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# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XII

#### SPECIAL CLASSES OF COMPANIES AND BUSINESSES

#### CHAPTER I

#### INSURANCE COMPANIES, UNDERWRITERS AND CAPITAL REDEMPTION BUSINESS

#### *Insurance companies: general*

#### **Modifications etc. (not altering text)**

- C1** See 1989 ss.82-92 for changes made by Finance Act 1989 and 1990 ss.41-48 for changes made by Finance Act 1990.

#### **431 Interpretative provisions relating to insurance companies.**

- (1) <sup>M1</sup>This section has effect for the interpretation of this Chapter.
- (2) <sup>M2</sup>Unless the context otherwise requires—

“annuity business” means the business of granting annuities on human life;

“general annuity business” means any annuity business which is not pension business [<sup>F1</sup>or overseas life assurance business], and “pension business” shall be construed in accordance with subsections (3) and (4) below;

“annuity fund” means, where an annuity fund is not kept separately from the life assurance fund of an insurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns;

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[<sup>F2</sup>“basic life assurance business” means life assurance business other than general business, pension business and overseas life assurance business;

“closing” and “opening”, in relation to a period of account, refer respectively to the position at the end and at the beginning of the period and, in relation to an accounting period, refer respectively to the position at the end and at the beginning of the period of account in which the accounting period falls;

“closing liabilities” includes liabilities assumed at the end of the period of account concerned in consequence of the declaration of reversionary bonuses or a reduction in premiums;

“industrial assurance business” has the same meaning as in the <sup>M3</sup>Insurance Companies Act 1982;]

“insurance company” means a company to which Part II of the Insurance Companies Act 1982 applies;

[<sup>F3</sup>“investment reserve”, in relation to an insurance company, means the excess of the value of the assets of the company’s long term business fund over the liabilities of the long term business;

“liabilities”, in relation to an insurance company, means the liabilities of the company estimated as for the purposes of its periodical return (excluding any that have fallen due or been reinsured and any not arising under or in connection with policies or contracts effected as part of the company’s insurance business);]

“life assurance business” includes annuity business;

[<sup>F4</sup>“linked assets” means assets of an insurance company which are identified in its records as assets by reference to the value of which benefits provided for under a policy or contract are to be determined;

“long term business” has the meaning given by section 1(1) of the Insurance Companies Act 1982;

“long term business fund” means the fund maintained by an insurance company in respect of its long term business or, where the company carried on both ordinary long term business and industrial assurance business, either or both (as the context may require) of the two funds so maintained;]

“offshore income gain” has the same meaning as in Chapter V of Part XVII;

[<sup>F5</sup>“ordinary long term business” and “ordinary life assurance business” means respectively long term business and life assurance business that is not industrial assurance business;

“overseas life assurance business”—

- (a) in the case of life assurance business other than reinsurance business, means business with a policy holder or annuitant not residing in the United Kingdom the policy or contract for which was effected at or through a branch or agency outside the United Kingdom where life assurance business is carried on; and
- (b) in the case of reinsurance business, means business the contract for which was effected at or through a branch or agency outside the United Kingdom where none, or no significant part, of the reinsurance business carried on relates to life assurance business with policy holders or annuitants residing in the United Kingdom;

“overseas life assurance fund” shall be construed in accordance with Schedule 19AA;]

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“overseas life insurance company” means an insurance company having its head office outside the United Kingdom but carrying on life assurance business through a branch or agency in the United Kingdom; and

“periodical return”, in relation to an insurance company, means a return deposited with the Secretary of State under Part II of the Insurance Companies Act 1982.

[<sup>F6</sup>“policy holders’ fraction” and “shareholders’ fraction” shall be construed in accordance with section 89 of the Finance Act 1989.]

[<sup>F7</sup>“value”, in relation to assets of an insurance company, means the value of the assets as taken into account for the purposes of the company’s periodical return;

“with-profits liabilities” means liabilities in respect of policies or contracts under which the policy holders or annuitants are eligible to participate in surplus;]

[<sup>F8</sup>(2A) Linked assets shall be taken to be linked solely to long term business of a particular category if, and only if, all (or all but an insignificant proportion) of the policies or contracts providing for the benefits concerned are policies or contracts the effecting of which constitutes the carrying on of business of that category.]

(3) <sup>M4</sup>Subject to section 439, any division to be made between general annuity business, pension business and other life assurance business shall be made on the principle of—

- (a) referring to pension business any premiums falling within subsection (4) below, together with the incomings, outgoings and liabilities referable to those premiums and the policies and contracts under which they are or have been paid;
- (b) allocating to general annuity business all other annuity business [<sup>F9</sup>that is not overseas life assurance business];

and references to “pension fund” and “general annuity fund” shall be construed accordingly, whether or not any such funds are kept separate from the insurance company’s life assurance fund.

(4) The premiums to be referred to pension business are those payable under contracts falling within one or other of the following descriptions, that is to say—

- (a) <sup>M5</sup>any contract with an individual who is, or would but for an insufficiency of profits or gains be, chargeable to income tax in respect of relevant earnings (as defined in section 623(1) and (2)) from a trade, profession, vocation, office or employment carried on or held by him (being a contract approved by the Board under section 620), or any substituted contract within the meaning of section 622(3);
- (b) <sup>M6</sup>any contract (including a contract of insurance) entered into for the purposes of, and made with the persons having the management of, an exempt approved scheme as defined in Chapter I of Part XIV, being a contract so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme;
- (c) a <sup>M7</sup>ny contract made under approved personal pension arrangements within the meaning of Chapter IV of Part XIV;
- (d) any annuity contract entered into for the purposes of—
  - (i) <sup>M8</sup>a scheme which is approved or is being considered for approval under Chapter I of Part XIV;

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- [<sup>F10</sup>(ii) a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV;] or
- (iii) a fund to which section 608 applies,
- being a contract which is approved by the Board and made with the persons having the management of the scheme or fund (or those persons and a member of or contributor to the scheme or fund) and by means of which relevant benefits as defined by section 612(1) (but no other benefits) are secured;
- (e) any annuity contract approved by the Board which is entered into in substitution for a contract within paragraph (d) above;
- (f) <sup>M9</sup>any contract with the trustees or other persons having the management of a scheme approved under section 620 or, subject to subsection (5) below, of a superannuation fund which was approved under section 208 of the 1970 Act, being a contract which—
- (i) was entered into for the purposes only of that scheme or fund or, in the case of a fund part only of which was approved under section 208, for the purposes only of that part of that fund, and
- (ii) (in the case of a contract entered into or varied after 1st August 1956) is so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme or fund (or the relevant part of the fund).
- (5) [<sup>F11</sup> Subsection (4)(f) ] above shall not apply to premiums payable under a contract where the fund in question was approved under section 208 of the 1970 Act unless—
- (a) immediately before 6th April 1980 premiums paid under the contract with the trustees or other persons having the management of the fund fell within section 323(4) of that Act (premiums referable to pension business); and
- (b) the terms on which benefits are payable from the fund have not been altered since that time; and
- (c) section 608 applies to the fund.
- (6) <sup>M10</sup>In subsections (3) to (5) above “premium” includes any consideration for an annuity.

#### Textual Amendments

- F1** 1990 s.41 and Sch.6 para.1(2)(a) on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.
- F2** 1990 s.41 and Sch.6 para.1(2)(b) on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.
- F3** 1990 s.41 and Sch.6 para.1(2)(b) on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.
- F4** 1990 s.41 and Sch.6 para.1(2)(b) on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.
- F5** 1990 s.41 and Sch.6 para.1(2)(b) on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.
- F6** 1989 s.84 and Sch.8 para.1—*with respect to accounting periods beginning on or after 1 January 1990 (including the 1990 component period). Repealed by 1990 s.132 and Sch.19 Part IV—repeal deemed always to have had effect.*
- F7** 1990 s.41 and Sch.6 para.1(2)(b) on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

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- F8** 1990 s.41 and Sch.6 para.1(3) on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.
- F9** 1990 s.41 and Sch.6 para.1(4) on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.
- F10** 1989 s.75 and Sch.6 paras.2 and 18(1)—deemed to have come into force on 14 March 1989. Previously “a statutory scheme as defined by section 612(1);”.
- F11** Words in s. 431(5) substituted (retrospectively) by [Finance Act 1994 \(c. 9\)](#), [Sch. 17 para. 4](#)

#### Modifications etc. (not altering text)

- C2** For application of definition see—1975 (No.2) s.58(10)—disposal of shares and securities. 1988 Sch.19 para.5(3)—distributable income.

