

2008 No. 2646

CORPORATION TAX

The Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) Regulations 2008

<i>Made</i>	- - - -	<i>7th October 2008</i>
<i>Laid before the House of Commons</i>		<i>7th October 2008</i>
<i>Coming into force</i>	- -	<i>28th October 2008</i>

The Treasury make the following Regulations in exercise of the powers conferred by paragraphs 16(2) to (4) of Schedule 18A to the Income and Corporation Taxes Act 1988(a).

Citation, commencement and effect

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) Regulations 2008 and shall come into force on 28th October 2008.

(2) These Regulations shall have effect for accounting periods beginning on or after 28th October 2008.

Modification of the Corporation Tax Acts

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

- (a) in regulation 3, in relation to EEA life insurance companies, and
- (b) in regulation 4, in relation to EEA general insurers.

(2) For the purposes of these Regulations —

“EEA general insurer” 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(b); and

“EEA life insurance company” means an EEA company whose business consists of, or includes, the effecting or carrying out of contracts falling within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(3) In paragraph (2)—

“EEA company” means a non-resident company—

- (a) which is resident in an EEA territory; or

(a) 1988 c. 1. Schedule 18A was inserted by paragraph 7 of Schedule 1 to the Finance Act 2006 (c. 25).
(b) S.I. 2001/544.

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

(4) In paragraph (3)—

“EEA territory” has the meaning given in section 413(2) of the Income and Corporation Taxes Act 1988(a), and

“non-resident” means a company which is not resident in the United Kingdom.

Modification of section 431(2) of the Income and Corporation Taxes Act 1988

3.—(1) It shall be assumed that the definition of “insurance special purpose vehicle” in section 431(2) of the Income and Corporation Taxes Act 1988(b) includes an EEA life insurance company but does not include an insurance special purpose vehicle treated as a BLAGAB group reinsurer.

(2) In paragraph (1) “BLAGAB group reinsurer” has the meaning given in paragraph 1 of Schedule 19ABA to the Income and Corporation Taxes Act 1988(c).

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

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

Revocations

5. The following instruments are hereby revoked—

- (a) the Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) (No. 2) Regulations 2006(e); and
- (b) the Group Relief (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) (No. 2) (Amendment) Regulations 2007(f).

Steve McCabe

Dave Watts

7th October 2008

Two of the Lords Commissioners of Her Majesty's Treasury

(a) The definition of “EEA territory” was inserted by paragraph 5 of Schedule 1 to the Finance Act 2006.
(b) The definition of “insurance special purpose vehicle” was inserted by article 4 of S.I. 2006/3270.
(c) Schedule 19ABA was inserted by S.I. 2007/3430.
(d) SI 1996/2991. Regulation 8 was amended by S.I. 1999/1408, 2001/3629 and 2002/1409.
(e) S.I. 2006/3389.
(f) S.I. 2007/2147.

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.

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