

2009 No. 1926

INCOME TAX

CORPORATION TAX

The General Insurers' Technical Provisions (Appropriate Amount) (Tax) Regulations 2009

<i>Made</i>	- - - -	<i>17th July 2009</i>
<i>Laid before the House of Commons</i>		<i>20th July 2009</i>
<i>Coming into force</i>	- -	<i>1st September 2009</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by paragraphs 1(4), 3(7) and 3(15) of Schedule 11 to the Finance Act 2007(a).

PART 1

INTRODUCTORY PROVISIONS

Citation, commencement and effect

1.—(1) These Regulations may be cited as the General Insurers' Technical Provisions (Appropriate Amount) (Tax) Regulations 2009 and come into force on 1st September 2009.

(2) In relation to a general insurer, other than a member of a Lloyd's syndicate, these Regulations shall have effect in relation to periods of account ending on or after 31st December 2009.

(3) In relation to a member of a Lloyd's syndicate, these Regulations shall have effect in relation to a syndicate return made in respect of profits or losses declared after 31st December 2009.

Interpretation

2.—(1) In these Regulations a reference to Schedule 11 is a reference to Schedule 11 to the Finance Act 2007.

(2) In these Regulations—

“Schedule 3 to the Accounts and Reports Regulations” means Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(b); and

“syndicate return” means a return of a syndicate’s profit or loss for an underwriting year made under regulation 4 of the Lloyd’s Underwriters (Tax) Regulations 2005(a).

PART 2

GENERAL INSURERS (OTHER THAN MEMBERS OF LLOYD’S SYNDICATES)

Appropriate amount of technical provisions: general insurers (other than a member of a Lloyd’s syndicate)

3. This Part applies to a general insurer other than a member of a Lloyd’s syndicate.
4. For a period of account, the appropriate amount of the technical provisions for the purposes of paragraph 1 of Schedule 11 is the aggregate of—
 - (a) the amount of the provision for unearned premiums determined in accordance with paragraph 50 of Schedule 3 to the Accounts and Reports Regulations;
 - (b) the amount of the provision for unexpired risks determined in accordance with paragraph 51 of that Schedule; and
 - (c) the estimated amount of the liabilities in respect of claims outstanding arising from the general insurer’s general business determined in accordance with regulations 5 to 8.

Estimated amount of claims outstanding: confirmation by general insurer

- 5.—(1) For the purposes of regulation 4, the amount of the liabilities in respect of claims outstanding arising from the general insurer’s general business is the amount of those liabilities stated in the general insurer’s accounts for the period if conditions A to C are satisfied.
 - (2) Condition A is—
 - (a) that the general insurer gives confirmation in writing that the amount of the liabilities stated in the accounts is not an excessive estimate of the amount of the liabilities, and
 - (b) the confirmation is founded on or supported by an opinion in writing given to the general insurer by an actuary or other suitably skilled person (which may include a director or employee of the general insurer) stating that the amount is not an excessive estimate of the amount of the liabilities.

Regulation 6 contains provisions supplementing condition A.

- (3) Condition B is that the opinion referred to in condition A must reflect the circumstances prevailing at the time at which the technical provisions are adopted by the general insurer.
- (4) Condition C is that the amount of the liabilities stated in the accounts is determined in accordance with regulation 8 (provisions supplementing regulations 5 and 7).

Provisions supplementing condition A

- 6.—(1) In the case of a controlled foreign company which is a general insurer within the meaning of paragraph 3(1)(b) of Schedule 11—
 - (a) references to “general insurer” in regulation 5(2)(a) and in this regulation (other than in sub-paragraph (b) of this paragraph) are to be construed as references to the company referred to in paragraph 3(2)(b) of Schedule 11, and
 - (b) the reference to “general insurer” in regulation 5(2)(b) is to be construed as a reference to the controlled foreign company.

(a) S.I. 2005/3338.

(2) For the purposes of condition A in regulation 5, an estimate of the amount of the liabilities is an excessive estimate unless the estimate includes no more than a reasonable margin to take into account the nature or type of risks to which the liabilities relate and the uncertainty associated with those risks.