#### Marginal Citations

- M1** Source—1970 s.323(1); 1973 s.40(7); 1982 s.58(7)
- M2** Source—1970 s.323(2); 1970(F) Sch.5 Pt.III 11(4)
- M3** [1982 c. 50](#).
- M4** Source—1970 s.323(3); 1970(F) Sch.5 Pt.III 11(5); 1981 s.41
- M5** Source—1970 s.323(4)(a); 1970(F) Sch.5 Part III 11(3); 1978 s.26(5)
- M6** Source—1970 s.323(4)(aa); 1970(F) Sch.5 Part III 11(1)
- M7** Source—1970 s.323(4)(ab); 1987 (No.2) s.39(3)
- M8** Source—1970 s.323(4)(ac), (ad); 1987 (No.2) Sch.3 16
- M9** Source—1970 s.323(4)(b)
- M10** Source—1970 s.323(4)

VALID FROM 21/07/2008

#### [<sup>F12</sup> 431ZA Election that assets not be foreign business assets

- (1) An insurance company may, in its company tax return for the first accounting period of the company beginning on or after 1 January 2008 in which any of the assets of the company's long-term insurance fund would (apart from this section) be foreign business assets, elect that none of the assets of the company's long-term insurance fund are to be regarded for the purposes of this Act as being foreign business assets.
- (2) The election has effect for that accounting period and all subsequent accounting periods of the company.
- (3) An election under subsection (1) is irrevocable.]

#### Textual Amendments

- F12** S. 431ZA inserted (with effect in accordance with [Sch. 17 para. 10\(6\)\(7\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 10\(2\)](#)

#### [<sup>F13</sup> 431A Amendment of Chapter etc.

Where it is expedient to do so in consequence of the exercise of any power under the <sup>M11</sup>Insurance Companies Act 1982, the Treasury may by order amend the provisions of this Chapter and any other provision of the Tax Acts so far as relating to insurance companies.]

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#### Textual Amendments

**F13** S. 431A inserted (1.1.1990) by Finance Act 1990 (c. 29), Sch. 6 paras. 2, **11(2)** (with Sch. 6 para. 12)

#### Marginal Citations

**M11** 1982 c. 50.

VALID FROM 03/05/1994

### <sup>F14</sup>**431A** Relevant benefits for purposes of section 431(4)(d) and (e).

- (1) Subsection (2) below applies where—
  - (a) section 431(4)(d)(i) applies, or
  - (b) section 431(4)(e) applies and the contract within section 431(4)(d) was entered into for the purposes of a scheme falling within section 431(4)(d)(i).
- (2) In such a case, relevant benefits fall within this section if they correspond with benefits that could be provided by a scheme approved under Chapter I of Part XIV, and for this purpose—
  - (a) a hypothetical scheme (rather than any particular scheme) is to be taken, and
  - (b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken.
- (3) Subsection (4) below applies where—
  - (a) subsection 431(4)(d)(ii) applies, or
  - (b) section 431(4)(e) applies and the contract within section 431(4)(d) was entered into for the purposes of a scheme falling within section 431(4)(d)(ii).
- (4) In such a case, relevant benefits fall within this section if they correspond with benefits that could be provided by a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV, and for this purpose—
  - (a) a hypothetical scheme (rather than any particular scheme) is to be taken, and
  - (b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken.
- (5) Subsection (6) below applies where—
  - (a) section 431(4)(d)(iii) applies, or
  - (b) section 431(4)(e) applies and the contract within section 431(4)(d) was entered into for the purposes of a fund falling within section 431(4)(d)(iii).
- (6) In such a case, relevant benefits fall within this section if they correspond with benefits that could be provided by a fund to which section 608 applies, and for this purpose—
  - (a) a hypothetical fund (rather than any particular fund) is to be taken, and
  - (b) benefits provided by a fund directly (rather than by means of an annuity contract) are to be taken.]

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### Textual Amendments

- F14** S. 431AA inserted (with application in accordance with s. 143(5) of the amending Act) by Finance Act 1994 (c. 9), s. 143(4)

## 432 Separation of different classes of business.

- (1) <sup>M12</sup>Where an insurance company carries on life assurance business in conjunction with insurance business of any other class, the life assurance business shall, for the purposes of the Corporation Tax Acts, be treated as a separate business from any other class of business carried on by the company.
- (2) Where an insurance company carries on both ordinary life assurance business and [<sup>F15</sup>industrial assurance] business, the business of each such class shall, for the purposes of the Corporation Tax Acts, be treated as though it were a separate business, and section 76 [<sup>F15</sup>and where appropriate the provisions of this chapter] shall apply separately to each such class of business.

### Textual Amendments

- F15** 1990 s.41 and Sch.6 para.3(a), (b) on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12. Previously “industrial life assurance” in subs.(2) line 2.

### Marginal Citations

- M12** Source—1970 s.307

## [<sup>F16</sup>432A] Apportionment of income and gains.

- (1) This section has effect where—
- (a) an insurance company carries on in any period both ordinary long term business and industrial assurance business, or life assurance business and other long term business, or more than one class of life assurance business, and
  - (b) it is necessary for the purposes of the Corporation Tax Acts to determine in relation to the period what parts of—
    - (i) income arising from the assets of the company’s long term business fund, or
    - (ii) gains or losses accruing on the disposal of such assets, are referable to any of the categories of business in question.
- (2) The classes of life assurance business referred to in subsection (1) above are—
- (a) pension business;
  - (b) general annuity business;
  - (c) overseas life assurance business; and
  - (d) basic life assurance business.
- (3) Income arising from, and gains or losses accruing on the disposal of, assets linked solely to ordinary long term business, industrial assurance business, life assurance

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- business, long term business other than life assurance business, pension business or basic life assurance business shall be referable to the category of business concerned.
- (4) Income arising from, and gains or losses accruing on the disposal of, assets of the overseas life assurance fund (and no other assets) shall be referable to overseas life assurance business.
  - (5) There shall be referable to any category of business (apart from overseas life assurance business) the relevant fraction of any income, gains or losses not directly referable to any of the appropriate categories of business.
  - (6) For the purposes of subsection (5) above “the relevant fraction”, in relation to a category of business, is the fraction of which—
    - (a) the numerator is the aggregate of—
      - (i) the mean of the opening and closing liabilities of the category, reduced by the mean of the opening and closing values of any assets directly referable to the category, and
      - (ii) the mean of the appropriate parts of the opening and closing amounts of the investment reserve; and
    - (b) the denominator is the aggregate of—
      - (i) the mean of the opening and closing liabilities of the long term business, reduced by the mean of the opening and closing values of any assets directly referable to any of the appropriate categories of business, and
      - (ii) the mean of the opening and closing amounts of the investment reserve.
  - (7) For the purposes of subsections (5) and (6) above—
    - (a) references to appropriate categories of business—
      - (i) where the category of business in question is ordinary long term business or industrial assurance business, are references to those categories of business;
      - (ii) where the category of business in question is life assurance business or long term business other than life assurance business, are references to those categories of business; and
      - (iii) where the category of business in question is pension business, general annuity business or basic life assurance business, are references to pension business and basic life assurance business; and
    - (b) income, gains or losses are directly referable to a category of business if referable to the category by virtue of subsection (3) above and assets are directly referable to a category of business if income arising from the assets is, and gains or losses accruing on the disposal of the assets are, so referable.
  - (8) In subsection (6) above “appropriate part”, in relation to the investment reserve, means—
    - (a) where all of the liabilities of the long term business are linked liabilities, the part of that reserve which bears to the whole the same proportion as the amount of the liabilities of the category of business in question bears to the whole amount of the liabilities of the long term business,
    - (b) where any of the liabilities of the long term business are not linked liabilities but none (or none but an insignificant proportion) are with-profits liabilities, the part of that reserve which bears to the whole the same proportion as the



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amount of the liabilities of the category of business in question which are not linked liabilities bears to the whole amount of the liabilities of the long term business which are not linked liabilities, and

- (c) in any other case, the part of that reserve which bears to the whole the same proportion as the amount of the with-profits liabilities of the category of business in question bears to the whole amount of the with-profits liabilities of the long term business;

and in this subsection “linked liabilities” means liabilities in respect of benefits to be determined by reference to the value of linked assets.

- (9) Where the category of business in question is a class of life assurance business, for the purposes of this section—

(a) “liabilities” does not include liabilities of the overseas life assurance business; and

(b) assets of the overseas life assurance fund and liabilities of the overseas life assurance business shall be left out of account in determining the investment reserve.

- (10) Subsection (5) above shall not apply in relation to gains or losses accruing on disposals deemed to have been made by virtue of section 46 of the Finance Act 1990 except where it is necessary to determine what parts are referable to different categories of business within subsection (3)(b) of that section (and shall apply in that case subject to appropriate modifications). ]]

#### Textual Amendments

**F16** 1990 s.41 and Sch.6 para.4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

#### Modifications etc. (not altering text)

**C3** Definition employed for purposes of 1990 s.46—annual deemed disposal of holdings of unit trusts etc. by insurance companies.

