

Status: Point in time view as at 06/09/1999.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, SCHEDULE 32. (See end of Document for details)

SCHEDULES

SCHEDULE 32

Section 166.

EQUALISATION RESERVES

- 1 In Chapter I of Part XII of the Taxes Act 1988 (insurance companies and capital redemption business), after section 444B there shall be inserted the following sections—

“ Equalisation reserves

444BA Equalisation reserves for general business.

- (1) Subject to the following provisions of this section and to sections 444BB to 444BD, the rules in subsection (2) below shall apply in making any computation, for the purposes of Case I or V of Schedule D, of the profits or losses for any accounting period of an insurance company whose business has at any time been or included business in respect of which it was required, by virtue of section 34A regulations, to maintain an equalisation reserve.
- (2) Those rules are—
 - (a) that amounts which, in accordance with section 34A regulations, are transferred into the equalisation reserve in respect of the company’s business for the accounting period in question are to be deductible;
 - (b) that amounts which, in accordance with any such regulations, are transferred out of the reserve in respect of the company’s business for that period are to be treated as receipts of that business; and
 - (c) that it must be assumed that all such transfers as are required by section 34A regulations to be made into or out of the reserve in respect of the company’s business for any period are made as required.
- (3) Where an insurance company having any business in respect of which it is required, by virtue of section 34A regulations, to maintain an equalisation reserve ceases to trade—
 - (a) any balance which exists in the reserve at that time for the purposes of the Tax Acts shall be deemed to have been transferred out of the reserve immediately before the company ceases to trade; and
 - (b) that transfer out shall be deemed to be a transfer in respect of the company’s business for the accounting period in which the company so ceases and to have been required by section 34A regulations.
- (4) Where—
 - (a) an amount is transferred into an equalisation reserve in respect of the business of an insurance company for any accounting period,
 - (b) the rule in subsection (2)(a) above would apply to the transfer of that amount but for this subsection,

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- (c) that company by notice in writing to an officer of the Board makes an election in relation to that amount for the purposes of this subsection, and
- (d) the notice of the election is given not more than two years after the end of that period,

the rule mentioned in subsection (2)(a) above shall not apply to that transfer of that amount and, instead, the amount transferred (the “unrelieved transfer”) shall be carried forward for the purposes of subsection (5) below to the next accounting period and (subject to subsection (6) below) from accounting period to accounting period.

(5) Where—

- (a) in accordance with section 34A regulations, a transfer is made out of an equalisation reserve in respect of an insurance company’s business for any accounting period,
- (b) the rule in subsection (2)(b) above would apply to the transfer but for this subsection, and
- (c) the accounting period is one to which any amount representing one or more unrelieved transfers has been carried forward under subsection (4) above,

that rule mentioned in subsection (2)(b) above shall not apply to that transfer except to the extent (if any) that the amount of the transfer exceeds the aggregate of the amounts representing unrelieved transfers carried forward to that period.

(6) Where in the case of any company—

- (a) any amount representing one or more unrelieved transfers is carried forward to an accounting period in accordance with subsection (4) above, and
- (b) by virtue of subsection (5) above the rule in subsection (2)(b) above does not apply to an amount representing the whole or any part of any transfer out of an equalisation reserve in respect of the company’s business for that period,

the amount mentioned in paragraph (a) above shall not be carried forward under subsection (4) above to the next accounting period except to the extent (if any) that it exceeds the amount mentioned in paragraph (b) above.

(7) To the extent that any actual or assumed transfer in accordance with section 34A regulations of any amount into an equalisation reserve is attributable to arrangements entered into wholly or mainly for tax purposes—

- (a) the rule in subsection (2)(a) above shall not apply to that transfer; and
- (b) the making of that transfer shall be disregarded in determining, for the purposes of the Tax Acts, whether and to what extent there is subsequently any requirement to make a transfer into or out of the reserve in accordance with section 34A regulations;

and this subsection applies irrespective of whether the insurance company in question is a party to the arrangements.

