedule D under section 436, 439B or 441.

The "relevant aggregate" is the sum of—

- (a) the basic deduction (see Step 8);
- (b) any non-trading deficit on the company's loan relationships which is produced for the period in relation to the company's basic life assurance and general annuity business by a separate computation under paragraph 2 of Schedule 11 to the Finance Act 1996;
- (c) any amount which in pursuance of a claim under paragraph 4(3) of that Schedule is carried back to the period and (in accordance with paragraph 4(5) of that Schedule) applied in reducing profits of the company for that period.

- (12) Where for any accounting period—

- (a) the amount of the expenses deduction (see Step 10), exceeds
- (b) the amount from which that deduction is to be made (see subsection (2) above),

the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

- (13) Subject to paragraph 4(11) to (13) of Schedule 11 to the Finance Act 1996, where for any accounting period—

- (a) the basic deduction (see Step 8), exceeds
- (b) the expenses deduction (see Step 10),

the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

- (14) In this section any reference to—

- (a) life assurance business, or
- (b) basic life assurance and general annuity business,

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includes a reference to capital redemption business.

(15) In this section—

“capital redemption business” means any capital redemption business, within the meaning of section 458, which is business to which that section applies;

“expenses payable” has the meaning given by subsection (3) above; and other expressions have the same meaning as in Chapter 1 of Part 12.”.

(2) This section has effect in accordance with sections 42 and 44 (commencement and transitional provisions).

41 Related amendments to other enactments

(1) The enactments mentioned in Schedule 6 to this Act shall have effect with the amendments specified in that Schedule.

(2) Subsection (1) has effect in accordance with sections 42, 43 and 44 (commencement and transitional provisions).

42 Commencement of sections 38 to 41

(1) The amendments made by sections 38 to 41 and Schedule 6 have effect for accounting periods beginning on or after 1st April 2004.

(2) This is subject to the transitional provisions in sections 43 and 44 and that Schedule.

43 Companies with investment business: transitional provisions

(1) Any amount which, apart from this subsection, would have fallen to be treated under the old section 75(3) as if it had been disbursed as expenses of management for the first new accounting period of a company shall instead be treated as if it were expenses of management deductible for that period by virtue of the new section 75(9).

(2) To the extent that any amount was deductible under subsection (1) of section 75 for an old accounting period, the amount shall not again be deductible under that subsection for a new accounting period.

(3) Subsection (2) is without prejudice to the old section 75(3) and the new section 75(9) (carry forward of unrelieved excess to later accounting period).

(4) To the extent that an amount—

(a) was not deductible under section 75(1) by an investment company for any old accounting period, but

(b) would have been deductible under the new section 75(1) for an old accounting period if the amendments made by sections 38 and 39 and Schedule 6 or any order under section 46 (so far as having effect in relation to the first new accounting period) had been in force in relation to that period,

the amount shall be deductible under section 75(1) for the first new accounting period of the company.

(5) Where there is an accounting period that begins before, and ends on or after, 1st April 2004 (“the commencement date”), it shall be assumed, for the purpose of determining

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the amounts that are deductible for that period under section 75(1) of the Taxes Act 1988, that that accounting period (the “straddling period”) consists of two separate accounting periods—

- (a) the first beginning with the straddling period and ending with the day preceding the commencement date, and
- (b) the second beginning with the commencement date and ending with the straddling period,

but this is subject to subsection (6).

(6) In the case of an investment company, subsection (5) does not have effect for the purpose of determining the amounts that are deductible for the straddling period under section 75(1) by virtue of—

- (a) subsection (3) of the old section 75, or
- (b) any provision of the Corporation Tax Acts, apart from section 75 and this section.

(7) Where, for the purposes of section 768B or 768C of the Taxes Act 1988, there is a change in the ownership of a company during the straddling period, then for the purposes of the section in question (and Schedule 28A to that Act), before making any such division as is required by section 768B(4) or 768C(3) of that Act,—

- (a) the straddling period shall be divided into two parts in accordance with subsection (5), and
- (b) those parts shall be treated in accordance with that subsection as two separate accounting periods, but
- (c) subsection (6) shall be disregarded,

and section 768B or 768C of, and Schedule 28A to, the Taxes Act 1988 shall have effect accordingly.

