

2004 No.2200

INCOME TAX

The Overseas Life Insurance Companies Regulations 2004

Made - - - - *27th August 2004*

Laid before the House of Commons *27th August 2004*

Coming into force - - *17th September 2004*

The Treasury, in exercise of the powers conferred upon them by section 156 of the Finance Act 2003(a), hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Overseas Life Insurance Companies Regulations 2004, shall come into force on 17th September 2004, and subject to paragraphs (2) to (4) have effect in relation to overseas life insurance companies for accounting periods beginning on or after 1st January 2003.

(2) The following regulations have effect in relation to qualifying overseas transfers which take place on or after the day the regulations come into force—

- (a) in regulation 3(4), sub-paragraphs (c), (h)(v), (h)(vii), (m) and (q);
- (b) regulation 6(5)(f);
- (c) in regulation 7(2), sub-paragraphs (f) and (h)(ii);
- (d) regulation 9;
- (e) in regulation 11, paragraphs (4) and (5).

(3) The following regulations have effect in relation to periods of account beginning on or after the day the regulations come into force—

- (a) regulation 3(4)(h)(ii);
- (b) in regulation 6, paragraphs (7), (8) and (10)(g).

(4) Regulations 3(4)(d)(iii) and 7(2)(i) have effect on and after the day the regulations come into force.

Interpretation

2. In these Regulations —

“overseas life insurance company” has the meaning given by section 156(5) of the Finance Act 2003;

“permanent establishment”, in relation to an overseas life insurance company, has the meaning given by section 148 of the Finance Act 2003;

“the Taxes Act” means the Income and Corporation Taxes Act 1988(a).

Modifications to the Taxes Act

3.—(1) In its application to an overseas life insurance company the Taxes Act has effect with the following modifications.

(2) In section 76(6), for “branch or agency”, wherever occurring, substitute “permanent establishment”.

(3) In section 431(2), in the definition of “overseas life insurance company”, for “branch or agency” substitute “permanent establishment”.

(4) In Schedule 19AC —

- (a) omit paragraph 3;
- (b) omit paragraph 4;
- (c) in paragraph 4A, omit sub-paragraphs (2) and (3)(b);
- (d) in paragraph 5 —
 - (i) before sub-paragraph (1) insert —

“(A1) In section 76, in subsection (2B), the reference in paragraph (a) to income and gains shall be treated as a reference to so much of the income and gains mentioned in that paragraph as falls to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

(A2) In that subsection, the reference in paragraph (b) to distributions shall be treated as a reference to so much of the distributions mentioned in that paragraph as falls to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”(c);

(ii) in sub-paragraph (1) —

- (aa) for “In section 76” substitute “In that section”;
- (bb) in paragraph (a) of the subsection (6A) treated as inserted into section 76, for “branch or agency” substitute “permanent establishment”;

(iii) omit sub-paragraph (1A);

- (e) omit paragraph 5A;
- (f) omit paragraph 5B;
- (g) in paragraph 5C(1), for “branch or agency” substitute “permanent establishment”;
- (h) in paragraph 6 —
 - (i) in sub-paragraph (1), for the definition of “investment reserve” treated as substituted in section 431(2), substitute —

““investment reserve”, in relation to an overseas life insurance company, means the excess of the value of the relevant assets over the relevant liabilities, and for the purposes of this definition —

 - (a) relevant assets are such assets of the company’s long-term insurance fund as fall to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business; and
 - (b) relevant liabilities are —

(a) 1988 c. 1.

(b) “Qualifying overseas transfer” is defined in section 431(2) as modified by paragraph 6 of Schedule 19AC.

(c) Subsection (2B) is amended by section 170 of, and paragraphs 6(6) and (12), and 12(1) and (5) of Schedule 33 to, the Finance Act 2003.

