

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 46 Schedule 23: Insurance Companies

Details of the Schedule

Transfers from non technical account not to be receipts

3. Paragraph 1(1) amends section 83 of FA 1989 so that additions of assets by a life insurance company to its LTIF on or after 22 April 2009 which are brought into account in the company's regulatory return are not taxable receipts.

No deduction for capital allocations to with-profits policy holders

4. Paragraph 2(1) amends section 82 of FA 1989 so that amounts allocated to with-profits policyholders which are capital and not funded out of income brought into account in the regulatory return are not allowable deductions in computing Case I profits. It makes it clear that where amounts are allocated to policy holders in respect of amounts payable in connection with the reattribution of inherited estate those amounts are to be treated as being capital.

Limits on loss relief for addition to non-profits funds

5. Paragraph 3(1) inserts into the Income and Corporation Taxes Act 1988 (ICTA) new sections 434AZA, 434AZB and 434AZC.
6. New section 434AZA restricts the Case I loss of the company's life assurance business available to set off against the company's other income of the accounting period or to surrender as group relief when:
 - there has been an addition to a non profit fund of the company; and, in that period of account or a subsequent period of account,
 - the company has made a book value election in respect of a non-profit fund or funds; and/or
 - arrangements have been entered into the purpose or main purpose of which is to reduce the admissible value of the assets of a non-profit fund or funds.
7. New section 434AZB determines the extent to which the Case I loss is to be restricted. The restriction in respect of a period of account is the least of:
 - a. the addition or additions to the company's non-profit fund or funds made in that period of account and/or, to the extent that it is attributable to additions made in earlier periods of account, the unappropriated surplus of a non-profit fund or funds carried forward to that period of account;
 - b. any amount(s) shown in Line 51 of Form(s) 14 for the company's non-profit fund or funds and/or any reduction in admissible value of assets, other than structural assets attributable to the arrangements; or,
 - c. the amount of the loss arising on the company's life assurance business.

*These notes refer to the Finance Act 2009 (c.10)
which received Royal Assent on 21 July 2009*

8. When a loss arising in a period of account has been restricted there will be a corresponding reduction in the amounts available to restrict losses in subsequent periods of account.
9. New section 434AZC contains supplementary provisions. Subsection (2) applies section 434AZA and 434AZB to a non-profit part of a with-profit fund. The non-profit part of a with-profit fund is that part of the with-profit fund which belongs to the company and in whose profits the with-profits policyholders are not entitled to participate. The subsection ensures that for this purpose it is treated in the same way as a non-profit fund.

**Financing-Arrangement-Funded Transfers to Shareholders (“FAFTS”) and
Contingent Loans**

10. Paragraph 4(1) amends Paragraph 4(5) of Schedule 17 to FA 2008 to make it clear that, for the purposes of calculating any relief on a subsequent repayment of an existing loan, transfers to shareholders which take place on or after 1 January 2008 do not need to be taken into account in computing the relief due. This ensures that the tax treatment on repayment of such a loan is effectively the same as it would have been had section 83ZA of FA 1989 continued in force.

Apportionment: Foreign Business Asset

11. Paragraph 5 provides for the references to foreign business assets (which effectively exclude them from the calculations) in subsections 432E(3)(a), (4) and (4A) to be omitted. When the concept of “foreign business assets” was introduced by Paragraph 10 of Schedule 17 to FA 2008 the intention was to allow the apportionment rules in section 432E(3), commonly known as the “floor”, to operate without seeking to distinguish the income from foreign business assets, because it would be impracticable to do so. For the purpose of the apportionment it is necessary for the foreign business assets to be removed from both the numerator and denominator of the apportionment fraction. Paragraph 5 does that by removing all remaining references to “foreign business assets” in the relevant subsections.
12. Paragraph 6 makes consequential amendments to Paragraph 19(4) and (6) of Schedule 7 to FA 2007, again omitting references to foreign business assets.

Value Shifting attributable to transfer of business

13. Paragraph 8(1) amends section 32(1) of TCGA to insert a reference to section 211 of TCGA. As a result, a disposal within section 211, the transfer of an insurance business, will be protected from the application of the anti-avoidance rules in section 30, providing the requirements of section 32(2) are met. The amendment is therefore wholly relieving.
14. Subsection 8(2) provides that the amendment in sub-paragraph (1) shall apply to disposals on or after 22 April 2009.