(8) For the purposes of this section the transfer of an amount into an equalisation reserve is attributable to arrangements entered into wholly or mainly for tax

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purposes to the extent that the arrangements to which it is attributable are arrangements—

- (a) the sole or main purpose of which is, or
- (b) the sole or main benefit accruing from which might (but for subsection (7) above) be expected to be,

the reduction by virtue of this section of any liability to tax.

(9) Where—

- (a) any transfer made into or out of an equalisation reserve maintained by an insurance company is made in accordance with section 34A regulations in respect of business carried on by that company over a period (“the equalisation period”), and

- (b) parts of the equalisation period are in different accounting periods, the amount transferred shall be apportioned for the purposes of this section between the different accounting periods in the proportions that correspond to the number of days in the equalisation period that are included in each of those accounting periods.

(10) The Treasury may by regulations provide in relation to any accounting periods ending on or after 1st April 1996 for specified transitional provisions contained in section 34A regulations to be disregarded for the purposes of the Tax Acts in determining how much is required, on any occasion, to be transferred into or out of any equalisation reserve in accordance with the regulations.

(11) In this section and sections 444BB to 444BD “section 34A regulations” means regulations made under section 34A of the ^{M1}Insurance Companies Act 1982 (equalisation reserves in respect of general business).

444BB Modification of s. 444BA for mutual or overseas business and for non-resident companies.

(1) The Treasury may by regulations make provision modifying section 444BA so as, in cases mentioned in subsection (2) below—

- (a) to require—
 - (i) sums by reference to which the amount of any transfer into or out of an equalisation reserve falls to be computed, or
 - (ii) the amount of any such transfer,

to be apportioned between different parts of the business carried on for any period by an insurance company; and

- (b) to provide for the purposes of corporation tax for the amounts taken to be transferred into or out of an equalisation reserve to be computed disregarding any such sum or, as the case may be, any such part of a transfer as is attributed, in accordance with the regulations, to a part of the business described for the purpose in the regulations.

(2) Those cases are cases where an insurance company which, in accordance with section 34A regulations, is required to make transfers into or out of an equalisation reserve in respect of any business carried on by that company for any period is carrying on, for the whole or any part of that period—

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- (a) any business the income and gains of which fall to be disregarded in making a computation of the company's profits in accordance with the rules applicable to Case I of Schedule D, or
 - (b) any business by reference to which double taxation relief is afforded in respect of any income or gains.
- (3) Section 444BA shall have effect (subject to any regulations under subsection (1) above) in the case of an equalisation reserve maintained by an insurance company which—
- (a) is not resident in the United Kingdom, and
 - (b) carries on business in the United Kingdom through a branch or agency,
- only if such conditions as may be prescribed by regulations made by the Treasury are satisfied in relation to that company and in relation to transfers into or out of that reserve.
- (4) Regulations under this section prescribing conditions subject to which section 444BA is to apply in the case of any equalisation reserve maintained by an insurance company may—
- (a) contain conditions imposing requirements on the company to furnish the Board with information with respect to any matters to which the regulations relate, or to produce to the Board documents or records relating to any such matters; and
 - (b) provide that, where any prescribed condition is not, or ceases to be, satisfied in relation to the company or in relation to transfers into or out of that reserve, there is to be deemed for the purposes of the Tax Acts to have been a transfer out of that reserve of an amount determined under the regulations.
- (5) Regulations under this section may—
- (a) provide for apportionments under the regulations to be made in such manner, and by reference to such factors, as may be specified or described in the regulations;
 - (b) make different provision for different cases;
 - (c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit;
 - (d) make provision having retrospective effect in relation to accounting periods beginning not more than one year before the time when the regulations are made;
- and the powers conferred by this section in relation to transfers into or out of any reserve shall be exercisable in relation to both actual and assumed transfers.
- (6) In this section “double taxation relief” means—
- (a) relief under double taxation arrangements which takes the form of a credit allowed against corporation tax, or
 - (b) unilateral relief under section 790(1) which takes that form;
- and “double taxation arrangements” here means arrangements having effect by virtue of section 788.