- (i) such liabilities of the long-term business as fall to be attributed, for the purposes of section 11AA(2), to the permanent establishment; and
 - (ii) any money debts (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) of the company which are not within sub-paragraph (i) above but which are owed in respect of that business and fall to be attributed, for the purposes of section 11AA(2), to the permanent establishment;.”(a);
- (ii) in sub-paragraph (2), for the definition of “liabilities” treated as substituted in section 431(2), substitute —
- ““liabilities’, where the company concerned is an overseas life insurance company, does not include liabilities that have been reinsured, and (subject to that) means —
- (a) the long-term liabilities of the company determined for the purposes of the company’s periodical return on actuarial principles in accordance with section 5.6 of the Prudential Sourcebook (Insurers), or
 - (b) in the case of liabilities not determined for the purposes of such a periodical return, liabilities as determined in accordance with actuarial principles for the purposes of any return equivalent to a periodical return and required to be made by the company under the law of the territory in which the company is resident;.”(b);
- (iii) omit sub-paragraph (4A);
- (iv) in sub-paragraph (5), in the definition of “value” treated as substituted in section 431(2), omit from “, or” at the end of paragraph (b) to the end of the definition;
- (v) after sub-paragraph (6) insert —
- “(7) In that subsection, the following definition shall be treated as substituted for the definition of “insurance business transfer scheme” —
- ““insurance business transfer scheme” means a scheme falling within section 105 of the Financial Services and Markets Act 2000 and includes a reference to—
- (a) an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section; and
 - (b) a qualifying overseas transfer;.”;
- (vi) after sub-paragraph (7) insert —
- “(8) In that subsection, in the definition of “insurance company”, the words “permanent establishment” shall be treated as substituted for the words “branch or agency”;.”;
- (vii) after sub-paragraph (8) insert —
- “(9) In that subsection, the following definition shall be treated as inserted at the appropriate place —
- ““qualifying overseas transfer” means so much of any transfer of the whole or any part of the business of an overseas life insurance company carried on through a permanent establishment in the United Kingdom as takes place in accordance with any authorisation granted outside the United Kingdom for the purposes of Article 14 of the Directive of the European Parliament and of the Council of 5th November 2002 concerning life assurance (No.2002/83/EC);.”;
- (viii) after sub-paragraph (9) insert —
- “(10) In that subsection, in the case of an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000, the following definition shall be treated as substituted for the definition of “long-term insurance fund” —
- ““long-term insurance fund”, in the case of an overseas life insurance company, means the technical account for life assurance business of the company within the meaning of

(a) Section 11AA is inserted into the Taxes Act by section 149(2) of the Finance Act 2003.

(b) Section 431(2) of the Taxes Act defines “the Prudential Sourcebook (Insurers)” as the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under the Financial Services and Markets Act 2000 (c. 8).

the Council Directive of 19th December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No.91/674/EEC), and references to assets of the long-term insurance fund shall be read as references to assets from which any income or gain is or would be included in the technical account;”;

(i) in paragraph 6A, in the words treated as inserted in section 431D(1), for “branch or agency” substitute “permanent establishment”;

(j) for paragraph 7 substitute —

“7. Section 432A has effect as if —

(a) the reference in subsection (1)(a) to assets of the company’s long-term insurance fund were to such of those assets as fall to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business;

(b) the references in subsections (3) and (6) to assets were to such of the assets concerned as fall to be attributed, for the purposes of section 11AA(2), to that permanent establishment; and

(c) the references in subsections (6) and (8) to liabilities were to such of the liabilities concerned as fall to be attributed, for the purposes of section 11AA(2), to that permanent establishment.”;

(k) in paragraph 8 —

(i) omit sub-paragraphs (1) and (2);

(ii) for sub-paragraph (3) substitute —

“(3) Sections 432B(3) and 432C to 432E shall have effect as if the reference to relevant business were to relevant business of the permanent establishment in the United Kingdom through which the company carries on life assurance business.”;

(l) omit paragraph 9;