### 432B [F17] Apportionment of receipts brought into account.

- (1) This section and sections 432C to 432E have effect where it is necessary in accordance with section 83 of the Finance Act 1989 to determine what parts of any items brought into account in the revenue account prepared for the purposes of the <sup>M13</sup>Insurance Companies Act 1982 are referable to life assurance business or any class of life assurance business.
- (2) Where in addition to the revenue account prepared for the purposes of the Insurance Companies Act 1982 in respect of the whole of any business carried on by a company there are prepared for the purposes of that Act revenue accounts relating to parts of the business, amounts referred to in sections 432C to 432E shall, so far as they relate to those parts, be ascertained by reference to the latter accounts rather than by reference to the former.
- (3) Sections 432C and 432D apply where the business with which an account is concerned (“the relevant business”) relates exclusively to policies or contracts under which the policy holders or annuitants are not eligible to participate in surplus; and section 432E

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 applies where the relevant business relates wholly or partly to other policies or contracts. ]

#### Textual Amendments

**F17** 1990 s.41 and Sch.6 para.4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

#### Modifications etc. (not altering text)

- C4** S. 432B modified by S.I. 1992/1655, **reg. 9**, as amended (with effect in accordance with reg. 1(2)(3) of the amending instrument) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 1993](#) (S.I. 1993/3111), **reg. 8, 1(1)**
- C5** ss. 432B-432E excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S. I. 1992/1655, **regs. 1,10**
- C6** S. 432B modified (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S.I. 1992/1655, **regs. 1, 9(1)**

#### Marginal Citations

**M13** 1982 c. 50.

### 432C [F18]Section 432B apportionment: income of non-participating funds.

- (1) To the extent that the amount brought into account as income is attributable to assets linked solely to life assurance business, pension business or basic life assurance business, it shall be referable to the category of business concerned.
- (2) To the extent that that amount is attributable to assets of the overseas life assurance fund, it shall be referable to overseas life assurance business.
- (3) There shall be referable to any category of business (apart from overseas life assurance business) the relevant fraction of so much of the amount brought into account as income as is not directly referable to any of the appropriate categories of business.
- (4) For the purposes of subsection (3) above “the relevant fraction”, in relation to a category of business, is the fraction of which—
  - (a) the numerator is the mean of the opening and closing liabilities of the relevant business so far as referable to the category, reduced by the mean of the opening and closing values of any assets of the relevant business directly referable to the category; and
  - (b) the denominator is the mean of the opening and closing liabilities of the relevant business, reduced by the mean of the opening and closing values of any assets of the relevant business directly referable to any of the appropriate categories of business.
- (5) For the purposes of subsections (3) and (4) above—
  - (a) references to appropriate categories of business—
    - (i) where the category of business in question is life assurance business, are references to that category of business and long term business other than life assurance business; and
    - (ii) where the category of business in question is pension business, general annuity business or basic life assurance business, are references to pension business and basic life assurance business; and

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- (b) ~~the part of the amount brought into account as income which is directly referable to a category of business is the part referable to the category by virtue of subsection (1) above and assets are directly referable to a category of business if such part of the amount brought into account as income as is attributable to them is so referable.~~
- (6) Where the category of business in question is a class of life assurance business, for the purposes of this section “liabilities” does not include liabilities of the overseas life assurance business. ]

#### Textual Amendments

**F18** 1990 s.41 and Sch.6 para.4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

#### 432D [F19]Section 432B apportionment: value of non-participating funds.

- (1) To the extent that the amount brought into account as the increase or decrease in the value of assets is attributable to assets linked solely to life assurance business, pension business or basic life assurance business, or to assets of the overseas life assurance fund which are linked solely to overseas life assurance business, it shall be referable to the category of business concerned.
- (2) There shall be referable to any category of business the relevant fraction of the amount brought into account as the increase or decrease in the value of assets except so far as the amount is attributable to assets which are directly referable to any of the appropriate categories of business.
- (3) Subsections (4) and (5) (but not (6)) of section 432C shall apply for the purposes of this section as if—
- (a) each of the references to a subsection of that section were a reference to the corresponding subsection of this section, and
- (b) in subsection (5)—
- (i) a reference to overseas life assurance business were included after each of the references to pension business in paragraph (a)(ii), and
- (ii) each of the references in paragraph (b) to income were a reference to the increase or decrease in the value of assets. ]

#### Textual Amendments

**F19** 1990 s.41 and Sch.6 para.4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

#### 432E [F20]Section 432B apportionment: participating funds.

- (1) The part of the net amount of the items referred to in subsection (1) of section 83 of the Finance Act 1989 (that is to say the income referred to in paragraph (a) of that subsection increased or reduced by the increase or reduction in the value referred to in paragraph (b)) which is referable to a particular category of business shall be—
- (a) the amount determined in accordance with subsection (2) below, or
- (b) the amount determined in accordance with subsection (3) below,

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 whichever is the greater.

- (2) For the purposes of subsection (1) above there shall be determined the amount which is such as to secure—
- (a) in a case where the relevant business is mutual business, that

$$CAS = CS$$

,and

- (b) in any other case, that

$$CS - CAS = \left( S - AS \right) \times \frac{CAS}{AS}$$

where—

S is the surplus of the relevant business;

AS is so much of that surplus as is allocated to persons entitled to the benefits provided for by the policies or contracts to which the relevant business relates;

CAS is so much of the surplus so allocated as is attributable to policies or contracts of the category of business concerned; and

CS is so much of the surplus of the relevant business as would remain if the relevant business were confined to business of the category concerned.

- (3) For the purposes of subsection (1) above there shall also be determined the aggregate of—
- (a) the applicable percentage of what is left of the mean of the opening and closing liabilities of the relevant business so far as referable to the category of business concerned after deducting from it the mean of the opening and closing values of any assets of the relevant business linked solely to that category of business, and
- (b) the part of the net amount mentioned in subsection (1) above that is attributable to assets linked solely to that category of business.
- (4) For the purposes of subsection (3) above “the applicable percentage”, in any case, is such percentage as may be determined for that case by or in accordance with an order made by the Treasury.
- (5) Where the part of the net amount referable to a particular category or categories of business (“the subsection (3) category or categories”) is the amount determined in accordance with subsection (3) above, the amount determined in accordance with subsection (2) above in relation to any other category (“the relevant category”) shall be reduced by—

$$\frac{XY}{Z}$$

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X is the excess of the amount determined in accordance with subsection (3) above in the case of the subsection (3) category (or each of them) over the amount determined in its case (or the case of each of them) in accordance with subsection (2) above;

Y is so much of the surplus of the relevant business as is allocated to persons entitled to the benefits provided for by policies or contracts of the relevant category; and

Z is so much of the surplus of the relevant business as is allocated to persons entitled to the benefits provided for by policies or contracts of the category (or each of the categories) which is not a subsection (3) category.

- (6) Where the category of business concerned is overseas life assurance business—
- (a) if the part of the income brought into account that is attributable to assets of the overseas life assurance fund not linked solely to overseas life assurance business is greater than the amount arrived at under subsection (3)(a) above, this section shall have effect as if that part of that income were the amount so arrived at; and
  - (b) the amount which, apart from this paragraph, would be the part of the net amount referable to that category of business shall be—
    - (i) reduced by the part of the net amount attributable to distributions of companies resident in the United Kingdom relating to assets of the company's overseas life assurance fund, and
    - (ii) increased by the amount which is income of the relevant business by virtue of section 441A.

#### Textual Amendments

**F20** 1990 s.41 and Sch.6 para.4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

#### Modifications etc. (not altering text)

**C7** [Ss. 432B-432E](#) excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by [S.I. 1992/1655](#), [regs. 1,10](#)

**C8** *For orders see Part III Vol.5 (under “Life assurance apportionment of participating funds: applicable percentage”).*

### 433 Profits reserved for policy holders and annuitants.

<sup>M14</sup> *Where the profits of an insurance company in respect of its life assurance business are, for the purposes of this Act, computed in accordance with the provisions of this Act applicable to Case I of Schedule D, such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders or annuitants shall be excluded in making the computation, but if any profits so excluded as being reserved for policy holders or annuitants cease at any time to be so reserved and are not allocated to or expended on behalf of policy holders or annuitants, those profits shall be treated as profits of the company for the accounting period in which they ceased to be so reserved.* <sup>F21</sup>

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#### Textual Amendments

**F21** Repealed by 1989 ss.84 and 187 and Schs.8 para.2 and 17 Part IV —deemed to have come into force on 14 March 1989. For effect see s.84(6).