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444BC Modification of s. 444BA for non-annual accounting etc.

- (1) The Treasury may by regulations make provision modifying the operation of section 444BA in relation to cases where an insurance company has, for the purpose of preparing the documents it is required to prepare for the purposes of section 17 of the ^{M2}Insurance Companies Act 1982, applied for any period an accounting method described in paragraph 52 or 53 of Schedule 9A to the ^{M3}Companies Act 1985 (accounting on a non-annual basis).
- (2) Subsection (5) of section 444BB applies for the purposes of this section as it applies for the purposes of that section.

444BD Application of s. 444BA rules to other equalisation reserves.

- (1) The Treasury may by regulations provide for section 444BA to have effect, in such cases and subject to such modifications as may be specified in the regulations, in relation to any equivalent reserves as it has effect in relation to equalisation reserves maintained by virtue of section 34A regulations.
- (2) For the purposes of this section a reserve is an equivalent reserve if—
 - (a) it is maintained, otherwise than by virtue of section 34A regulations, either—
 - (i) by an EC company carrying on business in the United Kingdom through a branch or agency, or
 - (ii) in respect of any insurance business (within the meaning of the Insurance Companies Act 1982) which is carried on outside the United Kingdom by a company resident in the United Kingdom;and
 - (b) the purpose for which, or the manner in which, it is maintained is such as to make it equivalent to an equalisation reserve maintained by virtue of section 34A regulations.
- (3) For the purposes of this section a reserve is also an equivalent reserve if it is maintained in respect of any credit insurance business in accordance with requirements imposed either—
 - (a) by or under any enactment, or
 - (b) under so much of the law of any territory as secures compliance with the requirements of Article 1 of the credit insurance directive (equalisation reserves for credit insurance).
- (4) Without prejudice to the generality of subsection (1) above, the modifications made by virtue of that subsection may—
 - (a) provide for section 444BA to apply in the case of an equivalent reserve only where such conditions as may be specified in the regulations are satisfied in relation to the company maintaining the reserve or in relation to transfers made into or out of it; and
 - (b) contain any other provision corresponding to any provision which, in the case of a reserve maintained by virtue of section 34A regulations, may be made under sections 444BA to 444BC.

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- (5) Subsections (4) and (5) of section 444BB shall apply for the purposes of this section as they apply for the purposes of that section.
- (6) Without prejudice to the generality of section 444BB(5), the transitional provision which by virtue of subsection (5) above may be contained in regulations under this section shall include—
- (a) provision for treating the amount of any transfers made into or out of an equivalent reserve in respect of business carried on for any specified period as increased by the amount by which they would have been increased if no transfers into the reserve had been made in respect of business carried on for an earlier period; and
 - (b) provision for excluding from the rule in section 444BA(2)(b) so much of any amount transferred out of an equivalent reserve as represents, in pursuance of an apportionment made under the regulations, the transfer out of that reserve of amounts in respect of which there has been no entitlement to relief by virtue of section 444BA(2)(a).
- (7) In this section—

“credit insurance business” means any insurance business falling within general business class 14 of Schedule 2 to the ^{M4}Insurance Companies Act 1982 that is not reinsurance business;

“the credit insurance directive” means Council Directive [87/343/EEC](#) of 22nd June 1987 amending, as regards credit insurance and suretyship insurance, First Directive 73/239 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; and

“EC company” has the same meaning as in the ^{M5}Insurance Companies Act 1982.”

Marginal Citations

- M1** 1982 c. 50.
M2 1982 c. 50.
M3 1985 c. 6.
M4 1982 c. 50.
M5 1982 c. 50.

- 2 In the second column of the Table in section 98 of the ^{M6}Taxes Management Act 1970 (penalties in respect of certain information provisions), after the entry relating to regulations under section 431E(1) or 441A(3) of the Taxes Act 1988 there shall be inserted the following entries—

“regulations under section 444BB;
regulations under section 444BD;”.

Marginal Citations

- M6** 1970 c. 9.

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