(8) In this section—

“the commencement date” shall be construed in accordance with subsection (5);

“investment company” has the same meaning as in Part 4 of the Taxes Act 1988 (see section 130 of that Act);

“new accounting period” means an accounting period beginning on or after the commencement date;

“old accounting period” means an accounting period beginning before the commencement date;

“the new section 75” means section 75 as it has effect in relation to a new accounting period;

“the old section 75” means section 75 as it has effect (apart from subsection (5) above) in relation to an old accounting period;

“section 75” means section 75 of the Taxes Act 1988.

44 Insurance companies: transitional provisions

(1) Step 7 has effect for the first new accounting period as if, in paragraph (b) of that Step, the reference to amounts carried forward under subsection (12) or (13) of the new section 76 (carry forward of unrelieved excess to later accounting period) included—

- (a) a reference to amounts falling to be carried forward from the last old accounting period under section 75(3) by virtue of the old section 76(1)

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- (including any amounts falling to be so carried forward by virtue of the old section 76(5)), and
- (b) a reference to so much of any pool under subsection (6) of section 87 of the Finance Act 1989 (c. 26) (pre-1990 expenses) as remains after making any reduction required by paragraph (c) of that subsection for the last old accounting period.
- (2) To the extent that an amount—
- (a) was not deductible under the old section 76(1) by a company for any old accounting period, but
- (b) would have fallen to be taken into account by the company in determining the expenses deduction to be made under the new section 76(1) for an old accounting period if the amendments made by section 40 and Schedule 6 had been in force in relation to that period,
- the company's basic deduction (see Step 8) for the first new accounting period shall be increased by the addition of that amount.
- (3) Where there is an accounting period that begins before, and ends on or after, 1st April 2004 ("the commencement date"), it shall be assumed, for the purpose of determining the deduction to be made under section 76(1), that that accounting period ("the straddling period") consists of two separate accounting periods—
- (a) the first beginning with the straddling period and ending with the day preceding the commencement date ("the first notional period"), and
- (b) the second beginning with the commencement date and ending with the straddling period ("the second notional period"),
- and the deduction shall be determined in accordance with subsections (4) to (6).
- (4) For the purpose of determining the deduction to be made under section 76(1) for the straddling period—
- (a) first add together—
- (i) such amounts falling within the old section 76(1) as were disbursed for the first notional period, but without deducting amounts falling within the old section 76(1)(aa), (a), (c), or (ca),
- (ii) the amounts falling to be brought into account at Step 1, as reduced at Step 2, for the second notional period, and
- (iii) amounts falling to be carried forward from the previous accounting period under the old section 75(3) by virtue of the old section 76(1) (including any amounts falling to be so carried forward by virtue of the old section 76(5)),
- (b) then reduce the aggregate of those amounts (but not below nil), by deducting from that aggregate any amounts falling within the old section 76(1)(aa), (a), (c), or (ca) for the straddling period,
- and that aggregate, as so reduced, is deductible in accordance with the old section 76(1) (e) but subject to the old section 76(2) to (2D).
- (5) Subsection (3) does not have effect for the purpose of determining the amounts that are deductible for the straddling period under section 76(1) by virtue of any provision of the Corporation Tax Acts apart from—
- (a) the old section 75(3),
- (b) section 76, and
- (c) this section,

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(so that, in particular, the old section 86 has effect for the straddling period).

- (6) No amount shall be brought into account in determining the deduction to be made under section 76(1) for the straddling period except as provided by subsections (4) and (5).
- (7) Any reference in this section to a numbered Step is a reference to the Step so numbered in subsection (7) of the new section 76.
- (8) In this section—
- “the commencement date” shall be construed in accordance with subsection (3);
 - “new accounting period” means an accounting period beginning on or after the commencement date;
 - “old accounting period” means an accounting period beginning before the commencement date;
 - “the new section 76” means section 76 as it has effect in relation to a new accounting period;
 - “the old section 76” means section 76 as it has effect (apart from subsection (3) above) in relation to an old accounting period;
 - “section 75” means section 75 of the Taxes Act 1988;
 - “section 76” means section 76 of the Taxes Act 1988;
 - “the old section 86” means section 86 of the Finance Act 1989 (c. 26) as it has effect (apart from subsection (3) above) in relation to an old accounting period.

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