

*This Statutory Instrument has been made in consequence of a defect in S.I. 2006 No. 3218 and is being issued free of charge to all known recipients of that Statutory Instrument.*

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STATUTORY INSTRUMENTS

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**2006 No. 3389**

**CORPORATION TAX**

**The Group Relief for Overseas Losses (Modification  
of the Corporation Tax Acts for Non-resident  
Insurance Companies) (No. 2) Regulations 2006**

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|---|---------|---------------------------|
| <i>Made</i>                                 | - - - - | <i>18th December 2006</i> |
| <i>Laid before the House of<br/>Commons</i> | - - - - | <i>18th December 2006</i> |
| <i>Coming into force</i>                    | - -     | <i>8th January 2007</i>   |

The Treasury, in exercise of the powers conferred upon them by paragraph 16(2) to (5) of Schedule 18A to the Income and Corporation Taxes Act 1988<sup>(1)</sup>, make the following Regulations:

**Citation, commencement, effect and interpretation**

1.—(1) These Regulations may be cited as the Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) (No. 2) Regulations 2006, and shall come into force on 8th January 2007.

(2) These Regulations shall have effect for accounting periods beginning on or after 1<sup>st</sup> April 2006.

(3) In these Regulations—

“EEA company” means a non-resident company—

- (a) which is resident in an EEA territory; or
- (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment;

“EEA territory”, and “non-resident company”, have the respective meanings in section 413(2) of the Income and Corporation Taxes Act 1988;

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(1) 1988 c. 1; Schedule 18A was inserted by paragraph 7 of Schedule 1 to the Finance Act 2006 (c. 25).

“EEA general insurer” means an EEA company whose business consists of the effecting or carrying out of contracts falling within Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(2)</sup>;

“EEA life insurance company” means an EEA company whose business consists of, or includes, the effecting or carrying out of contracts falling within Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and

a reference to a section without more, in regulations 3 to 9 is to that section of the Income and Corporation Taxes Act 1988, and in regulation 10 is to that section of the Finance Act 1989<sup>(3)</sup>.

### **Modifications of the Corporation Tax Acts**

2. For the purposes of Part 1 of Schedule 18A to the Income and Corporation Taxes Act 1988, the Corporation Tax Acts, and provision made under them, shall have effect with the modifications—

- (a) in regulations 3 to 10, in their application to EEA life insurance companies, and
- (b) in regulations 11 and 12, in their application to EEA general insurers.

### **Modifications of section 12 of the Income and Corporation Taxes Act 1988**

3. In section 12<sup>(4)</sup>—

- (a) in subsection (7B) for the definition of “insurance business transfer scheme” substitute—
  - ““insurance business transfer scheme” means so much of the transfer of the whole or any part of the business of an EEA life insurance company 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 5<sup>th</sup> November 2002 concerning life assurance (No. 2002/83/EC)<sup>(5)</sup>”;
- (b) in subsection (7C)—
  - (i) for “an actual periodical return” substitute “actual IAD accounts”;
  - (ii) for “periodical return” (where those words otherwise appear) substitute “IAD accounts”.

### **Modifications of section 431(2) of the Income and Corporation Taxes Act 1988**

4. In section 431(2)<sup>(6)</sup>—

- (a) insert the following definition at the appropriate place—
  - ““IAD accounts” means accounts drawn up in accordance with the Council Directive of 19<sup>th</sup> December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No. 91/674/EEC)<sup>(7)</sup>”;
- (b) for the definition of “insurance business transfer scheme” substitute—
  - ““insurance business transfer scheme” means so much of the transfer of the whole or any part of the business of an EEA life insurance company as takes place in accordance with any authorisation granted outside the United Kingdom for the

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(2) S.I. 2001/544.

(3) 1989 c. 26.

(4) Subsection (7B) was inserted by Article 14 of S.I. 2001/3629 and sub-section (7C) by paragraph 20(3) of Schedule 9 to the Finance (No. 2) Act 2005 (c. 22).

(5) O.J. 2002, L345/1.

(6) Section 431(2) was relevantly amended by paragraph 1 of Schedule 6 to the Finance Act 1990 (c. 29), S.I. 2001/3629 and paragraph 2 of Schedule 9 to the Finance (No. 2) Act 2005 (c. 22).

(7) O.J. 1991, L374/7.

purposes of Article 14 of the Directive of the European Parliament and of the Council of 5<sup>th</sup> November 2002 concerning life assurance (No. [2002/83/EC](#));”;

- (c) for the definition of “liabilities” substitute—

““liabilities”, in relation to an EEA life insurance company, means liabilities as determined in accordance with actuarial principles for the purposes of Article 20 of Directive No. [2002/83/EC](#);”;
- (d) omit the definition of “period of account”;
- (e) for the definition of “periodical return” substitute—

““periodical return”, in relation to a EEA life insurance company, means its IAD accounts;”;

and
- (f) for the definition of “value” substitute—

““value”, in relation to assets of an EEA life insurance company, means the value of the assets as determined in accordance with Articles 22 to 26 of Directive No. [2002/83/EC](#);”.

#### **Modification of section 439A of the Income and Corporation Taxes Act 1988**

5. It shall be assumed that the trade of the EEA life insurance company, referred to in paragraph 13(1) of Schedule 18A to the Income and Corporation Taxes Act 1988—

- (a) is charged to tax under Case 1 of Schedule D (and not under the I minus E basis); and
- (b) for that purpose falls within a type included in section 439A(8).