(3) If the opinion referred to in condition A is given to the general insurer by a director, or by an employee who is not a director of the general insurer, the confirmation must include a statement identifying the status of the person who gave the opinion to the general insurer.

(4) Subject to paragraph (5), the confirmation referred to in condition A must accompany the general insurer's company tax return which relates to the period of account (and if more than one company tax return relates to the period of account the confirmation need only be given with the return which relates to the earliest period in the period of account).

(5) If, at the time the company tax return is made, the general insurer has a reasonable excuse for not providing the confirmation with the company tax return, the confirmation may be provided to an officer of Revenue and Customs separately from the return but must be provided as soon as reasonably possible after the return is made.

(6) In this regulation "company tax return" means a return under paragraph 3 of Schedule 18 to the Finance Act 1998(a).

Estimated amount of claims outstanding where conditions in regulation 5 are not satisfied

7.—(1) This regulation applies in a case where any of conditions A to C in regulation 5 is not satisfied.

(2) For the purposes of regulation 4, the amount of the liabilities in respect of claims outstanding arising from the general insurer's general business is the general insurer's undiscounted best estimate of the future cash flows in respect of claims outstanding.

(3) For the purposes of paragraph (2)—

- (a) the reference to "best estimate" shall be construed as a reference to the mean of the distribution of the potential outcomes of the claims to which the estimate relates, and
- (b) the best estimate of the future cash flows must be the best estimate available at the time at which the technical provisions are adopted by the general insurer.

Provisions supplementing regulations 5 and 7

8.—(1) This regulation supplements regulations 5 and 7.

(2) Any calculation, computation or estimate required to determine the amount of the liabilities in respect of claims outstanding must be made in accordance the standards specified in paragraph (3) in force at the time at which the technical provisions are adopted by the general insurer.

(3) The specified standards are—

- (a) all generic technical actuarial standards and relevant specific technical actuarial standards published by the Board for Actuarial Standards in relation to the performance of actuarial functions, or
- (b) where the general insurer is not resident in the United Kingdom, such other standards or provisions of the law of the territory in which the general insurer is domiciled as may reasonably be regarded as equivalent in effect to the standards referred to in subparagraph (a).

In this paragraph, "the Board for Actuarial Standards" means the operating body of that name of the Financial Reporting Council(b).

(a) 1998 c. 36; paragraph 3 was amended by paragraph 385 of Schedule 1 to the Income Tax Act 2007 (c.3).

(b) The Board for Actuarial Standards can be contacted at the Board for Actuarial Standards, Financial Reporting Council, 5th floor, Aldwych House, 71-91 Aldwych, London, WC2B 4HN and the actuarial standards obtained from their website at www.frc.org.uk/bas/standards.

(4) Any calculation, computation or estimate required to determine the amount of the liabilities in respect of claims outstanding must take into account—

- (a) the nature or type of risks to which the liabilities in respect of claims outstanding relate, and
- (b) the volatility and uncertainty associated with those risks.

(5) Without prejudice to the generality of paragraph (4), the reference in that paragraph to taking into account includes, in particular, taking into account liabilities—

- (a) on the basis of general insurance business reporting categories described in Annex 11.3 to Chapter 11 of Volume 1 of IPRU(INS), or
- (b) on the basis of grouping of risks in accordance with the descriptions of accounting classes for general insurance business set out in Appendix 9.16 to Volume 2 of IPRU(INS).

(6) In paragraph (5), “IPRU(INS)” means the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under the Financial Services and Markets Act 2000(a).

(7) Any estimate of the amount of the liabilities in respect of claims outstanding shall be determined—

- (a) net of reinsurance ceded, and
- (b) in accordance with paragraph 53 of Schedule 3 to the Accounts and Reports Regulations.

(8) A reference to claims outstanding includes—

- (a) the expense of handling a future claim (whether allocated or unallocated), and
- (b) a future claim which has been incurred as a liability of the general insurer but which is—
 - (i) not reported to the general insurer at the time at which the technical provisions are adopted, or
 - (ii) reported, but not fully reported, to the general insurer at that time.

