SCHEDULES

SCHEDULE 8

Section 39

INSURANCE COMPANIES: BASIS OF TAXATION ETC

PART 1

AMENDMENTS

Income and Corporation Taxes Act 1988 (c. 1)

1 ICTA is amended as follows.

2 (1) Section 76 (expenses of insurance companies) is amended as follows.

(2) In subsection (1)(b), for "not charged to tax in respect of that business under Case I of Schedule D" substitute "charged to tax in respect of that business under the I minus E basis".

(3) In subsection (7)—

(a) in Step 8, for "basic" substitute "expenses", and

(b) omit Steps 9 and 10.

(4) Omit subsections (10) and (11).

(5) In subsection (12)—

(a) for "Step 10" substitute "Step 8", and

(b) after "next accounting period" insert "for which the company is charged to tax in respect of its life assurance business under the I minus E basis".

(6) For subsection (13) substitute—

"(13) Where for any accounting period excess adjusted Case I profits are charged to tax under section 85A of the Finance Act 1989, an amount equal to the profits is to be carried forward to the next accounting period for which the company is charged to tax in respect of its life assurance business under the I minus E basis and brought into account for that period in accordance with Step 7."

3 In section 431(2) (interpretative provisions relating to insurance companies), insert at the appropriate place—

""the I minus E basis" means the basis under which a company carrying on life assurance business is charged to tax on the relevant profits (within the meaning of section 88(3) of the Finance Act 1989) of that business otherwise than under Case I of Schedule D;".

4 For section 432 (and the italic cross-heading before it) substitute—

"Basis of taxation etc

431G Company carrying on life assurance business

(1) This section applies in relation to an insurance company which carries on life assurance business (whether or not it also carries on insurance business of any other kind).

(2) Subject as follows, the profits of the life assurance business for any accounting period shall be charged to tax under the I minus E basis.

(3) Where in the case of an insurance company for an accounting period either—

(a) all of its life assurance business is reinsurance business and none of that business is of a type excluded from this subsection by regulations made by the Board, or

(b) all, or substantially all, of its life assurance business is gross roll-up business,

the profits of that business for the accounting period shall be charged to tax in accordance with Case I of Schedule D and not otherwise.

(4) Where—

(a) the profits of the life assurance business of an insurance company for any accounting period are charged to tax under the I minus E basis, and

(b) had those profits been charged to tax in accordance with Case I of Schedule D, a loss would have arisen to the company from that business for the period,

the loss (after being reduced in accordance with section 434A(2)(a)) may be set-off under section 393A or section 403(1).

(5) The application, in relation to the life assurance business of an insurance company, of any provision of Case I of Schedule D is not to be taken—

(a) to prevent the application of the I minus E basis in relation to that business of the company for any accounting period, or

(b) to affect the operation of the I minus E basis in relation to the that business of the company for any accounting period except as specifically provided by the Corporation Tax Acts.

431H Company carrying on life assurance business and other insurance business

(1) This section applies in relation to an insurance company which carries on life assurance business and insurance business of any other kind.

(2) For the purposes of the Corporation Tax Acts—

(a) the life assurance business, and

(b) the other insurance business,

are to be treated as separate businesses.

(3) The profits of the other insurance business shall be charged to tax under Case I of Schedule D as the profits of a separate trade.

(4) But subsection (3) above does not apply where that business is mutual business.

(5) As to the profits of the life assurance business, see section 431G."

5 In section 432A(7)(c)(ii) (apportionment of income and gains), for "85(2C)(c)" substitute "85(2C) or 85A".

6 In section 437(1A) (annuities), for ", otherwise than in accordance with the provisions applicable to Case I of Schedule D," substitute "under the I minus E basis".

7 Omit section 439A (taxation of pure reinsurance business).

8 (1) Section 440B (modifications where tax charged under Case I of Schedule D) is amended as follows.

(2) In subsection (1), insert at the end "in accordance with section 431G(3)".

(3) In subsection (3), for "Section 440(1) and (2) apply" substitute "Subsection (1) of section 440 applies".

(4) After subsection (4) insert—

"(4A) Section 440(2) does not apply if either the transferor or the company by which the asset is acquired is a company whose profits are charged to tax in accordance with Case I of Schedule D (or if they both are).

(4B) Section 211 of the 1992 Act does not apply if the transferor is a company whose profits are charged to tax in accordance with Case I of Schedule D."

(5) Omit subsection (5).

9 After that section insert—

"**440C Modifications for change of tax basis**

(1) Subsection (2) makes provision for a case where—

(a) subsection (4) of section 431G applies in relation to the profits of the life assurance business of an insurance company for any accounting period, but

(b) the profits of that business for a succeeding accounting period fall to be charged to tax in accordance with Case I of Schedule D by virtue of subsection (3) of that section.

(2) The loss referred to in section 431G(4)(b) (less any loss for the same accounting period set off under section 436A for any intervening accounting period and any amount deducted for any such period in respect of the loss by virtue of section 85A(3)(b) of the Finance Act 1989) may be set off under section 393 against profits of that succeeding accounting period (without being reduced in accordance with section 434A(2)(a)).