#### Marginal Citations

**M14** Source—1970 s.309

### 434 Franked investment income etc.

- (1) <sup>M15</sup>Section 208 shall not prevent franked investment income of a company resident in the United Kingdom which carries on life assurance business from being taken into account as part of the profits in computing trading income in accordance with the provisions applicable to Case I of Schedule D.
- (2) In ascertaining for the purposes of section 393 or 394 whether and to what extent a company has incurred a loss on its life assurance business, any profits derived from the investments of its life assurance fund (including franked investment income of a company so resident) shall be treated as part of the profits of that business.
- <sup>F22</sup>(3) Subject to sections 437 and 438, the [<sup>F23</sup>policy holders' share] of the franked investment income from investments held in connection with a company's life assurance business shall not be used under Chapter V of Part VI to frank distributions made by the company and, accordingly, for the purposes of that Chapter (other than the application of franked investment income under section 241), in relation to any unrelieved income of a company falling within subsection (1) above, the surplus of franked investment income for any accounting period means the aggregate of—
  - (a) the [<sup>F23</sup>policy holders' share] of that franked investment income [<sup>F24</sup>from investments held in connection with the company's life assurance business]; and
  - (b) the amount determined under section 241(3) on the basis that the reference therein to franked investment income is a reference [<sup>F25</sup>to that income excluding the amount within paragraph (a) above].
- (3A) The policy holders' [<sup>F26</sup>share] of the franked investment income from investments held in connection with a company's life assurance business shall be left out of account in determining, under subsection (7) of section 13, the franked investment income forming part of the company's profits for the purposes of that section.]
- (4) <sup>M16</sup>Subject to subsection (5) below, the specified part shall be, in the case of any unrelieved income, the same fraction of it as the fraction which, on a computation of the profits of the company in respect of its life assurance business in accordance with the provisions applicable to Case I of Schedule D (whether or not the company is in fact charged to tax under that Case for the relevant accounting period or periods), would be connoted by the words in section 433 "such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders or annuitants".  
<sup>F27</sup>
- (5) If the income exceeds the profits as computed in accordance with the provisions applicable to Case I of Schedule D other than section 433, the specified part shall be that fraction of the income so far as not exceeding the profits, together with the amount of the excess.  
<sup>F27</sup>

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(6)<sup>M17</sup> For the purposes of section 239 the profits charged to corporation tax for any accounting period (as defined in subsection (6) of that section) shall be reduced by deducting [<sup>F28</sup>the policy holders' share of the relevant profits].

[<sup>F29</sup>(6A) For the purposes of this section—

- (a) “the policy holders' share” of any franked investment income is so much of that income as is not the shareholders' share within the meaning of section 89 of the Finance Act 1989, and
- (b) “the policy holders' share of the relevant profits” has the same meaning as in section 88 of that Act.]

(7)<sup>M18</sup> For the purposes of subsection [<sup>F30</sup>(3)] above “unrelieved income” means income which has not been excluded from charge to tax by virtue of any provision and against which [<sup>F31</sup>disregarding relief under section 242] no relief has been allowed by deduction or set-off.

(8)<sup>M19</sup> Where subsection (3) or (6) above would deny to a company any relief to which it would have been entitled if it had been charged to tax in respect of its life assurance business under Case I of Schedule D, corresponding relief shall be afforded to the company by repayment of, or set-off against, corporation tax or by payment of tax credit comprised in franked investment income from investments held in connection with that business.

#### Textual Amendments

- F22** 1989 s.84 and Sch.8 para.3(1), and subject to s.84(6), has effect with respect to accounting periods beginning on or after 1 January 1990 (including the 1990 component period). Previously “(3) Any such part of the franked investment income from investments held in connection with a company's life assurance business as is specified in subsection (4) below (“the specified part”) shall not be used under Chapter V of Part VI to frank distributions made by the company.”
- F23** 1990 s.45(4)(a). Previously “policy holders' fraction”.
- F24** 1990 s.45(4)(b).
- F25** 1990 s.45(4)(c). Previously “only to the shareholders' fraction of that income.”
- F26** 1990 s.45(5). Previously “fraction”.
- F27** Repealed by 1989 ss.84 and 187 and Sch.8 para.3(2) and Sch.17 Part IV with respect to accounting periods beginning on or after 1 January 1990.
- F28** 1990 s.45(6). Previously “therefrom [the policyholders' fraction thereof (1989 s.84 and Sch.8 para.3(3), and subject to s.84(6), has effect with respect to accounting periods beginning on or after 1 January 1990 (including the 1990 component period). Previously “such fraction thereof as is equal to the fraction of the profits of the company in respect of its life assurance business which under section 433 is excluded from the computation of those profits or would be so excluded if the profits were computed in accordance with the provisions applicable to Case I of Schedule D.”.]”.
- F29** 1990 s.45(7).
- F30** 1989 s.84 and Sch.8 para.3(4), and subject to s.84(6), has effect with respect to accounting periods beginning on or after 1 January 1990 (including the 1990 component period). Previously “(4).”
- F31** 1989 s.84 and Sch.8 paras.3(4), 4, respectively and subject to s.84(6), has effect with respect to accounting periods beginning on or after 1 January 1990 (including the 1990 component period).

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#### **Marginal Citations**

- M15** Source—1970 s.308(1), (2)  
**M16** Source—1970 s.310(6)  
**M17** Source—1972 Sch.18 2(4); 1987 (No.2) s.75(1)(b)  
**M18** Source—1970 s.310(7); 1984 s.18(5)  
**M19** Source—1972 Sch.18 2(5)

#### **[<sup>F32</sup>434A] Limitations on loss relief and group relief.**

- (1) In the case of a company carrying on life assurance business, no relief shall be allowable under Chapter II (loss relief) or Chapter IV (group relief) of Part X against the policy holders' [<sup>F33</sup>share] of the relevant profits for any accounting period.
- (2) For the purposes of subsection (1) above, [<sup>F33</sup>“the policy holders' share of the relevant profits” has the same meaning as in section 88 of the Finance Act 1989.]]

#### **Textual Amendments**

- F32** 1989 s.84 and Sch.8 paras.3(4), 4, respectively and subject to s.84(6), has effect with respect to accounting periods beginning on or after 1 January 1990 (including the 1990 component period).
- F33** 1990 s.45(8). Previously  
 “fraction”  
 and  
 “the relevant profits of a company for an accounting period are the total profits of its life assurance business, less any deduction due under section 76, but before allowing any relief under Chapter II or Chapter IV of Part X”  
 respectively.

#### **435 Taxation of gains reserved for policy holders and annuitants.**

- (1) <sup>M20</sup>This section has effect in relation to any accounting period of an insurance company carrying on life assurance business and for the purposes of this section—
  - (a) the life assurance gains are such part of the amount to be included, in accordance with section 345, in the company's total profits as is attributable to gains from investments held in connection with the company's life assurance business;
  - (b) the policy holders' share of the life assurance gains or of the relevant reliefs is such fraction thereof as is equal to the fraction of the profits of the company in respect of its life assurance business which, under section 433, is excluded from the computation of those profits or would be so excluded if the profits were computed in accordance with the provisions applicable to Case I of Schedule D; and
  - (c) the relevant reliefs are such of the sums to be deducted from or set off against the company's profits as are deducted from or set off against the life assurance gains.
- (2) <sup>M21</sup>Corporation tax charged on so much of the policy holders' share of the life assurance gains as remains after setting against it the amounts referred to in subsection (3)(c) below shall be calculated on the basis of a rate of corporation tax of 30 per cent.



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(3) For the purposes of this section there shall be ascertained the policy holders' share and the remainder ("the residual part") of the life assurance gains and of the relevant reliefs; and—

- (a) the residual part of the relevant reliefs shall be set against the residual part of those gains; and
- (b) if the residual part of the relevant reliefs exceeds the residual part of those gains, the excess (or so much of it as does not, together with the policy holders' share of the relevant reliefs, exceed the policy holders' share of those gains) shall be added to the policy holders' share of the relevant reliefs; and
- (c) the policy holders' share of the relevant reliefs, with any addition made under paragraph (b) above, shall be set against the policy holders' share of the life assurance gains. <sup>F34</sup>

#### Textual Amendments

**F34** Repealed by 1989 ss.84 and 187 and Schs.8 para.5 and 17 Part IV, and subject to s.84(6) has effect with respect to accounting periods beginning on or after 1 January 1990 (including the 1990 component period).

