
STATUTORY INSTRUMENTS

1995 No. 1730

The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995

Exclusion of certain reinsurance arrangements from section 442A

9.—(1) There shall be excluded from the operation of section 442A any reinsurance arrangement in respect of a policy which falls within any of the descriptions prescribed by paragraphs (2) to (4) below.

- (2) The description prescribed by this paragraph is of any reinsurance arrangement where—
- (a) both the cedant company and the reinsurer are insurance companies which are either resident in the United Kingdom or, as respects the reinsurance arrangement or, as the case may be, the business to which the reinsurance is attributable, are within the charge to corporation tax by virtue of section 11 of the Taxes Act⁽¹⁾;
 - (b) the cedant company is a 90% subsidiary of the reinsurer, or the reinsurer is a 90% subsidiary of the cedant company, or each is a 90% subsidiary of another body corporate; and
 - (c) the reinsurer is not a company which is charged to tax under Case I of Schedule D.
- (3) The description prescribed by this paragraph is of any reinsurance arrangement where—
- (a) the reinsurer is a company which in the relevant period is chargeable to tax under the laws of the territory in which it is domiciled or resident in respect of amounts to which the reinsurance arrangement gives rise;
 - (b) the head office of the reinsurer is in an EEA State;
 - (c) the charge to tax in the relevant period is such a charge made otherwise than by reference to profits as (by disallowing their deduction in computing the amount chargeable) to require sums payable and other liabilities arising under reinsurance arrangements to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the reinsurer;
 - (d) the rate of tax fixed for the purposes of that charge in relation to the amounts subject to tax in the hands of the reinsurer (not being amounts arising or accruing in respect of investments that are of a particular description for which a special relief or exemption is generally available) has in the relevant period been at least 20 per cent.;
 - (e) none of the obligations of the reinsurer under the reinsurance arrangement to pay any sum or meet any other liability, other than obligations in respect of mortality risk or morbidity risk, has itself been the subject of a reinsurance arrangement;
 - (f) no deposit-back arrangements are in force in respect of the reinsurance arrangement; and
 - (g) the reinsurer is not subject in the relevant period to a restriction in the amount of the expenses which may be deducted in computing its liability to tax, where the restriction is calculated by reference to the amount of its profits.

⁽¹⁾ Section 11 was amended by section 98(4) of, and Part V of Schedule 19 to, the Finance Act 1990, paragraph 14(2) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), and Part III (9) of Schedule 23 to the Finance Act 1993 (c. 34).

- (4) The description prescribed by this paragraph is of any reinsurance arrangement under which—
- (a) (i) only the mortality risk or the morbidity risk is being reinsured, or both the mortality risk and the morbidity risk (but no other risk) are being reinsured, and
 - (ii) no payment by way of surrender value is capable of being made by the reinsurer to the cedant company; or
 - (b) either—
 - (i) no profit such as is referred to in regulation 6(2) is capable of arising; or
 - (ii) such profit is capable of arising only as a result of the death, illness or infirmity of, or accident to, a person or the lapsing of the policy.

(5) In paragraph (3) above, “the relevant period” means a period for which the reinsurer draws up accounts and which ends in or at the end of an accounting period of the cedant company or, if there is more than one such period ending in or at the end of the same accounting period, the period which is the first to end.

(6) For the purposes of paragraph (4) above, the fact that a premium payable by the cedant company under the reinsurance arrangement is calculated so as to reflect a guarantee by that company under the terms of the policy that it will issue a different policy at a future date shall not be taken to mean that risks other than mortality risk or morbidity risk are being reinsured under the reinsurance arrangement.