(3) In determining whether any loss has been set off under section 436A for any intervening accounting period, or whether any amount has been deducted for any such period in respect of the loss by virtue of section 85A(3)(b) of the Finance Act 1989, losses of earlier accounting periods are to be assumed to be set off before those of later accounting periods.

(4) Subsection (5) makes provision for a case where—

(a) a loss arises to an insurance company for an accounting period for which the profits of its life assurance business fall to be charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3)(b),

(b) the profits of that business for a subsequent accounting period are charged to tax under the I minus E basis, and

(c) had those profits (instead) been charged to tax in accordance with Case I of Schedule D, any of that loss would have been available to be set off against them under section 393.

(5) The loss is to be treated for the purposes of the operation of section 436A in relation to the subsequent accounting period as if it were a loss arising from its gross roll-up business in the accounting period in which it arose.

(6) Subsections (7) and (8) make provision for a case where—

(a) the profits of the life assurance business of an insurance company for an accounting period are charged to tax under the I minus E basis,

(b) the profits of that business for its next accounting period fall to be charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3), and

(c) that prevents the giving of relief in accordance with section 86(8) of the Finance Act 1989 (acquisition expenses relieved in fractions under section 76).

(7) Any relief which would have been so given in—

(a) the next accounting period, or

(b) any subsequent accounting period for which the profits of the company's life assurance business continue to be charged to tax in accordance with Case I of Schedule D,

may be given by set-off against any gains treated as accruing under section 213(1) of the 1992 Act at the end of the accounting period.

(8) But if the profits of the company's life assurance business for a subsequent accounting period are charged to tax under the I minus E basis, any relief not previously given under subsection (7) is to be treated for the purposes of the operation of section 76 in relation to the first subsequent accounting period for which profits are so charged as if it were an amount which is to be relieved under that section by virtue of section 86(8) and (9) of the Finance Act 1989."

10 In section 755A(2) and (6)(a) (controlled foreign companies: apportionments to companies carrying on life assurance business), for "not charged to tax under Case I of Schedule D in respect of its profits from" substitute "charged to tax under the I minus E basis in respect of".

Finance Act 1989 (c. 26)

11 FA 1989 is amended as follows.

12 In section 83(6)(c) (receipts to be taken into account), for the words from "the reinsurer" to the end substitute "section 431G(3)(a) of the Taxes Act 1988 (pure

reinsurance) applies to the reinsurer under the contract for the accounting period of the reinsurer during which the transfer of business occurs".

13 In subsection (1) of section 85 (charge of certain receipts of BLAGAB)—

(a) for "the profits of an insurance company in respect of its life assurance business are not charged under Case I of Schedule D" substitute "an insurance company is charged to tax under the I minus E basis in respect of its life assurance business", and

(b) for "those profits" substitute "the profits of the life assurance business".

14 After that section insert—

"**85A Excess adjusted Case I profits**

(1) Where for any accounting period an insurance company is charged to tax under the I minus E basis in respect of its life assurance business, the company shall be chargeable on any excess adjusted Case I profits under Case VI of that Schedule.

(2) "Excess adjusted Case I profits" means any amount by which—

(a) the adjusted Case I profits (see subsection (3)), exceeds

(b) the relevant amount (see subsection (5)).

(3) "The adjusted Case I profits" means the amount that would be the profits of the company's life assurance business for the accounting period if—

(a) computed in accordance with the provisions applicable to Case I of Schedule D, and

(b) adjusted in respect of losses (see subsection (4)).

(4) The adjustment in respect of losses is a deduction of the amount which, disregarding section 434A(2)(a) of the Taxes Act 1988, would fall to be set off under section 393 of that Act against the company's income for the accounting period if the company had always been charged to tax under Case I of Schedule D.

(5) The relevant amount (which may be a negative amount) is found by—

(a) taking the relevant income (see subsection (6)), and

(b) deducting from it the relevant aggregate (see subsection (8)).

(6) "The relevant income" means—

(a) any income (including distributions received from companies resident in the United Kingdom) referable (in accordance with section 432A of the Taxes Act 1988) to the company's basic life assurance and general annuity business for the accounting period,

(b) any chargeable gains referable (in accordance with section 432A of that Act) to the company's basic life assurance and general annuity business for the accounting period (see subsection (7)), and

(c) any profits of the company chargeable for the accounting period under Case VI of Schedule D under section 436A of that Act.

(7) "Chargeable gains referable (in accordance with section 432A of the Taxes Act 1988) to the company's basic life assurance and general annuity business" has the same meaning as in subsection (3A)(a) of section 88 below (see subsection (3B) of that section).

(8) "The relevant aggregate" means the sum of—

(a) the expenses deduction (see Step 8 in section 76(7) of the Taxes Act 1988) in the case of the company for the accounting period,

(b) any non-trading deficit on the company's loan relationships which is produced for the accounting period in relation to the company's basic life assurance and general annuity business by a separate computation under paragraph 2(1) of Schedule 11 to the Finance Act 1996, and

(c) any amount which in pursuance of a claim under paragraph 4(3) of that Schedule is carried back to the accounting period and (in accordance with paragraph 4(5) of that Schedule) applied in reducing profits of the company for the accounting period.