(m) omit paragraph 10AA;

(n) in paragraph 10B —

(i) in sub-paragraph (2)(b) —

(aa) omit the paragraph (g) treated as inserted in section 440(4);

(bb) in the paragraph (h) treated as so inserted, for “non-UK assets” substitute “assets of the company which are not UK assets”;

(ii) in sub-paragraph (3), for the subsection (7) treated as inserted in section 440 substitute —

“(7) For the purposes of this section UK assets are assets which fall to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”;

(o) in paragraph 10C —

(i) in sub-paragraph (1), for the section 440B(3) treated as substituted, substitute —

“(3) Section 440(1) and (2) have effect as if the only categories specified in subsection (4) of that section were —

(a) UK assets of the long-term insurance fund,

(b) other UK assets, and

(c) assets of the company which are not UK assets,

and UK assets has the meaning given by section 440(7).”;

(ii) in sub-paragraph (2), in the subsection treated as substituted for section 440B(4), in the paragraphs treated as substituted in section 440A(2) —

(aa) at the end of paragraph (b) insert “and”;

- (bb) omit paragraph (c);
- (p) in paragraph 11 —
 - (i) in sub-paragraph (4), omit the paragraph (f) treated as inserted in section 440A(2) but not the word “and” at the end of that paragraph;
 - (ii) in sub-paragraph (5), for the subsection (6A) treated as inserted in section 440A substitute —
 - “(6A) For the purposes of this section —
 - (a) UK securities are such securities as are assets which fall to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business; and
 - (b) non-UK securities are securities which are not UK securities.”;
- (q) for paragraph 11C substitute —
 - “**11C.** In section 460(10A), the reference to an insurance business transfer scheme shall be treated as including a reference to a qualifying overseas transfer within the meaning given by the definition treated as inserted into section 431(2) by paragraph 6(9) above.”;
- (r) omit paragraph 13;
- (s) omit paragraph 14;
- (t) in paragraph 14A(2), in the paragraph 6 treated as inserted in Schedule 19AA —
 - (i) for paragraph (a) substitute —
 - “(a) the references in paragraphs 2 and 3 to assets of the long-term insurance fund were to such of those assets as fall to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”;
 - (ii) in paragraph (b), for “branch or agency” substitute “permanent establishment”;
 - (iii) for paragraph (c) and the words following it substitute —
 - “(c) the references in paragraph 4(1) and (2) to liabilities of the company’s long-term insurance fund which represent a money debt, and the reference in paragraph 4(5)(b) to money debts of the company, were references to such of those liabilities or debts as fall to be attributed, for the purposes of section 11AA(2), to the permanent establishment.”.

Modifications to the Taxes Act: transitional provisions

4.—(1) All the assets —

- (a) held by an overseas life insurance company immediately before the commencement of its first accounting period to begin on or after 1st January 2003, and
- (b) at that time falling within the category set out in the paragraph (g) (section 11C assets) treated as inserted in section 440(4) of the Taxes Act(a),

shall be taken to have been transferred, immediately after the commencement of that accounting period, to the category set out in paragraph (e) (UK assets of the long-term insurance fund not within paragraphs (a) to (d)) of section 440(4) of that Act(b).

(2) All the assets —

- (a) held by an overseas life insurance company immediately before the commencement of its first accounting period to begin on or after 1st January 2003, and

(a) Paragraph (g) was treated as inserted in section 440(4) by paragraph 10B(1) and (2)(b) of Schedule 19AC. It is omitted by virtue of regulation 3(4)(n) above. Section 11C is omitted by virtue of regulation 3(4)(b) above.

(b) Paragraph (e) is modified by paragraph 10B(1) and (2)(a) of Schedule 19AC where the company mentioned in section 440(1) is an overseas life insurance company.