#### Marginal Citations

**M20** Source—1974 s.26(1), (4)

**M21** Source—1974 s.26(2), (3); 1987 (No.2) s.75(2), (3)

### 436 Annuity business and pension business: separate charge on profits.

- (1) <sup>M22</sup> Subject to the provisions of this section, profits arising to an insurance company from general annuity business or pension business shall be treated as income within Schedule D, and be chargeable under Case VI of that Schedule, and for that purpose—
  - (a) the business of each such class shall be treated separately, and
  - (b) subject to paragraph (a) above, and to subsection (3) below, the profits therefrom shall be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.
- (2) Subsection (1) above shall not apply to an insurance company charged to corporation tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its ordinary life assurance business.
- (3) <sup>M23</sup> In making the computation referred to in subsection (1) above—
  - (a) [<sup>F35</sup>sections 82 and 83 of the Finance Act 1989] shall apply with the necessary modifications and in particular with the omission of all references to policy holders (other than holders of policies referable to pension business) [<sup>F36</sup>and of the words "tax or" in section 82(1)(a)];
  - (b) no deduction shall be allowed in respect of any expenses of management deductible under section 76; <sup>F37</sup>
  - (c) there may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen from pension business or general annuity business in any previous accounting period or year of assessment;
  - (d) where the computation in question is of profits arising to an insurance company from pension business—

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- [<sup>F38</sup>(i) group income so far as referable to pension business shall be deducted from the receipts to be taken into account,]  
 (ii) annuities shall be deductible notwithstanding section 337(2);  
 and the company shall not be entitled to treat as paid out of profits or gains brought into charge to income tax any part of the annuities paid by the company which is referable to pension business; and  
 (e) distributions which are not qualifying distributions shall not be taken into account where the computation in question is of the profits arising to an insurance company or overseas life insurance company from general annuity business or pension business.
- (4) <sup>M24</sup>Section 396 shall not be taken to apply to a loss incurred by a company on its general annuity business or pension business.
- (5) <sup>M25</sup>Nothing in section 128 or 399(1) shall affect the operation of this section.

#### Textual Amendments

- F35** 1989 s.84 and Sch.8 para.6 and, subject to s.84(6) deemed to have come into force on 14 March 1989. Previously “section 433”.
- F36** 1990 s.43(2). Subject to 1989 s.84(6) this amendment has effect with respect to accounting periods beginning on or after 1 January 1990.
- F37** Words repealed by 1989 ss.87(4) and 187 and Sch.17 Part IV with respect to accounting periods beginning on or after 1 January 1990. (See 1989 s.87(5) in relation to straddling periods).
- F38** 1990 s.41 and Sch.6 para.5 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12. Previously “(i) group income shall be not be taken into account as part of those profits, and”.

#### Modifications etc. (not altering text)

- C9** See also 1989 s.43—certain Sch.D computations involving emoluments.

#### Marginal Citations

- M22** Source—1970 s.312(1); 1970(F) Sch.5 Part III 11(3)  
**M23** Source—1970 s.312(2), 314(5); 1970(F) Sch.5 Part III 11(6)(a)(b); 1972 Sch.18 5(1)(a)  
**M24** Source—1970 s.312(3); 1970(F) Sch.5 Part III 11(3)  
**M25** Source—1985 s.72(7)

### 437 General annuity business.

- (1) <sup>M26</sup>In the case of a company carrying on general annuity business, the annuities paid by the company, so far as referable to that business and so far as they do not exceed the taxed income of the part of the annuity fund so referable, shall be treated as charges on income.
- (2) <sup>M27</sup>In computing under section 436 the profits arising to an insurance company from general annuity business—  
 [<sup>F39</sup>(a) taxed income, group income and income attributable to offshore income gains, so far as referable to general annuity business, shall be deducted from the receipts to be taken into account;] and  
 (b) <sup>M28</sup>of the annuities paid by the company and referable to general annuity business—

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- (i) those which under subsection (1) above are treated as charges on income shall not be deductible, and
- (ii) those which are not so treated shall (notwithstanding section 337(2)) be deductible.
- (3) <sup>M29</sup>In subsections (1) and (2) above “taxed income” means income charged to corporation tax otherwise than under section 436, and franked investment income.
- (4) <sup>M30</sup>Subject to subsection (5) below, franked investment income which is taken into account under subsection (2) above to enable annuities referable to general annuity business to be treated as charges on income shall not be used under Chapter V of Part VI to frank distributions made by the company.
- (5) <sup>M31</sup>For the purposes of subsection (4) above there shall be deducted from the amount of the franked investment income of the company arising in any accounting period and taken into account under subsection (1) above—
- (a) the amount of any profit arising in that accounting period to the company from general annuity business and computed under section 436; and
  - (b) the amount of any group income arising in that accounting period to the company and referable to its general annuity business.
- (6) A company which is not resident in the United Kingdom but carries on through a branch or agency there any general annuity business shall not be entitled to treat any part of the annuities paid by it which are referable to that business as paid out of profits or gains brought into charge to income tax.

#### Textual Amendments

- F39** 1990 s.41 and Sch.6 para.6 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12; Previously  
“(a) taxed income, group income and income attributable to offshore income gains shall not be taken into account as part of those profits;”.

#### Marginal Citations

- M26** Source—1970 s.313(1)  
**M27** Source—1970 s.313(2)(a); 1985 Sch.25 7  
**M28** Source—1970 s.313(2)(b)  
**M29** Source—1970 s.313(3)  
**M30** Source—1970 s.313(4); 1972 Sch.18 3  
**M31** Source—1970 s.313(5), (6)

#### 438 Pension business: exemption from tax.

- (1) <sup>M32</sup>Exemption from corporation tax shall be allowed in respect of income from, and chargeable gains in respect of, investments and deposits of so much of an insurance company’s life assurance fund and separate annuity fund, if any, as is referable to pension business.
- (2) <sup>M33</sup>The exemption from tax conferred by subsection (1) above shall not exclude any sums from being taken into account as receipts in computing profits or losses for any purpose of the Corporation Tax Acts.

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- (3) <sup>M34</sup> Subject to subsection (6) below, the exclusion by section 208 from the charge to corporation tax of franked investment income shall not prevent such income being taken into account as part of the profits in computing under section 436 income from pension business.
- (4) <sup>M35</sup> If in the case of any company the income referred to in subsection (1) above includes a distribution in respect of which the company is entitled to a tax credit, the company may, subject to subsections (5) and (6) below, claim to have the amount of that credit paid to it.
- (5) If the company is resident in the United Kingdom (so that the distribution and the tax credit in question constitute franked investment income of that company), no franked investment income comprising any tax credit which is paid under subsection (4) above shall, subject to subsection (6) below, be used under Chapter V of Part VI to frank the company's distributions.
- (6) <sup>M36</sup> If for any accounting period there is, apart from this subsection, a profit arising to an insurance company from pension business and computed under section 436, and the company so elects as respects all or any part of its [<sup>F40</sup>relevant] franked investment income arising in that period, being an amount of franked investment income not exceeding the amount of that profit, subsections (3) to (5) above shall not apply to the franked investment income to which the election relates.
- [<sup>F41</sup>(6A) In subsection (6) above “relevant franked investment income” means the shareholders' share of franked investment income within subsection (1) above, and for this purpose “shareholders' share” has the same meaning as for the purposes of section 89 of the Finance Act 1989.]
- (7) An election under subsection (6) above shall be made by notice given to the inspector not later than two years after the end of the accounting period to which the election relates or within such longer period as the Board may by notice allow.
- (8) <sup>M37</sup> Nothing in sections 431(4)(c) or 643(2) of this Act or section 149B(1)(h) of the 1979 Act shall be construed as affording relief in respect of any sums to be brought into account under this section.

#### Textual Amendments

**F40** 1990 s.45(9).

**F41** 1990 s.45(9).

#### Marginal Citations

**M32** Source—1970 s.314(1); 1970(F) Sch.5 Part III 11(3), (6)(c)

**M33** Source—1970 s.314(2)

**M34** Source—1970 s.314(3)(a); 1970(F) Sch.5 Part III 11(3)

**M35** Source—1972 Sch.18 4(1), (2)

**M36** Source—1970 s.314(4); 1970(F) Sch.5 Part III 11(3); 1972 Sch.18 4(2)

**M37** Source—1987 (No.2) s.39(3)

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VALID FROM 02/10/1992

**[438A <sup>F42</sup>Pension business: payments on account of tax credits and deducted tax.**

Schedule 19AB shall have effect.]

**Textual Amendments**

**F42** S. 438A inserted (2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49(1); S.I. 1992/1746, art.2

**439 Restricted government securities.**

[<sup>F43</sup>(1) For the purposes of this Chapter restricted government securities shall be treated as linked solely to pension business.