(9) The Treasury may by regulations provide—

(a) that, in circumstances prescribed by the regulations, the charge imposed by this section for an accounting period may be reduced or eliminated, and

(b) that the amount by which the charge is reduced, or (where the charge is eliminated) the amount of the charge, is instead imposed for a subsequent accounting period (or part of the amount is instead imposed for more than one subsequent accounting period).

(10) Regulations under subsection (9) may include provision having effect in relation to times before they are made."

15 (1) Section 88 (policy holders' fraction of profits) is amended as follows.

(2) Omit subsection (2).

(3) In subsection (3)(a), for "basic" substitute "expenses".

16 (1) Section 89 (policy holders' share of profits) is amended as follows.

(2) In subsection (1B)(b), for "basic" substitute "expenses".

(3) In subsection (7), for the words after "Schedule D" substitute "; but for the purposes of subsections (1), (1A) and (2) they are to be adjusted in respect of losses in accordance with section 85A(4)."

Finance Act 1991 (c. 31)

17 In paragraph 16(1) of Schedule 7 to FA 1991 (transitional relief for old general annuity contracts), for ", otherwise than in accordance with the provisions applicable to Case I of Schedule D," substitute "under the I minus E basis".

Taxation of Chargeable Gains Act 1992 (c. 12)

18 In section 212 of TCGA 1992 (annual deemed disposal of holdings of unit trusts etc), omit subsection (7A) (which applies section 440B(5) of ICTA).

Finance (No. 2) Act 1992 (c. 48)

19 In F(No.2)A 1992, omit section 65 (life assurance business: I minus E basis).

Finance Act 1996 (c. 8)

20 In paragraph 4 of Schedule 11 to FA 1996 (loan relationships: special provisions for insurers: treatment of deficit), omit sub-paragraphs (12) to (14).

Finance Act 1998 (c. 36)

21 In paragraph 84 of Schedule 18 to FA 1998 (company tax returns, assessments and related matters), for sub-paragraphs (1) to (3) substitute—

"(1) This paragraph applies where amounts may be brought into charge to tax either—

(a) in computing profits chargeable to tax under Case I of Schedule D, or

(b) as amounts within Case III or V of that Schedule.";

and the italic heading before that paragraph accordingly becomes "*Choice between Case I and Case III or V of Schedule D*".

Capital Allowances Act 2001 (c. 2)

22 CAA 2001 is amended as follows.

23 In section 256(1) (different giving effect rules for different categories of business), for paragraph (b) substitute—

"(b) is charged to tax under the I minus E basis in respect of its life assurance business."

24 In section 257(2) (life assurance: supplementary), for paragraphs (a) and (b) substitute—

"(a) section 85A(3) of the Finance Act 1989 (excess adjusted Case I profits), or

(b) section 89 of that Act (policy holders' share of profits)."

Finance Act 2002 (c. 23)

25 FA 2002 is amended as follows.

26 In paragraph 13(1) of Schedule 12 (tax relief on R&D: special provisions for insurance companies), for "the profits arising to a company from its life assurance business are not charged to corporation tax under Case I of Schedule D" substitute "an insurance company is charged to tax under the I minus E basis in respect of its life assurance business".

27 In Schedule 29 (gains and losses of a company from intangible fixed assets), omit paragraph 36(6) (meaning of I minus E basis).

PART 2

TRANSITIONAL PROVISIONS

Unused pre-commencement section 76(12) etc excesses

28 Step 7 in subsection (7) of section 76 of ICTA applies in relation to an insurance company for the first accounting period beginning on or after 1st January 2007 for

which the profits of the life assurance business are charged to tax under the I minus E basis as if the amounts carried forward to the accounting period under subsection (12) of that section included—

(a) any excess such as is mentioned in that subsection relating to the company for an accounting period beginning on or after 1st April 2004 but not later than 1st January 2007 which was not brought into account for the next accounting period in accordance with Step 7 in subsection (7) of that section, and

(b) any excess such as was mentioned in subsection (3) of section 75 of ICTA relating to the company for an accounting period beginning before 1st April 2004 which was not deducted for the succeeding accounting period in accordance with that section (as applied by section 76 of that Act).

Shifts in basis of taxation at first post-commencement accounting period

29 (1) This paragraph applies where—

(a) the profits of the life assurance business of an insurance company for the first accounting period of the company beginning on or after 1st January 2007 ("the first accounting period") are charged to tax in accordance with Case I of Schedule D by virtue of subsection (3)(b) of section 431G of ICTA, but

(b) the profits of the life assurance business of the company for the preceding accounting period were charged to tax under the I minus E basis.

(2) The amount of the losses available to be set off under section 393 of ICTA against the profits of the first accounting period is the amount of any loss under section 436, 439B or 441 of ICTA carried forward to that period by virtue of Part 2 of Schedule 7 to this Act.