(9) A reference in this Part to the time at which technical provisions are adopted is a reference—

- (a) to the time at which the directors of the general insurer approve the general insurers’ annual accounts for the purposes of section 414 of the Companies Act 2006(b);
- (b) in the case of a general insurer to which that section does not apply, to such similar time as may apply under equivalent provisions of the law of the territory in which the general insurer is domiciled; or
- (c) in the case of general business carried on by a permanent establishment in the United Kingdom of a general insurer which is not resident in the United Kingdom and for which accounts of the permanent establishment are prepared for the period of account, the time at which the general insurer approves those accounts.

PART 3

MEMBERS OF LLOYD’S SYNDICATES

Appropriate amount of technical provisions: members of closed Lloyd’s syndicates

9.—(1) This regulation applies to a general insurer which is a member of a closed Lloyd’s syndicate.

In this regulation, a closed Lloyd’s syndicate is a Lloyd’s syndicate that is not an open Lloyd’s syndicate.

(a) 2000 c. 8. The Interim Prudential Sourcebook can be obtained from the Financial Services Authority’s website at www.fsa.gov.uk/Pages/handbook.

(b) 2006 c. 46.

(2) For a period of account, the appropriate amount of the technical provisions for the purposes of paragraph 1 of Schedule 11 is the member's allowable reinsurance to close amount in respect of the syndicate.

(3) For the purposes of paragraph (2), the allowable reinsurance to close amount for the period of account is the lesser of—

- (a) the reinsurance to close amount for the period of account which is treated as a technical provision in accordance with regulation 11 (reinsurance to close amounts); and
- (b) subject to paragraphs (4), the aggregate of the member's share of—
 - (i) the amount of the provision for unearned premiums determined in accordance with paragraph 50 of Schedule 3 to the Accounts and Reports Regulations;
 - (ii) the amount of the provision for unexpired risks determined in accordance with paragraph 51 of that Schedule; and
 - (iii) the amount of the liabilities in respect of claims outstanding arising from the general business of the syndicate.

(4) For the purposes of paragraph (3)(b), amounts are to be determined on the assumption that—

- (a) the syndicate is an open Lloyd's syndicate, and
- (b) no reinsurance to close amounts have been paid in respect of the syndicate by any member of the syndicate.

Appropriate amount of technical provisions: members of open Lloyd's syndicates

10.—(1) This regulation applies to any general insurer which is a member of an open Lloyd's syndicate.

(2) For a period of account, the appropriate amount of the technical provisions for the purposes of paragraph 1 of Schedule 11 is the aggregate of the member's share of—

- (a) the amount of the provision for unearned premiums determined in accordance with paragraph 50 of Schedule 3 to the Accounts and Reports Regulations;
- (b) the amount of the provision for unexpired risks determined in accordance with paragraph 51 of that Schedule 3; and
- (c) the amount of the liabilities in respect of claims outstanding arising from the general business of the syndicate.

Reinsurance to close amounts

11.—(1) The reinsurance to close amount to be treated as a technical provision in the case of a member of a Lloyd's syndicate for a period of account is whichever is the lesser of—

- (a) the total of the reinsurance to close amounts which the member pays or gives, or is treated as paying or giving, in respect of the underwriting year for which profits or losses are declared; and
- (b) the total of the reinsurance to close amounts which the member receives, or is treated as receiving, in respect of the underwriting year for which profits or losses are declared.

This paragraph is subject to paragraph (2).

(2) If a company—

- (a) pays or gives, or is treated as paying or giving, a reinsurance to close amount to a member in respect of an underwriting year for which profits or losses are declared, and
- (b) the company is connected to the member,

the amount which the member receives, or is treated as receiving, shall also be treated as a reinsurance to close amount paid by the member in respect of that underwriting year.

(3) For the purposes of paragraph (2), section 839(5) to (8) of the Income and Corporation Taxes Act 1988(a) (connected persons) applies for the purpose of determining whether a company is connected to a member.

Provisions supplementing regulations 9 and 10: determination of member's share of provisions

12.—(1) For the purposes of regulations 9(3)(b) and 10(2), a member's share of the amounts referred to in those regulations shall be determined by reference to the member's proportionate entitlement to participate in the underwriting business of the syndicate.