(2) In this section]

“restricted government securities” means, subject to the following provisions of this section, government securities issued on the condition that, except in such circumstances as may be specified in the conditions of issue, they are to be held by insurance companies against and applied solely towards meeting pension business liabilities.

(6) <sup>M38</sup>Subject to subsection (7) below, the following Treasury Stock, namely—

- (a) 2 per cent. Index-linked Treasury Stock 1996;
- (b) 2 per cent. Index-linked Treasury Stock 2006;
- (c) 2 per cent. Index-linked Treasury Stock 2011;

are not restricted government securities for the purposes of this section.

(7) If any of the index-linked stock referred to in subsection (6) above was on 27th March 1982 held by an insurance company against and applied solely towards meeting the liabilities of the company’s pension business, then—

- (a) <sup>M39</sup>if and so long as the stock continues to be so held by that company, it shall continue to be treated as restricted government securities for the purposes of this section; and
- (b) <sup>M40</sup>if the stock ceases to be restricted government securities otherwise than by virtue of being actually disposed of or redeemed, on the day on which it so ceases the stock shall be deemed for the purposes of corporation tax, including (subject to subsection (8) below) <sup>F44</sup>corporation tax on chargeable gains, to have been disposed of and immediately re-acquired at its market value on that date.

(8) <sup>M41</sup>For the purposes of sections 67 and 68 of the 1979 Act (gilt-edged securities)—

- (a) in ascertaining the date on which securities were acquired, no account shall be taken of any deemed disposal and reacquisition resulting from subsection (7)(b) above; and
- (b) so long as any index-linked stock continues, by virtue of subsection (7) (a) above, to be treated as restricted government securities for the purposes of this section, it shall be regarded as being stock of a different kind from the

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*index-linked stock referred to in subsection (6) above which is not so treated.*

F44

### Textual Amendments

**F43** 1990 s.41 and Sch.6 para.7 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12. Previously

“(1) This section applies where for any accounting period—(a) any division falls to be made between the pension business and any other kind of long-term business of an insurance company, and (b) any of the income or gains or losses of the company for that period relate to restricted government securities; and where this section applies section 431(3) shall have effect subject to the provisions of this section.

(2) All income, gains or losses of the company which relate to restricted government securities shall be referred to its pension business. (3) Where the division of the other income, gains or losses of the company is made by reference to the liabilities at any time in the accounting period which are referable to pension business or to two or more kinds of business including pension business, those liabilities shall be treated as reduced by the appropriate amount. (4) In subsection (3) above “the appropriate amount” means—(a) in a case in which the total liabilities of the company at the time in question which are referable to long-term business are less than the market value at that time of the investments and deposits held by the company relating to all such business, such proportion of the market value of the restricted government securities held by the company at that time as those liabilities bear to the market value of those investments and deposits, and (b) in any other case, the market value of the restricted government securities at that time. (5) In this section— “long-term business” has the same meaning as in section 1(1) of the Insurance Companies Act 1982;”.

**F44** Repealed by 1990 s.132 and Sch.19 Part IV.

### Marginal Citations

**M38** Source—1982 s.58(1), (3)

**M39** Source—1982 s.58(4)

**M40** Source—1982 s.58(5)

**M41** Source—1982 s.58(6)

### <sup>F45</sup> 440 Transfers of assets etc.

(1) If at any time an asset (or a part of an asset) held by an insurance company ceases to be within one of the categories set out in subsection (4) below and comes within another of those categories, the company shall for the purposes of corporation tax be deemed to have disposed of and immediately re-acquired the asset (or part) for a consideration equal to its market value at that time.

(2) Where—

(a) an asset is acquired by a company as part of the transfer to it of the whole or part of the business of an insurance company (“the transfer”) in accordance with a scheme sanctioned by a court under section 49 of the <sup>M42</sup>Insurance Companies Act 1982, and

(b) the asset (or part of it) is within one of the categories set out in subsection (4) below immediately before the acquisition and is within another of those categories immediately afterwards,

the transferor shall for the purposes of corporation tax be deemed to have disposed of and immediately re-acquired the asset (or part) immediately before the acquisition for a consideration equal to its market value at that time.

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(3) Where, apart from this subsection, section 273 or 274 of the 1970 Act (transfers within a group) would apply to a disposal or acquisition by an insurance company of an asset (or part of an asset) which, immediately before the disposal or (as the case may be) immediately after the acquisition, is within one of the categories set out in paragraphs (a) to (d) subsection (4) below, that section shall not apply to the disposal or acquisition.

(4) The categories referred to in subsections (1) to (3) above are—

- (a) assets linked solely to basic life assurance business;
- (b) assets linked solely to pension business;
- (c) assets of the overseas life assurance fund;
- (d) assets of the long term business fund not within any of the preceding paragraphs;
- (e) other assets.

(5) In this section “market value” has the same meaning as in the 1979 Act. ]]

#### Textual Amendments

**F45** 1990 s.41 and Sch.6 para.8 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12. But not to affect the operation of the original s.440 before 20 March 1990 or of subs. (6) and (7) of that section in relation to the disposal of an asset which has not been deemed to be disposed of before the day of the disposal. Previously

“Identification or exchange of long term assets. **440.**—(1) The provisions of this section apply to any insurance company which carries on or has carried on long term business, and shall have effect for all purposes of the Corporation Tax Acts. (2) Subject to subsection (4) below, a profit or loss shall not be taken to arise in respect of any asset of the company by reason only that at any time after the base date the asset was or is exchanged for other assets of the company so as to become or cease to be part of the long term assets. (3) Subject to subsection (5) below, if an asset of the company which has at any time after 29th April 1975 been exchanged as mentioned in subsection (2) above is—(a) within the period of one year beginning with the date of that exchange (“the relevant exchange”) exchanged again for other assets of the company so as to cease to be or, as the case may be, become part of the long term assets; or (b) within the period of six months beginning with the date of the relevant exchange disposed of by the company, then any income arising in respect of the asset after the relevant exchange, and any profit, gain or loss accruing to the company on a disposal of the asset made after the relevant exchange, shall be treated as if the relevant exchange had not taken place. (4) If an insurance company to which this section applies by notice given to the inspector so elects, then, where in the relevant period any relevant asset of the company was or is exchanged as mentioned in subsection (2) above—(a) that subsection shall not apply in relation to that asset as regards that exchange; and (b) the company shall be treated as if the asset had been disposed of at market value by the company at the time of the exchange. In this and the following subsection— “the relevant period”, in relation to a notice under this subsection, means the period of six years from the end of the accounting period of the company in which the notice is given; “relevant asset”, in relation to an insurance company, means an asset of the company such that, if it were sold, the proceeds would be taken into account in any computation of profits of the company in accordance with the provisions of this Act applicable to Case I of Schedule D. (5) Where an insurance company has given a notice under subsection (4) above, subsection (3) above shall, as regards relevant assets disposed of by the company in the relevant period, have effect as if paragraph (b) and the reference to any profit, gain or loss accruing to the company on a disposal made after the relevant exchange were omitted. (6) If at any time after the base date an insurance company to which this section applies disposed or disposes of an asset which—(a) was or is part of the long term assets at the time of the disposal, but without having been continuously part of those assets since its acquisition by the company; or (b) was or is not

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part of the long term assets at the time of the disposal, but without having been continuously not part of those assets since its acquisition by the company, the asset shall be treated, in a case falling within paragraph (a) above, as if it had been continuously part of the long term assets from the time of its acquisition by the company to the time of the disposal, or, in a case falling within paragraph (b) above, as if it had been continuously not part of the long term assets from the time of its acquisition by the company to the time of its disposal; and if the disposal is one as respects which subsection (3) above applies, this subsection shall apply as if the relevant exchange (within the meaning of that subsection) had not taken place. (7) Without prejudice to subsection (6) above, if—(a) an insurance company to which this section applies disposes of an asset which, since its acquisition by the company, has on one or more occasions (whether after the base date or not) been exchanged for other assets of the company; and (b) as regards that occasion or one or more of those occasions the company was assessed to income tax or corporation tax in an amount computed by reference to the value of the asset at the time of the exchange, then, in computing for any purpose of the Corporation Tax Acts the profit, gain or loss (if any) arising on the disposal, the asset shall be deemed to have been acquired by the company on the occasion or latest of the occasions mentioned in paragraph (b) above at a cost equal to the value by reference to which the company was so assessed as regards that occasion. (8) There shall be made such assessments, reductions of assessments or, on a claim in that behalf, repayments of tax as may in any case be required in order to give effect to subsection (3) or (4) above. (9) In this section, unless the context otherwise requires, “asset” includes part of an asset and any reference to a disposal of part of an asset includes a reference to a part disposal of an asset within the meaning of section 19(2) (b) of the 1979 Act; and where part of an asset is exchanged or disposed of as mentioned in any of subsections (2) to (7) above, that subsection shall have effect as if that part of the asset and the part not exchanged or disposed of were separate assets. (10) For the purposes of this section— “the base date”, in relation to an insurance company, means the last day of the financial year of the company which ended next after 7th December 1973; “financial year” has the meaning given by section 96 of the Insurance Companies Act 1982; “long term assets”, in relation to an insurance company, means assets representing the fund or funds maintained by the company in respect of its long term business; and “long term business” has the meaning given by section 1(1) of the Insurance Companies Act 1982”.