#### **Modifications of section 444AA of the Income and Corporation Taxes Act 1988**

- 6. In section 444AA(9)—
  - (a) for “an actual periodical return” (wherever those words appear) substitute “actual IAD accounts”;
  - (b) for “a periodical return” or “periodical return” (wherever those words otherwise appear) substitute “IAD accounts”;
  - (c) omit subsection (6).

#### **Modifications of section 444AB of the Income and Corporation Taxes Act 1988**

- 7. In section 444AB(10)—
  - (a) in subsection (6A)(b) after “as were” insert “shown in the IAD accounts of the transferor and correspond to the amounts which would fall to be”;
  - (b) in subsection (7) after “shown” insert “in the IAD accounts of the transferor and correspond to the amounts which would fall to be included”.

#### **Modification of section 444AC of the Income and Corporation Taxes Act 1988**

- 8. Section 444AC(11) shall be omitted.

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(8) Section 439A was inserted by paragraphs 26 and 57 of Schedule 8 to the Finance Act 1995 (c. 4).

(9) Section 444AA was inserted by paragraph 18 of Schedule 33 to the Finance Act 2003 (c. 14).

(10) Section 444AB was inserted by paragraph 19 of Schedule 33 to the Finance Act 2003.

(11) Section 444AC was inserted by paragraph 20(1) of Schedule 33 to the Finance Act 2003.

**Modification of section 444AD of the Income and Corporation Taxes Act 1988**

9. Section 444AD(12) shall be omitted.

**Modifications of section 83A of the Finance Act 1989**

10. In section 83A(13)—

- (a) in subsection (2) for “are—” to the end substitute “are technical accounts included in accounts drawn up in accordance with the Council Directive of 19<sup>th</sup> December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No. 91/674/EEC)”;
- (b) subsections (3) to (6) shall be omitted.

**Modification of the General Insurance Reserves (Tax) Regulations 2001**

11. It shall be assumed that Case 1 in regulation 10(1) of the General Insurance Reserves (Tax) Regulations 2001(14) applies to an EEA general insurer.

**Modification of the Insurance Companies (Reserves) (Tax) Regulations 1996**

12. It shall be assumed that regulation 8 of the Insurance Companies (Reserves) (Tax) Regulations 1996(15) applies to an EEA general insurer.

**Revocation of the Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) Regulations 2006**

13. The Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) Regulations 2006(16) are hereby revoked.

18th December 2006

*Kevin Brennan*  
*Dave Watts*  
Two of the Lords Commissioners of Her  
Majesty’s  
Treasury

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(12) Section 444AD was inserted by paragraph 20(1) of Schedule 33 to the Finance Act 2003.  
(13) Section 83A was inserted by paragraph 16(1) of Schedule 8 to the Finance Act 1995.  
(14) S.I. 2001/1757; regulation 10 was inserted by regulation 11 of S.I. 2003/2862.  
(15) S.I. 1996/2991; regulation 8 was amended by S.I. 1999/1408, 2001/3629 and 2002/1409.  
(16) S.I. 2006/3218.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Finance Act 2006 (“FA 2006”) extended the provisions in the Corporation Tax Acts concerning loss relief for groups of companies (known as “group relief”). Prior to that Act, the relief was available only to U.K. resident companies or companies with a permanent establishment in the U.K. Following the EC Court of Justice’s decision in Marks and Spencer p.l.c. v Halsey (H.M. Inspector of Taxes) in 2005, FA 2006 included provisions allowing certain non-resident companies (an “EEA company”) to surrender losses to a U.K. resident company in the same group. The loss must be calculated following the provisions of the Corporation Tax Acts. Paragraph 16 of Schedule 18A to the Income and Corporation Taxes Act 1988 (inserted by FA 2006) gives the Treasury power to modify the relevant provisions, including for a particular class of trade or business. These Regulations make such provision for insurance companies.

Regulation 1 provides for citation, commencement, effect and interpretation. The retrospective effect provided for by regulation 1(2) is authorised by paragraph 16(5) of Schedule 18A to the Income and Corporation Taxes Act 1988.

Regulation 2 provides that the modifications in regulations 3 to 10 apply to EEA life insurance companies (as defined) and those in regulations 11 and 12 apply to EEA general insurers (as defined).

Regulation 3 modifies the meanings of “insurance business transfer scheme” and “periodical return” (defined according to provisions in domestic legislation) to refer to their EEA equivalents. Regulations 4 and 6 to 10 make similar technical modifications. Regulation 5 provides for an assumption that the trade of the EEA company is taxed under Case 1 of Schedule D (and not under the alternative “I minus E basis”).

Regulations 11 and 12 provide for assumptions that provisions in the General Insurance Reserves (Tax) Regulations 2001 (S.I. 2001/1757) and the Insurance Companies (Reserves) (Tax) Regulations 1996 (S.I. 1996/2991) apply to the EEA general insurer. Regulation 13 revokes the Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) Regulations 2006 (which contained a technical error).

A Regulatory Impact Assessment on the extension of group relief was published with the 2006 Budget and can be found at <http://www.hmrc.gov.uk/ria/ria-ct-extension.pdf>.