(2) For the purposes of regulations 9(3)(b)(iii) and 10(2)(c), in determining the amount referred to in those provisions, regulations 5 to 8 shall apply with the following modifications—

- (a) a reference to “the general insurer's general business” shall be treated as a reference to the general business of the syndicate;
- (b) the reference in regulation 5(1) to “the general insurer's accounts” shall be treated as a reference to the syndicate's accounts;
- (c) references in regulations 5(3), 7(3) and 8(8) to “the general insurer” shall be treated as a reference to the syndicate;
- (d) regulation 6(1) shall be treated as omitted;
- (e) the reference in regulation 6(4) and (5) to the “general insurer's company tax return” shall be treated as a reference to the syndicate return which relates to the period of account;
- (f) the reference in regulation 6(5) to “general insurer” shall be treated as a reference to the syndicate's managing agent;
- (g) regulation 6(6) shall be treated as omitted;
- (h) the reference in regulation 7(2) to “the general insurer's undiscounted best estimate” shall be treated as a reference to the best estimate of the syndicate's managing agent;
- (i) regulation 8(3)(b) shall be treated as omitted; and
- (j) for regulation 8(9) there shall be treated as substituted—

“(9) A reference in this Part to the time at which technical provisions are adopted is a reference to the time at which the syndicate's managing agent approves the syndicate's profit or loss accounts for the period of account by signing them.”.

*Bernadette Kenny
Dave Hartnett*

17th July 2009

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

The amount of technical provisions stated in the accounts of a general insurer (which includes members of Lloyd's underwriting syndicates carrying on general insurance business) for a period of account is taken into account in the calculation for tax purposes of the profits of the general insurer's trade for that period unless that amount exceeds the appropriate amount. Where the amount stated in the accounts exceeds the appropriate amount the excess is not taken into account when computing the profits: see paragraphs 1(2) and (3) of Schedule 11 to the Finance Act 2007. These Regulations make provision specifying how the appropriate amount of a general insurer's technical provisions is to be determined for this purpose.

Part 1 of these Regulations comprises regulation 1 which provides for the citation, commencement and effect of these Regulations and regulation 2 which provides for the interpretation of terms used in these Regulations.

(a) c.1; section 839 has been amended but none of the amendments are relevant.

Part 2 comprises regulations 3 to 8 and makes provision specifying the appropriate amount in the case of general insurers other than members of Lloyd's underwriting syndicates.

Regulation 3 introduces Part 2.

Regulation 4 specifies that the appropriate amount of the technical provisions is the aggregate of amounts representing unearned premiums, unexpired risks and the liability of the insurer for outstanding claims made against it.

Regulation 5 provides that the amount of the liabilities of the insurer for outstanding claims is the amount stated in the insurer's accounts provided the amount is not excessive and that this is confirmed by the insurer on the basis of an opinion from a suitably skilled person.

Regulation 6 makes provision supplementing regulation 5.

Regulation 7 deals with the case where the conditions for regulation 5 to apply are not satisfied. Where regulation 7 applies the amount of the liabilities of the insurer for outstanding claims is the best estimate of the future cash flows arising for the claims.

Regulation 8 makes further provision supplementing regulation 5 and provision supplementing regulation 7.

Part 3 comprises regulations 9 to 12 and makes provision specifying the appropriate amount in the case of members of Lloyd's underwriting syndicates.

Regulation 9 specifies the appropriate amount of the technical provisions in the case of a member of a Lloyd's underwriting syndicate which has succeeded in closing its accounts through the payment of a reinsurance to close premium.

Regulation 10 specifies the appropriate amount of the technical provisions in the case of a member of a Lloyd's underwriting syndicate which remains open.

Regulation 11 makes provision specifying the how to determine the reinsurance to close amount to be treated as a technical provision for the purposes of regulation 9.

Regulation 12 makes provision modifying regulations 5 to 8 to apply those regulations to Lloyd's syndicates for the purposes of regulations 9 and 10.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

2009 No. 1926

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CORPORATION TAX

The General Insurers' Technical Provisions (Appropriate
Amount) (Tax) Regulations 2009

£5.50