**Modifications etc. (not altering text)**

**C10** S. 440(1) excluded (25.7.1991) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 48, [Sch. 7 para. 6\(4\)](#)

**C11** See 1990 s.41 and Sch.6 para.12(2)—subs.(d) omitted for period 1 January 1990 to 19 March 1990 inclusive.

**Marginal Citations**

**M42** 1982 c. 50.

**440A** [<sup>F46</sup>Securities.

- (1) Subsection (2) below applies where the assets of an insurance company include securities of a class all of which would apart from this section be regarded for the purposes of corporation tax on chargeable gains as one holding.
- (2) Where this subsection applies—
  - (a) so many of the securities as are identified in the company’s records as securities by reference to the value of which there are to be determined benefits provided for under policies the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of basic life assurance business shall be treated for the purposes of corporation tax as a separate holding linked solely to that business,
  - (b) so many of the securities as are identified in the company’s records as securities by reference to the value of which there are to be determined



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- benefits provided for under contracts the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of pension business shall be treated for those purposes as a separate holding linked solely to that business,
- (c) so many of the securities as are included in the overseas life assurance fund shall be treated for those purposes as a separate holding which is an asset of that fund,
  - (d) so many of the securities as are included in the company's long term business fund but do not fall within any of the preceding paragraphs shall be treated for those purposes as a separate holding which is an asset of that fund (but not of any of the descriptions mentioned in those paragraphs, and
  - (e) any remaining securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs.
- (3) Subsection (2) above also applies where the assets of an insurance company include securities of a class and apart from this section some of them would be regarded as a 1982 holding, and the rest as a new holding, for the purposes of corporation tax on chargeable gains.
- (4) In a case within subsection (3) above—
- (a) the reference in any paragraph of subsection (2) above to a separate holding shall be construed, where necessary, as a reference to a separate 1982 holding and a separate new holding, and
  - (b) the questions whether such a construction is necessary in the case of any paragraph and, if it is, how many securities falling within the paragraph constitute each of the two holdings shall be determined in accordance with paragraph 12 of Schedule 6 to the Finance Act 1990 and the identification rules applying on any subsequent acquisitions and disposals.
- (5) Section 66 of the 1979 Act shall have effect where subsection (2) above applies as if securities regarded as included in different holdings by virtue of that subsection were securities of different kinds.
- (6) In this section—
- “1982 holding” has the meaning given by Part II of Schedule 19 to the Finance Act 1985;
  - “new holding” has the meaning given by Part III of that Schedule; and
  - “securities” has the same meaning as in section 65 of the 1979 Act.

#### Textual Amendments

**F46** See commentary text for s.440 (F588) above.

#### Modifications etc. (not altering text)

**C12** See 1990 s.41 and Sch.6 para.12(2)—subs.(d) omitted for period 1 January 1990 to 19 March 1990 inclusive.

**C13** See 1990 s.41 and Sch.6 para.12(1), (3), (4), (6), (7) and (10)—application and commencement provisions for “1982 holdings” and “new holdings”.

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**441 Overseas life assurance business.**

- (1) This section and section 441A shall apply for an accounting period of an insurance company resident in the United Kingdom if during the period the company carries on overseas life assurance business.
- (2) Subject to the provisions of this section and section 441A, profits arising to the company from the overseas life assurance business shall be treated as income within Schedule D, and the chargeable under Case VI of that Schedule, and for that purpose—
  - (a) that business shall be treated separately, and
  - (b) subject to paragraph (a) above, the profits from it shall be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.
- (3) Subsection (2) above shall not apply if the company is charged to corporation tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its life assurance business.
- (4) In making the computation referred to in subsection (2) above—
  - (a) sections 82(1), (2) and (4) and 83 of the Finance Act 1989 shall apply with the necessary modifications and in particular with the omission of the words “tax or” in section 82(1)(a), and
  - (b) there may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen from overseas life assurance business in any previous accounting period beginning on or after 1st January 1990.
- (5) Section 396 shall not be taken to apply to a loss incurred by a company on overseas life assurance business.
- (6) Nothing in section 128 or 399(1) shall affect the operation of this section.
- (7) Notwithstanding section 337(2), there shall be deductible in computing the profits arising to a company from overseas life assurance business—
  - (a) interest payable by the company under a liability of the long term business, so far as referable to overseas life assurance business, and
  - (b) annuities payable by the company, so far as so referable.
- (8) Gains accruing on the disposal by a company of assets of its overseas life assurance fund shall not be chargeable gains. ]]

**Textual Amendments**

**F47** 1990 s.42 and Sch.7 para.3 for accounting periods beginning on or after 1 January 1990 (see para.10). Previously

“Foreign life assurance funds. **441.**—(1) Corporation tax under Cases IV and V on income arising from investments of the foreign life assurance fund of an insurance company shall be computed as in the case mentioned in section 65(4), that is to say, by reference to the amount of income received in the United Kingdom; and this subsection shall apply notwithstanding that that section relates only to income tax. (2) Where any of the following securities, namely—(a) securities issued by the Treasury with the condition that the interest thereon shall not be liable to income tax so long as it is shown, in manner directed by the Treasury, that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom; or (b) securities issued by the Treasury with the condition that—(i) so long as the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest thereon shall be exempt from income tax, and (ii) so long as the securities are in the beneficial ownership of persons who are neither domiciled

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nor ordinarily resident in the United Kingdom, neither the capital thereof nor the interest thereon shall be liable to any taxation present or future; or (c) securities to which section 581 applies; for the time being form part of the investments of the foreign life assurance fund of an insurance company, the income arising from those securities, if applied for the purposes of that fund or reinvested so as to form part of that fund, shall not be liable to tax. (3) Where any income arising abroad from the investments of the foreign life assurance fund of an insurance company has been remitted to the United Kingdom and invested, as part of the investments of that fund, in any such securities as are mentioned in subsection (2) above, that income shall not be liable to tax and any tax paid thereon shall, if necessary, be repaid to the company on the making of a claim. (4) Any securities issued by the Treasury in pursuance of the power conferred by section 60(1) of the Finance Act 1940 with a modified form of the condition specified in subsection (2)(b) above shall, save in so far as the terms of the issue otherwise provide, be deemed for the purposes of subsections (2) and (3) above to be such securities as are mentioned in subsection (2) above. (5) Where income arising from the investments of the foreign life assurance fund of an insurance company has been relieved from tax in pursuance of the provisions of this section, a corresponding reduction shall be made—(a) in the relief granted under section 76 in respect of expenses of management; and (b) in any amount on which [in respect of general annuity business only (1989 s.84 and Sch.8 para.7, and subject to s.84(6), has effect with respect to accounting periods beginning on or after 1 January 1990 (including the 1990 component period).)] the company is chargeable to tax by virtue of section 436. (6) In this section “foreign life assurance fund”—(a) means any fund representing the amount of the liability of an insurance company in respect of its life assurance business with policy holders and annuitants residing outside the United Kingdom whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the United Kingdom; and (b) where such a fund is not kept separately from the life assurance fund, means such part of the life assurance fund as represents the liability of the company under such policies and contracts, such liability being estimated in the same manner as it is estimated for the purpose of the company's periodical return. (7) Where this section has effect in relation to income arising from investments of any part of an insurance company's life assurance fund, it shall have the like effect in relation to chargeable gains accruing from the disposal of any such investments, and losses so accruing shall not be allowable losses. (8) For the purposes of this section, an offshore income gain accruing to an insurance company carrying on life assurance business shall, if it accrues in respect of investments held in connection with that business, be treated as if it were income from investments held in connection with that business. (9) Where any payment is made by the Export Credits Guarantee Department—(a) under any agreement entered into under arrangements made by the Secretary of State in pursuance of section 11 of the Export Guarantees and Overseas Investment Act 1978, and (b) in respect of any income—(i) which cannot be transferred to the United Kingdom, and (ii) which arises from investments of the foreign life assurance fund of an insurance company, then, to the extent of the payment, this section shall apply in relation to the income as if it had been received in the United Kingdom (and accordingly cannot be received again in the United Kingdom)”.