- (b) at that time falling within the category set out in paragraph (c) (section 11C assets) of the subsection (3) treated as substituted in section 440B of the Taxes Act (a),

shall be taken to have been transferred, immediately after the commencement of that accounting period, to the category set out in paragraph (a) (UK assets of the long-term insurance fund) of the subsection (3) treated as substituted in that section(b).

(3) Section 440(1) of the Taxes Act shall not have effect in relation to the transfer of assets from one category to another by virtue of paragraph (1) or (2) above.

(4) Section 440(1) of the Taxes Act shall not have effect in relation to the transfer of assets from one category to another by virtue of sub-paragraph (n)(ii) or (o)(i) of regulation 3(4).

Modifications to section 89A of, and Schedule 8A to, the Finance Act 1989

5.—(1) In the heading to section 89A of the Finance Act 1989(c) for “83” substitute “82 to 83A, 88”.

(2) In section 89A of that Act, for “83” substitute “82 to 83A, 88”.

6.—(1) Schedule 8A to the Finance Act 1989(d) is modified as follows.

(2) In the heading, for “83 TO 83A” substitute “82 TO 83A, 88”.

(3) In paragraph 1 —

(a) in sub-paragraph (1) —

(i) for “sections 83 to 83A” substitute “sections 82 to 83A and 88”;

(ii) for “paragraphs 1A to 1C” substitute “paragraphs 1ZA to 1D”;

(b) omit sub-paragraph (2).

(4) After paragraph 1 insert —

“**1ZA.** The reference in section 82(2) to amounts allocated to policy holders or annuitants in respect of a period of account shall be construed as a reference to such of those amounts as fall to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

1ZB. The reference in section 82A(1) to tax expended on behalf of policy holders or annuitants shall be construed as a reference to so much of that tax as falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”(e).

(5) In paragraph 1A —

(a) in sub-paragraph (1), for “branch or agency” substitute “permanent establishment”;

(b) for sub-paragraph (2) substitute —

“(2) The references to assets in section 83(2) (as it applies apart from subsection (3) of that section) and section 83(2B) to (2E) shall be construed as references to such of the assets concerned as fall to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to that permanent establishment.”;

(c) omit sub-paragraph (3);

(d) after sub-paragraph (3) insert —

(a) Paragraph (e) was part of the subsection (3) treated as substituted in section 440B by paragraph 10C(1) of Schedule 19AC. It is replaced by virtue of regulation 3(4)(o) above.

(b) Paragraph (a) is part of the subsection (3) treated as substituted in section 440B by paragraph 10C(1) of Schedule 19AC.

(c) 1989 c. 26. Section 89A was inserted by section 101(1) of the Finance Act 1993 (c. 34).

(d) Schedule 8A was inserted by section 101(2) of, and Schedule 10 to, the Finance Act 1993.

(e) Section 82 is substituted by, and sections 82A and 82B are inserted by, section 170 of, and paragraph 1 of Schedule 33 to, the Finance Act 2003.

“(3A) The reference in section 83(2)(d) to other income shall be construed as a reference to such of the income concerned as falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to that permanent establishment.”(a);

(e) in sub-paragraph (4), for “any amount being added” substitute “assets being added”, and for “branch or agency” substitute “permanent establishment”;

(f) after sub-paragraph (4) insert —

“(4A) In section 83(6), insert “or” at the end of paragraph (a), and omit paragraph (b).”;

(g) in sub-paragraph (5) omit “, (3) or (4)”.

(6) After paragraph 1A insert —

“**1AA.**—(1) Where an overseas life insurance company has a revenue account prepared for the purposes of Chapter 9 of the Prudential Sourcebook (Insurers), the reference in section 83ZA(8) (definition of “relevant net transfers to shareholders”) to the positive amounts brought into account as transfers to non-technical account shall be read as a reference to so much of any positive amounts brought into account as transfers to non-technical account as falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

(2) Where an overseas life insurance company is an EEA firm, the reference in section 83ZA(8) to the positive amounts brought into account as transfers to non-technical account shall be read as a reference to so much of any positive amounts brought into account as transfers to non-technical account as —

(a) is shown in accounts drawn up in accordance with the Council Directive of 19th December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No.91/674/EEC), and

(b) falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

(3) In sub-paragraph (2) “EEA firm” means a firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000.

