
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 relief was available only to U.K. resident companies or companies with a permanent establishment in the U.K. Following the European 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 (“ICTA”) gives the Treasury power to modify the relevant provisions. These Regulations make such provision for insurance companies which carry on life insurance or general insurance business. These Regulations also consolidate previous provisions in relation to such companies.

Regulation 1 provides for citation, commencement and effect.

Regulation 2 provides that the modification in regulation 3 applies to EEA companies carrying on life insurance business and that the modification in regulation 4 applies to EEA companies carrying on general insurance business. The Regulation also provides for interpretation of the terms used in that Regulation.

Regulation 3 modifies section 431(2) ICTA by providing for the assumption that the definition of “insurance special purpose vehicle” in that section includes an EEA life insurance company but does not include an insurance special purpose vehicle which is treated as a BLAGAB group reinsurer. The reason for this is that a BLAGAB group reinsurer is a type of insurance special purpose vehicle that is treated as an insurance company and the tax treatment of such a reinsurer is not an appropriate one for an EEA life insurance company.

Regulation 4 provides for the assumption that the Insurance Companies (Reserves) (Tax) Regulations 1996 (S.I. 1996/2991) apply to an EEA general insurer.

Regulation 5 revokes the Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) (No. 2) Regulations 2006 and the Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) (No. 2) (Amendment) Regulations 2007. The effect of the provisions of those instruments have been consolidated in these Regulations.

An 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>. A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.