#### 441A [F48] Section 441: distributions.

- (1) Section 208 shall not apply to a distribution in respect of any asset of an insurance company's overseas life assurance fund.
- (2) Subject to subsection (3) below, an insurance company shall not be entitled under section 231 to a tax credit in respect of such a distribution.
- (3) A company shall be entitled to such a tax credit if and to the extent that, were the recipient an individual resident in the territory in which the relevant branch or agency is situated, he would be entitled to the credit under arrangements having effect by virtue of section 788.

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- (4) For the purposes of subsection (3) above the relevant branch or agency, in the case of a tax credit in respect of a distribution, is—
- (a) where the relevant asset is linked solely to overseas life assurance business—
    - (i) the branch or agency at or through which the company has effected policies or contracts the benefits under which are to be determined by reference to the value of the asset, or
    - (ii) in a case where there is more than one such branch or agency, the branches to which different parts of it are allocated by the company in accordance with subsection (5) below;
  - (b) subject to paragraph (a) above, where the management of the relevant asset is under the control of a person whose normal place of work is at a branch or agency, that branch or agency; and
  - (c) in any other case, the branch or agency to which it is allocated by the company.
- (5) Where policies or contracts the benefits under which are to be determined by reference to the value of an asset within subsection (4)(a) above have been effected at or through more than one branch or agency, different parts of the asset shall be allocated to them so as to secure as far as practicable that the part allocated to each is proportionate to the part of the liabilities in respect of those benefits represented by liabilities under policies or contracts effected at or through it.
- (6) Where the overseas life assurance business carried on at or through a branch or agency in a territory includes—
- (a) reinsurance business which consists of the reinsurance of liabilities of a person resident in another territory, or
  - (b) retrocession business,
- the amount of any tax credit in relation to which the branch or agency is the relevant branch or agency shall be reduced by the proportion which the liabilities of that reinsurance business bear to all the liabilities of the overseas life assurance business carried on at or through the branch or agency.
- (7) Where a company is entitled to an amount of tax credit by virtue of this section the company may claim to have that amount paid to it.
- (8) No franked investment income shall be used under Chapter V of Part VI of this Act to frank a company's distributions if the tax credit (or any part of the tax credit) comprised in it is payable to the company under subsection (7) above.

#### **Textual Amendments**

**F48** See commentary text for s. 441 (F589) above.

#### **Modifications etc. (not altering text)**

**C14** S. 441A(8) amended (27.7.1993) by 1993 c. 34, s. 78(7)

## **442 Overseas business of U.K. companies.**

- (1) <sup>M43</sup>Subsections (2) and (3) below apply where a company resident in the United Kingdom carries on insurance business outside the United Kingdom through a branch or agency and—

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- (a) that business, or part of it, together with the whole assets of the company used for the purposes of that business or part (or together with the whole of those assets other than cash), is transferred to a company not resident in the United Kingdom;
- (b) the business or part is so transferred wholly or partly in exchange for shares, or for shares and loan stock, issued by the transferee company to the transferor company; and
- (c) the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company.
- (2) In making any computation in accordance with the provisions of this Act applicable to Case I of Schedule D of the profits or losses of the transferor company for the accounting period in which the transfer occurs, there shall be disregarded any profit or loss in respect of any asset transferred which, apart from this subsection, would fall to be taken into account in making that computation.
- (3) Where by virtue of subsection (2) above any profit or loss is disregarded in making any computation otherwise than for the purposes of section 76(2) the profit or loss shall be treated for the purposes of the 1979 Act as a chargeable gain or allowable loss accruing to the transferor company on the transfer.
- (4) Where at any time a company resident in the United Kingdom—
- (a) which carries on insurance business wholly outside the United Kingdom, and
- (b) the whole or part of whose ordinary share capital is beneficially owned by one or more companies resident in the United Kingdom,
- ceases to be resident in the United Kingdom, the profits or losses of the company in respect of that business for the accounting period ending at that time shall be computed for tax purposes without regard to the whole, or, as the case may be, a corresponding part of any profit or loss in respect of any asset which, apart from this subsection, would fall to be calculated in accordance with section 100(1)(b) and taken into account in making that computation.

#### Marginal Citations

**M43** Source—1977 s.45(1)—(4); 1979(C) Sch.7

#### 443 Life policies carrying rights not in money.

<sup>M44</sup>Where any investments or other assets are or have been, in accordance with a policy issued in the course of life assurance business carried on by an insurance company, transferred to the policy holder on or after 6th April 1967, the policy holder's acquisition of the assets, and the disposal of them to him, shall be deemed to be for a consideration equal to the market value of the assets for the purposes of computing income in accordance with Case I or VI of Schedule D.

#### Marginal Citations

**M44** Source—1970 s.321(1)(b), (2)

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#### **444 Life policies issued before 5th August 1965.**

- (1) <sup>M45</sup>This section applies in relation to policies of life assurance issued before 5th August 1965 by a company carrying on life assurance business, being policies which—
- (a) provide for benefits consisting to any extent of investments of a specified description or of a sum of money to be determined by reference to the value of such investments, but
  - (b) do not provide for the deduction from those benefits of any amount by reference to tax chargeable in respect of chargeable gains.
- (2) Where—
- (a) the investments of the company’s life assurance fund, so far as referable to those policies, consist wholly or mainly of investments of the description so specified, and
  - (b) on the company becoming liable under any of those policies for any such benefits (including benefits to be provided on the surrender of a policy), a chargeable gain accrues to the company from the disposal, in meeting or for the purpose of meeting that liability, of investments of that description forming part of its life assurance fund, or would so accrue if the liability were met by or from the proceeds of such a disposal,
- then the company shall be entitled as against the person receiving the benefits to retain out of those benefits a part not exceeding in amount or value corporation tax, at the rate specified in subsection (3) below, in respect of the chargeable gain referred to in paragraph (b) above, computed without regard to any amount retained under this subsection.
- (3) The amount to be retained under subsection (2) above shall, subject to subsection (4) below, be computed by reference to the rate of corporation tax for the time being in force or, if no rate of corporation tax has yet been fixed for the financial year, the rate last in force.
- (4) In so far as the chargeable gain represents or would represent a gain belonging or allocated to, or reserved for, policy holders, the amount to be retained shall be computed by reference to a rate of tax not exceeding 37.5 per cent.

#### **Marginal Citations**

**M45** Source—1970 s.322

#### **[<sup>F49</sup>444A Transfers of business.**

- (1) Subject to the following provisions of this section, this section applies where there is a transfer of the whole or part of the 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 <sup>M46</sup>Insurance Companies Act 1982.
- (2) Any expenses of management which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been deductible by the transferor under sections 75 and 76 in computing profits for an accounting period following the period which ends with the day on which the transfer takes place shall, instead, be treated as expenses of management of the transferee (and deductible in accordance with those sections, as modified in the case of acquisition expenses by

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- section 86(6) to (9) of the Finance Act 1989 and in the case of expenses to which subsection (6) or (7) of section 87 of that Act applies by that subsection).
- (3) Any loss which (assuming the transferor had continued to carry on the business transferred after the transfer)—
- (a) would have been available under section 436(3)(c) to be set off against profits of the transferor for the accounting period following that which ends with the day on which transfer takes place, or
  - (b) where in connection with the transfer the transferor also transfers the whole or part of any overseas life assurance business, would have been so available under section 441(4)(b),
- shall, instead, be treated as a loss of the transferee (and available to be set off against profits of the same class of business as that in which it arose).
- (4) Where acquisition expenses are treated as expenses of management of the transferee by virtue of subsection (2) above, the amount deductible for the first accounting period of the transferee ending after the transfer takes place shall be calculated as if that accounting period began with the day after the transfer.
- (5) Where the transfer is of part only of the transferor's long term business, subsection (2) or (3) above shall apply only to such part of any amount to which it would otherwise apply as is appropriate.
- (6) Any question arising as to the operation of subsection (5) 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 transferee shall be entitled to appear and be heard or to make representations in writing.
- (7) Subject to subsection (8) below, this section shall not apply unless the transfer is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax.
- (8) Subsection (7) above shall not affect the operation of this section in any case where, before the transfer, the Board have, on the application of the transferee, notified the transferee that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any scheme or arrangements such as are mentioned in that subsection; and subsections (2) to (5) of section 88 of the 1979 Act shall have effect in relation to this subsection as they have effect in relation to subsection (1) of that section.]

#### Textual Amendments

**F49** 1990 s.48 and Sch.9 para.4 in relation to transfer of business on or after 1 January 1990.

#### Marginal Citations

**M46** 1982 c. 50.

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**Changes to legislation:**

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