(4) The reference in section 83ZA(9) to the amount allocated to policy holders as bonuses shall be construed as a reference to so much of that amount as is brought into account, and “brought into account” has the meaning given by section 83A.

(5) The reference in section 83ZA(10)(a) to liabilities shall be construed as a reference to so much of those liabilities as falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

(6) Section 83ZA(12) shall apply but with the omission of the words “as other income”.”
(b), (c).

(7) In paragraph 1B —

(a) at the end of sub-paragraph (1) insert —

“This is subject to sub-paragraph (1A).”;

(b) after sub-paragraph (1) insert —

“(1A) In its application in relation to an overseas life insurance company which is an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000, section 83A shall have effect with the substitution for subsection (2) of —

(a) Section 83 is amended by section 170 of, and paragraph 2 of Schedule 33 to, the Finance Act 2003.

(b) By virtue of section 90A of the Finance Act 1989 (inserted by section 170 of, and paragraph 31 of Schedule 33 to, the Finance Act 2003) “the Prudential Sourcebook (Insurers)” has the meaning given in section 431(2) of the Taxes Act.

(c) Section 83ZA is inserted by section 170 of, and paragraph 3(1) and (3) of Schedule 33 to, the Finance Act 2003.

“(2) Subject to the following provisions of this section and to any regulations made by the Treasury, the accounts recognised for the purposes of those sections are technical accounts included in accounts drawn up in accordance with the Council Directive of 19th December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No.91/674/EEC), in respect of the whole of the company’s long-term business or such of that business as is carried on through the permanent establishment in the United Kingdom through which the company carries on life assurance business.”;

(c) omit sub-paragraph (2).

(8) Omit paragraph 1C.

(9) After paragraph 1C insert —

“**1D.**—(1) In section 88(3), the reference to income and gains of the company’s life assurance business shall be construed as a reference to so much of that income and those gains as falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

(2) The reference to the aggregate amount of the items specified in paragraphs (aa) to (b) of section 88(3) shall be construed as a reference to the aggregate of so much of the amount of each of those items as falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to that permanent establishment.”.

(10) In paragraph 2 —

(a) in sub-paragraph (1), omit the words from “; and ” to the end of the sub-paragraph;

(b) omit sub-paragraph (2);

(c) after sub-paragraph (2) insert —

“(2A) In subsection (1B), the reference to income and chargeable gains referable to the company’s basic life assurance and general annuity business shall be construed as a reference to so much of that income and those gains as falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

(2B) In subsection (1B), the reference to the aggregate amount of the items specified in paragraphs (a) to (c) of that subsection shall be construed as a reference to the aggregate of so much of the amount of each of those items as falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to that permanent establishment.

(2C) In paragraph (b) of subsection (2), the reference to distributions shall be construed as a reference to so much of the distributions mentioned in that paragraph as falls to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to that permanent establishment.”(a);

(d) in sub-paragraph (3), for the words from “the branch or agency” to the end of the sub-paragraph substitute “that permanent establishment”;

(e) for sub-paragraph (4) substitute —

“(4) The reference in subsection (5)(b) to assets shall be construed as a reference to such of the assets concerned as fall to be attributed, for the purposes of section 11AA(2) of the Taxes Act 1988, to that permanent establishment.”;

(f) in sub-paragraph (5), for “the branch or agency” substitute “that permanent establishment”;

(g) after sub-paragraph (6) insert —

“(6A) Where the company is an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000, subsection (6) shall have effect as if, for the words from ““brought into account”” to “(Insurers);” there were substituted

(a) Section 89(1B) is inserted by section 170 of, and paragraph 6 of Schedule 33 to, the Finance Act 2003, and section 89(2)(b) is amended by section 170 of, and paragraph 12 of Schedule 33 to, the Finance Act 2003.

““brought into account” means brought into account in the technical accounts included in accounts drawn up in accordance with the Council Directive of 19th December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No.91/674/EEC), in respect of the whole of the company’s long-term business or such of that business as is carried on through the permanent establishment in the United Kingdom through which the company carries on life assurance business;”.”;

(h) omit sub-paragraphs (7), (7A), (8), (9) and (10).

Modifications to the Taxation of Chargeable Gains Act 1992

7.—(1) In its application to an overseas life insurance company the Taxation of Chargeable Gains Act 1992(a) has effect with the following modifications.

(2) In Schedule 7B —

(a) in paragraph 1 omit the words from “; and” to the end of the paragraph;

(b) after paragraph 1 insert —

“**1A.** In section 10B(1)(b) the words “situated in the United Kingdom and” are omitted.”

(b);

(c) omit paragraphs 2, 3, 4, 5, 6, 6A, 6B and 7A;

(d) for paragraph 8 substitute —

“**8.** In section 185(4) —

(a) in paragraph (a), omit “are situated in the United Kingdom and”;

(b) in paragraph (b), omit “are so situated and”.”;

(e) omit paragraph 9;

(f) omit paragraph 9A(c);

(g) in paragraph 10 —

(i) in sub-paragraph (1), for the subsection (5A) treated as inserted into section 212, substitute —

“(5A) In its application to an overseas life insurance company, this section shall have effect as if the references in subsections (1) and (2) to assets were to such of the assets concerned as fall to be attributed, for the purposes of section 11AA(2) of the Taxes Act, to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”;

(ii) omit sub-paragraph (2);

(h) in paragraph 11 —

(i) in sub-paragraph (1), in the words treated as inserted in section 213(4), for “branch or agency” substitute “permanent establishment”;

(ii) omit sub-paragraph (1A)(d);

(i) omit paragraphs 12 and 13;

(j) omit paragraph 14;

(k) in paragraph 15 —

(i) omit sub-paragraph (1);

(a) 1992 c.12.

(b) Section 10B is inserted into the Taxation of Chargeable Gains Act 1992 by section 149(4) of the Finance Act 2003.

(c) This paragraph is rendered otiose by virtue of section 214BA of the Taxation of Chargeable Gains Act 1992 (inserted by section 170 of, and paragraph 32 of Schedule 33 to, the Finance Act 2003), and sections 431(2) and 444B of, and Schedule 19AC to, the Taxes Act. Paragraph 6 of Schedule 19AC (which modifies section 431(2)) is amended by regulation 3(4)(h) above.

(d) This sub-paragraph is rendered otiose for the reasons in the preceding footnote.

- (ii) in sub-paragraph (2), for “In that paragraph” substitute “In Schedule 7A, in paragraph 1”;
- (l) omit paragraph 16.

Modification to the Finance (No. 2) Act 1992

- 8.**—(1) The Finance (No. 2) Act 1992(a) is modified as follows.
- (2) Omit section 65(2)(ab).

Modification to the Finance Act 1996

- 9.**—(1) Schedule 9 to the Finance Act 1996(b) is modified as follows.
- (2) In paragraph 12(1)(d), for the words “of paragraph 4A of Schedule 19AC to the Taxes Act 1988” substitute “given by the definition treated as inserted into section 431(2) of the Taxes Act 1988 by paragraph 6(9) of Schedule 19AC to that Act”.

Modification to the Capital Allowances Act 2001

- 10.**—(1) The Capital Allowances Act 2001(c) is modified as follows.
- (2) In section 255(2), for “branch or agency” substitute “permanent establishment”.

Modifications to the Finance Act 2002

- 11.**—(1) The Finance Act 2002(d) is modified as follows.
- (2) In section 66 —
 - (a) in subsection (6)(a) —
 - (i) for “branch or agency” substitute “permanent establishment”;
 - (ii) for “Article 11 of the third life insurance directive” substitute “Article 14 of the consolidated life assurance directive”;
 - (b) in subsection (7), for the definition of “the third life insurance directive” substitute —
““the consolidated life assurance directive” means the Directive of the European Parliament and of the Council of 5th November 2002 concerning life assurance (No.2002/83/EC);”.
 - (3) In Schedule 22, in paragraph 10 —
 - (a) in sub-paragraph (5)(a) —
 - (i) for “branch or agency” substitute “permanent establishment”;
 - (ii) for “Article 11 of the third life insurance directive” substitute “Article 14 of the consolidated life assurance directive”;
 - (b) in sub-paragraph (6), for the definition of “the third life insurance directive” substitute —
““the consolidated life assurance directive” means the Directive of the European Parliament and of the Council of 5th November 2002 concerning life assurance (No.2002/83/EC);”.
 - (4) In Schedule 26, in paragraph 28(2)(d), for the words “of paragraph 4A of Schedule 19AC to the Taxes Act 1988” substitute “given by the definition treated as inserted into section 431(2) of the Taxes Act 1988 by paragraph 6(9) of Schedule 19AC to that Act”.

(a) 1992 c. 48.
(b) 1996 c. 8.
(c) 2001 c. 2.
(d) 2002 c. 23.

(5) In Schedule 29, in paragraph 89(1)(b), for the words “of paragraph 4A of Schedule 19AC to the Taxes Act 1988” substitute “given by the definition treated as inserted into section 431(2) of the Taxes Act 1988 by paragraph 6(9) of Schedule 19AC to that Act”.

Modification to the Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995

12.—(1) The Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995(a) are modified as follows.

(2) In paragraph 2(1), in the definition of “relevant business”, for “branch or agency” substitute “permanent establishment”.

Jim Murphy
John Heppell

27th August 2004

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify legislation relating to the taxation of overseas life insurance companies. They are consequent to changes made in the Finance Act 2003 (c. 14), by the introduction of section 11AA of the Income and Corporation Taxes Act 1988 (c. 1), to the method of determining for the purposes of corporation tax the amount of profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom. The meaning of “permanent establishment” is given by section 148 of the Finance Act 2003. These Regulations have substituted this term in most of the places where previously there was a reference to a company’s “branch or agency”.

These Regulations omit categories of assets from section 440 of the Income and Corporation Taxes Act 1988 as modified where the company is an overseas life insurance company. In consequence these Regulations may have the effect of transferring assets from one category to another. Regulation 4 of these Regulations prevents any such transactions from being deemed to be a disposal and re-acquisition of assets for the purposes of corporation tax.

The Finance Act 2003 also made amendments to the provisions in the Finance Act 1989 (c. 26) relating to life assurance. These provisions are modified in their application to overseas life insurance companies by Schedule 8A to the Finance Act 1989. Regulation 6 amends Schedule 8A in consequence of the amendments made by the Finance Act 2003. Its effect is to limit references in the relevant provisions of the Finance Act 1989 to various amounts to only so much of those amounts as could be attributable to a company’s permanent establishment.

Paragraphs 31 and 32 of Schedule 33 to the Finance Act 2003 introduced interpretation provisions into, respectively, the Finance Act 1989 and the Taxation of Chargeable Gains Act 1992 (c. 12). These provisions give expressions also used in the relevant parts of those Acts the meaning they have in Chapter 1 of Part 12 of the Income and Corporation Taxes Act 1988. This has made some modifications to definitions given in the Finance Act 1989 and the Taxation of Chargeable Gains Act 1992 unnecessary, and these Regulations omit those superfluous modifications.

(a) S.I. 1995/3237.

STATUTORY INSTRUMENTS

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